American Indian Education: The Terror of History and the Nation's Debt to the Indian Peoples

Raymond Cross

Follow this and additional works at: https://lawrepository.ualr.edu/lawreview

Part of the Education Law Commons, and the Law and Race Commons

Recommended Citation
Available at: https://lawrepository.ualr.edu/lawreview/vol21/iss4/13

This Essay is brought to you for free and open access by Bowen Law Repository: Scholarship & Archives. It has been accepted for inclusion in University of Arkansas at Little Rock Law Review by an authorized editor of Bowen Law Repository: Scholarship & Archives. For more information, please contact mmserfass@ualr.edu.
AMERICAN INDIAN EDUCATION: THE TERROR OF HISTORY
AND THE NATION'S DEBT TO THE INDIAN PEOPLES

Raymond Cross*

"With an education, you become the White man's equal. 
Without it you remain his victim."—Crow Chief, Plenty Coups

"When God wanted to create the world, the conservative angels, 
with tears in their eyes, shouted to him, 'Lord, do not destroy chaos'."—Monsieur de Mere

I. THE FEDERAL DESTRUCTION OF TRADITIONAL AMERICAN INDIAN EDUCATION

American Indian education, like the dismal state of the weather in Mark Twain's famous aphorism, is much discussed, but no one does anything to improve it! Doing something about the dismal state of Indian education requires that we confront deeply embedded historic, cultural, and legal biases. These biases have long frustrated attempts to reform Indian education. My essay explains the origin of some of these biases and suggests some strategies for mitigating, if not eliminating, their influence on Indian education.

A. Locating American Indians Within a Pluralist American Society

American Indians are classified by sociologists as among those "involuntary minorities" who were coercively incorporated into American society.¹ They are contrasted with the voluntary minorities, those Northern European and other immigrant peoples who willingly adapted to American values as the price of admission to the new world. Education was regarded by these immigrants as their best means of success within their new American context of work and social life. Education served their progress of "ethnic succession" by allowing them to move from the service class, to the crafts and trades and ultimately to the "top rung" professions as lawyers, doctors, and political leaders.²

America's implied, if not express, promise to these voluntary minorities was that if they "played by the rules" they, too, would share in America's largess. Some members of America's involuntary minorities, as well, sought

* Associate Professor of Law, School of Law, University of Montana. J.D., 1973, Yale Law School.
2. See id.
to avail themselves of this promise. They heeded, for example, their mother's injunction that they "be an American first, a man second and an Afro-American third." But those involuntary minorities who sought the societal "cash value" of this promise usually realized only its hollowness. Indeed, even those who otherwise criticize affirmative action programs within the American marketplace, such as Harvard sociologist Nathan Glazer, concede that the fair representation of involuntary minorities in America's economic and political life will not be achieved absent minority preference in admissions to American higher educational institutions. But some of America's involuntary minorities rejected America's promised "melting pot" as illusory and destructive of what they valued the most. Many American Indians have sought to retain their traditional cultures and ways even in the overwhelming presence of an antagonistic and alien American society. When the "ethnic succession" model was extended so as to facilitate their assimilation into American society, that experiment was a dismal failure.

This dismal failure evidences the need for a new American promise. This new promise would reaffirm the ancient inherent right of the American Indian peoples to educate their children. The three elements of this new American promise are as follows:

1) Sovereignty guaranteed by the "domestic, dependent nation" status of American Indian tribes allows tribal communities to reconstruct American Indian education consistent with their values, needs and traditions.

2) Traditional American Indian education may provide the "yardstick" for the reconstruction of the social and economic life of those tribal communities that may choose to assume control of their educational institutions.

3) The trust duty that compels the federal and state governments to respect the unique cultural and educational status of American Indians.

4. See id.
Indians also insulates American Indian educational programs from strict judicial scrutiny. 8

The realization of this new American promise will require the shared and concerted efforts of federal, state, and tribal educational leaders.

B. The Present State of American Indian Education

Dr. Johanna Nell’s recent study of the contemporary state of American Indian education resulted in troubling statistical conclusions. 9 A brief summary of her findings paints a stark portrait of American Indian education in the 1990’s: over 10% of Indian children are not enrolled in any school; over 75% of Indian children are at least one grade behind in school; a disproportionate number of Indian children are diagnosed as having “emotional disorders” or are enrolled in special education and disabled learning programs—11% of American Indian sophomores were enrolled in special education programs and 36% were classified as being handicapped; a disproportionate number of Indian children feel rejected, depressed or have lower self-esteem and perceive that they lack control over their lives; Indian children have a higher rate of suicide than their White counterparts; and they have a significantly higher high school drop-out rate (35.5%) than Hispanic school children (27.9%) or Afro-American school children (22.2%).10 Dr. Nell suggests that the causes of American Indian students’ low educational achievement record includes lowered self-esteem related to their “out-group” identity as American Indians and sharp cultural conflicts within their schools.

Reversing this dismal educational record requires the reconstruction of American Indian education in the 21st Century. It may include the return to a view of education seemingly abandoned in America. Education had historically transmitted an accumulated fund of cultural and social knowledge to the succeeding generations of a community’s members. New community members were empowered by this knowledge to develop their individual talents and skills to their fullest potential.11 Within American Indian

---

8. American Indian educational programs stand on a fundamentally different legal footing from those racially targeted educational programs that must be justified by a compelling state or federal interest. The Supreme Court in Bakke observed that the strict scrutiny test that applies to race-based admissions preferences does not apply to American Indian educational programs because such preferences are “not racial at all.” See Regents of University of California v. Bakke, 438 U.S. 265, 304 n. 42 (1978).


10. See id.

11. See DEJONG, supra note 7, at 1-21.
communities this educational responsibility was historically shared by the Indian children’s parents, their clan uncles and aunts, tribal elders, and their age-group peers.12

But larger tectonic forces subordinated traditional education, by the late nineteenth century, to an educational pragmatism that emphasized the inculcation of vocational skills. This education would “fit” emigrant children to the needs of an increasingly industrialized American society.13 American Indian education had, by that same time, likewise become captured by this educational pragmatism. It became an institutionalized artifact produced within a system of federally established off-reservation boarding schools, industrial schools, and mission schools. Indian parents, tribal elders, and traditional Indian educational precepts were banished from the four corners of these institutions. Their presence was deemed antithetical to the realization of the mission of these Indian schools.14 That mission, as articulated by Army Captain Richard Henry Pratt, a key architect of federal Indian education, was to “kill the Indian so as to save the man within.”15

This educational philosophy was shared by those countless Indian agents, teachers, and matrons who ran Indian schools. They reasoned that to leave Indian children within the confines of their Indian camps would be to condemn them to a short, nasty and brutish life. Reservation Indian life was deemed so inherently destructive of the Indian children so as to mandate their physical removal from its debilitating influences.16 Captain Pratt’s Indian educational philosophy stemmed from three late-nineteenth-century assumptions about emigrant children:

1) Indian children, like emigrant children, were infinitely plastic and educable in character so long as they were effectively disabused of their “old world” superstitions in favor of a “new world” culture and knowledge;17

12. See DEJONG, supra note 7, at 1-21.
13. Horace Kellen, a Progressivist educator, asserted that the “first purpose” of education is to “teach people how to labor to earn.” ERNEST BECKER, BEYOND ALIENATION: A PHILOSOPHY OF EDUCATION FOR THE CRISIS OF DEMOCRACY 40 (1967).
14. Segregation and isolation of Indian children from their culture and families was deemed essential for their education and assimilation within the federal Indian education system. See DEJONG, supra note 7, at 116.
15. See DEJONG, supra note 7, at 116.
16. See DEJONG, supra note 7, at 107.
17. Army Captain Richard H. Pratt, a chief architect of federal Indian education in the 1880’s, viewed the successful annual assimilation of thousands of immigrants “with ideals and customs far removed from our own” as evidence for a successful Indian assimilation campaign via the federal Indian educational system. See DEJONG, supra note 7, at 116.
2) Indian children, like emigrant children, would benefit from a compulsory formal education in a suitable classroom or shop setting that would, in the case of Indian children, transform them from savages to citizens; and

3) Indian children, unlike emigrant children, must be separated from their parents, families, and peer groups if they were to be effectively educated in the white way of life.

C. Traditional Indian Education as Adaptation to the Natural Environment

The devaluing of traditional Indian education in favor of federal Indian education was to dominate American Indian life from the 1870's until the mid 1930's. What was the character of traditional Indian education? The diversity of American Indian peoples and their traditions defy easy generalization about traditional Indian education. But anecdotes told by a respected Indian scholar, George Bird Grinnell, and a respected Indian leader, Charles Eastman, give us some insight into the manner of traditional Indian education. Grinnell challenged the popular "dime-novel" image of Indians as bloodthirsty warriors bent only on the raping of white women or the pillaging of wagon trains and non-Indian settlements:

[Non-Indians] do not realize that [warfare] occupies but a small part of [the Indian's] existence, or that apart from this he has a communal life and family life on which his well-being depends. He has a wife and little ones whom he loves as we do ours; parents and grandparents whom he respects for their experience and the wisdom derived from it; chiefs and rulers to whose words he listens and whose advice he follows; and spiritual

18. See DEJONG, supra note 7, at 116.
19. See DEJONG, supra note 7, at 116. Recent anthropological discoveries of prehistoric human remains in America have revived the controversy over the "emigrant" status of American Indians. Standard anthropological theory held that any prehistoric human remains in America should resemble today's American Indians or the Asians who were their ancestors. But recently discovered prehistoric human remains that are over 9000 years old, such as the Spirit Caveman and the Kennewick Man, do not show any affinity to any known Amerindian sample. Although anthropologists cannot say for certain who were the "First Americans," one anthropologist claims that "if today's Native Americans are just another Ellis Island group, it makes it hard for them to preserve their sovereignty." Sharon Begley & Andrew Murr, The First Americans, NEWSWEEK, Apr. 26, 1999, at 55.
20. This one-dimensional portrayal of the "Indian as warrior" fed into the popular 19th Century stereotype that the American Indians must be eradicated by the advancing white civilization as were other dangerous predators such as the wolves, coyotes and lynx. See DEJONG, supra note 7, at 3.
directors, who tell him about the powers which rule the earth, the air and the waters, and advise him in his relation to the force of the unseen world. In other words, his is a complex life, not devoted to one pursuit, but full of varied and diverse interests. He must provide food for this family, must maintain his position in the camp, and must uphold the standing of the tribe in its relations to other peoples. All these duties call for the exercise of discretion and self-restraint in his living which can be acquired only by some system of education.\textsuperscript{21}

Charles Eastman, known as Hakadah among the Santee Sioux, tells of the role that his grandmother and traditional uncles played in his education.\textsuperscript{22} He tells how his grandmother educated him and his brother about his role in nature:

At another time, when I was engaged in a similar discussion with my brother Chatanna, Oesedah came to my rescue. Our grandmother had asked us: "What bird shows most judgment in caring for its young?"

Chatanna at once exclaimed: "The eagle!" But I held my peace for a moment, because I was confused—so many birds came into my mind at once. I finally declared: "It is the oriole!"

Chatanna was asked to state all the evidence that he had in support of the eagle's good sense in rearing its young. He proceeded with an air of confidence: "The eagle is the wisest of all birds. Its nest is made in the safest possible place, upon a high and inaccessible cliff. Being exposed to the inclemency of the weather the young eagles are hardy. They are accustomed to hear the mutterings of the Thunder Bird and the sighing of the Great Mystery. Why, the little eagles cannot help being as noble as they are, because their parents selected for them so lofty and inspiring a home! How happy they must be when they find themselves above the clouds, and behold the zig-zag flashes of lighting all about them! It must be nice to taste a piece of fresh meat up in their cool home, in the burning summer time! Then when they drop down the bones of the game they feed upon, wolves and vultures gather beneath them, feeding upon their refuse. That alone would show their chieftainship over all other birds. Isn't that so, grandmother?" Thus triumphantly he concluded his argument. I was staggered at first by the noble speech of Chatanna, but I soon recovered.

\textsuperscript{21} Traditional Indian education focused on the acquisition of what Professor David Orr calls "slow knowledge." Orr describes this knowledge as "shaped and calibrated to fit a particular ecological and cultural contest." The purpose of "slow knowledge" is to instill resilience, harmony, and the preservation of long-standing patterns that give the learners' lives aesthetic, spiritual and social meaning.

Professor Orr criticizes our society's fascination with the acquisition of "fast knowledge" that threatens our planet with ecological disaster and technological overload. \textit{See} Jon Spayde, \textit{Learning in the Key of Life}, \textit{The UTNE Reader}, May-June 1998, at 45-48.

\textsuperscript{22} \textit{See} DEJONG, \textit{supra} note 7, at 6.
from its effects. The little Oesedah came to my aid by saying, "Wait until Ohiyesa tells of the loveliness of the beautiful Oriole's home!" This timely remark gave me courage and I began: "My grandmother, who was it said that a mother who has a gentle and sweet voice will have children of a good disposition? I think that the oriole is that kind of parent. I provides both sunshine and shadow for its young. It nest is suspended from the prettiest bough of the most graceful tree, where it is rocked by the gentle winds; and the one we found yesterday was beautifully lined with soft things, both deep and warm, that the little featherless birdies cannot suffer from the cold and wet."

Here Chatanna interrupted me to exclaim: "That is just like the white people—who cares for them? The eagle teaches its young to be accustomed to hardships, like young warriors!"

Ohiyesa was provoked: he reproached his brother and appealed to the judge saying that he had not yet finished: "But you would not have lived, Chatanna, if you had been exposed like that when you were a baby! The Oriole shows its wisdom in providing for its children a good, comfortable home! A home upon a high rock would not be pleasant—it would be cold! We climbed a mountain once and it was cold there; and who would care to stay in such a place when it storms? What wisdom is there in having a pile of rough sticks upon a bare rock, surrounded by ill smelling bones of animals, for a home? Also my uncle says that the eaglets seem always to be on the point of starvation. You have heard that whoever lives on game killed by some one else is compared to an eagle. Isn't that so, grandmother?"

"The oriole suspends its nest from the lower side of a horizontal bough, so then no enemy can approach it. It enjoys peace and beauty and safety."

Oesedah was at Ohiyesa's side during the discussion, and occasionally whispered into his ear. Uncheedah decided this time in favor of Ohiyesa.32

Traditional Indian education emphasized learning by application and imitation, not by memorization of basic information. It also emphasized learning by sharing and cooperation, as compared with an American education that emphasized competition and hardy individualism. Tribal histories told and re-told an Indian people's origin myths and how they spurred that people to great deeds.24 They located the Indian children within a loving and caring

23. DEJONG, supra note 7, at 11-12.
24. John Hecewelder's 19th Century assessment of traditional Indian education emphasized the role played by the tribal elders and the larger Indian community in the education of their children. See DEJONG, supra note 7, at 12-21.
natural environment. Etiquette, including an abiding respect for his elders, was also a central part of an Indian child’s traditional education.\textsuperscript{25}

Could an American-style education improve the Indian peoples’ long-successful adaptation to their natural environment? Indian leaders, such as the Osage leader, Big Soldier, spurned the proffered American education for their children. Big Soldier spoke in 1820 to George C. Sibley, the Indian agent at Fort Osage:\textsuperscript{26}

> I see and admire your manner of living, your good warm houses, your extensive fields of corn, your gardens, your cows, oxen, workhorses, wagons, and a thousand machines that I do not know the use of. I see that you are able to clothe yourselves, even from weeds and grass. In short you can do almost what you choose. You whites possess the power of subduing almost every animal to your use. You are surrounded by slaves. Everything about you is in chains, and you are slaves yourselves. I fear if I should exchange my pursuits for yours, I too should become a slave. Talk to my sons, perhaps they may be persuaded to adopt your fashions, or at least to recommend them to their sons; but for myself, I was born free, was raised free, and wish to die free.\textsuperscript{27}

Other Indian leaders, such as Mescalero Apache Chief Cadete, likewise rejected American education for their people. He spoke in the mid-nineteenth century to Captain John C. Cremony:\textsuperscript{28}

> You desire our children to learn from books, and say, that because you have done so, you are able to build all those big houses, and sail over the sea, and talk with each other at any distance, and do many wonderful things, now let me tell you what we think. You begin when you are little to work hard, and work until you are men in order to begin fresh work. You say that you work hard in order to learn how to work well. After you get to be men, then you say, the labor of life commences; then too, you build big houses, big ships, big towns, and everything else in proportion. Then, after you have got them all, you die and leave them behind. Now we call that slavery. You are slaves from the time you begin to talk until you die, but we are as free as air. We never work, but the Mexicans and others work for us. Our wants are few and easily supplied. The river, the wood and plain yield all that we require, and we will not be slaves; nor will we send our children to your schools, where they only learn to become like yourselves.\textsuperscript{29}

\textsuperscript{25} See DEJONG, supra note 7, at 12-21.
\textsuperscript{26} See DEJONG, supra note 7, at 4.
\textsuperscript{27} DEJONG, supra note 7, at 4.
\textsuperscript{28} See DEJONG, supra note 7, at 5.
\textsuperscript{29} DEJONG, supra note 7, at 5.
Prominent contemporary critics of American education, such as Ralph Waldo Emerson, echoed these American Indian leaders.\(^3\) Materialism had fundamentally undermined those original principles on which the American nation had been founded. But American industrialization and westward expansion silenced these critics and doomed the American Indians' traditional hunting and roaming way of life in the American West.\(^3\) Destroying traditional Indian education was a facet of a much larger anti-tribal campaign by the federal government. Federal Indian policy sought to either transform or destroy the American Indian peoples.\(^3\)

II. THE FEDERALIZATION OF AMERICAN INDIAN EDUCATION

The British and American Colonial governments early on established education as a major element of their American Indian policy.\(^3\) Education was an agent for Christianizing and civilizing the Indians; little or no effort was made to incorporate Indian languages, cultures, or histories in the Indian education curriculum.\(^4\) Even though this early Indian education touched few Indian peoples, it became the template for future Indian education efforts by the nascent American government in the early nineteenth century. Ironically, federal Indian education in that era was propelled by the "great American religious awakening" that promoted evangelical and missionary work among the Indian peoples.\(^3\) Early federal Indian education policy bears the birth

---

30. Emerson pictured contemporary Americans as part of a dismembered corpse: "The state of society is one in which the members have suffered amputations from the trunk, and strut about so many walking monsters—a good finger, a neck, a stomach, an elbow, but never a man." Becker, supra note 1, at 3.

31. The incorporation of the Indian lands into the American property system was essential for the realization of nineteenth-century visions of America's destiny. Thomas Jefferson, as champion of the social agrarian movement, promoted the commercialization and appropriation of western Indian lands as the basis for founding an independent-minded "yeoman" class of free-hold farmers. By contrast, William Gilpin focused in 1846 on the idea of progress and manifest destiny when he wrote: "The untransacted destiny of the American people is to subdue the Continent—to rush over this vast field to the Pacific Ocean...to establish a new order in human affairs." Stephen Cornell, The Return of the Native: American Indian Political Resurgence 37-38 (1988).

32. See id. at 37-38.

33. King James on March 24, 1617, called for the education of the Indian peoples under the British Crown's jurisdiction. Harvard's John Elliot was one of the clergymen who responded to the King's call. Harvard College was established for the education of English and Indian youths and others. The campus of the College of William and Mary included an "Indian house" in 1723. See Estelle Fuchs & Robert J. Havighurst, To Live on This Earth: American Indian Education 2 (1972).

34. See id. at 3.

35. Religious conversion of the Indian, rather than his extermination, was the evangelical
marks of the optimistic flush of this evangelical and civilizing spirit among the Indian peoples.

A. The Foundations of Federal Indian Education Policy

The Constitution of the United States conferred on the federal government the right to control Indian commerce, make treaties with the Indian tribes, and to regulate the Indian lands. The Indian peoples were to be dealt with by the federal government as if they were foreign nations with the capacity to wage wars and conclude binding treaties.

1. The Treaty Origin of Federal Indian Education

In the Northwest Ordinance of 1787, the United States pledged to provide a suitable education for the American Indian peoples. Over 110 Indian treaties stipulated that the federal government shall provide an education to the members of the signatory tribes. Many of these treaties with the Great Plains and Rocky Mountain tribes derived from President Ulysses Grant's Indian Peace Policy of the late 1860's to 1870's. They typically contained Indian educational provisions that called for federally provided "schools for every 30 students that could be induced or compelled to attend them." Ironically, it was the Indian leaders who later sought to enforce these treaty stipulations. Their goal was to create reservation Indian schools that would blend traditional Indian education with the needed non-Indian skills that would allow their members to adapt to the reservation way of life.

But the necessary federal Indian education appropriations proved hard to get from an increasingly stingy Congress that was concerned about retiring Civil War debts. Lucius O. Lamar, the Secretary of the Interior, estimated in the 1870's that it would cost more than $4 million in federal appropriations to carry out the educational services stipulations in Indian treaties. Until the 1870's it was primarily the American religious denominations and their

36. See id. at 4.
37. This act stated: "Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools, and the means of education, shall be forever encouraged. The utmost good faith shall always be observed towards the Indians." Article III of the 1787 Northwest Ordinance Act of Aug. 7, 1789, ch. 8, art. 12, 1 Stat. 50, 52.
38. See DEJONG, supra note 7, at 34.
39. See DEJONG, supra note 7, at 35.
40. See DEJONG, supra note 7, at 35.
cognate missionary societies who provided education to the Indian peoples. 41

But Indian treaty negotiators also sought the federal performance of those educational services provisions so as to meet the adaptive needs of their tribal members. The Choctaw treaty negotiators expressed their view of an appropriate Indian education in a letter of November 22, 1824, to treaty commissioner John C. Calhoun: 42

We made a direct proposition for the proposed cession west of the Mississippi. After the views we gave in the beginning of this letter, you will not be surprised that we think our terms reasonable. We ask, first, that thirty thousand dollars worth of goods be distributed as presents to our nation—$15,000 the first year & $15,000 the second. Second, that nine thousand dollars a year, for twenty years, be appropriated for the support of mechanical institutions among the Choctaws. Third, that the same sum be appropriated annually for twenty years, for the education of Choctaw children in colleges or institutions, out of the nation. Fourth, that three thousand dollars a year for twenty years, be appropriated for the education of Choctaws beyond the Mississippi, when they shall have settled there, and an agent appointed to live among them. These annuities to be applied, for the purposes expressed under the direction of the President.

The price we ask may be more than has been usually given for lands lying so remote. But it is not more than we think to be their just value. We wish our children educated. We wish to derive lasting, if not transient, benefits from the sale of our lands. The proceeds of those sales we are desirous should be applied for the instruction of our young countrymen. It is for this important object that we may seem to you unreasonable in our proposition. We feel our ignorance, and we begin to see the benefits of education. We are, therefore, anxious that our rising generation should acquire a knowledge of literature and the arts, and learn to tread in those paths which have conducted your people, by regular generations, to their present summit of wealth & greatness. 43

Likewise, those Menominee Indians who negotiated with Indian agent Samuel C. Stambaugh at Green Bay on July 18, 1831, wanted an Indian education that melded non-Indian skills with a traditional Indian education. 44 Stambaugh seemed to understand their intentions when he spoke:

Brothers, your good friend and brother Rev. Mr. Cadle, who now sits beside me, told you truly, when he spoke to you the other day, and said that your Great Father was anxious to see your children educated like the

41. See DEJONG, supra note 7, at 57-70.
42. See DEJONG, supra note 7, at 41.
43. DEJONG, supra note 7, at 41.
44. See DEJONG, supra note 7, at 43.
children of the good white men; and you have heard from what I read to you that a large sum of money is to be given to you for that purpose. How proud the Menominees will be when their children can read and write; can calculate the prices of what they wear, of the furs they have to sell, and the powder and ball they have to buy. You will then be able to protect yourselves from being cheated and abused by bad traders who may get into your country, or by faithless agents who unfortunately are sometimes sent to live among the Indian tribes. 45

In response, Jossette Carrin, the principal chief of the Menominees, spoke saying: "Father we have heard what you know about educating our children. It is good, the Menominees wish to have their children laugh like the Americans." 46

But this federal promise of a suitable education for each tribe was subverted, first, by Congress' refusal to make the needed educational appropriations and then, second, by the federal government's "change of heart" regarding how educational services would be delivered to the Indian peoples.

2. The Rise of the Federal Indian Boarding School System

The federal Indian boarding school system grew out of the Indian peoples' changed status in the late 19th Century. They legally devolved from their historic status as semi-independent sovereigns to a governmental wardship status. 47 As federal wards, Indian children were to be federally educated so as to "give the Indian a white man's chance" in life. 48 Manifest destiny had doomed the American Indian peoples to extinction, or so thought the Board of Indian Commissioners in 1888. 49 Indian education policy had to reflect the reality of the disappearance of the Indian way of life within twenty years' time:

If anything in the world is certain, it is that the red man's civilization will disappear before the white man's civilization, because of the two, it is inferior. The Indian problem, in its fundamental aspects, is then, must the red man disappear with his civilization? Is it possible that in Christian times the Indians themselves have got to disappear with their inferior

45. DEJONG, supra note 7, at 43-44.
46. DEJONG, supra note 7, at 44.
47. Cornell quotes federal Indian policy makers such as Thomas Morgan, Indian Commissioner in 1889, as saying: "The Indians must conform to 'the white man's ways,' peaceably if they will, forcibly if they must." CORNELL, supra note 31, at 56.
48. See DEJONG, supra note 7, at 108-09.
49. See DEJONG, supra note 7, at 108-09.
civilization? I think we can say certainly that unless we can incorporate the
red man into the white man’s civilization, he will disappear. Therefore, the
one question behind the land question, behind the education question and
the law question, is, How can we fit the red man for our civilization?
There is needed an annual expenditure of $4,000,000. The call for
such an amount need not frighten us. We have abundant means to meet it.
Were the demand twice as large we ought not to hesitate. We ought not to
make it a question of cost. It is a question of saving or destroying a race
within our borders. And, on even economic grounds, it is cheaper to
educate and train to self support than to feed and clothe and guard the
Indian in perpetual pauperism. Ten years of training of all Indian children
will take a large portion off our hands, and in twenty years there would be
a few Indians needing the care and support of the government.50

This Indian education theory would be put into practice by men such as
John H. Oberly, the superintendent of Indian education.51 He outlined in 1885
how this Indian educational program would work:

It is understood fact that in making large appropriations for Indian school
purposes, the aim of the government is the ultimate complete civilization
of the Indian. When this shall have been accomplished the Indian will
have ceased to be a beneficiary of the government, and will have attained
the ability to take care of himself. Hence national selfishness, as well as
a broad philanthropy, calls for the earliest possible achievement of the end
in view. But anxious and eager as the patriotic humanitarian way may be
on this point, it is conceded on all sides that the permanent civilization of
the Indian can only come ... by the slow processes of education, which
lead from lower to higher, and refine while they elevate. The government
has begun to act on the belief that the Indian cannot be civilized until he
has received an education that will enable him to catch at least a glimpse
of the civilized world through books. But the Indian might have all the
knowledge of the books, and he would remain a barbarian nevertheless, if
he were not led out of his prejudices into the white man’s ways, if he were
not won from slothfulness into industrious habits, if he were not taught to
work, and to believe that he, as well as the white man, is in justice bound
by the law that if a man will not work neither shall he eat. Appreciating
this fact, the government has slowly organized a system of Indian schools
for the purpose of teaching the Indian child to read and write, the Indian
boy to till the soil, shave the plane, strike the anvil, and drive the peg, and
the Indian girl to do the work of the good and skillful housewife.52

50. DEJONG, supra note 7, at 108-09.
51. See DEJONG, supra note 7, at 108-09.
52. DEJONG, supra note 7, at 109.
This federal Indian educational system was to hold sway over generations of American Indian children. Taking stock of the outcomes and cost of this federal educational system for the American Indian peoples requires an "inside look" at the boarding school system.  

3. **Assessing the Benefits and Costs of the Federal Indian Boarding School System**

Federal Indian boarding and industrial schools seemed to offer the most pragmatic means for incorporating large numbers of Indian children into non-Indian society. Viewing these Indian children as like unto emigrant children offered a simple and demonstrably successful educational model. But Indian children were and are very different from European emigrant children. Emigrant parents had generally welcomed and valued the inculcation of American values through the classroom and shop floor. But Indian children generally resisted those American values that were substituted for their languages, ways of dress, and religious beliefs. This Indian resistance required a more rigorous and authoritarian Indian educational system than the "friends of the Indian" may have anticipated.

Indian girls and boys actively and passively rebelled against an authoritarian educational system that sought control of their bodies and minds. One scholar likens federal Indian boarding schools to other authoritarian institutions in that they sought to "produce a new image of the female Indian body . . . created according to dictates of Victorian decency and domesticity."[55]

This battle for control between Indian children and school administrators took place on many fronts. A young Choctaw woman tells her "resistance story" at Chillico Indian School in 1931 when she was 14 years old:

We wore gray sateen bloomers and black cotton stockings and GI shoes the first year I was up there. Well, when we went to the dances, we could wear what we called "home clothes" [the personal clothes that the girls brought from home]. But if we put home clothes over those big old sateen bloomers, it looked terrible. So all the girls hated that and some of them would get brave . . . . They pulled their home pants on and then put their bloomers over them so when we had inspection—they'd inspect us for that

---

54. See id. at 227-28.
55. See id. at 230.
56. See id. at 228-30.
before we left—we’d raise our dresses and show we had our bloomers on. So some of ‘em got a real clever idea and they made legs, just cut the legs off the bloomers, so when Miss M [the head matron] would come along to inspect, they’d just raise their dress so far [to show the piece of leg]. But they got caught with that, too; we got caught with everything eventually.  

Federal Indian education was steeped in late 19th Century evolutionary ideas that linked the Indians’ physical and mental competencies to their genetic inheritance. Given the teachers’ low intellectual expectations of their Indian students, it is not surprising that federal Indian education emphasized the development of the children’s physical skills. Even then, Indian children suffered by comparison to their White counterparts. Booker T. Washington, the Hampton Institute “housefather” for some young Kiowa and Cheyenne prisoners of war who were interned at the institute, remarked:  

The untutored Indian is anything but a graceful walker. Take off his moccasins and put shoes on him, and he does not know how to use his feet. When the boys and girls are brought here it is curious to see in what a bungling way they go up and down stairs, throwing their feet in all sorts of directions as if they had no control over them.  

The educational “rebuilding of the Indian” would take, the federal government discovered, a far more thorough-going program than had been necessary with emigrant children. Ironically, Victorian dogma about the frailty of white women worked to both the advantage and disadvantage of young Indian women. Ms. Sylvanus Stall’s presentation to the National Congress of Mothers in 1893 was typical of this view when she contrasted the white woman’s fragility with that of her Indian sister: “At war, at work, or at play, the white man is superior to the savage, and his culture has continually improved his condition. But with woman the rule is reversed. Her squaw sister will endure effort, exposure and hardship which would kill the white woman.”  

Young Indian women, if not young Indian men, could be usefully reconstructed with new identities, new skills, and new norms of appearance and physical presentation. Indian boys were, apparently, “cut more slack” in terms of personal behavior and work details. But Indian girls’ health was

57. Id.
58. See id.
59. See Lomawaima, supra note 53, at 228-229.
60. Lomawaima, supra note 53, at 229-30.
61. See Lomawaima, supra note 53, at 230.
63. Lomawaima, supra note 53, at 230.
carefully monitored. The need for this intense monitoring of Indian children was articulated by Ms. Estelle Reed at the turn of the century: 64

Allowing for the exceptional child the Indian child is of lower physical organization than the white child of a corresponding age. His forearms are smaller and his fingers and hands less flexible; the very structure of his bones and muscles will not permit so wide a variety of manual movements as are customary among Caucasian children, and his very instincts and modes of thought are adjusted to this imperfect manual development . . . . In short, the Indian instinct nerves and muscles and bones are adjusted one to another, and all to the habits of the race for uncounted generations, and his offspring cannot be taught like the children of the white man until they are taught to do like them. 65

These racist attitudes fundamentally tainted any hope that the federal government would work with tribal parents, governments and organizations in its delivery of educational services to the Indian peoples.

4. Did the American Indians Get the Education They Were Promised?

The cultural reorientation of the American Indian peoples proved to be a tall order, even for the federal government. But the idea of forced cultural transformation died hard. Mr. Thomas J. Morgan, Indian Commissioner from 1889-93, remained convinced that compulsory-federal schooling would "turn the American Indian into the Indian American." 66 Morgan envisioned a comprehensive mix of Indian day schools, off-reservation boarding schools, mission schools and public schools. Speaking before the 1889 gathering of the Lake Mohonk Conference of Friends of the Indian, Morgan expanded on his idea for Indian education:

When we speak of the education of the Indian, we mean that comprehensive system of training and instruction which will convert them into American citizens . . . . Education is the medium through which the rising generation of Indians are to be brought into fraternal and harmonious relationships with their white fellow citizens, and with them enjoy the sweets of refined homes, the delight of social intercourse, the emolument of commerce and trade, the advantages of travel, together with the

64. See Lomawaima, supra note 53, at 232-33.
65. Lomawaima, supra note 53, at 233.
67. See id. at 86.
pleasures that come from literature, science, and philosophy, and the solace and stimulus afforded by a true religion. 68

Did Morgan’s ambitious Indian education project succeed? An Indian Country “case study” shows that Morgan’s Indian education project failed for 3 reasons:

1) The federal government never intended to fully fund its “civilizing agenda” for the American Indian peoples.

2) The federal Indian agents and their teaching staffs never worked effectively with Indian students, families and clans so as to “fit” the proffered education to the Indians’ real-life circumstances.

3) The producing of truly educated Indians was never the goal of the federal Indian education project.

The institutional reason for the failure of federal Indian education effort seems clear in hindsight. The educational mission of the Bureau of Indian Affairs was belatedly “tacked on” to its earlier Indian land and resource management responsibilities. It was not until 1892 that BIA teachers were placed under federal civil service within the Department of the Interior. 69 The BIA was always uneasy about running Indian schools and understandably sought to delegate that responsibility to religious denominations in the 1870’s and to the states in the 1930’s.

A case study of this institutional failure will help display the complex underlying reasons why the Indian peoples did not get the educational services promised by the federal government.

a. The Rainy Mountain Indian Boarding School

The Rainy Mountain Indian Boarding School was established on the Kiowa-Comanche Reservation in the southwestern corner of Oklahoma in the 1870’s. 70 That reservation was created by the 1867 Treaty of Medicine Lodge Creek. 71 Section 7 of that treaty committed the federal government to a broad civilizing agenda for the benefit of the Kiowa-Comanche people. 72 But the

68. See id. at 87.
69. See FUCHS, supra note 33, at 5.
70. See FUCHS, supra note 33, at 88.
71. See FUCHS, supra note 33, at 88.
72. See FUCHS, supra note 33, at 88.
leading scholar on the Kiowa-Comanche people concluded that neither sufficient federal funds nor sufficient teaching staff was forthcoming so as to realize this goal on that reservation.73 This outcome did not surprise that scholar, William T. Hagan, because the real federal purpose of the 1867 treaty was merely to clear the way for the non-Indian settlement of that region.74

Furthermore, neither the early Quaker missionaries nor the later federal teaching staff proved willing to push the treaty-declared “civilizing agenda” on the Kiowa-Comanche peoples. Hagan characterizes these people as generally “innocent of any prior experience with the Indians or the West.”75 They soon discovered how difficult it was to “fit” a non-Indian education model to the real needs of their Indian charges. The Indian teaching experience of Josiah Butler, a Quaker missionary, reflects an extremely modest “civilizing agenda” among the Kiowa-Comanche people. He describes what he accomplished with his Indian students in February, 1871:76

I read a psalm, explaining what it was, I then explained the use of the small bell. I got all in a class before Wilson’s Chart No. 1, spelling cap, cat, dog, ox, hen, etc., the pictures of the same being before them. They articulated better than I had expected . . . . I gave them slates and they made fairly good figures. I kept them at it one hour and then dismissed them until after dinner. I gave them an hour for noon, then an hour on slates and charts, an hour for recess and then another hour as before.77

The real education that Indian boys received was the “industrial training” they got working at the Indian agency sawmill for fifty cents a day. Indian girls’ real education was the sewing and domestic skills they were taught by the missionary’s wife.78

Both the Kiowa-Comanche and the Indian agents knew Congress had no intention of living up to its treaty promises to provide educational or other annuities to the Indians in the quantity and quality as defined by the treaty.79 The Kiowa-Comanche’s response to this federal breach was “to go on the warpath awhile, kill a few white people, steal a good many horses and mules . . . and they would get a large amount of presents and a liberal supply of goods for that fall.”80

73. See Ellis, supra note 66, at 91.
74. See Ellis, supra note 66, at 91.
75. See Ellis, supra note 66, at 93.
76. See Ellis, supra note 66, at 95-96.
77. Ellis, supra note 66, at 96.
78. See Ellis, supra note 66, at 96.
79. See Ellis, supra note 66, at 92.
80. Ellis, supra note 66, at 93.
Neither the Quakers nor the federal Indian agents exercised any effective control on the Kiowa-Comanche Reservation. As a consequence, by the late 1870's little civilizing had occurred on the reservation. Some were quick to blame educational failure on the Indian themselves. A former school teacher complained that the Kiowas would disrupt the classroom:

Battey (an Iowa Quaker who established an Indian school) traveled with the Kiowas for more than a year, but the school he tried to hold in his tent was never very successful. Just about the time he would get some scholars interested, some of the old Kiowas or some young Kiowas would enter the tent, laugh, or forcibly evict the students so that it was impossible to hold regular classes.

Other teachers contended that it was the Kiowa-Comanche people who were most supportive of Indian education. Indian agent P.B. Hunt reported in 1880:

[a] sincere desire upon the part of the parents to have their children educated in the schools. A few years ago many children were entered . . . [with] the parents wishing and expecting to find favor with the agent; but now I am satisfied that higher motives actuate the larger portion of them. They are heard to say that they are too old, that it is too late for them to change their ways, but they wish their children to learn and follow the white man's ways.

But consensus historians conclude that the federal government’s "civilizing agenda" was never carried out on the Kiowa-Comanche reservation or on any other Indian reservation. The BIA's Indian education project was fundamentally crippled by Congress' failure to appropriate sufficient funds to carry out its civilizing agenda. Given this failure the BIA turned towards in the 1890's a scaled-down, vocational educational system. Earlier Indian education efforts had failed, these critics argued, because they tried to give Indians a "fancy eastern education." Anthropologist James Mooney in 1903 advised the Lake Mohonk Conference to "make it impossible for an Indian . . .

81. See Ellis, supra note 66, at 94.
82. See Ellis, supra note 66, at 97.
83. Ellis, supra note 66, at 97.
84. See Ellis, supra note 66, at 98.
85. Ellis, supra note 66, at 98.
86. See Ellis, supra note 66, at 110.
87. See Ellis, supra note 66, at 108-09.
88. See Ellis, supra note 66, at 110.
to get a dollar except by earning it . . . . I doubt if more than a small percentage can meet this test, but that is the percentage worth saving."

Renowned Indian scholar Fred Hoxie concludes that federal Indian education was expressly redirected in the 1890's to create a marginalized Indian population. This change was the inevitable result of a Indian education effort that lacked the necessary support to achieve its goals.

By the late 1920's even the BIA was willing to admit that the federal Indian education system was in shambles. This educational system was awarded an “F” because it had fundamentally failed to meet the educational needs of the Indian peoples. Indian Commissioner Fancis Leupp spoke of this failure in 1910:

How are Indians to live, inquires someone, unless we educate them to compete with the whites? That is exactly what I wish to see done: but let us study fitness in all things. You would not think of teaching a young man to dye wool in order to work in a cotton factory. You would not train a boy as a glass-blower and then put him in a iron foundry to practice his trade. Yet what you are doing with the Indian every day is no less inconsequent. Now suppose, instead of pursuing this folly, you inquire what there is for a young man to do after he has finished his schooling, and you adapt your teaching to that? You may not make so brave a showing in your paper statistics of the Indian’s “educational progress,” but you will make a big difference for the better with the Indian himself, and that is of more importance.

However, Commissioner Leupp’s wisdom did not serve to form the basis for reformulating federal Indian education. Instead, the educational separation of Indian children was to end with a dramatic new push in the 1930’s to integrate and assimilate Indian students into the states’ public school systems.

b. The Federal Government Rethinks Indian Education in the 1930’s

Integrating American Indian children into the public school system became the BIA’s educational policy from the 1930’s to the 1970’s. The Johnson-O’Malley Act of 1934 (JOM) authorized the Interior Secretary to contract with “any state, university, college or with any appropriate state or

89. Ellis, supra note 66, at 110.
90. See Ellis, supra note 66, at 111.
91. DEJONG, supra note 7, at 131-32.
private corporation, agency, or institution, for the education of Indians in such state or territory.\textsuperscript{92}

Many states proved eager to take the available federal subsidies for Indian education, but they were not as eager to provide the required cultural support services that would allow Indian children to succeed in the public school setting.\textsuperscript{93} Although the JOM program, coupled with the additional federal "impact aid" funding to public schools, resulted in the transfer of thousands of Indian children into the public school system, it did not successfully meet the educational needs of the American Indian students.\textsuperscript{94} Margaret Szasz, the leading scholar on the JOM program, states it was common practice for the public schools to misuse, at least before the mid-1960's, JOM funds intended to underwrite the unique educational needs of the Indian children by devoting those funds to meet the general educational program needs of the schools involved.\textsuperscript{95}

The BIA was well aware of the dubious motives that prompted the state educational offices to contract to receive JOM funds for the education of Indian children within their borders:

Bureau educators were very dubious about the motives of the state public school systems. Principally they feared that public schools were more interested in the money that Indian enrollment would add to their school budgets than in the Indian pupils themselves. They knew that many schools were in serious financial difficulty and were eager to receive additional funds. The challenge for Bureau educators were two fold: Could they retain sufficient control over the funding and administration of public school programs to insure that the type of education needed by Indian pupils would be provided? Given the trend of increasing state control of JOM programs, could they teach state administrators the unique approach necessary for Indian students before the states took over? The history of the JOM program, from its inception to the 1950's, is to a great degree an account of the Bureau's failure to cope with this challenge.\textsuperscript{96}

The BIA was also well aware of the monumental problems that lie with transferring Indian children to public schools:

Many Bureau educators were convinced that most public schools were unsympathetic toward Indian children, and whenever they compared the

\textsuperscript{92} Act of Apr. 16, 1934, 49 Stat. 1458 (authorizing the Secretary of the Interior to arrange with States or Territories for the education, medical attention, relief of distress, and social welfare of Indians, and for other purposes).

\textsuperscript{93} See DEJONG, supra note 7, at 177.

\textsuperscript{94} See DEJONG, supra note 7, at 180-82.

\textsuperscript{95} See DEJONG, supra note 7, at 180-82.

\textsuperscript{96} DEJONG, supra note 7, at 181-82.
two systems public education came out a poor second. As Willard Beatty concluded, "school for school, the teachers of the Indian Service are superior in training and character to those found in many rural public schools." Beatty was basing his conclusion upon the efforts of his own administration, and there is no question that during his term of office teachers received better training than under any other administrator. The in-service training program was highly successful and the efforts to encourage Progressive Education within the Indian Service were so well known by the late thirties that one state director of public instruction, in the process of negotiating a contract with the Department of the Interior, commented, "With the progressive and practical ideas of education that Willard Beatty has we can get ideas across to our public school people by learning what is being done in Indian Education." Beatty's own teachers may not have been as uniformly Progressive-minded as he wished, but unlike many rural school teachers, they did have the opportunity to keep abreast of current trends in education and to receive special training for teaching Indian children.  

The basic problem with the JOM program, as with the BIA lead Indian educational programs, was that Indian parents and communities were systematically excluded from any participation in the education of their own children:

By the 1960's, then, it had become apparent that the concern of Bureau leaders in the 1930's over public school funding for Indian education had been justified. Their predictions that the state school systems would be more interested in the additional money than in the Indian students had proven correct. This situation continued to exist for so many years largely because those who were directly affected by the aid—Indian pupils, parents and communities—had never been consulted. Throughout most of this period the question of Indian involvement was not even raised.

Two federal studies concluded that the JOM program had never resulted in its intended educational benefits to Indian students:

The failure of federal aid between 1928 and 1973 is illustrated dramatically by the tragic effect it had on Indian children in public school. Throughout these four decades, one of the most persistent problems was that of poor attendance and high dropout rates. Lack of motivation, general defeatism, and a semi-nomadic pattern of existence—all these combined to make the Indian child feel there was no reason for attending or continuing school.

97. DEJONG, supra note 7, at 187.
98. See DEJONG, supra note 7, at 190-93.
99. DEJONG, supra note 7, at 194.
100. See DEJONG, supra note 7, at 193.
Consequently, the Indian level of achievement remained well below the national average. ¹⁰¹

The acknowledged twin failure of federal and state Indian education required by the late 1960's a new departure. A new federal Indian policy of tribal self-determination was ushered by President Nixon's Indian Message in 1970.¹⁰² It set the stage for what I will refer to as the new "three legged stool" of Indian education.¹⁰³

III. THE NEW "THREE-LEGGED STOOL" OF AMERICAN INDIAN EDUCATION

A. Re-visioning American Indian Education as a Shared Responsibility of Federal, State, and Tribal Governments

Reconstructing Indian education in the 21st Century requires the fulfillment of an old covenant between the Indian peoples and the federal government. The potential revitalization of this covenant is based on three educational "shoulds":

¹⁰¹. See DEJONG, supra note 7, at 193-94.
¹⁰². President Richard Nixon, in his 1970 Indian Message to Congress, called for a new federal policy of "self-determination" for the American Indian peoples. Congress responded by enacting several new Indian statutes that confirmed the inherent sovereign powers of the Indian peoples and sought to establish a meaningful "government-to-government" relationship between federal agencies and the affected Indian peoples. See DAVID H. GETCHES ET AL., FEDERAL INDIAN LAW 253-59 n.10 (3d ed.). Professor Getches comments on these new federal Indian statutes:

As major legislation passed in the mid-1970's has been implemented, the situation has begun to improve. The 1975 Indian Self-Determination and Education Assistance Act (P.L. 93-639), the 1978 Educational Amendment Act (P.L. 95-561), and the Tribally Controlled Schools Act of 1988 (P.L. 100-297) substantially restructured both BIA and tribally operated schools, providing for more direct funding and local control.

Id. at 18.

¹⁰³. David Getches cites the progress of this new "3 legged stool of Indian education" evidenced in the 1990 census:

At the 1990 census, there were more than half a million Indian children in preschool, elementary or high school. Only about 10 percent of these children were in BIA-run schools, in contrast to the days when the controversial BIA boarding schools were the only schoolhouse for the large majority of Indian children. In 1997, tribes operated 105 days schools and the BIA 82. In 1995-1996, the BIA funded 50 on-reservation and seven off-reservation boarding schools. Three of these off-reservation schools are tribally operated. Dormitories—five run by the BIA and nine run by tribes—enable some 1,800 Indian children to attend state public schools far from their reservation homes. Under the Johnson-O'Malley Act of 1934, the BIA provides funding to public school districts across the nation to meet special needs of more than 271,000 Indian children in their schools.

Id. at 18.
1) The state governments "should" view public school education as requiring the fair and accurate representation of the American Indian peoples within their history and social studies curricula for the benefit of Indian and non-Indian students alike.

2) The federal government "should" view the education of the American Indians as its continuing trust duty that extends from the K-12 grades through higher education for qualified Indian students.

3) The tribal governments "should" view the education of their tribal members as a fundamental goal of tribal self-determination, co-equal with their responsibility to protect and preserve their natural and cultural resources.

Creating this new "three legged" stool of American Indian education need not be an arduous or expensive undertaking. Substantial legal and treaty authority would sustain these undertakings by federal, state and tribal educational authorities.

B. The First Leg: Making the American Indian "Visible" Within the States' Higher Education and K-12 Systems

American Indians have been largely invisible within America's higher education and K-12 systems. But this is changing slowly and reason exists for future optimism. I will present some of the evidence supporting this optimism.

Most public school districts do a poor job teaching their students about American Indians, even within the large Indian Country states. Lisa Harjo, a member of the Choctaw Nation of Oklahoma and the executive director of the Denver Indian Center, reviewed her children's elementary school social studies book and found only one reference to the American Indians—a depiction of Indians introducing the Pilgrims to cranberries. Such depictions typify the information that is conveyed to elementary school students regarding American Indians. Ms. Harjo criticizes her daughter's texts as portraying "American Indians as redskins who rode horses on the plains and lived in teepees . . . ."

104. See id.
106. Id.
Existing public school curricula restrict the discussion of contemporary American Indian issues to a brief mention within history, social studies, and literature classes. Such discussions are further circumscribed by the little information available about American Indians in textbooks approved by local boards of education. Rarely are contemporary Indian life or the major contributions of Indians to American life discussed or taken seriously by public school teachers. None of these books discuss the American Indian peoples' aspirations to self-determination within their territories today.

But the federal educational initiative known as Goals 2000 emphasizes cultural diversity as one of the main tenets of effective public school education in the next century. This initiative may spur a re-examination of public school curricula regarding contemporary American Indian peoples. Large Indian Country states—such as New Mexico, Arizona and Oklahoma—are beginning to view their urban and reservation Indian peoples as cultural and educational resources who should be involved in developing American Indian Studies curricula with their public schools.

Indian educators acknowledge that revamping the public school curricula to reflect contemporary American Indian culture and history will not be easy. Lee Francis, director of Native American Studies at the University of New Mexico, says that school textbook production is controlled by educators with a "Eurocentric" viewpoint. Unless Indian educators help formulate Indian education policy, the stereotypical images of Indian peoples currently presented in American textbooks will not change.

A large Indian Country state, Montana, is re-examining its American Indian studies public school curriculum. It seeks to fulfill its unique educational responsibilities to American Indians declared in Article 10, § 1(2), of its 1972 state constitution. That constitutional provision recognizes the distinct cultural heritage of the American Indian peoples and declares that the state "is committed in its educational goals to the preservation of their cultural integrity."
1. **State Action to Improve American Indian Access to Higher Education**

Montana has taken legislative action that addresses the higher education access needs of American Indian students in Montana. By statute, financially needy Indian students are eligible for a waiver of tuition and related fees at Montana colleges and universities. An Indian student must demonstrate that:

1) He or she has one-fourth Indian blood or more;

2) He or she has been a bona fide resident of Montana for at least one year prior to enrollment in the Montana University System; and

3) He or she has financial need.

Many American Indian students have used this educational "hand up" to secure higher education degrees in a wide variety of disciplines. These earned degrees add value to the individual futures of these Indian students and to Montana's collective future that will increasingly depend on a college-educated work force. The Commissioner of Higher Education's statistics from February 12, 1996, show that the Indian fee waiver is a cost-effective way of increasing Indian access to higher education. A total of 618 Indian tuition...

---

Education and Public Lands Committee, Verbatim Transcript, at 1950 (March 10, 1972) (on file at the University of Montana Law School Library).

Other delegates characterized that section as an appropriate step towards addressing past discrimination against American Indians and fostering social and economic competition for them in Montana. See id. at 1951. Still other delegates felt that this provision was so important that it should be a separate article within the constitution. See id. at 1952. Delegate James Champoux testified that this constitutional provision was the appropriate way to protect the unique manner in which Indian people educated their children within their culture and societies. See id. at 1952. Champoux explained that "A pow-wow is an Indian educational endeavor. That's where they teach their culture." Id.

The delegates to the 1972 Constitutional Convention envisioned protection for a wide range of Indian cultural and educational endeavors via the adoption of this constitutional provision. The provision passed with an overwhelming majority vote of 83-1. The lone dissenter felt that Indian peoples should not be identified in the constitution as a special group. See id. at 1952. Delegate George Harper summed up the sense of the convention when he testified that this "little section will help more than any other thing we have done or probably will do in this convention." Id. at 1951.

114. See id.


fee waivers valued at $2000 each were granted in 1996 by Montana’s university system. Montana’s investment in this program amounted to $1.236 million for that year. That modest investment returned a significant harvest of Indian graduates from Montana’s universities and colleges. The measured 6-year college graduation rate shows that as of Spring 1996, 168 out of 421 Indian students who had entered the system in 1990 with the help of the fee waiver had graduated. This 39.9% graduation rate compares favorably with the overall student graduation rate from the university system.

Montana’s Indian fee waiver program raises no significant constitutional issues under state or federal law. Other states with similar Indian fee waiver programs have likewise concluded that their programs are consistent with governing civil rights statutes and constitutional standards.

Montana's universities and colleges are also seeking to strengthen their ties with the seven tribal community colleges within the state. Articulation agreements recently have been developed between the University of Montana and several of the tribal colleges. These agreements are intended to ease the transfer process for Indian students from those colleges to the four year university system. Further, the Board of Regents’ Minority Education

117. See id.
118. See id.
119. That the American Indian peoples constitute a “political” and not “racial” class is fundamental federal constitutional law. See Elk v. Wilkins, 112 U.S. 94, 101-03 (1884). Justice Gray reasoned in his opinion that American Indians have always been regarded as distinct political societies outside the constitutional confines of the United States. See Elk, 112 U.S. at 101-03. Therefore, the federal government may legislate so as to either advantage or disadvantage American Indians so long as that legislation is rationally related to those trust duties that it owes to the Indian peoples. See Morton v. Mancari, 417 U.S. 535 (1974).

120. Other state governments have recognized that fostering American Indian education is a legitimate obligation states owe to their Indian children. The New Mexico Supreme Court upheld the expenditure of New Mexico tax dollars for schools within the Navajo Reservation despite the fact that those Indian lands were not within the state’s taxing jurisdiction. See Prince v. Board of Educ., 543 P.2d 1176 (N.M. 1975). That court concluded that “it has long been the policy of the federal government to encourage and support the states in providing public instruction to Indian children.” Id.

A Minnesota appeals court recently held that the state’s American Indian Education Act of 1988 was insulated from strict scrutiny because it was rationally related to the state legislative goal of enhancing Indian education within Minnesota. See Krueth v. Independent Sch. Dist. No. 38, 496 N.W.2d 829 (Minn. Ct. App. 1993). That court reasoned that the state act, which recognized the unique educational and cultural needs of American Indians and instituted hiring preferences for Indian teachers, was consistent with the Supreme Court’s decision in Mancari.

121. Mr. Larry LaCounte, Interim Director of the Native American Studies Department, University of Montana, cites these articulation agreements as important for the future success of tribal colleges in “incubating” Indian students who wish to eventually transfer to four-year institutions.

122. Mr. LaCounte believes these articulation agreements may be strengthened by a new policy announced by the Montana Commissioner of Higher Education that would recognize the
Policy requires the state university system to adopt Ten-Year Diversity Action Plans that recruit, retain, and graduate American Indian and other minority students in proportion to their representation within the state-wide population. 123 The implementation of these plans at the University of Montana and in other portions of the university system have had beneficial effects for American Indian and other minority students. 124 For example, Native American Studies has been “upgraded” to a degree major status at the University of Montana. Likewise, special recruitment and retention efforts have resulted in a steadily increasing number of American Indian students at the University of Montana. 125

These efforts have been legislatively challenged in Montana by those who consider American Indian education preferences illegal or immoral. So far these legislative challenges have failed because the state legislature concluded that its investment in American Indian education makes good practical as well as legal sense. 126

2. State Action to Make American Indians Part of the K-12 Educational System

Indian Country states, like Montana, are beginning to address the invisibility of their American Indian peoples within their public school

---

123. The Montana Board of Regents’ 1990 directive is set forth as Section 1902 (Minority Achievement) of its policy and procedures manual. That section declares specific minority achievement standards for the Montana University System are intended to “promote multicultural diversity and [improve] the participation and achievement of American Indians and other minority students . . . at a minimum, equal to their participation in the state’s population.” Several diversity related goals for higher education in Montana were also declared in that section, including:

1. To enroll and graduate American Indians in proportion to their representation in the state’s population. This proportional representation goal would apply at both the undergraduate and graduate levels. Furthermore, success would occur when minority students achieve at comparable levels with non-minority students.
2. To employ American Indians and other under-represented minorities in administrative, faculty, and staff positions within the higher education system in proportion to their representation in the relevant labor force.
3. To enhance the overall curriculum by infusion of content which increases multicultural awareness and understanding throughout the higher educational system.

124. Enrollment of American Indian and other minority students has steadily increased at the University of Montana.


curricula. Representative Carol Juneau, who resides on the Blackfeet Indian Reservation in Montana, introduced a bill to encourage public school districts, especially those on or near Indian reservations, to ensure that certified teaching personnel have an understanding of the history, culture, and contemporary contributions of Montana's Indian people. The bill's preamble refers to a 1995 committee study that public school districts, including those on or adjacent to Montana's Indian reservations, do not recognize the special cultural heritage of American Indians within their school curricula. That omission, coupled with the lack of American Indian teachers and school administrators, deprived Indian student of role models and created a lack of cultural awareness in non-Indian students. That omission also rendered incomplete the history of Montana and prevented a fair understanding of those contemporary problems that confront the Indian peoples of Montana.

H.B. 528, as amended, passed the Montana Senate by a vote of forty-one to eight on April 17, 1999. It passed the Montana House of Representatives by a vote of seventy-six to twenty-four on April 21, 1999. It was signed into law by Governor Marc Rachicot on April 23, 1999.

The enactment of H.B. 528, if it is meaningfully implemented by the respective public school districts, goes some distance towards making American Indians more visible within the K-12 educational system in Montana.

127. H.B. 528 implements Article X, Section I(2), of the Montana Constitution by encouraging every Montanan, whether Indian or non-Indian, to learn about the distinct and unique heritage of American Indians in a culturally responsive manner. Section One of this bill declares that it is the constitutionally declared policy of the state to recognize the distinct and unique cultural heritage of American Indians and to be committed to its educational goals to the preservation of their cultural heritage. This bill also encourages every local educational agency to work with those Indian tribes that are in "close proximity" when providing instruction, implementing an educational goal, or adopting an educational rule to include specific information on the cultural heritage and contemporary contributions of Montana's Indian people.

Section Two defines American Indian studies as meaning instruction pertaining to the history, traditions, customs, beliefs, ethics, and contemporary affairs of American Indians, particularly Indian tribal groups in Montana. Instruction is further defined by this bill as constituting a formal course of study developed with the advice of Indian people, an in-service training component developed by the superintendent of public instruction in cooperation with Indian educators, in-service training provided by a local school district in cooperation with education departments and tribal community colleges, or in-service training developed by professional educational organizations in cooperation with Indian educators.

Under Section Three of this bill local school districts may require their certified teaching personnel to complete a course of instruction in American Indian studies.

128. See id.
129. See id.
C. The Second Leg: Re-defining the Federal Government’s Role in American Indian Education

Reason also exists for optimism regarding the federal government’s role in American Indian education. President Clinton’s Executive Order of August 6, 1998, on American Indian education assigns the lead responsibility for improving the quality of American Indian education to the Department of Education. This executive action is the culmination of lengthy negotiations by the administration with many interested Indian organizations, including Native American Rights Fund (NARF), National Congress of American Indians (NCAI), National Indian Educational Association (NIEA), and National Advisory Council on Indian Education (NACIE). This executive order reaffirms the federal trust responsibility for Indian education, and it is hoped that promised executive action will result in an improved education for the 600,000 American Indian and Alaskan Native students of all ages.

This executive order requires the administration to develop a comprehensive Indian education policy in consultation with tribal leaders and Indian educators within two years. Its preamble recites the “unique legal and political relationship of the Federal Government with the tribal governments” and recognizes the “unique educational and culturally related academic needs of American Indian and Alaska Native students.” Its goals statement reaffirms the federal government’s trust responsibility for Indian education and requires federal educational agencies to focus their attention on six areas of Indian education:

a. Improving reading and mathematics;
b. Increasing high school completion and post-secondary attendance rates;
c. Reducing the influence of long-standing factors that impede educational performance, such as poverty and substance abuse;
d. Creating strong, safe, and drug free environments;
e. Improving science education; and

131. This Executive Order seeks the better coordination and implementation of federal Indian education law and programs. It seeks to improve Indian student academic performance by “increasing ownership of education with tribes and Indian communities, ensuring equitable access for Native Americans to federal education resources, and facilitating tribal, federal and state partnerships in Indian education.” 23 NARF LEGAL REV., Summer/Fall 1998, at 1.
132. See id.
133. See id.
f: Expanding the use of educational technology.134

The strategy section of this executive order emphasizes the need for a long term, comprehensive Indian educational policy. It establishes an Interagency Task Force on American Indian and Alaskan Native Education responsible for the execution of this strategy. That task force must consult with interested Indian organizations to gather advice on implementation of the educational activities called for by this order. It is composed of representatives from the Departments of the Treasury, Defense, Justice, Interior, Agriculture, Commerce, Labor, Health and Human Services, Housing and Urban Development, Transportation, Energy, and Education as well as the EPA, the Corporation for National and Community Service, and the National Science Foundation.135

Administration proposals were unveiled on January 21, 1999, to make these new educational initiatives a “working reality” within Indian Country.136 These include a planned $400 million in School Modernization Bonds for the construction and renovation of BIA schools within Indian Country. A new $10 million initiative would help recruit and train 1000 American Indian teachers who commit to teach in schools with high concentrations of American Indian and Alaska Native Students. Mr. William Cohen, special assistant to the President on educational policy, explained that this effort is “part of an overall effort to get well-qualified teachers into the classroom.”137 It is estimated that only 1% or 18,000 of the country’s more than 2 million elementary and secondary school teachers are American Indians or Alaskan Natives.138

Mr. David Beaulieu, Director of the Indian Education Office in the Department of Education, deems this 1% figure “even more significant when you consider that those Native American teachers who make up this 1 percent teach outside Indian communities.”139 He believes that this initiative must effectively “target teachers for Indian classrooms who are well trained in the latest teaching strategies and methods that will be effective with Indian students and their specific needs—linguistically, culturally and developmentally.”140

134. See id.
135. See id.
137. See id.
138. See id.
139. See id.
140. See id.
Whether the federal government can recreate this "second leg" of American Indian education will depend once again on Congress' willingness to appropriate the needed funds to provide Indian education consistent with its treaty and trust duty responsibilities. Ms. Lorraine Edmo, a national Indian education activist, say that the "next steps involve getting these proposals through Congress and the appropriations process." She believes that the teacher training initiative may have the best chance of surviving the appropriations process given "the dire need for teachers on reservations." 141

Tribal education directors likewise support this federal educational initiative. Mr. Collins Oakgrove, educational coordinator for the Red Lake Band of Chippewa Indians in northern Minnesota, would welcome more American Indian teachers on Red Lake Reservation. 142 He believes that their presence would reduce the "culture clash that occurs between Indian community values and the values of those from outside the reservation." 143 Others, such as Ms. Sherry Red Owl, director of education for the Rosebud Sioux Tribe in South Dakota, focus on the tribal "opportunity to request money to improve our [educational] facilities." 144 She points to the 1930's vintage BIA schools that "are environmentally unsafe and too crowded, which is the situation throughout Indian Country." 145

Whether the rhetoric of President Clinton's executive order will be matched by the reality of Congressional appropriations remains to be seen. However, this executive order and budget proposals may be evidence of a new federal effort to carry out its treaty and trust duties in American Indian education. 146

D. The Third Leg: The Tribal Role in Reconstructing American Indian Education

Tribal governments have, of course, the primary responsibility for ensuring the appropriate education of their tribal children. Unfortunately, tribal governments have focused historically on protecting their lands, waters and other resources against loss or destruction. They have not considered tribal education as within their portfolio of sovereign responsibilities. That oversight must be addressed by tribal governments and some evidence shows tribal governments are seeking to put tribal education "on par" with their other

141. See id.
142. See Hill, supra note 136.
143. See Hill, supra note 136.
144. See Hill, supra note 136.
145. See Hill, supra note 136.
146. See Hill, supra note 136.
sovereign responsibilities. Some tribes are exercising greater sovereignty over tribal education in both the K-12 arena and the higher education context. Education is increasingly appreciated as an important means of achieving tribal self determination in a complex, modern society.

1. **Tribal Sovereignty Within the K-12 Context**

Tribal governments are now recognizing elementary and secondary education as an important part of their civil regulatory responsibility within Indian County. The Rosebud Sioux Tribe may be the first tribe to adopt a comprehensive education code on the Rosebud Reservation in South Dakota. It addresses four areas of importance to the tribal people and their children:

a. Lakota language instruction,
b. Teacher and school administrator qualification and retention,
c. Tribal parental involvement programs, and
d. Tribal alcohol and substance abuse programs.

The Rosebud Sioux Tribal Education Department is the tribal agency with responsibility for implementing the code. It has sought to do so by establishing a tribal student tracking system and tribal truancy intervention program. The Department also oversees the development of an alternative high school and tribal courses for elementary and secondary teacher recertification at the tribal college, Sinte Gleska University. Tribal education reports have shown that progress is being made in raising the achievement levels of tribal students in the reservation schools. The Carnegie Foundation will independently evaluate the success of tribal educational efforts, such as those on the Rosebud Reservation, and will issue its report next year.

Other tribal governments are following the lead of the Rosebud Tribe. The Assiniboine Sioux Tribe of the Fort Peck Reservation in Montana adopted a tribal education code in 1995. It plans to implement its code via a cooperative agreement with the five public schools located on that reservation. Like Rosebud, the Assiniboine Sioux are tracking each student’s status and progress within the reservation’s schools. Through its agreements with the

---

148. *See id.*
149. *See id.*
150. *See id.*
151. *See id.*
152. *See id.*
public schools on the reservation, the tribe seeks to influence the public school curriculum and teacher certification standards so as to improve the educational status of both Indian and non-Indian children on that reservation.153

The Three Affiliated Tribes (Mandan, Hidatsa and Arikara Nations) of the Fort Berthold Reservation, North Dakota, are likewise seeking to establish a comprehensive tribal education code—to improve the elementary and secondary education of tribal children. Five school districts serve the tribal students, including two state-run public school districts. The remaining reservation school districts operate under BIA grants and tribal council ordinances that incorporate state educational standards.154 Tribal action was clearly required given the over 50% dropout rate of tribal children in secondary schools on the reservation. The tribal government accepted its responsibility to help improve Indian school attendance and to make the public and BIA school curricula more relevant to Indian students.155

But this “macro-level” focus on large Indian tribes sometimes ignores the “micro-level” accomplishments of relatively small tribes such as the Pascua Yaqui Tribe of Arizona.156 At the educational program level the Pascua Yaqui implemented a program for its “at risk” Yaqui youth on their reservation 12 miles outside of Tucson. Some 13 Yaqui students participated in the Pascua Yaqui Educational Group Effort. These “at risk” Indian youth transformed a patch of brown, crusted Sonoran desert into a garden.

Tribal leaders were troubled that over one-third of Pascua Yaqui students drop out of Tucson high schools each year. Many of these children felt out of place both in the public school system and in their traditional Yaqui community. This tribal program focused these students’ education on a tribal service learning model. It was based on preparation, action, and reflection activities. Its goal was to promote the students’ personal social and intellectual growth by emphasizing civic responsibility and career exploration. The program demanded that the students collectively identify and analyze their community’s problems and needs. It further required that they plan a project that effectively addressed those issues.157

These troubled students—including two teen parents, two youth offenders, and one substance abuser—identified difficult tribal community problems and proposed a solution to the tribal administration. They would raise cultural awareness among Yaqui children by building a traditional Yaqui

153. See Improving the Education, supra note 147, at 1-3.
155. See Improving the Education, supra note 147, at 3.
156. See Linda Sandler et al., From Desert To Garden: Reconnecting Disconnected Youth, 52 EDUC. LEADERSHIP 14 (1995).
157. See id.
garden. They measured seed beds and walkways, estimated the materials and equipment needed and developed a business plan. To successfully develop a traditional Yaqui garden, they had to learn traditional horticultural skills: how to prepare seed beds for a dry climate, plant low water crops, irrigate and fertilize their plants, and maintain their growing garden. They participated in sunrise meditation ceremonies conducted by tribal elders. They took younger Head Start children on a garden tour. They also produced a trilingual (Yaqui, Spanish, and English) coloring/activity book for those same Head Start children.¹⁵⁸

Some personal success stories of these Yaqui students deserve mention. Their basic skills performances on standardized measures of achievement improved significantly; three students received sufficient high school credits to return to Tucson schools, and several others made progress on their GED certification.¹⁵⁹

These stories demonstrate that tribal sovereignty deserves expression at both the “macro-level” of sovereign action and the “micro-level” of the individual human mind and heart. Successful tribes must seek to address both scales of tribal education.¹⁶⁰

2. *Tribal Sovereignty Within the Higher Education Context*

Tribal governments are now recognizing higher education as an important aspect of their sovereign responsibility to their tribal members. Tribal higher education—delivered through more than 27 tribal colleges operating in 11 western and mid-western states—is the most conspicuous manifestation of this effort within Indian Country.¹⁶¹ These colleges seek to offer American Indian students a rigorous general studies education while providing adult education, child care, health services, jobs and setting academic standards for business organizations. Funding has always been the biggest hurdle for the survival and success of these colleges. The Carnegie

---

¹⁵⁸. See id.
¹⁵⁹. See id.
¹⁶⁰. See id.
¹⁶¹. See Dan O’Kane, *Tribal Colleges: Providing Long-Overdue Aid to Native American Education*, 266 THE ATLANTIC 528 (1990). Tribal colleges seek to avoid the historic separation of young Indian students from their tribal cultures. The 1989 Carnegie Foundation report on tribal colleges concluded:

But if we have learned anything from our relationship with the American Indian, it is that people cannot be torn from their cultural roots with harm. To the extent that we fail to assist Native Americans, through their own institutions, to reclaim their past and secure their future, we are compounding costly errors of the past.

Foundation, among others, has criticized the federal government for not providing sufficient funds to the tribal colleges. But private foundations have assisted the tribal colleges in expanding their funding base by creating the American Indian College Fund.\textsuperscript{162} This fund is administered by an independent board composed of private citizens and the respective tribal college presidents. Its goal is to increase the fund’s endowment to $10 million by the end of the decade.\textsuperscript{163}

A typical tribal college student is a first generation college student, often a single parent who lives on a income well below the poverty level, who faces formidable obstacles if he or she moved to a non-Indian college campus far from a reservation home. How have tribal colleges sought to cope with all these obstacles to success?\textsuperscript{164} At Turtle Mountain Community College in North Dakota, President Gerald Monette has used a small $50,000 grant from U.S. West to develop a health-care core curriculum.\textsuperscript{165} Each year tribal students focus on a different heath care subject and are targeted for transfer to a specific four-year institution to earn a bachelor’s degree in the health care field. At United Tribes Technical College in Bismarck, North Dakota, the tribal college president used his small grant to build a computer learning center that will enable tribal students to develop job skills making them employable within a year or two.\textsuperscript{166}

These tribal colleges now serve over 10,000 American Indians (and some non-Indian students) and have a full-time equivalent enrollment of over 4,500 students. Although Congress has authorized up to $6,000 per student, the real appropriations for tribal colleges decreased during the Reagan era to only about $1900.\textsuperscript{167} Congressional per-student appropriations still do not meet the tribal colleges’ educational costs.

A brief case study of Little Big Horn College (LBHC), the tribal college on the Crow Reservation in southeastern Montana, illustrates the role of these colleges in filling a significant gap in American Indian higher education. The 150 students at LBHC must make personal sacrifices to succeed in higher education. Their average age is 29 and most juggle classes and single parenting, as well as part-time jobs, to succeed. Some hitchhike up to 75 miles each day, even in winter when outdoor temperatures may drop to 45 degrees below zero.\textsuperscript{168}

\textsuperscript{162} See O’Kane, supra note 161, at 528.
\textsuperscript{163} See O’Kane, supra note 161, at 528.
\textsuperscript{164} See O’Kane, supra note 161, at 528.
\textsuperscript{165} See O’Kane, supra note 161, at 528.
\textsuperscript{166} See O’Kane, supra note 161, at 528.
\textsuperscript{167} See O’Kane, supra note 161, at 528.
\textsuperscript{168} See Bill Shaw, Crow College: A Beleaguered Montana Tribe Turns to Education to Help Its Members Help Themselves, LIFE, Aug. 1988, at 64.
The student story of Regina Gros Ventre, a 30-year-old divorced mother of a 6-year-old boy, is typical. Her ex-husband would not let her work or go to school. When he deserted his family, Regina went back to LBHC because when she had applied for jobs, she was told that she needed requisite job skills. She gets up at 6 a.m. to feed her son, Colby. She then hitchhikes 30 miles to LBHC, where she majors in data processing. After studying in the school gym, she get home about 9 p.m., just in time to kiss her son goodnight. She many times feels too tired to get up for school, but she does so when her son says, "Mom, you have to go to school."  

Many challenges must be overcome by these tribal colleges and their students before Indian Country can claim that they have succeeded in their mission. But their existence is becoming better accepted by the larger, non-Indian educational community, which increasingly seeks to cooperate with the tribal colleges to promote their growth and future success. 

Tribal colleges will undoubtedly mature in their understanding of their educational mission within Indian Country and beyond. Their success in fulfilling their respective missions will be a key element in the transition to a meaningful era of Indian education.

IV. CONCLUSION

We need to do more than talk about reforming American Indian education, we need to do something about it! Reconstructing American Indian education in the 21st century will be a slow and painful process. It will require long-term effort, as well as legal, economic, and ethical initiatives of behalf of American educational leadership. But this effort, if forthcoming, will be worth it and America’s Indian peoples will finally gain a share in the education of their children.

169. Id.