Transcending Frontiers: Indian Child Welfare in the United States

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Let us put our minds together and see what kind of future we can build for our children.

I. Introduction

These words were spoken by Sitting Bull, a Hunkpapa Lakota leader, following his peoples’ victory over the army of the United States at the Battle of Little Big Horn in 1876. In the struggle to protect the Lakota lands against colonial expansion, Sitting Bull recognized that the gravest danger facing his tribe was the distinct possibility of their extermination. In the almost one hundred twenty years since these words were spoken, Indian people have learned to defend themselves by waging battles through means other than armed struggle. Indian tribes have since fought to maintain their right to govern their own people; they have fought for their sovereignty, a principle which is, as one noted Indian scholar has argued, “the most basic principle of all Indian law.”

Tribal sovereignty is the force that binds a community together and represents the will of a people to act together as a single political entity. Tribal sovereignty is also a barrier against intrusion into tribal affairs. If left unguarded, tribal sovereignty faces two dangers, either...
of which could severely limit its scope or even destroy it. The first
danger emanates from external forces—specifically, federal and state
government interference with tribal governmental authority or tribal
affairs. The second danger to tribal sovereignty is the failure of the
tribes themselves to internally organize their own governments in
order to fully and fairly exercise their powers of self-government in a
manner which is responsive to the welfare of their people.

The first danger to tribal sovereignty—interference by outside
governments—has been guarded against by means of a prolonged
legal struggle to hold the federal government accountable to fulfilling
its treaty and trust obligations. Both federal and state governments,
however, continually test the stability and resiliency of tribal govern­
ments by attempting to place further restraints on the ability of tribal
governments and courts to maintain their own tribal and familial
relations. In doing so, they disregard the most essential tribal relation
of all—the collective responsibility of the Indian community to their
children.

In enacting the Indian Child Welfare Act in 1978, Congress finally
acknowledged that many of these harmful responses have contributed
to the removal of thousands of Indian children from their families.
The basic tenets of the Indian Child Welfare Act are to protect the best
interests of Indian children and promote the stability and security of
Indian tribes and families. These tenets recognize that tribes have a
serious stake in the welfare of their children and empower those tribes
with expansive jurisdiction over Indian child custody proceedings in
order to prevent further discrimination and destruction of tribal and
family interests.

The second danger to tribal sovereignty—the failure of tribes to
fully and fairly exercise their powers of self-government—is a greater
danger than the first because it is mostly self-inflicted. This threat
occurs when a tribe loses sight of tribal or individual Indian rights and
fails to assert its tribal sovereignty to protect these vital interests. Tra­
ditionally, tribal governments represented their communities’ religious

v. Confederated Salish and Kootenai Tribes, 425 U.S. 463, 475 (1976); McClanahan v. Arizona
Tax Comm’n, 411 U.S. 164, 165 (1973); Oklahoma Tax Comm’n v. Citizen Band Potawatomi

7 See id.
and spiritual values of harmony and responsibility—harmony amongst and responsibility toward all elements: the land and plant, animal, and human life.\textsuperscript{10} The people were both connected to and a part of nature, and the responsibility for all aspects of life was shared collectively by individual members.\textsuperscript{11} Collective responsibility still forms the basis for tribal self-government and tribal sovereignty.

These values are also reflected in the Indian Child Welfare Act wherein Congress forthrightly recognized that "there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children."\textsuperscript{12} Yet in the sixteen years since the mandates of the Indian Child Welfare Act were issued, placements of Indian children in substitute care have actually increased. Thus, tribes must begin to heed the warning signs of a potentially self-destructive internal upheaval of Indian families and children, and begin to address the reasons for this alarming development—reasons which are due, in no small measure, to the failure of tribes to fully exercise their tribal sovereignty.

This paper presents a brief outline of the devastating history of Indian child welfare in the United States and the basic jurisdictional tenets of the Indian Child Welfare Act. It then offers a retrospective view for understanding the current internal upheavals in our tribal communities and suggests a viable solution based on the full exercise of tribal sovereignty and the commitment of internal tribal resources, both financial and cultural, to attain the ultimate goal of preserving Indian families and communities.

II. HISTORICAL IMPACTS ON INDIAN CHILD WELFARE

A. The Source and Scope of Federal Authority in Indian Affairs

The manner in which tribes and Indian people respond to Indian child welfare matters and carry out their responsibilities has been impacted by both the rapid and drastic changes in tribal governmental and cultural organizations, as well as tribal economic status since Christopher Columbus first encountered the North American Indians. The general course of the history of the conquest of the Americas and subsequent European subjugation of Native peoples and the expro-

\textsuperscript{10} Sharon O'Brien, American Indian Tribal Governments 15 (1989).
\textsuperscript{11} Id.
\textsuperscript{12} 25 U.S.C. § 1901(3).
priation of their lands has been effected through a historical progression of federally instigated policies for dealing with tribes and Indian people—war, treaties, reservations, allotment, assimilation, termination, relocation. None of these policies demonstrated much regard or respect for the values of traditional native culture, social organization, and specifically the Native American peoples’ extensive and elaborate kinship systems. By the time the United States Constitution was formally adopted in 1789, the federal government had assumed plenary authority over practically all aspects of Indian affairs.13

During the nineteenth and twentieth centuries, white settlers incessantly demanded more land and unhindered access to valuable resources discovered in Indian territory. The federal government responded by entering into treaties with Indian tribes. In exchange for the federal government’s promises to preserve their remaining lands and provide them with food, clothing, and shelter, the Indian tribes submitted themselves to the protection of the United States and agreed to cede their aboriginal lands and remove themselves to designated reservations.14

Out of sight was not out of mind, however, when the white settlers increased their demands for more Indian land and voiced their mounting apprehension over the practice of Native American religions. Congress also feared that allowing tribes to hold their reservation lands in traditional common fashion would inhibit acculturation processes and

13 See U.S. ARTICLES OF CONFEDERATION, art. IX, “The United States in Congress assembled shall also have the sole and exclusive right and power of . . . regulating the trade and managing all affairs with the Indians, not members of any of the States, provided that the legislative right of any State within its own limits be not infringed or violated. . . .”; see also U.S. CONST., art. I, § 8, cl. 3 which reads, “the Congress shall have the Power . . . to regulate Commerce . . . with the Indian Tribes. . . .”

14 For example, after more than 20 years of war with the United States, the Great Sioux Nation relinquished most of its aboriginal lands in a series of treaties with the federal government and reluctantly agreed to confine itself to reservation lands. When gold was discovered in their sacred hunting grounds in the Black Hills, thousands of miners disregarded treaties and invaded the Black Hills. The confrontation resulted in the battle of Greasy Grass with General George Armstrong Custer near the Little Big Horn River in the southern Montana territory. After this battle, another agreement was established by which the Sioux lost not only their sacred Black Hills but much of their independence. At this time the Sioux were confined to even smaller reservations. Since the great buffalo herds had disappeared along with the Sioux lands, the Indians had to rely on the federal government for most of their basic necessities, food, housing, and clothing. The federal government’s distribution of these supplies, however, was slow and haphazard. Consequently, the Sioux people experienced enormous population losses from starvation and disease. Reliance on the federal government then became total dependence. RUSSELL THORNTON, AMERICAN INDIAN HOLOCAUST AND SURVIVAL, A POPULATION HISTORY SINCE 1492, 105-06, 146 (1987).
ignite the natives’ smoldering spirit to revolt. The federal government therefore introduced a plan to decentralize various tribes’ influences over communal property and replace them with a new veneration for individual ownership of land—the allotment policy. Under the Allotment Acts, Indian reservations were thus further divided into smaller allotments of 160 acres and parcelled out to individual Indians. Indian allotments were held in trust by the United States for a period of twenty-five years during which time they could not be sold and were immune from state taxation.

The allotment policy was based on a wholly ill-founded belief that Indian people would willingly abandon their traditional philosophy and assume the roles and responsibilities attendant upon individual landholders by assimilating the customs and habits of their farming neighbors. In 1924, as further encouragement to cooperate with the assimilation process, the federal government officially granted citizenship to Indian allottees who would adopt “the habits of civilized life” and sever their tribal relations. Accordingly, the federal government planned that once all the lands had been allotted and the trust periods had expired, the reservations would be abolished, tribal governments would cease to function, and the federal government would have no further responsibility for its Indian wards.

By the late 1920s, Congress recognized that the incredible loss of land, combined with the lack of tribal resources to provide a subsistence lifestyle for the reservation communities, produced widespread poverty among Indian people. Congress formally repudiated the al-

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16 See United States v. Mitchell, 445 U.S. 535, 544 (1980). The essential characteristic of most Indian allotments was a federally imposed restraint against alienation in the form of a trust title. However, once these restraints were removed through the issuance of fee patents after the expiration of the trust period, the allottee owned the land in fee simple and could encumber or alienate it in any manner allowed by law, such as the imposition of state property taxes. Thus, many Indian people who could not afford to pay the state property taxes lost their lands through sales and tax foreclosures. E.g., Moe v. Confederated Salish and Kootenai Tribes, 425 U.S. 463, 476 (1976). In addition, reservation lands left over after every eligible Indian person had received an allotment were deemed “surplus” lands, and were made available as homesteads to white settlers. See, e.g., Solem v. Bartlett, 465 U.S. 463, 466–68 (1984); Montana v. United States, 450 U.S. 544, 559 n.9 (1981).
17 Ch. 233, 43 Stat. 253, (1924) (codified as carried forward at 8 U.S.C. § 1401(b) (1988)).
18 Through the allotment process, the government distributed more than one hundred reservations, and tribes lost ninety million acres, approximately two-thirds of the land they had held in 1887. Thirty million acres had been sold as “surplus” lands. See O’Brien, supra note 10, at 78.
19 See INSTITUTE FOR GOVERNMENT RESEARCH, THE PROBLEM OF INDIAN ADMINISTRATION 6–7 (Lewis Meriam et al. eds. 1928) [hereinafter THE PROBLEM OF INDIAN ADMINISTRATION].
lotment policy in 1934 by enacting the Indian Reorganization Act (IRA). Through the IRA, Congress extended the trust period of the Indian allotments indefinitely and encouraged tribes to exercise a stronger role in governing their members and resources.

B. The Consequences of Centuries of Deliberate Interference with Indian Families

From the earliest contact with Europeans, the security of Indian families has been constantly tested and strained. The historical cohesiveness of Indian communities was structured around intricate kinship practices and communal connection to landholdings. Just as their connection to the land was seen as an impediment to assimilation, which had to be broken through the reservation and allotment policies, the close bonds of extended Indian families also were deemed obstacles which had to be removed. Thus, the integrity of Indian families was attacked by social, cultural, and economic forces which were intended to break the familial bonds. Education, a prominent social tenet of the assimilation policy, was one of the most pernicious Indian child removal methods.

The Bureau of Indian Affairs (BIA), the agency specifically authorized to discharge the trust responsibilities of the federal government to Indian people, devised Indian boarding schools as a way to physically remove children from the influence of their parents and tribe. The agency would place the children in a totally foreign and controlled environment where they would throw off all vestiges of Indian identity and put on the habits of "civilized" people. Indian children were taken from their families on the reservations and sent, often across the country, to attend boarding schools.

23 A romanticized version of this dilemma is the popular legend of the abduction of Pocahontas from her father Powhatan, which resulted in her conversion to Christianity and marriage to John Rolfe.
26 See Kirke and Lynn Kickingbird, A Short History of Indian Education, AMERICAN INDIAN JOURNAL, September 1979, at 17-21.
The children were kept at boarding school for eight years, during which time they were not permitted to see their parents, relatives, or friends. Anything Indian—dress, language, religious practices, even outlook on life—was uncompromisingly prohibited.

Ostensibly educated, articulate in the English language, wearing store-bought clothes, and with their hair short and their emotionalism toned down, the boarding-school graduates were sent out either to make their way in a White world that did not want them, or to return to reservations to which they were now foreign.

“Clearly, the boarding school was an effort to destroy cultural identity; unfortunately, it was quite successful.”

Other destructive social and economic tactics directly contributed to the breakup of Indian families and the disintegration of their cultural identity. For example, the BIA, often in concert with states and various religious organizations, agreed to remove Indian children from their families and place them with non-Indian families. The BIA actually paid the states to remove Indian children and denied tribes access to information about the adoption of their children.

Many Indian children were removed from their families on the premise that they were being neglected. However, these charges frequently were based on racist and discriminatory attitudes about Indian cultures and kinship practices. For example, Indian children spent considerable amounts of time with care-givers other than their parents.

28 Id.
29 Id. at 257–59.
30 Horejsi, supra note 25, at 333–34.
31 See Rex Weyler, Blood of the Land, the Government and Corporate War Against the First Nations 149 (1982). The Latter Day Saints Placement Program removed as many as 2,000 Hopi and Navajo children every year from their reservations, placing them in Mormon homes throughout the country. Id. These removals were justified through scriptures which told them that the “dark and loathsome . . . Lamanites” (Indians) had been cursed with dark skin by God because of their moral turpitude and ancient wickedness. Id.
Cousins grew up like sisters and brothers in the houses of their aunts and uncles or grandparents, where whatever food and supplies they had were shared amongst the group. Reservation housing often was small, poorly insulated, and lacked electricity and indoor plumbing. Employment opportunities tended to be scarce, and commonly were limited to positions with the BIA.

Cruelly, the very real effects of the poverty and dependence created by the reservation system, and the corresponding debilitation caused by the diseases and chronic health problems associated with poverty, were used against Indian people as evidence that they were unfit parents and as grounds for the removal of their children. State authorities often cited these various “Indian problems” as justifications for removing children and placing them in substitute care.

It was not until the 1970’s, however, that Congress investigated the appalling history of the deliberate separation and removal of Indian children from their families. Oversight hearings revealed startling findings: thousands of Indian children had been forcibly removed from their homes at an incredibly disproportionate rate to the non-Indian population. Historically, many children were never seen again by their families.

Overwhelmed by the tragic history of Indian child removals and the outcry for federal legislation, Congress enacted the Indian Child Welfare Act in 1978 (ICWA). The ICWA established procedural directives which state courts must follow when dealing with an Indian child

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34 See generally We the . . . First Americans, U.S. DEP’T OF COMMERCE, ECONOMICS AND STATISTICS ADMIN. (1993) [hereinafter First Americans]; see also SAR A. LEVITAN, PROGRAMS IN AID OF THE POOR 164 (6th ed. 1990); THE PROBLEM OF INDIAN ADMINISTRATION, supra note 19, at 440.

35 The inordinately high rates of chronic diseases such as diabetes, alcoholism, heart disease and liver disease, as well as suicide and accidents among Native Americans directly correlates with a shortened life expectancy of only forty-four years, compared with seventy years for the general population. MAN KEUNG HO, FAMILY THERAPY WITH ETHNIC MINORITIES 70 (1987). See also, THORNTON, supra note 14, at 44–47; Horejsi, supra note 25, at 333.


custody proceeding and delineated jurisdictional mandates to strengthen tribal sovereignty. Generally, these procedures are:

1. Tribal courts have exclusive jurisdiction over Indian child custody proceedings when the child resides or is domiciled on the reservation and have jurisdiction concurrent with the state’s over an Indian child who does not reside within the reservation;\(^\text{39}\)
2. Notice to the Indian child’s tribe must be given if a child custody proceeding originates in a state court,\(^\text{40}\) and the tribe has a right to intervene in the state court proceeding;\(^\text{41}\)
3. The state court must transfer the case to tribal court if the tribe or either parent requests a transfer, absent an objection by a parent (not a party seeking adoption).\(^\text{42}\) The state court can refuse to transfer the case to tribal court for good cause;\(^\text{43}\)
4. If a case remains in state court, an order terminating parental rights requires proof beyond a reasonable doubt, and a foster care placement can be ordered only upon a showing of clear and convincing evidence;\(^\text{44}\)
5. In the event an Indian parent loses his or her parental rights, the state court must give placement preference to the Indian family and tribe in the following order: (a) a member of the child’s extended family; (b) other members of the child’s tribe; (c) other Indian families.\(^\text{45}\) Only after depleting these resources may an adoption be made to a non-Indian family. A state court may disregard these preferences if it can prove “good cause”;\(^\text{46}\)
6. If a state court proceeding or placement violates the provisions of the Act, the proceeding or placement may be invalidated upon the petition of the child’s parents, Indian custodian, or tribe.\(^\text{46}\)

There is little dispute that state courts and welfare services continue to impose significant restraints on the ability of tribal govern-

\(^{41}\)25 U.S.C. § 1911(b).
\(^{42}\)25 U.S.C. § 1911(b).
\(^{43}\)\text{Id.}
\(^{44}\)25 U.S.C. § 1912(c).
ments and courts to exercise their jurisdiction over Indian child welfare matters. Moreover, the contentious nature of the states' responses to Indian child welfare cases has lead to inconsistent interpretations and applications of ICWA. Despite these obstacles, tribes and Indian communities must recognize their paramount responsibility for safeguarding their children.

The next section discusses the post-codification status of Indian child welfare. Tribes are still struggling to overcome the consequences of historical attempts to annihilate Native American social, cultural and economic values. Moreover, the increasing number of Indian children in foster care indicates that service providers in the child welfare area should reevaluate the sources and purposes of the current program system.

III. "THE WELFARE OF INDIAN CHILDREN IS AT RISK"

Who speaks for the children today? It appears that Congressional efforts through ICWA were only partially successful. Recent findings indicate that Indian children still are greatly overrepresented in the foster care system. Moreover, the number of Indian children in substitute care has actually increased since the passage of ICWA: "[t]he Indian substitute care population has grown from about 7200 children in the early 1980's to 9005 in 1986—an increase of twenty-five percent." This number is nearly twice that previously documented.


50 STATUS REPORT, supra note 36, at 3–1, 3–2; see also Trends Show More Children In Foster Care Nationally, LINKAGES, (TCI Inc., Wash., D.C.), Aug. 1992, at 8 [hereinafter Trends].

51 See Trends, supra note 50, at 8.
The reasons for the high incidence of substitute placements among Indian children are multifaceted. Statistics indicate glaring internal-tribal problems—over three-fourths of the children were placed in care because of parental, rather than child, problems. Parental issues account for fifty percent of placements.\(^{52}\) Parental substance abuse resulted in substitute placement in fourteen percent of the cases.\(^{53}\) Removing children from their families and placing them in substitute care often triggers destructive behavior that subsequently exacerbates the problem. A parent or family from whose care a child has been removed frequently reacts with either extreme aggressiveness or passivity. This, in turn, leads to several other serious problems such as: confrontations with the court system, avoidance of the child protection team, leaving the area, and even abandonment of their children.\(^{54}\) Such “fight or flight” reactions do not comport with traditional Native American values which honor children and families. Thus it is important to understand and reevaluate the factors underlying this vicious circle from the Indian person’s perspective. One of the most devastating and pervasive factors has been poverty.

Few dispute the fact that Native Americans are among the poorest of the poor.\(^{55}\) American Indian children have a 38.8 percent chance of being poor. South Dakota, where the Pine Ridge and Rosebud Indian reservations are located in two of the poorest counties in the nation, has the highest state poverty rate for Indian children (63.3 percent), followed by North Dakota (58.3 percent), Nebraska (57 percent) and Minnesota (54.8 percent).\(^{56}\)

The reservation system of the 1800’s institutionalized poverty among Indian people. Before their confinement on reservations, Indian people lived in self-sufficient and self-supporting communities, subsisting on their lands, taking only what they needed to provide the basic necessities for their people, and using everything they took to avoid waste. After their confinement on reservations, Indian people could no longer subsist on their traditional hunting, fishing or gathering.

\(^{52}\) See id.; see also Hearings on S. 2340 to Develop & Improve Child Protective Service Programs on Indian Reservations and to Strengthen Indian Families Before the Senate Select Committee on Indian Affairs, 101st Cong., 2d Sess. (1990).

\(^{53}\) STATUS REPORT, supra note 36, at 3–2.

\(^{54}\) See Horejsi, supra note 25, at 330.

\(^{55}\) “First Americans,” supra note 34, at 6; see generally LEVITAN, supra note 34.

practices. Reservations became human pockets of poverty, despair and abuse.\textsuperscript{57}

While the Indian peoples' dependence on others for basic necessities of living increased, the federal government often threatened to withhold its treaty promises of food, clothing, and supplies in order to coerce the Indians into cooperating with its assimilation and land policies.\textsuperscript{58} Conditions on reservations were worse than miserable—malnutrition and poor living conditions made them vulnerable to sickness and disease, taking the lives of hundreds of their people, mostly the elderly and children.

The impacts of poverty were not all economic—the indignity of poverty seeped into Indian peoples' cultural and social relationships. Their lives became almost completely dominated and regulated by the federal government. Their tribal governments were no longer sources of power and inspiration for their people. The loss of their lands and the years of living precariously close to death and starvation were extremely demoralizing. Indian communities were in a constant state of grieving for the many members who had left or who had died, for the many who were sick and in need of care, and for the day-to-day wear of existence.

Poverty is exhausting, not only on the individual but on the entire community. Many tribes were overwhelmed by the pressures of trying to maintain a cohesive community under the mounting neglect and repression effected by the policies of both federal and state governments, while at the same time dealing with the trauma of the past and attempting to create a future for their children. Carried over from generation to generation, poverty bred feelings of hopelessness and despair in Native American communities: despair that rankled the spirit of their existence. As aptly professed by the Bible: "... but from him that has not shall be taken away even that which he has."\textsuperscript{59}

Though Indian families were devastated by the effects and drudgery of poverty, the federal government still perceived them as a threat and decided that they must be further divided through relocation and


\textsuperscript{58} For example, when buffalo, the staple resource of western plains tribes, became virtually extinct in the late 1870s, tribes became dependent on their treaty rations of beef. \textit{O'Brien, supra} note 10, at 145. The Sioux Appropriation Bill of 1876 stated that unless the Lakotas sold the Black Hills, Powder River and Bighorn counties, no further funds and rations would be forthcoming. \textit{Id.} Congress continued to decrease the Lakotas' appropriations to less than half of what they were promised in the treaties to ensure conformance with federal policy. \textit{See id.} at 146.

\textsuperscript{59} \textit{Matthew} 25:29.
placements in boarding schools. Beginning in 1869, the federal government removed thousands of Indian children from the influences of their families and homes and sent them to boarding schools run by missionaries and government employees. The physical conditions at these schools were harsh: grossly inadequate provisions for the care of the children; diets deficient in quantity and quality; overcrowded schools and dormitories; inadequate medical services; Indian students physically forced into working for the schools as janitors, custodians, gardeners, and seamstresses. The social conditions were just as intolerable. Indian children were forbidden to speak their own language; visits from their families were prohibited; their long hair was cut short; their clothing and personal belongings were taken from them and destroyed. “Clearly, the boarding school was an effort to destroy cultural identity... [M]any who attended these schools lost touch with their tribal language, religious beliefs, customs, and social norms.”

In most respects, the federal government accomplished its goals: it appropriated much of the Indians’ lands; the buffalo was nearly exterminated; most Indian people were made vulnerable to sickness and disease; and the historically traditional values of the Indian family were subverted. Like seeds fed only with salt water, Indian children grew up stunted and weak. Native Americans usually defined themselves via their children first, a “spousal” couple secondly, with the clan and tribe viewed as an overarching presence. The separation of the children from their families destroyed much of the warmth and intimacy of social relationships. The children, both those who were relocated and removed to boarding schools and those who remained on the reservation, did not learn to be caregivers or parents. Instead they learned to live and cope with extremely harmful experiences; “beatings and sexual abuse became the everyday reality [at boarding school] for little ones who had never even had a harsh word spoken to them.”

Many Indian people never returned to their homes and families. They moved into urban areas, became absorbed in the general population, developed new relationships with non-Indians, and forsook

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60 Kickingbird, supra note 26, at 18.
61 See The Problem of Indian Administration, supra note 19, at 11-13.
62 Horejsi, supra note 25, at 333-34.
their culture and traditions. By these actions, they effectively did unto themselves what the boarding schools had symbolically attempted to do by cutting off their braids and burning their beaded buckskin garments; they stripped themselves of their Indian identity. Being an Indian was no longer seen as honorable.

Many Indian people who grew up outside their culture refused to consider themselves ethnically Indians, nor did they attach any significance to belonging to a Native American culture, family or clan. Nonetheless, though they were socially and culturally raised within the white community, they still looked like Indians, and accordingly, they were racially considered and treated as Indians. The severe identity problems that developed from such disattachment and abuse resulted in further destruction of the Indian community.

Cultural disorientation results in acting out in socially aberrant behavior, delinquency and estrangement from Indian family members. As a minority group, Native Americans suffer from depression and chronic diseases at disproportionate rates to the general population. Moreover, Native Americans have the highest suicide rate of any adolescent group in the country.

Drug and alcohol abuse have saturated every layer of Native Americans’ lives and culture. Despite the fact that many Native Americans are coming to grips with their drug and alcohol problems, the intergenerational effects of such abuse are still widespread on Indian reservations. As with poverty, overcoming a chemical dependency requires so much time and energy that little of both are left over to attend to personal relationships—parents neglect children, spouses and relatives are shunned, and the old are forgotten. “Until these problems are dealt with, each new generation is at risk of repeating this dysfunctional cycle.”

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64 Iris Heavy Runner, Coordinator of Native Cultural Services at Fairview Riverside Medical Center in Minneapolis, summed up the problem thus, “One of the things that hurts Native American children the most is loss of identity: Who am I? Where did I come from? And where am I going?” Kay Miller, Bridging the Cultural Divide: Heavy Runner Helping Indians within Traditions, Star Trib., July 12, 1993, at 1E.

65 Indigenous Woman, supra note 63, at 23.


67 Status Report, supra note 36, at 8-6, estimates that 95 percent of Native Americans are affected directly or indirectly by alcoholism.


69 Horejsi, supra note 25, at 334.
IV. REBUILDING A TRIBAL COMMUNITY

The challenge for Indian child welfare today is to build a new history around and supported by the tribal community. ICWA established a number of procedural directives and standards in order to strengthen tribal sovereignty and increase tribal involvement in Indian child welfare matters. Balancing the tribal interests in preserving the family with the best interests of the child is often a very difficult task, especially in abuse and neglect cases. Tribes are expected to administer child welfare programs, protect the Indian child’s best interests, serve the family’s needs, and preserve tribal culture; and all with the extremely limited funds made available by the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS) under a very restricted grant system.70

It is imperative therefore that tribes become integrally involved in all Indian child welfare matters, from preventative to rehabilitative phases. Tribes must also be prepared to offer tribally based child and family welfare programs that meet the needs of the entire tribal community. Tribes initiate the process by designing a tribal program geared toward the tribe’s particular needs, with every member of the tribal community, from tribal leadership to the newest member, having a role and participating in the community program.

Studies have shown, however, that merely placing an Indian child with an extended family member will not solve the problem.71 In fact, such placement may exacerbate the problem since many members of the extended family and tribe share the same underlying problems. Children placed in extended family care eventually return to the troubled parents, who typically have not received any help in the meantime.72 Thus tribal programs should be centered around creating a continuum of services73 to all members of the community, delivering services dealing with basic living skills (such as health and nutrition

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70 Indian tribes must compete with one another for a limited source of funds. Tribes with smaller populations risk receiving no funds at all because their potential impact is relatively narrow. Tribes that are funded struggle with myriad compliance requirements and with a juggler’s confusion of coordinating overlapping services from different federal agencies.


73 Id. at 146.
classes, maintaining regular schedules, parenting and discipline classes, financial management, vocational programs and training in employment skills, health education (such as drug and alcohol treatment and mental health counseling), and tribal education (such as courses in the tribe’s culture, history, language and family life).

The continuing attitude that Indian children are better off if they are raised outside the reservation or Indian communities is still widespread and, consequently, social workers and tribal programs too often look to resources outside the reservation rather than within the Indian community. Thus, the continuum of services should also include establishing a group home for the children, located in the Indian community and staffed by community members. Rather than continuing the frustrating cycle of unsuccessful foster-care placements, a tribally-run group home could provide better quality care for less cost than individual foster-care placement programs. Such programs adhere to the philosophy of preserving and reunifying Indian families by keeping the children within the community, and rendering remedial services that support and strengthen families. While the idea of group homes might, at first glance, appear to be similar to the boarding school system, tribes nevertheless need to create some alternatives to foster-care placements. With this in mind they should be given the latitude to design a tribally-based program which acknowledges the errors of the past but is built upon the resiliency of tribal integrity.

As with the tribally-based design of community welfare programs, tribes should also look to their own economic resources to fund such programs. Tribes can streamline administrative oversight in BIA and IHS programs, coordinate duplicative services, and extend the available services within the grant parameters. They should designate significant percentages of their economic enterprises, be it gaming, subsistence activities, or mineral revenue, to family programs.

Beyond this, tribal governments need to make community welfare their priority. They must endeavor to address these concerns by drafting strong tribal laws and by confirming the tribe’s commitment to child welfare cases. Tribes must also learn to respect the ability of their tribal courts to make the initial determinations of tribal jurisdiction and decide foster-care and adoption placements.

74 The Mashantucket Pequots, an eastern tribe, is running a group home called Ohomowauke as their tribe’s innovative response to problems with individual Indian foster homes. Ohomowauke provides extensive care and assistance to their children and families.
V. CONCLUSION

The United States government, its various policies towards indigen­
ous peoples and its history of “placement” neglect have played a heavy
hand in creating the problems which have given rise to the need for
substitute care for Indian children. Poverty, racism and discrimina­tion,
chronic health problems, and boarding schools are only some of the
debilitating institutional results of a long history of social, economic,
and cultural degeneration, which follow upon centuries of federal
policies deliberately geared toward the removal and subversion of all
aspects of Indian identity and culture. The status of Native American
families has devolved from one based on a set of blood ties secured
by strong cultural and spiritual values, to one based on a set of blood ties
threatened, severed or tenuously acknowledged amid wrenching, inter­
gen erational problems.

These are issues of tribal welfare as well as child welfare. Indian
reservations are still the religious, cultural, economic, and civic centers
of Indian communities. Tribal governments, the voice of the people,
are powerful in number and vigorous in spirit. Indian people must
look to themselves, understand past history, and write a new history of
Indian child welfare; one based not only on the jurisdictional premises
of ICWA, nor geared solely toward the rigid, pre-ordained programs
instituted and controlled by the federal government, but one also
based on Indian peoples’ own internal resources and tailored to their
own needs.

Since the Indian Reorganization Act of 1934, the strengthening
of tribal governance has been the emphasis of virtually every major
piece of federal legislation addressing the status of tribes and of any
programs administered for their benefit. At the forefront of these
legislative efforts is the Indian Child Welfare Act of 1978, which is still

experiment during the 1950s with the now thoroughly repudiated policy of Termination.

Most recently, President Clinton declared at an historic meeting with tribal leaders at The
White House:

In every relationship between our people [Americans, Native Americans, Alaskan
Natives], our first principle must be to respect your right to remain who you are
and to live the way that you want to live. And I believe the best way to do that is to
acknowledge the unique government-to-government relationship we have enjoyed
over time.
one of the singular most important pieces of federal legislation recognizing tribes’ sovereign rights to protect the interests of their communities and their children.

This is the new tribal frontier. Tribes must rewrite their own histories by gaining control of their own natural and cultural resources and by defining new social, economic, and cultural goals for their communities.

Today I re-affirm our commitment to self-determination for tribal governments. Today I pledge to fulfill the trust obligations of the federal government. Today, I vow to honor and respect tribal sovereignty based upon our unique historical relationship. And today I promise to continue my efforts to protect your rights to fully exercise your religion as you wish.