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Indian Schools and Community Control

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In most Indian communities today, people are demanding community control of education. This position has substantial support. In 1969, the Special Senate Subcommittee on Indian Education, after more than two years of intensive study, recommended that the United States set as a national goal the achievement of "[m]aximum Indian participation in the development of exemplary educational programs for (a) Federal Indian schools; (b) public schools with Indian populations; and (c) model schools to meet both social and educational goals. . . ."[1] The following year, President Nixon declared, "[W]e believe every Indian community wishing to do so should be able to control its own Indian schools."[2]

Approximately 250,000 Indian, Eskimo, and Aleut children now attend this nation's public, federal, and private schools.[3] Roughly 70 percent of these students attend public schools, 25 percent attend federal schools operated by the Bureau of Indian Affairs (BIA), and 5 percent attend religious or other schools.[4]

The education of Indian children receives substantial federal financial support. In fiscal year 1972 the BIA spent almost $3,000 per pupil for its 52,000 students (36,000 boarding and 16,000 day), while the federal government provided about $700 for each Indian student to supplement state and local expenditures in the state public schools.[5] This nearly doubles the nationwide average per-pupil expenditures in public schools of $858.[6]

The purpose of this Article is to discuss the legal and practical considera-

1. SPECIAL SUBCOMM. ON INDIAN EDUCATION, COMM. ON LABOR AND PUBLIC WELFARE, INDIAN EDUCATION: A NATIONAL TRAGEDY—A NATIONAL CHALLENGE, S. REP. NO. 501, 91st Cong., 1st Sess. 106 (1969) [hereinafter cited as SUBCOMM. REPORT]. The Special Senate Subcommittee on Indian Education was established with bipartisan support in 1967. Senator Robert F. Kennedy served as Chairman until June 8, 1968. Senator Wayne Morse served as the second Chairman and was succeeded by Senator Edward M. Kennedy. The 220 page Report of the Senate Subcommittee has become a standard reference. *See also* R. HAVIGHURST, 5 THE NATIONAL STUDY OF AMERICAN INDIAN EDUCATION: THE EDUCATION OF INDIAN CHILDREN AND YOUTH 27 (1970).

2. MESSAGE FROM THE PRESIDENT OF THE UNITED STATES, H.R. DOC. NO. 363, 91st Cong., 2d Sess. 6 (1970) [hereinafter cited as PRESIDENT'S MESSAGE].

3. SENATE COMM. ON LABOR AND PUBLIC WELFARE & SENATE COMM. ON INTERIOR AND INSULAR AFFAIRS, INDIAN EDUCATION ACT OF 1971, S. REP. NO. 384, 92d Cong., 1st Sess. 13–15 (1971).

4. U.S. DEP'T OF INTERIOR, FISCAL YEAR 1971 STATISTICS CONCERNING INDIAN EDUCATION 1 [hereinafter cited as STATISTICS]. The vast majority of the 52,000 children attending federal schools comes from one of three places, the Navajo Reservation in Arizona, New Mexico and Utah (23,436), the Sioux Reservations in North and South Dakota (6,248), or the State of Alaska (6,605). Almost every child attending federal Indian schools resides on an Indian reservation.

On a nationwide basis, approximately 50% of Indian people live off reservations. Of these non-reservation Indians, many live in rural settlements or in small towns near the reservations while others live in major urban areas. There is a substantial variation in the economic and social conditions of Indian communities throughout the nation. Some tribes have thousands of members; many others have less than 300. The Aqua Caliente in Palm Springs, California, own small but valuable property, much of which is leased at favorable rates to entrepreneurs in that resort area, while the barren Cocopah Reservation in southwestern Arizona is one of the most desolate settlements in the nation. The degree of acculturation also varies significantly from tribe to tribe.

5. Federal Agency Expenditures in Indian Education, Office of American Indian Affairs, U.S. Office of Educ., Information Sheet, Jan. 1972. *But see* NAACP LEGAL DEFENSE AND EDUC. FUND & CENTER FOR LAW AND EDUC., HARVARD U., AN EVEN CHANCE 26 (1971) [hereinafter cited as AN EVEN CHANCE] (a report on federal funds for Indian children in public school districts) regarding the misuse of these funds.

6. U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 121 (1971).

tions which face Indian communities as they begin to move toward transforming the rhetoric of "Indian control" into the reality of quality education. First, the Article presents a brief history of federal and state Indian education policies, followed by a description of the contemporary movement for community control. Next, the Article considers alternative strategies and possible guidelines for Indian community control of education. The Article concludes with a review of constitutional issues which are posed by the existence of Indian schools.

I. Indian Education Policy Reviewed

It should come as no surprise that formal Indian education is termed "A National Tragedy"[7] or "Mental Genocide."[8] For the last 400 years the white man in the name of education has been primarily interested in changing or "civilizing" the American Indian.[9] For 300 years, beginning in 1568 with the Jesuit mission school for Florida Indians, the various denominations of the Christian church provided most of the formal education of Native Americans.[10] The young federal government, when confronted with skirmishes between Indian hunters and white settlers who sought to move West, adopted "civilization" as its overall Indian policy. The transformation of the Native Americans from hunters to farmers was also a change which would free millions of acres for non-Indian settlement.[11] Education was perhaps the most important instrument through which civilization was to occur, as evidenced by the inclusion of education provisions in Indian treaties beginning in 1794[12] and continuing through the end of the treatymaking in 1889.[13] Part of the consideration for these treaty promises

7. Subcomm. Report, *supra* note 1, at 1.

8. Brightman, *Mental Genocide, Some Notes on Federal Boarding Schools for Indians*, 7 Inequality in Educ. 15 (1971).

9. While "assimilation" is thought unpalatable by many, it should not escape notice that the original Indian policy of the European settlers was extermination. The early Puritans gave rewards for Indian heads, the Dutch in New Amsterdam began paying bounties for Indian scalps in 1641, and the other colonies followed suit. E. Berry, The Education of American Indians, A Survey of the Literature 24 (1968).

10. *See* Subcomm. Report, *supra* note 1, at 140–41.

11. *See* F. Prucha, American Indian Policy in the Formative Years 213 (1962). Prucha notes that the brutal outlook of many frontiersmen militated in favor of "the total destruction of the aborigines."

12. Treaty with the Oneida, Tuscarora and Stockbridge Indians, Dec. 2, 1794, 7 Stat. 47, 48. In the above treaty the federal government undertook "to instruct some young men of the three nations in the arts of the miller and sawyer, . . ." *Id.*

13. *See, e.g.*, Treaty with the Sioux Nations of Indians in Dakota, Mar. 2, 1889, 25 Stat. 888, 894 (education provision of 1868 treaty effective for 20 years); Treaty with the Navajo Indians, June 1, 1868, 15 Stat. 667, 669 (school, teacher, compulsory attendance); Treaty with the Cheyenne Indians, May 10, 1868, 15 Stat. 655, 657 (school, teacher, compulsory attendance); Treaty with the Crow Indians, May 7, 1868, 15 Stat. 649, 651 (school, teacher, compulsory attendance); Treaty with the Sioux Indians, April 29, 1868, 15 Stat. 635, 637–38 (school, teacher, compulsory attendance); Treaty with the Chippewa Indians, Mar. 19, 1867, 16 Stat. 719, 720 (funds for school buildings);

of education was the cession by various Indian tribes of almost one billion acres of land to the United States.[14]

Throughout the early part of the 19th century federal efforts in support of Indian education remained modest, and continued to rely heavily on the work of missionary groups. It was through the missionary societies, for example, that the government distributed its annual $\$$19,000 appropriation to introduce to the Indians "the habits and arts of civilization."[15] For the 10-year period ending in 1855, expenditures for education among Indian tribes exceeded $\$$2,150,000 of which only $\$$102,107.14 was contributed directly by the federal government: "$\$$824,160.61 was added from Indian treaty funds, over $\$$400,000 was paid out by Indian nations themselves, and $\$$830,000 came from private benevolence."[16]

A. *Federal School System*

Although religious groups continued to receive federal subsidies to operate schools for Indians until 1897, the BIA, primarily to discharge treaty commitments, began to build its own educational system in the 1870's.[17] This federal interest in enforcing treaty commitments coincided with the period in which many of the Plains tribes fought with great ferocity in the final defense of their homeland.[18] Indian children becoming "civilized" in government institutions would not be able to join the young warriors of their tribes in battle, and parents of students in federal schools, fearing possible reprisal against their children, would feel more reluctant to take up arms against the government.

In 1879, the House Committee on Indian Affairs submitted a report recommending the establishment of Industrial Training Schools for Indian

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Treaty with Sacs, Foxes, Iowas, Mar. 16, 1861, 12 Stat. 1171, 1172–73 (school, teacher, yearly stipend). For a more complete list of Treaties with education provisions, see U.S. SOLICITOR, DEP'T OF INTERIOR, FEDERAL INDIAN LAW 271 n.4 (2d rev. ed. 1958) [hereinafter cited as FEDERAL INDIAN LAW]. For a helpful explanation of some educational provisions, see ASS'T COMM'R ON INDIAN AFFAIRS, TREATY ITEMS, INDIAN APPROPRIATION BILL, H.R. Doc. No. 1030, 63d Cong., 2d Sess. (1914). The treaty provisions emphasized technical education in agriculture and in the mechanical arts. *See generally* FEDERAL INDIAN LAW, *supra* at 270–81.

14. SUBCOMM. REPORT, *supra* note 1, at 11. For example, the Treaty with the Chippewas states: "In further consideration for the lands herein ceded, estimated to contain about *two million of acres*, the United States agree to pay the following sums, to wit: Five thousand dollars for the erection of school buildings upon the reservation . . . four thousand dollars each year for ten years . . . for the support of a school or schools upon said reservation." Treaty with the Chippewa Indians, Mar. 19, 1867, 16 Stat. 719–20 (emphasis added).

15. F. PRUCHA, *supra* note 11, at 219, 222; *see* FEDERAL INDIAN LAW, *supra* note 13, at 273.

16. REPORT OF THE SECRETARY OF INTERIOR, S. Doc. No. 1, 34th Cong., 1st Sess., pt. 1, at 561 (1855), *quoted in* FEDERAL INDIAN LAW, *supra* note 13, at 273 n.17.

17. SUBCOMM. REPORT, *supra* note 1, at 147–48.

18. *Id. See generally* D. BROWN, BURY MY HEART AT WOUNDED KNEE (1970); Ross, *Cultural Integrity and American Indian Education*, 11 ARIZ. L. REV. 641, 659–62 (1969). These nomadic tribes included the Sioux, Cheyennes and Arapahoes, Kiowas and Commanches, Crows, Navajos, and Northern Cheyennes. *See* COMM. ON INDIAN AFFAIRS, INDUSTRIAL TRAINING SCHOOL FOR INDIANS, H.R. REP. No. 29, 46th Cong., 1st Sess. 1 (1879).

Youth. Pointing out that more than 12,000 Indian children were entitled to education under the treaties but "less than 1,000 have received schooling as provided," the Committee declared: "It is clear that the mutual interests and well-being of the Indians and the government, as well as the cause of civilization and humanity, alike demand that these [treaty] provisions be fully carried out and enforced."[19] The Industrial Training Schools called for in the Committee Report would utilize abandoned army barracks and have the effect of removing Indian children from all tribal influence during the period of their education.[20] The Committee believed its recommendations were the "true solution" to the Indian question, and that "a generation will not pass before the use of a standing army to protect our frontiers from Indian raids, depredations, barbarities, and murders will no longer be required."[21]

In the same year the Carlisle Indian School was established in Carlisle, Pennsylvania, under the direction of Captain R. H. Pratt of the United States Cavalry. Carlisle was attended by Indian children from many of the western tribes,[22] and its military format served as a model for the nascent federal boarding school system.[23] Anthropologist Peter Farb gives the following picture of Indian boarding schools:

> The children usually were kept at boarding school for eight years, during which time they were not permitted to see their parents, relatives, or friends. Anything Indian — dress, language, religious practices, even outlook on life . . . was uncompromisingly prohibited. Ostensibly educated, articulate in the English language, wearing store-bought clothes, and with their hair short and their emotionalism toned down, the boarding-school graduates were sent out either to make their way in a White world that did not want them, or to return to a reservation to which they were now foreign.[24]

On July 31, 1882, Congress, acting upon the recommendation of the Committee on Indian Affairs, authorized the use of vacant army posts or barracks to establish a system of normal and industrial training schools "for

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19. COMM. ON INDIAN AFFAIRS, INDUSTRIAL TRAINING SCHOOL FOR INDIANS, H.R. REP. No. 29, 46th Cong., 1st Sess. 1 (1879).

20. The dual thrust of the Committee's proposal was expressed in the following rhetorical question: "Is it not wise economy to occupy these government buildings and premises for the objects contemplated, employ (in part) Army officers who are fitted, as teachers and otherwise, in connection with such schools, and to vigorously and adequately provide for and enforce the treaty stipulations recited; thereby not only discharging a solemn government obligation and duty, but speedily accomplishing the education, elevation, and civilization of all the savages in our land?" *Id.* at 3.

21. *Id.* Congress in 1893 authorized the Secretary of Interior to "withhold rations, clothing and other annuities from Indian parents or guardians who refuse or neglect to send and keep their children of proper school age in some school a reasonable portion of the year." Act of Mar. 3, 1893, ch. 209, § 1, 27 Stat. 628, 635 (codified at 25 U.S.C. § 283 (1970)).

22. COMM. ON INDIAN AFFAIRS, INDUSTRIAL TRAINING SCHOOLS FOR INDIANS, H.R. REP. No. 752, 46th Cong., 2d Sess. 3 (1880).

23. SUBCOMM. REPORT, *supra* note 1, at 147–48.

24. P. FARB, MAN'S RISE TO CIVILIZATION AS SHOWN BY THE INDIANS OF NORTH AMERICA FROM PRIMEVAL TIMES TO THE COMING OF THE INDUSTRIAL STATE 257–59 (1968).

Indian youth from nomadic *tribes having educational treaty claims upon the United States.*"[25] Although the federal school system was to be based upon treaty claims of specific tribes, the practice first established at Carlisle of drawing students from many different tribes resulted in the creation of a system which operated without regard to any particular treaty. And, as the number of BIA schools increased, new facilities were constructed in addition to the vacant army facilities authorized by the 1882 statute. In 1921, Congress gave the BIA board authorization to spend monies for "[g]eneral support and civilization, including education."[26]

The BIA's authority under the statute, although clearly influenced by treaty obligations, is not limited to the discharge of treaty commitments.[27] After 1900, the federal system included not only boarding schools but an ever increasing number of local day schools, including several hundred small day schools which had previously been operated by the Oklahoma tribes.[28]

Today, the BIA school system varies dramatically among different regions and between elementary and secondary facilities. In Alaska, where most of the Native[29] population resides in isolated villages, there are numerous small elementary day schools run by the BIA.[30] Elementary school children are not sent to boarding school in Alaska.[31] By contrast, most elementary school students on the Navajo reservation attend one of 48 relatively large reservation boarding schools.[32] A third variant is found on the Rosebud Sioux reservation in South Dakota where the BIA maintains a dormitory, but the elementary and secondary school students attend a public school rather than a BIA facility.[33] The present BIA boarding school program is not designed to serve all of the children who attend BIA day school.[34] Rather, as discussed below, BIA policy is, and for many years has been, to encourage Indian students to attend state public schools wherever possible.[35]

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25. Act of July 31, 1882, ch. 363, 22 Stat. 181 (codified at 25 U.S.C. § 276 (1970)) (emphasis added).

26. 25 U.S.C. § 13 (1971). The 1921 Act has become the basic statutory source of federal authority to provide for Indian education. It is the authority for the entire BIA school system.

27. COMM. ON INDIAN AFFAIRS, AUTHORIZING APPROPRIATIONS AND EXPENDITURES FOR THE ADMINISTRATION OF INDIAN AFFAIRS, S. REP. No. 294, 67th Cong., 1st Sess. (1921). The Pueblo Indians of New Mexico and Alaska Natives, for example, have attended BIA schools over the years even though they have no treaty with the United States.

28. FEDERAL INDIAN LAW, *supra* note 13, at 274–75.

29. Indian, Eskimo, and Aleut.

30. All but four of the 53 BIA elementary day schools have enrollments of less than 150 and 18 schools enroll fewer than 150 children. STATISTICS, *supra* note 4, at 20–21.

31. *Id.* at 13.

32. *Id.* at 13–15, 22.

33. *Id.* at 25. This is one of 19 such facilities. The dormitory at Rosebud and most of the others serve both elementary and secondary students. *Id.*

34. *See* text accompanying notes 83–84 *infra.*

35. STATISTICS, *supra* note 4, at 5. The BIA still operates a total of 77 boarding schools. Those located on the reservations serve elementary and in some instances secondary students. The off-

B. *Federal Assistance to State Schools*

Prior to the Citizenship Act of 1924,[36] governmental responsibility for the education of Indians rested with the federal government. Most Indians were not citizens, and therefore did not possess the right of citizens to attend state supported public schools. Even where Indians had become citizens through treaty[37] or the General Allotment Act of 1887,[38] the public systems did not accept large numbers of Indian students without financial subsidies from the federal government.

The state public school systems are financed in large measure by local property taxes. Title to most Indian land, including reservations and allotments, is held in trust by the United States Government for the benefit of either the Indian tribe or the individual and is not subject to local property tax.[39] Accordingly, the influx of substantial numbers of Indian children places a financial burden on the state school systems. This burden has been alleviated by a variety of federal financial assistance programs.

Federal support to induce states to accept Indian children in the public school systems began as far back as 1890.[40] After 1900, the practice of paying "nonresident tuition" to state schools to educate Indian children developed rapidly.[41] The most important programs to subsidize the transfer of Indian children to the state school systems have been the Johnson-O'Malley Act of 1934[42] and two Impact Aid laws passed in the 1950's.[43] These Acts, which authorize financial assistance to the state schools, also play an important role in facilitating the integration of Indians into non-Indian society.

1. *The Johnson-O'Malley Act.*

The Johnson-O'Malley Act of 1934 has been the most significant program through which the federal government has brought about the transfer

reservation schools serve primarily secondary students. *Id.* at 12–16. The off-reservation schools in particular have been singled out for strong criticism: "Most of the 19 off-reservation boarding schools have become 'dumping ground' schools for Indian students with serious social and emotional problems. These problems are not understood by the school personnel, and instead of diagnosis and therapy, the schools act as custodial institutions at best, and repressive, penal institutions at worst." SUBCOMM. REPORT, *supra* note 1, at 103. *See* Brightman, *supra* note 8, at 18–19.

36. Ch. 233, 43 Stat. 253 (codified at 8 U.S.C. § 1401(a)(2) (1970)).

37. *E.g.*, A Treaty of Perpetual Friendship, Cession and Limits with the Choctaw Indians, Sept. 27, 1830, 7 Stat. 333, 335; Articles of a Treaty with the Cherokee Indians, July 8, 1817, 7 Stat. 156, 159.

38. Act of Feb. 8, 1887, Ch. 119, 6, 24 Stat. 390. *See generally* FEDERAL INDIAN LAW, *supra* note 13, at 517–26. For the effects of the Allotment Act on Indian education, see SUBCOMM. REPORT, *supra* note 1, at 146–52.

39. *See, e.g.*, The Kansas Indians, 72 U.S. (5 Wall.) 737 (1866); The New York Indians, 72 U.S. (5 Wall.) 761 (1866); Board of County Comm'rs v. Seber, 130 F.2d 663 (1942), *aff'd*, 318 U.S. 705 (1943).

40. FEDERAL INDIAN LAW, *supra* note 13, at 274.

41. *Id.*

42. 25 U.S.C. §§ 452–54 (1970). BIA authority is derived from the statutory delegation of power to the Secretary of the Interior. *See* note 44 *infra*.

43. 20 U.S.C. §§ 236–44, 631–47 (1970).

of Indian children from federal to state schools. Basically, the Act authorizes the BIA to make contracts with any state for the education of Indians.[44] From 1944 to 1969, Congress appropriated more than $132,200,000 for payments to the states under Johnson-O'Malley (JOM).[45] In 1969, the estimated expenditure of $11,552,000 meant that public school districts received approximately $174 for every eligible Indian student.[46] Recently, JOM appropriations have increased dramatically—from $11,552,000 in 1969 to $22,652,000 in 1972.

Under existing regulations, the JOM program is administered "to accommodate unmet financial needs of school districts related to the presence of large blocks of nontaxable Indian-owned property in the district. . . ."[47] The result is that local school districts have been able to serve Indian students from the reservations without placing an inordinate burden on school budgets.[48]

2. *Impact aid.*

In recent years, an even more substantial federal subsidy to public schools has been provided through the two "Impact Aid" laws, Public Law 81-815 and Public Law 81-874.[49] Enacted in 1950 to assist public school districts burdened by the impact of federal installations (primarily military bases), these statutes are applicable to districts with large Indian populations living on tax-exempt land. Public Law 81-815, known as the School Facilities Construction Act, authorizes, *inter alia*, grants for the construction of public schools attended by Indians. Section 14 of the Act is expressly designed to finance facilities in districts attended by large numbers of Indians where the immunity of Indian land from taxation impairs the ability of the public

44. 25 U.S.C. § 452 (1970). Contracts with private corporations, institutions, Indian tribes, or tribal organizations are also permitted, but such authorization has not been used until recently. *See* SUBCOMM. REPORT, *supra* note 1, at 38–47; Rosenfelt, *New Regulations for Federal Funds*, 10 INEQUALITY IN EDUC. 22 (1971); Yudof, *Federal Funds for Public Schools*, 7 INEQUALITY IN EDUC. 20, 23–27 (1971).

45. SUBCOMM. REPORT, *supra* note 1, at 47.

46. *Id.* at 39.

47. 25 C.F.R. § 33.4(a) (1972) (contracts with public schools). Most commentators find this regulation inconsistent with the original intent of Congress which was to aid communities where "the Indian tribal life [was] largely broken up and in which the Indians [were] to a considerable extent mixed with the general population." H.R. REP. No. 864, 73d Cong., 2d Sess. 1–2 (1932); COMM. ON INDIAN AFFAIRS, CONTRACTS WITH STATES FOR EDUCATION AND RELIEF FOR INDIANS, S. REP. No. 561, 73d Cong., 2d Sess. 1 (1934). *See, e.g.*, SUBCOMM. REPORT, *supra* note 1, at 38–44; Rosenfelt, *supra* note 44, at 22–23; Sclar, *Participation by Off-Reservation Indians in Programs of the Bureau of Indian Affairs and the Indian Health Services*, 33 MONT. L. REV. 191, 199 (1972). JOM funds are concentrated in such states as Arizona, Alaska, and New Mexico which contain large blocks of tax-exempt Indian land.

48. *See* text accompanying notes 53–57 *infra*.

49. 20 U.S.C. §§ 236–44, 631–47 (1970). *See generally* SUBCOMM. REPORT, *supra* note 1, at 31–37; Yudof, *supra* note 44, at 20–23.

school district to finance necessary construction.[50] In the 1950's, funding under Public Law 81–815 was generous. For example, during the 19-year period from 1951 to 1970 (under all sections of the Act) Arizona received $43 million, New Mexico $47 million, and Montana $13 million.[51]

During the last decade, appropriations under Public Law 81–815 have decreased dramatically, and such funds as have been appropriated have been earmarked for disasters (section 16) or for temporary federal activities (section 9). There have been almost no new school construction funds available to assist Indians. In fiscal years 1968, 1969, and 1970, not a single section 14 construction project was funded.[52] This unavailability of construction funds has necessarily slowed down the transfer of Indian children from federal to state schools.

Public Law 81–874, known as the Federally Impacted Areas Act, provides public school districts with funds for general operating expenses. Monies are appropriated "in lieu of taxes" from nontaxable federal property. Unlike Public Law 81–815, the congressional appropriations for Public Law 81–874 have been generous, reaching between 90 and 100 percent of the total authorization.[53] In several school districts located largely or entirely on Indian reservations, Public Law 81–874 funds provide the major portion of operating revenue.[54] In fiscal year 1972, appropriations under Public Law 81–874 relating to Indian land totalled $26,390,000, thus making it the single largest program of federal support for Indian education in the public schools.[55]

There is an apparent duplication between Public Law 81–874 and the Johnson-O'Malley program, for both provide funds to public school districts to meet financial needs caused by the presence of nontaxable land. When Public Law 81–874 funds became available in 1958, JOM regulations were amended to require that districts eligible for Public Law 81–874 aid must use JOM funds to meet educational problems "under extraordinary or exceptional circumstances."[56] Thus, Public Law 81–874 funds provide gen-

50. Comm'r of Educ., Administration of Public Laws 81–874 and 81–815, Twentieth Annual Report 15–23 (1970).

51. *Id.* at 116–20, 151–53, 156–57. This generous funding may be explained in part by the increased burdens imposed upon the public schools by the transfer of large numbers of Indians from BIA to state public schools beginning in the 1950's. *See* notes 64–69 *infra* and accompanying text.

52. Comm'r of Educ., *supra* note 50, at 21. There is nothing to suggest that the failure to appropriate funds is connected in any way with federal Indian policy; rather, the freeze on construction seems to be part of an overall move to combat inflation on a nationwide basis.

53. U.S. Office of Educ., Expenditures in Indian Education, Nov. 30, 1971.

54. Subcomm. Report, *supra* note 1, at 37.

55. *Id.*

56. 25 C.F.R. § 33.4(c) (1970). Although the language of the regulation is far from clear, both the BIA and a federal district court in New Mexico construe the language in the following manner: in the absence of extraordinary or exceptional circumstances (undefined), districts using Impact Aid may use JOM only to meet the special needs of Indian children, thereby avoiding duplication be-

eral operating revenue "in lieu of taxes," while JOM funds are devoted to special programs for Indians.[57]

tween Impact Aid and JOM. *See* Nannahah v. Board of Educ., 355 F. Supp. 716 (D.N.M. 1973).

57. This limitation has not always been respected. *See* AM. INDIAN CHARTER, *supra* note 5, at 21–26. Unhappily, the Department of Interior's choice of the words "extraordinary or exceptional circumstances" in 25 C.F.R. § 33.4(c) (1970) created unnecessary ambiguity which persists to this date. As originally enacted Pub. L. 81–87, monies were not to benefit federal lands or programs receiving aid from other federal sources, and accordingly JOM and Impact Aid were deemed mutually exclusive. Act of Sept. 30, 1950, Pub. L. No. 81–874, § 2, 64 Stat. 1100. Another section of Pub. L. 81–874 expressly excluded Indian children. *Id.* § 9(2), 64 Stat. at 1108. A third section was a nonduplication provision, prohibiting the use of appropriations to other government agencies for the same purposes as Impact Aid appropriations. *Id.* § 8(d), 64 Stat. at 1108.

In 1953, the Impact Aid Law was amended. The express exclusion of Indian children, cited above, was deleted and a new section was added to the Act, section 10(a), defining the procedures for determining Impact Aid for Indian children. This section states: "The governor of any State may elect to have the provisions of this section apply in such State. . . ." Act of Aug. 8, 1953, Pub. L. No. 83–248, § 10(a), 67 Stat. 536, *amending* 20 U.S.C. § 236 (1970). The BIA interpreted the amended law to make the two programs, JOM and Impact Aid, mutually exclusive, with the governor of each state electing coverage of one or the other law. It would have been equally consistent with the amended law to interpret the election to preclude JOM funds only for "normal school services" but still permitting them to go for "special extra-educational payments." This was the position of the Office of Education, whose views included the quoted phrases in the last sentence. *Hearings on H.R. 6028 Before the House Comm. on Educ. and Labor*, 83d Cong., 1st Sess. 146, 342–47 (1953). This remained the view of the Office of Education during the following five years. *Hearings on Proposed Amendments to Pub. L. 81–815 and 81–874, 81st Cong., Before the House Comm. on Educ. and Labor*, 85th Cong., 1st and 2d Sess. 66 (1957–58). Nevertheless, the BIA during the years 1954–58 usually refused to provide any JOM aid to states that elected to accept Impact Aid funds for their Indian areas. (The BIA was not wholly consistent: funds from both sources were provided to the State of Oklahoma. *Id.* at 730–72.)

In 1958, the Bureau of Indian Affairs supported an amendment to Pub. L. 81–874 to allow individual school districts, rather than the governor of each state, to choose between Pub. L. 81–874 and JOM funds. However, Representative (now Senator) Metcalf introduced an amendment to the bill to permit school districts to receive special services from JOM at the same time that they receive operational and maintenance money from Pub. L. 81–874. The BIA opposed the Metcalf amendment on the ground that it might lead to duplication of funds. *See Hearings on Proposed Amendments to Pub. L. 81–815 and 81–874, supra* at 66. The Act as finally passed incorporated the Metcalf idea. Act of Aug. 12, 1958, Pub. L. No. 85–620, 72 Stat. 548, *amending* 20 U.S.C. § 237 (1970). Section 201(2) of this enactment, 72 Stat. 559, amended the Impact Aid Act to except from its original anti-duplication provisions "appropriations under . . . the Johnson-O'Malley Act." The House Committee report sets out the intention of this amendment: "H.R. 11378 makes a significant change in the treatment of school districts educating Indian children, by enabling them to accept payments under Public Law 874 without forfeiting the right to obtain payments under the Johnson-O'Malley Act for special services and for meeting educational problems under extraordinary or exceptional circumstances. . . . H.R. 11378, in amending Public Law 874 in this connection, prevents any duplicate payments for the same services." H.R. REP. No. 1532, 85th Cong., 2nd Sess. 3 (1958).

25 C.F.R. 33.4(c) (1959), promulgated in 1958, must be viewed against this background. Section 33.4(c) provides: "When school districts educating Indian children are eligible for Federal aid under Public Law 874, 81st Cong. (64 Stat. 1100), as amended, supplemental aid under the act of April 16, 1934 [JOM] . . . will be limited to meeting educational problems under extraordinary or exceptional circumstances." The following year the Department of the Interior's request for JOM money decreased $4.3 million. In its justification for budget requests, the Department explained: "These costs were borne in 1958 by the Bureau but will be borne by the Department of Health, Education and Welfare in the budget year. . . . Johnson-O'Malley aid will be . . . limited entirely to districts not qualifying for Public Law 874 aid and to meeting the needs under extraordinary and exceptional circumstances when the district is eligible for Public Law 874 funds." *Hearings on Department of Interior and Related Agencies Appropriations for 1960 Before a Subcomm. of the House Comm. on Appropriations*, 86th Cong., 1st Sess. 732–33 (1959).

Clearly, the intent of Congress in authorizing Impact Aid for school districts educating Indian children included an intent to avoid any duplication of use between Impact Aid funds and JOM funds. Those districts receiving Impact Aid funds are paid JOM funds only to meet the special needs of Indian children for which Impact Aid funds are not intended. JOM in these districts is accordingly supplemental, categorical aid for Indian children. JOM can be used for general aid in lieu of taxes only in those districts not eligible for Impact Aid.

3. *Termination.*

The development of the national Indian education policy is inextricably related to overall federal Indian policy. The civilization policy designed to bring about the assimilation of Indians into white society has been discussed above. Through the treaties, and because Indians were not state citizens, there developed a special relationship between Indians and the federal government which, according to Chief Justice John Marshall, "resembles that of a ward to his guardian."[58] The treaties, the judicially evolved theory of guardianship, and the constitutional directive of Article I, Section 8 to regulate commerce with Indian tribes, have provided the sources of power for Congress to pass a series of laws for the special benefit of Indians and establish the Bureau of Indian Affairs to carry out those programs.

After World War II both the executive and legislative branches of government sought to "terminate" the special relationship between Indians and the federal government, and to promote the full integration of Indians into the mainstream of society. Termination contemplated the division of tribal assets among members of the tribe, the withdrawal of BIA and Public Health services, and the implementation of a program to encourage Indians to relocate from the reservations to urban areas where they would be trained to fill available jobs in the cities.[59] The termination philosophy was articulated in House Concurrent Resolution 108 of the 83rd Congress which expressed the congressional desire to end the status of Indians "as wards of the United States, and to grant them all the rights and prerogatives pertaining to American citizenship."[60]

Specific laws terminated the existence of the Menominee tribe of Wisconsin, the Klamath tribe of Oregon, four Paiute bands in Utah, the Uintah and Ouray Indians of Utah, several rancherias in California, and the Alabama and Coushatta tribe of Texas.[61] In 1953, Public Law 83-280 brought about the wholesale transfer of civil and criminal jurisdiction from the federal government to the states.[62] The effect of this legislation has been to

58. Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 178, 181 (1831) (dictum). The unique status of Indians is discussed in the text accompanying notes 209–63 *infra*.

59. *See generally* V. DELORIA, CUSTER DIED FOR YOUR SINS 54–77 (1969); Orfield, *A Study of the Termination Policy*, in STAFF OF SUBCOMM. ON INDIAN EDUCATION OF THE SENATE COMM. ON LABOR AND PUBLIC WELFARE, 91ST CONG., 1ST SESS., THE EDUCATION OF AMERICAN INDIANS: THE ORGANIZATION QUESTION 673–816 (Comm. Print 1969).

60. H.R. Concurrent Resolution 108, 83rd Cong., 1st Sess. (1953).

61. W. WASHBURN, RED MAN'S LAND—WHITE MAN'S LAW 80–93 (1971). Washburn discusses the disastrous consequences of forced termination upon the Menominees at 93–97. The Klamath tragedy is recounted in V. DELORIA, *supra* note 59, at 63–64, and in E. SPICER, A SHORT HISTORY OF THE INDIANS OF THE UNITED STATES 141–42 (1969).

62. Act of Aug. 15, 1953, ch. 505, §§ 2–5, 67 Stat. 588, *as amended*, 18 U.S.C. § 1162 (§ 2), 28 U.S.C. § 1360 (§ 3) (§§ 4–5 codified at 25 U.S.C. §§ 1321–23 (1970)). (Initially Pub. L. No. 83–280 applied to California, Minnesota (except the Red Lake Reservation), Nebraska, Oregon (except the Warm Springs Reservation), and Wisconsin (except the Menominee Reservation). Subsequently, Nevada, Florida, Idaho, Iowa, Washington, South Dakota, North Dakota, Montana, and (for pollution control only) Arizona, have assumed full or partial jurisdiction.)

place power for law enforcement, administration of justice, and the enactment of rules of conduct[63] in state rather than federal or tribal governments. Termination connotes the destruction of tribal government and with it tribal culture.

The movement to transfer federal responsibility for the education of Indians to the states gained its greatest momentum during the termination era (the 1950's). In 1952, the BIA closed down all federal schools in Idaho, Michigan, Washington, and Wisconsin. The following year 19 federal boarding and day schools were closed.[64] The Impact Aid programs provided the necessary additional funds to enable public school districts to absorb Indian children living on tax-exempt land into the system. The construction funds under Public Law 81–815 were particularly crucial, for in many cases it was necessary to erect new buildings or additions to existing buildings which the local districts could not have financed alone.

Most Indian people opposed compulsory transfer to the public schools. For example, the leaders of the San Felipe and Santo Domingo Pueblos in New Mexico kept all children out of school for the entire year of 1956 rather than send them to public school. Only after negotiation of an agreement between the Pueblos, the public school district, and the BIA, guaranteeing Indian children rights to an education equal to the best in the state did the Santo Domingo and San Felipe Pueblos permit their children to attend public school.[65]

The all-out drive for termination ended on September 18, 1958, when Secretary of the Interior Fred Seaton announced that no tribe would be terminated without its consent.[66] The shock and anguish felt by Indian people during the 1950's continues to play a key role in the Indian's assessment of any new proposal or policy. Writing in 1969, Vine Deloria asserted that "termination is the single most important problem of the American Indian people at the present time."[67] The fear of termination continues as a serious issue because of the tremendous economic and social pressures which are in fact pushing Indian people into the mainstream of society. In order to overcome the extreme poverty which confronts most Indian tribes, it is necessary to undertake economic development projects. To succeed, Indians will have to learn the white man's methods of doing business and be able to deal comfortably with non-Indians. The acquisition of a quality education is rapidly becoming a necessity for Indian people. But, if Indian

63. For example, as a result of Pub. L. No. 83–280 county building ordinances may now apply to reservation Indians.

64. SUBCOMM. REPORT, *supra* note 1, at 163.

65. Interview with Frank Tenorio, former Governor, San Felipe Pueblo, in San Felipe, N.M., Nov. 1969; Interview with Thomas O. Olson, Attorney, All-Indian Pueblo Council, in Albuquerque, N.M., Nov. 1969.

66. SUBCOMM. REPORT, *supra* note 1, at 14.

67. V. DELORIA, *supra* note 59, at 75.

people succeed in their economic development plans, if they acquire decent educations, and if they are able to take care of their own affairs, then there will be no need for the guardianship relation with the federal government and some form of termination will be desirable. By contrast, if Indian people fail in these efforts to become self-sufficient, then it will be necessary for the government to continue special programs for the benefit of Indian people. The dilemma is real. Most tribes today are committed to economic development but there remains the lingering fear that the federal government will cut off support before Indian tribes or communities have reached a secure position of self-sufficiency. This fear is pervasive and cannot be ignored in attempting to understand contemporary Indian issues.

The Kennedy, Johnson and Nixon administrations have repudiated the policy of forced termination.[68] In education, however, the policy of transferring responsibility from the federal government to the states has continued, and the percentage of Indian children in state public schools increases yearly.[69]

C. *Legal Obligation to Provide Educational Services*

In reviewing Indian education policy, reference must be made to the legal relations between the Indians and the state and federal governments. Who has the legal responsibility for providing educational services to Indians, and how is this responsibility reflected in policy?

1. *Federal obligation.*

Generally, the federal government has no legal obligation to provide educational services for Indian children. The Congress has authorized the Bureau of Indian Affairs to provide educational services and has regularly appropriated funds for that purpose, but no statute *requires* the continuation of educational programs.[70] The BIA, which operates some 200 schools for Indians, could probably close them all next year. Federal policy reflecting this legal relation was set forth recently by a BIA spokesman:

> [T]he Federal Government takes the position that *legal responsibility for Indian education rests with the States*. . . . When public schools are not accessible because of geographical isolation, nontaxable status of Indian lands, or for other reasons, the Federal Government recognizes its responsibility to continue to meet the educational needs of Indian children *until such time as the States are able to assume full educational responsibility for all of their children.*[71]

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68. *See, e.g.*, PRESIDENT'S MESSAGE, *supra* note 2, at 1–4.

69. *Compare* W. BROPHY & S. ABERLE, THE INDIAN: AMERICA'S UNFINISHED BUSINESS, REPORT OF THE COMM'N ON THE RIGHTS, LIBERTIES, AND RESPONSIBILITIES OF THE AMERICAN INDIAN 141 (1966) (54 percent in 1964) *with* STATISTICS, *supra* note 4, at 1 (68.8 percent in 1971).

70. *See, e.g.*, 25 U.S.C. §§ 13, 273, 276 (1970).

71. Letter from Vincent J. Lovett, Chief Div. of Communications Services, to the author, Mar. 10, 1972 (emphasis added), on file with *Stanford Law Review*.

The United States did agree in many treaties to provide teachers and other educational services.[72] In some instances the obligation is for a limited number of years long since past;[73] in others, the duration is to be determined by the President;[74] and, in a few, there is no period of time specified.[75] Even if the treaty promises were legally enforceable, it is not at all clear that an Indian tribe could obtain effective relief. Most of the treaties do not specify how the government shall discharge its obligations, and the government in most instances can argue that its programs of financial assistance to public schools are sufficient to discharge whatever obligation remains. Several of the more specific treaty provisions, moreover, obligate the government to provide services, such as millers or blacksmiths, which may not be appropriate for contemporary needs.

Some treaty education provisions, however, may still maintain validity. One successful instance of educational treaty enforcement occurred when the Mesquakie Indians of Tama, Iowa, relying upon a treaty, brought suit in federal district court in 1968 to enjoin the BIA from closing the day school at the Indian settlement. After the plaintiffs secured a preliminary injunction, the Indians and the BIA reached an agreement and the case never went to trial.[76]

Even though there may be no specifically enforceable federal obligation to provide educational services, there is a strong moral duty derived from the history of the federal government's dealings with the Indians and the general guardianship or trust relation expounded by the courts. The classic statement of the general federal obligation is found in *United States v. Kagama*,[77] in which the Court upheld congressional authority to vest federal rather than state courts with jurisdiction over cases involving major crimes between Indians occurring on Indian reservations. The Court explained:

> These Indian tribes *are* the wards of the nation. They are communities *dependent* on the United States. . . . Because of the local ill feeling, the people of the States where they are found are often their deadliest enemies. From their very weakness and helplessness, so largely due to the course of dealing of the Federal Government with them and the treaties in which it has been promised, there arises the duty of protection, and with it the power.[78]

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72. *See* text accompanying notes 12–14 *supra*.

73. *See, e.g.*, Treaty with the Cheyenne Indians, May 10, 1868, 15 Stat. 655.

74. *See, e.g.*, Treaty with Sacs, Foxes, and Iowas, Mar. 6, 1861, 12 Stat. 1171, 1173 ("so long as the President . . . may deem advisable").

75. *See, e.g.*, Treaty with the Navajo Indians, June 1, 1868, 15 Stat. 667, 669 (not less than 10 years).

76. Sac and Fox Tribe v. Community School Dist., Civ. No. 68-C39-CR (N. Dist. of Iowa). *See* Subcomm. Report, *supra* note 1, at 48–52. The Mesquakie case is the only known instance in which an Indian tribe successfully invoked its treaty education provisions.

77. 118 U.S. 375 (1886).

78. *Id.* at 383–84 (emphasis in original), *cited with approval in* Tulee v. Washington, 315 U.S.

The precise nature of the "wardship" relation has never been defined by the Congress or the Court. Arguably, the "duty of protection" mentioned in *Kagama* may give rise to a legally enforceable federal obligation to assure that Indian children are provided an equal educational opportunity by either the state or federal government. It seems clear that the wardship doctrine is valid today.[78] Thus, President Nixon, summing up his administration's Indian policy, stated: "[W]e have turned from the question of *whether* the Federal government has a responsibility to Indians to the question of *how* that responsibility can best be fulfilled."[80]

Present education policy reflects a wardship or trust responsibility for only a limited class of Indian people. Enrollment in federal day schools is limited to children of at least one-fourth Indian blood and who reside on Indian land under the jurisdiction of the BIA.[81] Approximately 90 percent of these students enter first grade with little or no English language facility,[82] and are ill-equipped to confront a foreign language and a foreign culture in the public schools.

Enrollment in federal boarding schools is limited to children who are eligible to attend day school, when there are no other appropriate school facilities available, or when the children come from broken or unsuitable homes.[83] In practice, the boarding schools serve a large number of orphans, children from non-English-speaking families, the academically retarded, dropouts from public schools, or children having special problems which the public schools are not equipped to meet.[84] The BIA appears to be converting its boarding schools to specialized institutions designed to deal with highly specialized needs of Indian children. Although most boarding schools still offer a general educational program, the boarding school at Santa Fe, New Mexico, serves artistically talented Indian children from throughout the nation, the boarding school at Pierre, South Dakota, serves primarily children with social problems, and the newest boarding school at Albuquerque, New Mexico, provides vocational education. Concomitant with the increasing specialization of federal schools, basic education

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681, 683 (1942); Gray v. United States, 394 F.2d 96, 98 (9th Cir. 1967); Maryland Cas. Co. v. Citizens Nat'l Bank, 361 F.2d 517, 520 (5th Cir. 1966).

79. *See* Pyramid Lake Paiute Tribe of Indians v. Morton, 354 F. Supp. 252 (D.D.C. 1972) holding, *inter alia*, that the trust obligation of the United States to the Pyramid Lake Paiute Indians required the Secretary of the Interior to exercise his powers to allocate all water not obligated to others by court decree or contract to the Indians. In short, the wardship relation imposes affirmative obligations on officers of the United States for the benefit of the Indians.

80. PRESIDENT'S MESSAGE, *supra* note 2, at 12 (emphasis in original).

81. 25 C.F.R. § 31.1(a) (1972). Enrollment may be available to children who reside *near* the reservation when a denial of enrollment would have a direct effect upon Bureau programs within the reservation. Although the needs of nonreservation residents are often just as great as the needs of those who live on reservations, instances in which nonreservation students are allowed to attend BIA day schools are rare. *See generally* Solar, *supra* note 47.

82. SUBCOMM. REPORT, *supra* note 1, at 55.

83. 25 C.F.R. § 31.1(a) (1970).

84. R. HAVIGHURST, *supra* note 1, at 22–23; Interview with John C. Wade, Education Specialist, BIA Aberdeen Area Office, in Flandreau, S.D., June 14, 1972.

programs for Indian children are provided by the states to an ever increasing extent.

2. *State obligation.*

State governments, unlike the federal government, do have an obligation to provide public education for Indians. The Supreme Court has ruled emphatically that "[s]uch an opportunity, where the state has undertaken to provide it, is a right which must be made available to *all* on equal terms."[85]

Indian children who reside on remote reservations not now served by public schools have a constitutional right to education from the state. Under the equal protection clause of the fourteenth amendment, state action which differentiates between two classes of people on the basis of race is subject to strict scrutiny by the courts and will be upheld only if necessary to promote a compelling state interest.[86] Indians are a distinct racial group and are thus able to trigger this rigorous constitutional test.[87]

No state could demonstrate a "compelling interest" in denying Indians access to its public school system. In the remote areas of the Navajo Reservation or in sections of Alaska there are no state schools. Alaska natives need not be sent to federal boarding schools in Oklahoma or Oregon and Navajos need not be bussed 400 miles to the Intermountain School in Utah. Indian people might successfully bring suit to compel the state to provide public schools. The courts have long held that the exclusion based on the availability of federal Indian schools cannot be justified under either federal[88] or state[89] constitutions. Nor could such a rule be countenanced in the name of education. In *Piper v. Big Pine School District*[90] the Supreme Court of California, with a tacit slap at the quality of education provided by the federal schools, flatly rejected the contention that the availability of federal schools was a fact which justified the exclusion of Indians from California public schools:

> The public school system of this state is a product of the studied thought of the eminent educators of this and other states of the Union, perfected by years of trial and experience. . . . Each grade is preparatory to a higher grade, and, indeed, affords an entrance into schools of technology, agriculture, normal schools, and

85. Brown v. Board of Educ., 347 U.S. 483, 493 (1954) (emphasis added).

86. *E.g.*, Loving v. Virginia, 388 U.S. 1, 11 (1967). Strict scrutiny will also be applied to classifications which differentiate with regard to a fundamental interest. While education has been held not to be a fundamental interest under the federal equal protection clause, strict scrutiny may still be applied to educational disparities under state constitutions. *See* San Antonio Independent School Dist. v. Rodriguez, 93 S. Ct. 1278 (1973) *and* notes 194–200 *infra* and accompanying text.

87. *See, e.g.*, Simmons v. Eagle Seelatsee, 244 F. Supp. 808, 814 (E.D. Wash. 1965) (three-judge court), *aff'd*, 384 U.S. 209 (1966) (Indians can only be defined by their race).

88. Piper v. Big Pine School Dist., 193 Cal. 664, 226 P. 926 (1924).

89. Grant v. Michaels, 94 Mont. 452, 23 P.2d 266 (1933); Piper v. Big Pine School Dist., 193 Cal. 664, 226 P. 926 (1924); Crawford v. School Bd., 68 Ore. 388, 137 P. 217 (1913).

90. 193 Cal. 664, 226 P. 926 (1924).

the University of California. In other words, the common schools are doorways opening into chambers of science, art and the learned professions. . . .[91]

D. *Need for Increased Indian Control*

The inadequacy of the present system of formal Indian education in both public and federal schools is suggested by the following statistics compiled by the Senate Subcommittee: (1) dropout rates for Indians are twice the national average; (2) more than 20 percent of Indian men have less than 5 years of schooling; (3) 20,000 Navajo Indians, nearly a third of the entire tribe, are functional illiterates in English; and (4) only 18 percent of the students in federal Indian schools go on to college (the national average is 32 percent).[92]

A review of the testimony of Indian leaders in hearings held by the Senate Subcommittee and by other congressional committees reveals a strong consensus that the single most important reason for this deplorable condition in both public and federal schools has been the exclusion of Indian parents and community members from participation in, and influence or control over, the kind of education which their children receive.[93] Most Indian children are taught by persons from a foreign culture with foreign values who speak a foreign language. Other factors are also operating to make many Indian children uncomfortable in white schools. These factors include the historical fact that Indian people have been treated by non-Indians as inferior, that non-Indians have usurped Indian lands, and that non-Indians control all important private and public organizations.

After almost 200 years of a federal "civilization" policy, one-half to two-thirds of Indian children enter school with little or no skill in the English language,[94] and only a handful of teachers and administrators speak Indian languages.[95] Even where language itself is not a barrier, very few federal or public school teachers fully understand and share the values of their Indian students.[96] At school, the curriculums, textbooks, and educational philosophy are designed to instill values such as competitiveness and indi-

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91. *Id.* at 673, 226 P. at 930. The highly critical findings of the Senate Subcommittee on the quality of education provided by the federal school system refute any contention that federal schools provide a consistently superior educational opportunity for Indian children. SUBCOMM. REPORT, *supra* note 1, at 99–104.

92. SUBCOMM. REPORT, *supra* note 1, at xii–xiii; R. HAVIGHURST, *supra* note 1, at 22. Indians do poorly in both state and federal schools. *Compare* SUBCOMM. REPORT, *supra* note 1, at 52–54 (Public School Findings) *with id.* at 99–104 (Federal School Findings).

93. *See, e.g.*, Testimony of William Youpee, Chairman, Nat'l. Tribal Chairmen's Ass'n, in *Hearings on S. 2724 Before the Senate Comm. on Interior and Insular Affairs*, 92d Cong., 2d Sess. 122 (1972); Statement of Jerome Buckanaga, Principal, Pine Point Experimental School, Pennford, Minn., White Earth Reservation, in *Hearings on S. 659 Before the Subcomm. on Educ. of the Senate Comm. on Labor and Public Welfare*, 92d Cong., 1st Sess., pt. 4, at 1831–35 (1971); Statement of Brightman, President, United Native Americans, in *Hearings on Policy, Organization, Administration, and New Legislation Concerning the American Indians Before the Subcomm. on Indian Educ. of the Senate Comm on Labor and Public Welfare*, 91st Cong., 1st Sess., pt. 1, at 44–47 (1969).

94. SUBCOMM. REPORT, *supra* note 1, at 27.

95. *Id.* at 52–63; R. HAVIGHURST, *supra* note 1, at 35.

96. SUBCOMM. REPORT, *supra* note 1, at 26–27, 61–63; R. HAVIGHURST, *supra* note 1, at 22.

vidual self-aggrandizement which are alien to Native American cultures."[97] In short the present education system is simply not equipped to cope with the cultural and linguistic disparities presented by Indian students.

Today there is a rapidly growing awareness in Indian communities that a bilingual-bicultural education built upon Indian values and Indian traditions presents a viable alternative to present forms of instruction. There is no intrinsic reason why education must take place in a foreign language and instill foreign values. Indian parents, however, must play an active role in reshaping the schools if they are to become more relevant to the needs of Indian children. Fortunately, the importance of education is becoming increasingly apparent to Indian people eager to escape poverty or hoping to join the force of skilled and professional workers in the economic development of their reservations. In this regard, Indian parents and community members are taking a new look at the educational institutions which purport to serve their children.

The call for "Indian community control of Indian education" has struck a responsive chord among Indian communities. Reports of the exciting experiment at the Rough Rock Demonstration School in Arizona contrast sharply with the blanket condemnations of existing public and federal programs, and are now leading many Indian communities to adopt new approaches to education.