The Indian Boarding School Era and Its Continuing Impact on Tribal Families and the Provision of Government Services

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THE INDIAN BOARDING SCHOOL ERA AND ITS CONTINUING IMPACT ON TRIBAL FAMILIES AND THE PROVISION OF GOVERNMENT SERVICES

I. INTRODUCTION

In those days the Indian schools were like jails and run along military lines, with roll calls four times a day. We had to stand at attention, or march in step. The B.I.A. thought that the best way to teach us was to stop us from being Indians.

The Government teachers were all third-grade teachers. They taught up to this grade and that was the highest. I stayed in that goddam third grade for six years. There wasn't any other.¹

These comments by John (Fire) Lame Deer are probably representative of the typical boarding school experience, but for many, the experience was much more horrific. Mainstream American history is littered with many dark marks, but perhaps none as dark as the attempt of the federal government to eradicate the language and culture of American Indians in an attempt to turn them into a white man with different colored skin. Given that this policy was articulated during the late nineteenth century,² it is easy to assume that the indignities of these policies are far behind us. Unfortunately, the effects continue.

While the use of federal boarding schools is finally waning, the residual effects are still evident. Part II of this article will detail the history of the boarding school era, covering both governmental policies and the boarding schools themselves.³ Part III will focus on the impact the removal of American Indian children from their homes, during the boarding school era, had on American Indian culture.⁴ The analysis will focus on both the immediate generation and successive generations.⁵ Part IV will explore the effect this impact is having on modern government's ability to effectively provide services to American Indians with a specific focus on child placement services and welfare programs.⁶ Part V will address some potential remedies, both legislative (such as the Indian Child Welfare Act's focus on keeping American Indian children in their

² The assimilation era of U.S. government tribal policy was from the 1870s–1930s.
³ Infra pt. II.
⁴ Infra pt. III.
⁵ Infra pt. III(a)–(b).
⁶ Infra pt. IV.
communities) and governmental (such as one measure some Tribes have adopted to mitigate some of the problems identified in Part IV), by looking specifically at the provision of welfare services through Tribal TANF.\(^7\)

II. A BRIEF HISTORY OF INDIAN BOARDING SCHOOLS

The Indian Boarding School era developed after the removal and reservation policy era.\(^8\) After American Indians had been removed to reservations, dissatisfaction that such large amounts of land were left “unused” and “undeveloped” by the Indians remained among the government and settlers who were hostile towards Indian tribes.\(^9\) These sentiments led the U.S. government to begin focusing its policies regarding American Indians on assimilation, a policy that essentially encompassed two major government actions.\(^10\)

The first significant step in the United States assimilation policy was tribal land allotment. Congress passed the General Allotment Act of 1887, also known as the Dawes Act, in an attempt to encourage Indians to make more “productive” use of their land, and to open up additional lands to white settlers.\(^11\) The Dawes Act provided that Indian reservations be divided into 160-acre plots and 80-acre plots with each head of an Indian household given a plot of land.\(^12\) The hope was that by having American Indians own their land individually, rather than collectively, the policy would have the effect of eliminating the American Indian cultural values of shared ownership, and would instead encourage individualism and capitalism among American Indian people.\(^13\) Ultimately,

7. *Infra* pt. V.
9. William C. Canby, Jr., *American Indian Law* 20–21 (West 1981). However, some settlers were sympathetic to the plight of the American Indian and recognized that the current policies were not making any progress in the economic conditions of the tribes, many of which were living in hopeless poverty by this time.
Id.
10. *See generally id.* at 20–23.
11. *Id.* at 21. The Dawes Act can be found at 24 Stat. 388 (1887).
12. Dawes Act, 24 Stat. 388. Under the Act, 160 acres was to go to the head of each family and eighty acres was to go to all others. *Id.* The act included a provision to double the size of allotment that an individual was entitled to if the land was only suitable for grazing, as opposed to farming. *Id.* After the land was parcelled out there was “excess” tribal land available and, under the authority of the Dawes Act, this excess land could be acquired by white settlers. *Id.*; *see Canby,* supra n. 9, at 22.
13. Andrea A. Curcio, *Civil Claims for Uncivilized Acts: Filing Suit Against the Government for American Indian Boarding School Abuses,* 4 Hastings Race & Poverty L.J. 45, 52 (2006). Euro-Americans viewed the American Indian culture as a threat to the system of capitalism. Capitalism functions optimally when citizens put resources to the most productive, or income generating, use. Therefore, American Indians’ failure to “use” their land was considered a waste of resources. *See id.* *See also Ezra Rosser,* *This Land Is My Land, This Land Is Your Land: Markets and Institutions for Economic Development on Native American Land,* 47 Ariz. L. Rev. 245, 260–62 (2005) (discussing the policy of the U.S. government in pursuing allotment). Unfortunately, allotment resulted in even more reservation land being passed on to white settlers. Gerald Vizenor, *Minnesota Chippewa: Woodland Treaties to Tribal Bingo,* 13 Am. Indian Q. 31, 33–35 (1989). Unscrupulous settlers took advantage of American Indians’ lack of English proficiency and misunderstanding of the concept of “owning” land and purchased large allotments of land for paltry sums. *Id.* For example, one Chippewa woman, Catherine Goodman, sold her eighty-acre allotment when she was only 17 for a mere $200. “Why did you not write your name at the time you were at the bank and put your hand to the pen?” asked James Graham, the Chairman of the House of Representatives Committee that was investigating the White Earth Reservation. Goodman’s response was that she did not know how to write when she sold her land to a white man with whom she did not know. *Id.* at 33–34.
the policy did not change American Indian culture, but instead led to a massive loss of land and extreme fractionalization of the remaining parcels.\textsuperscript{14}

The second measure implemented by the U.S. government to encourage assimilation was the reformation of Indian education.\textsuperscript{15} The idea behind boarding schools was to teach Indian children English, as well as capitalistic values, in order to accelerate the assimilation process.\textsuperscript{16} The Indian Boarding School era has been described as an "ideological and psychological" war "waged against children."

The schools leave a scar. We enter them confused and bewildered and we leave them the same way. When we enter the school we at least know that we are Indians. We come out half red and half white, not knowing what we are... I wouldn't cooperate in the remaking of myself. I played the dumb Indian. They couldn't make me into an apple—red outside and white inside. From their point of view I was a complete failure.\textsuperscript{18}

While the education of Indian children by non-Indians had been occurring for decades by the time the first boarding schools were opened,\textsuperscript{19} the boarding schools marked a clear upsurge in the government's resolve to eliminate Indian culture.\textsuperscript{20}

The "curriculum" and structure of Indian boarding schools was largely developed by Captain Richard Henry Pratt.\textsuperscript{21} Pratt had been successful in Indian assimilation during his tenure supervising a prison camp for captive Native Americans from 1875 to 1878.\textsuperscript{22} Pratt founded the first Indian boarding school in 1879, the Carlisle Indian School, without any official support from the U.S. government.\textsuperscript{23} After some initial

\begin{itemize}
\item[14.] Canby, supra n. 9, at 22–23.
\item[15.] Curcio, supra n. 13, at 53.
\item[16.] See generally Curcio, supra n. 13.
\item[17.] Curcio, supra n. 13, at 53 (quoting David Wallace Adams, Education for Extinction: American Indians and the Boarding School Experience, 1875–1928 27 (U. Kansas Press 1995)).
\item[18.] Lame Deer & Erdoes, supra n. 1, at 146–47.
\item[19.] O'Brien, supra n. 8, at 238. Much of the early education of Indian youth occurred at Indian day schools, usually located close to reservations. Children attended school during the day and returned home to their families at night. Many of these day schools were run by missionaries. See id. at 76.
\item[20.] Curcio, supra n. 13, at 52–53. Indian boarding schools are a reflection on the shifting status of Indian people from "domestic dependent nations," Cherokee Nation v. Ga., 30 U.S. 1, 10 (1831), into wards of the federal government. Raymond Cross, American Indian Education: The Terror of History and the Nation's Debt to the Indian Peoples, 21 UALR L. Rev. 941, 952 (1999). The attack on Indian culture involved more than allotment and boarding schools; under the authority of the BIA, everything "Indian," such as cultural dances, celebrations, practices, medical and religious ceremonies were banned. Curcio, supra n. 13, at 53.
\item[21.] Curcio, supra n. 13, at 54. The curriculum of many of the boarding schools focused on the development of physical skills. Teachers generally had "low intellectual expectations" for their students. Cross, supra n. 20, at 955. Boys often were trained in industrial skills, and girls in domestic skills. Id. at 953 (quoting David H. Deiong, Promises of the Past: A History of Indian Education in the United States 109 (North Am. Press 1993)). Examples of work that children were required to do as part of their education include doing laundry using industrial equipment, working in dairies, folding paper in a printing station, or pressing clothing. Curcio, supra n. 13, at 64. During the summer months, children were often sent to live with white families where they were usually put to work as servants. Id.
\item[22.] Curcio, supra n. 13, at 55. In addition to teaching his Cheyenne and Kiowa captives to read and write English, Pratt put them to work making canoes, baking bread, working in saw mills, caring for horses, and cultivating and harvesting oranges often outside the prison and in the community. Robert L. Brunhouse, The Founding of the Carlisle Indian School, 6 Pa. History 72, 75 (1939). The Cheyenne and Kiowa captives were so indoctrinated by their training that some begged to continue their Euro-American education in the East when they were ordered to return to the West. Loring Benson Priest, Uncle Sam's Stepchildren: The Reformation of the United States Indian Policy, 1865–1887 142 (Rutgers U. Press 1942). Given Pratt's background, it is no wonder that people describe their time in boarding schools as like being in prison. Curcio, supra n. 13, at 68.
\item[23.] Priest, supra n. 22, at 143. The school was located in Carlisle, Pennsylvania. Id.
\end{itemize}
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success,\textsuperscript{24} Pratt successfully lobbied the federal government, and in 1891, funding for the Carlisle School and additional Indian boarding schools was granted by Congress.\textsuperscript{25} This marked the official entry of the U.S. government into the business of funding Indian boarding schools, and revolutionized mainstream thought on the feasibility of educating American Indians.\textsuperscript{26} Funding for the Indian boarding schools came in a variety of forms, including government money, but also including proceeds from the sale and lease of "surplus" land left over after allotment and from the labor of the students.\textsuperscript{27}

Pratt's philosophy on Indian education was the dreadful extreme of assimilation, and Pratt himself summed it up—"Kill the Indian in him, and save the man."\textsuperscript{28} Pratt believed that the primary way to accomplish this was to indoctrinate the Indian children into the ways of the Euro-American capitalist.\textsuperscript{29} Pratt believed that day schools were insufficient for this purpose, and that separation from the tribe was necessary to achieve true assimilation. In his view, the only way to educate and civilize an Indian child was to take him away from the primitive influence of his family.\textsuperscript{30}

A further example of the general policies regarding Indian education are the comments made by Minnesota Governor Alexander Ramsey, who was also the

\textsuperscript{24} This initial success was defined in two ways. First, although Pratt faced initial opposition from Tribal Leaders, more American Indian children agreed to go to the Carlisle School in its first year than could be accommodated. Priest, \textit{supra} n. 22, at 143. Second, the House Committee on Indian Affairs visited the school in 1880, just a few months after it opened and saw that students were reciting in classrooms, learning a number of trades in the workshops, had a tidy and clean appearance, and had made great strides in the use of a knife and fork. Brunhouse, \textit{supra} n. 22, at 84–85.

\textsuperscript{25} 26 Stat. 989, 1012–14 (1891) (providing funding for the Carlisle Industrial School in Pennsylvania in addition to providing for Pratt's annual allowance "one thousand dollars"). In addition to funding the Carlisle school, the 1891 Act also provided funding to educate 100 Chippewa boys and girls at St. John's University and St. Benedict's Academy in Stearns County, Minnesota, and funding to educate "one hundred Indian pupils at Saint Paul's Industrial School at Clontarf, in the State of Minnesota." \textit{Id.} at 1013. The same provision was also included in 27 Stat. 612, 637.

\textsuperscript{26} Priest, \textit{supra} n. 22, at 143 (discussing that despite evidence to the contrary, the prevailing popular opinion was very skeptical towards the idea of successfully educating American Indians). Indeed, even the Superintendent of Indian Education, John H. Oberly, held such a belief:

... 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 injustice bound by the law that \textit{if a man will not work neither shall he eat.}\textit{Id.} However, not everyone who supported the Indian Boarding schools did so in the name of Indian Education. "The Indian Office used the Carlisle School as a means to secure from discontented tribes the children of the important tribal leaders, who could thus be held as hostages for the good behavior of the whole tribe." Brunhouse, \textit{supra} n. 22, at 78. Pratt himself seems to have at least tacitly accepted the idea of using the boarding schools as a hostage system; he focused his initial recruiting on the Sioux tribe because of hostile relations between the Sioux and the U.S. government and wrote back to officials to let them know that a large number of his new pupils were the "progeny of chiefs." \textit{Id.} at 78–80.

\textsuperscript{27} Vizenor, \textit{supra} n. 13, at 36–37. There was an Indian Boarding School on White Earth Reservation where the girls were taught cooking, sewing, knitting, and other domestic duties. \textit{Id.} at 43. It seems that for a period anyway, there were a small number of boys in the school, but the school nonetheless maintained a ninety-acre farm which generated income in a variety of ways. \textit{Id.} at 47. Additionally, many boarding schools continued to be at least partially funded by missionaries and other religious groups. Allison M. Dussias, \textit{Waging War with Words: Native American's Continuing Struggle against the Suppression of Their Languages}, 60 Ohio St. L.J. 901, 909, 911 (1999).

\textsuperscript{28} Curcio, \textit{supra} n. 13, at 55.

\textsuperscript{29} \textit{Id.} at 53.

\textsuperscript{30} \textit{Id.} at 54–55. Pratt believed the problem with day schools is that when the children are able to return home at night it slows the "learning" process. \textit{See id.} at 54.
Commissioner of Indian Affairs. He stated, "[E]ducation and agricultural efforts can only hope for useful results when Indians are removed in pursuance of treaties . . . and when manual-labor schools" are established "to educate their rising generation in the arts, conveniences, and habits of civilization."  

Boarding schools were often located a significant distance from the reservations, and predictably, Native Americans resisted having their children leave home to be educated by the white man. In order to guarantee attendance, Congress authorized the Commissioner of Indian Affairs to make rules to ensure attendance, and provided funding for the transportation of children from reservations to boarding schools. The policy led to practices such as "child snatching," described in one account as requiring the police "to chase or capture them [Indian children] like so many wild rabbits." Rations were intentionally withheld to force parents to choose between starvation or sending their children away to school. In some circumstances, the federal government's coercion was more subtle and was simply a result of the dire poverty that some Indian tribes faced. Often with no means of self support, some parents agreed to let their children attend boarding school in the hopes that they would learn to deal with the white man. 

Unfortunately, the conditions in the boarding schools were no better than the

31. Minn. Historical Socy., Governors of Minnesota, http://www.mnhs.org/people/governors/gov/gov_01.htm (accessed Mar. 14, 2008). Ramsey was first appointed territorial governor on June 1, 1849, and served until May 15, 1853. He later won election to serve as Minnesota’s second state governor on January 2, 1860. Ramsey also served as commissioner of Indian affairs and negotiated with the Dakota for land cessations. Id.  
32. Vizenor, supra n. 13, at 31 (quoting Governor Ramsey).  
33. Curcio, supra n. 13, at 55–56. One famous quote from Conassatego, Iroquois League, put it this way when he turned down an offer of education for six of the tribe’s young men:

We know you highly esteem the kind of Learning taught in these Colleges, and the maintenance of our young Men, while with you, would be very expensive to you. We are convinced, therefore, that you mean to do us Good by your Proposal; and we thank you heartily. But you who are so wise must know that different Nations have different Conceptions of things; and you will not therefore take it amiss, if our Ideas of this kind of Education happens not to be the same with yours. We have had some experience of it. Several of our young People were formerly brought up in the Colleges of the Northern Provinces; they were instructed in all your Sciences; but, when they came back to us, they were bad Runners, ignorant of every means of living in the Woods, unable to bear either cold or Hunger, knew neither how to build a Cabin, take a deer, or kill an enemy, spoke our language imperfectly, were therefore neither fit for Hunters, Warriors, nor Counsellors; they were totally good for nothing. O'Brien, supra n. 8, at 239. See also Linda J. Lacey, The White Man’s Law and the American Indian Family in the Assimilation Era, 40 Ark. L. Rev. 327, 360–61 (1986) (discussing how the assimilation policy as applied to Indian education affected Native American families).  
34. 26 Stat. 989, 1014. 

And the Commissioner of Indian Affairs, subject to the direction of the Secretary of the Interior, is hereby authorized and directed to make and enforce by proper means such rules and regulations as will secure the attendance of Indian children of suitable age and health at schools established and maintained for their benefit.

Id.  
35. Lacey, supra n. 33, at 359. See also Curcio, supra n. 13, at 56–58 (describing the forced attendance policies). 
36. 27 Stat. 612, 635. Legislation provided for sanctions if parents did not comply with the mandatory attendance requirements: "Hereafter the Secretary of the Interior may in his discretion 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 each year." Id.  
The schools provided sub-standard living environments, including poor ventilation, exposed electrical wiring, no indoor toilets, lack of sanitary supplies, and trough-like basins for washing. Children were routinely exposed to a variety of dangers including health and fire hazards. Lack of proper nutrition was another problem, since many boarding schools fed children low-grade food and rationed the food severely. As a result of the unsanitary living conditions, labor intensive work, and poor nutrition, the children were vulnerable to death and disease. Additionally, children were subject to corporal punishment and abuse, physical and sexual, at the hands of their educators.

The first order of business when children arrived at the boarding schools was to strip them, literally, of their identity. Being told they were dirty, American Indian children were washed and their traditional clothes were replaced with government issued uniforms and shoes. The boys’ hair, which was a source of cultural pride, was cut to fit their Euro-American educators’ ideas of what a civilized young man should look like. Unbelievably, American-Indian children lost their names as well—school officials and classmates chose new English names for the children. Furthermore, American Indian children were forced to abandon their language and customs and were instead expected to speak English and learn from educational materials reflecting “white middle class culture.” Finally, because many schools were missionary in nature, American Indian children were forced to convert to Christianity, which destroyed their own sense of spirituality and connection to their people and their culture.

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38. O’Brien, supra n. 8, at 75–76 (describing conditions on reservations at the time).
40. Id.
41. Id. at 63. In South Dakota, some students who left reservations suffering from malnutrition actually weighed less after living at the boarding school for the year. Id. See also Matt Kelley, American Indians Describe School Beatings 1, 2, http://www.nospank.net/n-e36.htm (Apr. 24, 1999).

In the late 1920s, federal boarding schools fed students thin gruel, moldy molasses and weak coffee for 11 cents per day, the equivalent of $1 today. Government inspectors in the 1930s cited the Haskell Institute, a federal boarding school in Lawrence, Kan., for having bathrooms that were nothing more than a row of chamber pots lined up in a closet.

42. Curcio, supra n. 13, at 65–68. American Indian children in the boarding schools were plagued with tuberculosis, influenza, trachoma, and other serious diseases. Understandably, tribes across the country began to associate the boarding schools with death. Id. at 65–66.
43. Id. at 67. One school administrator justified his use of corporal punishment, saying, “We deal with a primitive race, with persons who often lack appreciation of the reasons for good behavior.” Kelley, supra n. 41, at 2 (quoting Phoenix Indian School Superintendent John B. Brown).
44. Curcio, supra n. 13, at 59–61.
45. Id. at 59.
46. Id. “As soon as the opportunity came, the barber’s shears clipped off the long locks of the boys, though not without opposition and a scene that remained vividly in the memory of all for years to come.” Brunhouse, supra n. 22, at 84.
47. Curcio, supra n. 13, at 59. Culturally, names are very significant to American Indians. Families take great care when choosing the name of the child taking such things as future aspirations and characteristics of honored ancestors into account. Id.
48. Id. at 60.
49. Id. at 61; see also Lacy, supra n. 33, at 362–64; Vizenor, supra n. 13, at 46–51.
III. THE SOCIAL AND CULTURAL IMPACT OF THE BOARDING SCHOOL ERA

The systematic removal of generations of American Indian children had a profound and lasting impact on American Indian culture. Indeed, the atrocities suffered by the children who were sent to boarding schools are the kinds of events that have a lasting and generally negative impact on an individual’s well-being.\(^5\) American Indians who were sent to boarding schools lost their language, their culture, and their sense of self, and this profound loss was passed on from generation to generation.\(^5\) Traditionally, American Indian culture, traditions, values, and beliefs were passed on orally to younger generations by the elders.\(^5\) A segment of this oral tradition includes a responsibility of American Indian youth to seek out this knowledge from elders.\(^5\) However, as discussed below, a variety of factors such as the psychological impact of the boarding schools, and the inability to communicate because of lost language, made this nearly impossible.\(^5\)

A. The Immediate Impact

The primary goal of assimilation was to rid the American Indian of his culture and replace it with Euro-American culture.\(^5\) These two cultures, however, were fundamentally conflicted. American Indian culture is collectivistic and traditional; education focused on the application of shared principles and cooperation.\(^5\) Conversely, Euro-American education was starkly individualistic and emphasized competition.\(^5\) This conflict of educational priorities and cultural style often led both the American Indians and Euro-Americans to have profound misconceptions about the other.\(^5\) For example, Euro-Americans often believed that Indians were lazy, unintelligent, and too dependent on the tribes.\(^5\) Likewise, American Indians believed that Euro-Americans were slaves to their own materialism.\(^5\) "You are slaves from the time you begin to talk until you die, but we are as free as air.... Our wants are few and easily supplied. The river, the wood and plain yield all that we require, and we will not be slaves..."\(^5\)

These vast cultural differences made it difficult for American Indian children to

50. Curcio, supra n. 13, at 72–76.
51. See generally id.; Dussias, supra n. 27; Vizenor, supra n. 13.
53. Id.
54. Infra pt. III(a)–(b).
55. See Canby, supra n. 9, at 20–21.
57. Id. at 947.
58. See generally Cross, supra n. 20 (discussing the history of the U.S. government’s American Indian education policy); Priest, supra n. 22 (discussing the conflicting perspectives on educating American Indians).
59. This belief was ultimately the driving force behind the assimilation movement. See Priest, supra n. 22, at 132–54.
60. Cross, supra n. 20, at 948 (paraphrasing Big Soldier in David H. Dejong, Promises of the Past: A History of Indian Education in the United States 4 (North Am. Press 1993)).
61. Id. (quoting Mescalero Apache Chief Cadete in David H. Dejong, Promises of the Past: A History of Indian Education in the United States 5 (North Am. Press 1993)).
understand and embrace Euro-American culture. Likewise, it made it difficult for their teachers to understand and comprehend the struggle faced by American Indian youth. This conflict was especially pronounced regarding the U.S. government’s “English-Only” policy.

The BIA formally adopted an English-Only policy in 1885:

All instruction must be in English, except in so far as the native language of the pupils shall be a necessary medium for conveying the knowledge of English, and the conversation of and communications between the pupils and with the teacher must be, as far as practicable, in English.

The purpose of the English-Only policy was to accelerate the rate of assimilation, and it was designed to eliminate the use of the American Indian children’s tribal language. The mainstream belief of the time was that the tribal languages spoken by American Indians was fundamentally inferior to English, but that as long as children were taught their native language they would not be able to embrace English. Government officials believed that if a generation of children were taught English exclusively, they would understand its superiority and would abandon their native language.

Much to the detriment of the culture and identity of many American Indians, the BIA’s English-Only policy was very successful in transforming generations of American Indian children into English speakers. The English-Only policy not only applied to the classroom, but also applied to all aspects of life at the boarding schools. Therefore, until children had grasped enough of the English language to communicate with their

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62. For example, many American Indian children were being taught in religious schools. These children were not only trying to cope with learning a new language, but they were also trying to learn religion. Vizenor, supra n. 13, at 48. This was difficult because it takes place in a foreign context; there is no word for “religion” in American Indian languages. Id.

63. Lame Deer described the transition from tribal life to boarding school like this:

In their own homes Indian children are surrounded with relatives as with a warm blanket. . . . To the Indian kid the white boarding school comes as a terrific shock. He is taken from his warm womb to a strange, cold place. It is like being pushed out of a cozy kitchen into a howling blizzard.

Lame Deer & Erdoes, supra n. 1, at 146.

64. This policy was pursued after the Indian Peace Commission, authorized by Congress in 1867, determined that differences in language had led to many of the problems that the U.S. government had with American Indians. Dussias, supra n. 27, at 909–10. The Peace Commission determined that if American Indian children had learned English, the problems plaguing the government’s interactions with tribes would have disintegrated and “civilization” would have flourished. Id. at 910.

65. Id. at 912. The phrase “English-Only” is a deliberate choice, as the purpose of the policy was not to promote bilingualism, but rather was to eradicate all American Indian languages and replace them with English. Id. at 918. In fact, the only exception to the English-Only policy was to further religious education, specifically Christianity, to the various tribes using their own language. Id. at 920.

66. Dussias, supra n. 27, at 916–19.

67. Id. at 916–17.

68. Id. at 918–19. This was an especially difficult task for American Indian children because of the “vast linguistic gap” between their native language and English. Id. at 921. The fact that at most schools there were a variety of different American Indian languages spoken further complicated the task. Id. at 922.

69. Dussias, supra n. 27, at 922. Learning English meant developing a new way of looking at the world, a new way of thinking about and reacting to their surroundings; thus differences between languages reflects differences in cultural priorities. This new perspective, and the new priorities attached, is one of the primary ways that the English-Only policy led to the loss of culture for individual American Indians. Id. at 922–23.
schoolmates, life at the boarding schools was very isolating. For some, a deep cultural shame developed, associated with speaking their native language, that caused them to avoid using their language. Yet for others, years of non-use led them to forget their native language. Feelings of alienation were common for young American Indians returning from boarding school. Often they had forgotten much of their own language and culture, and could no longer connect with their families. For example, Way quah gishig was given a new name, John Rogers, and was taught that his traditional tribal language was inferior to English. He later wrote of his return home: “I was anxious to see my mother and be home again” and when he saw his mother for the first time upon his return “[s]he started talking joyously, but we could not understand very well what she said, for we had forgotten much of the Indian language during our six years away from home.”

American Indians who grew up in boarding schools struggled to develop a healthy self identity as a result of being isolated from their families, and being taught that their language, culture, and beliefs were inferior or evil. This is largely due to the fact that children were sent away from home at such a young age. Young children have not fully developed their sense of self, and being placed in a harsh, institutional environment will have a negative impact on that child’s ability to form a strong sense of self as an adult.

Boarding school survivors had trouble fitting in with their tribes when they returned home because they no longer understood the language and customs, nor could their families understand them. “We didn’t like ourselves because we were Indian. We were bad. We were no good. We were uneducated, illiterate. We were not going to amount to anything.” Sadly, this was a relatively commonly phenomenon.

The vast cultural loss of American Indian identity was also impacted by the physical and sexual abuse that some children faced while attending boarding schools.

70. Id. at 925 (discussing the experiences of some boarding school survivors’ feelings about the English-Only policy).
71. Id. at 928. “One Sioux student at Carlisle Indian School wrote to the school superintendent in 1881 to report ‘with much sorrow’ that she had spoken one Sioux word without thinking when another student spoke to her in Sioux, and that she had been so upset that she could not eat her dinner and wept at the dining table.” Id.
72. In fact, some children made a game of seeing how long of a sentence they could make using their native language without using any English. Dussias, supra n. 27, at 928.
73. Vizenor, supra n. 13, at 43–44. In some cases, when the children left home their parents also struggled to find a sense of purpose, and for some, the marital bond weakened. Id. at 43 (describing John Rogers’ experience learning that his parents had separated when he returned home from boarding school).
74. Id.
75. Id. at 43–44 (quoting from John Rogers, Red World and White: Memories of a Chippewa Boyhood (U. Oklahoma Press 1974)).
76. Curcio, supra n. 13, at 72–76.
77. See generally Curcio, supra n. 13.
78. Curcio, supra n. 13, at 73.
79. Without family and tribal connections, many boarding school survivors moved to urban areas to find work. Vizenor, supra n. 13, at 44–45.
80. Kelley, supra n. 41.
81. As it turns out, this belief may have functioned as somewhat of a cruel, self-fulfilling prophecy. See infra n. 89 and accompanying text.
While it is understood that such abuse can affect the self esteem of children and can also lead to the abused becoming an abuser, the impact on American Indian children may be even more profound.83 This is because of Native beliefs about how the “body, mind, and spirit are intertwined.”84

Another factor adding to the destruction of the American Indian identity was the abuse of American Indian children at boarding schools by former attendees who were now employed there.85 According to Joyce Burr, who attended Wahpeton Boarding School, the worst abuse came from such individuals—“I suppose the same thing happened to them, so they turned around and did the same thing to us.”86 In some cases, teachers would force the children to punish a classmate who had misbehaved, utilizing an approach called a “hotline,” where offending students were required “to walk a gauntlet of classmates wielding belts or sticks or hairbrushes.”87 With circumstances of abuse by their own people, combined with messages that their culture and traditions were evil, it is understandable that American Indian children learned to dislike themselves.88

Kevin Gover, Assistant Secretary of the Bureau of Indian Affairs, recognized the intergenerational impact of the boarding school era in a statement he made at the celebration of the 175th Anniversary of the establishment of the BIA:

Even in this era of self-determination, when the Bureau of Indian Affairs is at long last serving as an advocate for Indian people in an atmosphere of mutual respect, the legacy of these misdeeds haunts us. The trauma of shame, fear and anger has passed from one generation to the next, and manifests itself in the rampant alcoholism, drug abuse, and domestic violence that plague Indian Country.89

The sum total of the loss of language, loss of culture, loss of connection with family, and the rejection American Indian’s still faced in Euro-American culture led to a profound loss of identity, which in many respects was the most harmful impact that the boarding schools had on individuals.

B. The Lingering Impact

Individuals who attended boarding schools are not the only ones affected. The problems that developed at the boarding schools were passed on through families and felt by tribal communities. One of the most direct ways that subsequent generations were impacted as the result of the boarding school era was the inability of American Indians, who were raised in boarding schools and subjected to systematic neglect and corporal

(1995)).

83. Id. at 74.
84. Id. Such beliefs include the idea that “(1) violation of their body necessarily includes a violation of their spirit; (2) violation of taboos against sexual activity within the same gender or across generational lines destroys natural harmony and balance; and, (3) such sexual activity is the moral responsibility of the victim as well as the perpetrator.” Id. (discussing the Irwin study).
85. Kelley, supra n. 41.
86. Id.
87. Id.
88. Id.
89. Curcio, supra n. 13, at 75. Gover went on to say “[p]overy, ignorance, and disease have been the product of this agency’s work.” Id.
punishment, to transition naturally into parenthood. For example, parents who had no nurturing role models were “unable to give their own children the nurturing they needed.”

Compounding the inability to transition from boarding school child to nurturing parent was the fact that many American Indians who attended boarding school suffered from mental health and chemical dependency problems, which further isolated them from their children. Furthermore, these parents were not raised within the cultural traditions and heritage of their ancestors and thus did not have the traditional guidance to help them along the way, nor could they pass on such knowledge to their own children. Much as their parents had lost their identities, later generations, after years of marginalization and learned shame, came to reject their identity as American Indians.

Another area that continues to be affected by the boarding school era is the effect of the government’s efforts to eradicate American Indian languages. Eradication of language was an essential part of the “efforts to ‘civilize’ and assimilate Native Americans.” As a result, American Indian languages became very obscure. One survey of American Indian languages conducted in 1997 found that only 175 tribal languages remain of the over 300 that were known at the time of the European settlers, and of those, fifty-five are spoken by fewer than six people. There is now great interest in the American Indian community to preserve tribal language, and many tribes are using technology to spread their language and cultural heritage.

Another helpful measure of the lingering impact of the boarding school era is the statistical and demographic resources available from government and non-profit agencies. Statistical comparisons between American Indian populations and other demographic groups lend evidence to the notion that the impact of the Indian boarding school era is continuing to affect American Indians in a variety of ways. According to a study done by the Minnesota Supreme Court Task Force on Racial Bias in the Judicial System, American Indians are over represented in a number of measures.

90. Id. at 73.
91. Id. See also Kelley, supra n. 41 (quoting Ida Amiotte, a former boarding school attendee: “My children always asked me ‘Why are you so cold? Why don’t you hug us?’ I said ‘I never learned how.’”).
92. Curcio, supra n. 13, at 73–74 (citing studies done of attendees of Canadian boarding schools, which were largely similar to American boarding schools, finding high rates of post traumatic stress disorder (PTSD) and other mental illnesses).
93. Vizenor, supra n. 13, at 44–45.
94. Id. at 45. Will Antell, who was born on the White Earth Indian Reservation and attended public schools experienced this first hand: “When I was young I rejected my Indian ancestry... because in the school I attended which was predominately white, I found out that it wasn’t to my advantage to be an Indian.” Id.
95. Dussias, supra n. 27, at 903.
96. Id.
97. Id. at 928–38. The languages became so obscure that the U.S. government was able to baffle enemy troops by using the Navajo language as a code during World War I and World War II. Id. See also Doris A. Paul, The Navajo Code Talkers (Dorrance 1973).
100. See Am. Indian Fam. L. Ct., Plan to Improve Outcomes for American Indian MFIP Recipients in Ramsey County Introduction (2005).
example, American Indian youth are over represented in the juvenile justice system compared to their relative population.\textsuperscript{102} The task force found that approximately 9\% of the juveniles in the system were Native American,\textsuperscript{103} while their overall percentage in the general population is only 1.6\%.\textsuperscript{104}

Additionally, the statewide high school dropout rates for Native American students is 8.69\%, more than 2\% higher than the next highest minority dropout rate.\textsuperscript{105} Like the juvenile justice statistics, dropout rates are disproportionate to the underlying population percentage.\textsuperscript{106} Another area where American Indian children are over represented occurs in out-of-home placements; 11.5\% of all Minnesota children in out-of-home placement were American Indian.\textsuperscript{107}

IV. THE IMPACT OF THE BOARDING SCHOOL ERA ON THE PROVISION OF SOCIAL SERVICES

Considering the findings in the sections above, a very relevant question for policy makers is how this impact affects the provision of social services and other government based programs. The impact that the boarding school experience had on American Indians both individually and culturally had even wider implications; it was just one more example of American Indian suffering at the hands of the U.S. government. One specific outcome of the boarding school policies is that American Indians’ distrust of the U.S. government and its motives was cemented for many more generations.\textsuperscript{108}
One specific area where the impact of the boarding school era can be seen is with respect to child welfare services. A recent example of the source of American Indian distrust of government involves the state’s use of their police power to bring American Indian children into the child protection system. Citing mental health problems, alcoholism, and “lack of parenting skills,” government officials often removed American Indian children from their homes and placed them into foster or adoptive homes, thus perpetuating the cycle of removal.

During the 1960s and 1970s, American Indian children were being removed from their homes and placed in non-Indian adoptive and foster homes at alarmingly high rates. Additionally, many boarding schools were still operating during this period with the BIA estimating that approximately 17% of the American Indian school-age population was living away from their families in boarding schools. This continued removal, whether in the form of boarding schools or involuntary out-of-home placements, operated to continue the destruction of American Indian people as such by further removing individuals from their families, their culture, and their language. Therefore, while the official policy of assimilation may not have been enforced, the spirit of the policy was still perpetuated by the paternalistic and misguided governmental actions of looking out for the “best interest” of American Indian children.

Not only were American Indians much more likely to have experienced involuntary removal, but there were often less than convincing justifications to support the removal. For example, American Indian children were rarely removed as a result of physical abuse. More often, vague justifications such as “neglect” or “social

reservation lands and sizes, and the allotment process, which put vast amounts of tribal reservation land into the hands of white settlers. See O’Brien, supra n. 8, at 71-90 (discussing the assimilation era policies); see also Vizenor, supra n. 13, at 40 (stating that tribal leaders of the Leech Lake Band of Ojibwa who negotiated agreements with the state of Minnesota regarding hunting and fishing rights on Reservations in 1972 were “more cautious” in their negotiations than were their ancestors who signed treaties with the federal government).


110. Curcio, supra n. 13, at 74. Many of the reasons cited to justify removing children were the direct result of the psychological devastation felt by individuals who were raised in boarding schools, and therefore, lost their connection to their tribe. Id. at 73-74.

111. The House Report by the Interior and Insular Affairs Committee on the Indian Child Welfare Act found that in 1969 and 1974, approximately 25-35% of all American Indian children were placed in foster homes. H.R. Rpt. 95-1386 at 9. Furthermore, the Committee highlighted states where the problem was getting worse, including Minnesota, where one in every eight American Indian children is adopted and one in every four American Indian children under the age of one are adopted. During this period, American Indian children were five times more likely to be placed in adoptive homes than other children. Other states had similarly outrageous out-of-home placement rates for American Indian children as compared to other children; for example, in Montana that rate was thirteen times greater, in South Dakota nearly sixteen times greater, and in Washington it was nineteen times greater. Additionally, nearly 85-90% of those children placed out-of-home were with non-American Indian families. Id. See also Barbara Ann Atwood, Flashpoints under the Indian Child Welfare Act: Toward A New Understanding of State Court Resistance, 51 Emory L.J. 587, 601-02 (2002) (discussing that Indian children were being removed at much higher rates than other children and that they were placed in non-Indian placements at rates of two-thirds or higher).

112. Atwood, supra n. 111, at 601.

113. Curcio, supra n. 13, at 73-74.


115. Id. (some studies indicate that less than 1% of removals were on the grounds of physical abuse).
deprivation" were given.\textsuperscript{116} However, a closer look at these rationales shows that what social workers saw as "neglect" or "social deprivation" was actually a misunderstanding of differences in culture.\textsuperscript{117}

Practices that might be considered poor parenting from the nuclear family perspective of Euro-American social workers were often reflections of quality parenting that had deep cultural significance to American Indians.\textsuperscript{118} Therefore, the relationship between parents and intervening social workers were often complex and complicated.\textsuperscript{119} Given that the frequency with which these relationships ended in the termination of parental rights and adoptions of American Indian children into non-American Indian families, the mistrust that American Indians feel towards government programs that purport to look out for the "best interests of the child" is understandable.\textsuperscript{120}

Another area where the interaction between American Indians and the U.S. government reflects the scars of the boarding school era is with respect to welfare and cash-assistance programs. Welfare is a very politically charged topic, and often this political energy leads to reforms. One such welfare reform was the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which was signed into law by President Clinton.\textsuperscript{121} The act repealed an existing assistance program, Aid to Families with Dependent Children (AFDC), and replaced it with a comprehensive program called Temporary Assistance for Needy Families (TANF).\textsuperscript{122}

The change in the program also reflected a change in basic policy.\textsuperscript{123} AFDC was a cash-assistance entitlement program and TANF was built on the idea of encouraging self sufficiency, and specifically provides that there is no entitlement to TANF.\textsuperscript{124} Unlike AFDC, TANF had strict time limits and work requirements.\textsuperscript{125} Recipients were to use

\textsuperscript{116} Id.
\textsuperscript{117} Id. "Indian Communities are often shocked to learn that parents they regard as excellent caregivers have been judged unfit by non-Indian social workers." Id. In most cases social workers made decisions about the welfare of a child without considering the context of the American Indian family. For example, where a Euro-American who leaves their child with an aunt for a month may be thought of as having abandoned their child, this is considered normal in American Indian family life. American Indian extended families are much closer and more tight-knit than those of the nuclear family based Euro-American family. H.R. Rpt. 95-1386 at 10.
\textsuperscript{118} For example, what social workers consider "permissive parenting" is viewed within American Indian culture as a different, yet effective method of child discipline. Id.
\textsuperscript{119} This sometimes ended with tragic results for the parents. In some communities, social workers were accepted as part of the extended family, as individuals who were interested in what was best for the child. Parents who thus turned to the welfare department to take temporary custody of their children were deemed to have relinquished their parental rights. Id.
\textsuperscript{120} See Vizenor, supra n. 13, at 44 (describing the experience of Way quah gishig, John Rogers, and his learned distrust of "promises made by white people").
\textsuperscript{122} Id.
\textsuperscript{123} Id. Policy makers believed that public assistance should be a transitional program, not a way of life. Accordingly, the goal of TANF was to completely restructure the welfare system. The Act contains elaborate congressional findings including that the number of children who receive AFDC, the predecessor program, has increased exponentially since 1965 despite the fact that the number of children overall in the United States has decreased. Additionally, Congress found that the majority of these children were living in homes with no father present (89%), thus the program provides for additional child support collection efforts as well as childcare subsidies. Id. at § 101 ("Findings").
\textsuperscript{125} Pub. L. No. 104-193.
their time on TANF to engage in work experience and training in order to gain the skills and ability to support themselves and their families by the time they reached their TANF time limit. This shift in policy was probably uncomfortable for American Indians because it reflected another broken promise from the U.S. government; another situation where they were told they would be provided for only to have the government rescind.

Another new aspect of the program was the decision to focus resources less on eligibility requirements and determinations, but instead on program outcomes. In order to ensure results, Congress required the states to be accountable to the federal government to meet pre-selected outcomes or face cuts to program funding. Additionally, recipients of TANF faced sanctions if they did not comply with the program’s work activity and child support requirements. American Indians have fallen victim to the use of sanctioning before, and for many, the requirement to work or face sanction may have reminded them of the tough choices made by relatives between sending their children to boarding schools or having their government rations withheld.

The Minnesota Legislature enacted the Minnesota Family Investment Program (MFIP) in order to implement the TANF program developed by the federal government. MFIP provides recipients with monthly cash assistance and food stamps, and each participant is required to work with an Employment Service Provider (ESP). The basic requirements of the program are relatively straight forward. Participants are required to work with an ESP to develop a plan, which they are required to follow. Failure to strictly follow this plan can result in the initiation of the sanction process. Minnesota uses a progressive sanctioning process starting with a 10%
The employment plan (EP) requirement essentially consists of a contract between the job counselor and the MFIP participant. The EP generally spells out what job-related activities the participant will engage in and what support services the job counselor will provide to assist the participant. The EP is to be written in a way that will lead most directly to self-sufficiency for the participant. The philosophy of self-sufficiency underlying the MFIP program was difficult for American Indians to swallow because it goes against the collectivistic values of American Indian culture. Additionally, the required EPs, much like past treaties, are essentially a forced contract between American Indians and the U.S. government. The cultural conflict underlying the program, the learned distrust American Indians have regarding the U.S. government combined with the forced nature of the contract, add up to a major obstacle to successful outcomes.

According to a variety of important MFIP measures, American Indians tend to have less success on MFIP than other demographic groups. For example, one measure used to determine the long term success of MFIP participants is the Self Support Index. According to this measure, American Indians have a success rate of 59.7% compared to a statewide rate of 71.1%. Another important measure of MFIP success
is the Work Participation Rate. Here, American Indians fared much better compared to statewide rates; the statewide Work Participation Rate for American Indians was 33.9% with a statewide rate of 36.3%. A study of case sanction rates in Ramsey County, Minnesota, found similar trends regarding sanction levels with American Indians being sanctioned at 6.5%, which is out of proportion considering that American Indians only represent 2.6% of the MFIP population in that county. As the numbers show, American Indians are not having great success with the MFIP program, and as the sanction numbers indicate, this is partially due to a lack of engagement with the program.

V. POTENTIAL SOLUTION: BUILDING ON THE STRENGTH OF AMERICAN INDIAN CULTURE

Recognizing the lasting, harmful, and collective effects that the assimilation era policies had on American Indians, such as the forced removal of American Indian children to be placed in boarding schools, two congressional policies mark a shift in U.S. government philosophy about its relationship with tribal nations. First, Congress enacted the Indian Child Welfare Act (ICWA), which represented a reversal in U.S. policy from removing American Indian children from their homes, to ensuring safe placements in American Indian homes. Second, Congress authorized tribes to develop their own welfare-to-work programs called Tribal TANF. Both ICWA and Tribal TANF are tools tribes can use to assert their sovereignty and work to better the lives of their members.

The intention of Congress when it passed ICWA in 1978 was to attempt to remedy the U.S. government's past wrongs. Part of the official findings included the fact

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144. See supra n. 133 and accompanying text.
145. Minn. Dept. Human Servs., supra n. 142, at 6. While it is a positive indicator that rates for American Indians on this measure are closer to the statewide average, the statewide average is dismal. Results were similar in 2004 with a 29.9% work participation rate for American Indians and a statewide average of 33.3%. Id.
146. The rate of sanctions for American Indians in Ramsey County is a full 2% higher than the county average for all racial/ethnic groups during September 2005. Ramsey Co., American Indian MFIP Cases Compared to Overall Cases in Ramsey County (Nov. 2005). Another Ramsey County study that looked at sanction rates over a period of seven years found that from 1999-2005 American Indians were sanctioned at rates 4%-16% higher than the county average. Ramsey Co., Ramsey County MFIP Sanction Cases (Jan. 2006).
147. A similar conclusion was reached by the American Indian Family Center:

Social service providers must better understand the age-old cultural values that continue to exist and function in Indian communities. Recent American Indian community Talking Circles revealed that the interaction between service provider and Indian client contain little cultural content. It is clearly an oversight that cultural strength exists among Indian people and can be useful when treated as an asset.

Am. Indian Fam. Ctr., supra n. 100, at Introduction.
150. Cheyanna L. Jaffke, The "Existing Indian Family" Exception to the Indian Child Welfare Act: The States' Attempt to Slaughter Tribal Interests in Indian Children, 66 La. L. Rev. 733, 735-36 (2006). The "wholesale separation of Indian children from their families" is considered the "most tragic and destructive aspect of American Indian life." Id. (quoting H.R. Rpt. 95-1386 at 9); see also Natl. Indian Child Welfare...
"that an alarmingly high percentage of Indian families are broken up by the often unwarranted removal of their children from them by non-tribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions."¹⁵¹ The purpose of ICWA was to keep Indian children within their Indian Community when removal was required.¹⁵² It established procedures and standards that served a unique function in U.S. legislative history, strengthening tribal sovereignty.¹⁵³ ICWA grants jurisdiction to tribal courts in proceedings involving an American Indian child and requires courts to consider tribal culture and customs when deciding what is in the best interests of the Indian child; a far cry from the policies perpetuated during the assimilation era.¹⁵⁴ It also requires that American Indian definitions regarding family life be used in order to guide the appropriate application of the Act.¹⁵⁵

The role of the child protection worker is to look out for the safety and well-being of children who may be in danger, requiring a measured prediction of future conduct.¹⁵⁶ A major reason why American Indian children were removed from their homes at alarmingly high rates during the 1960s and 1970s was because predictors, which are sometimes accurate in Euro-American family culture, are not reliable at predicting such conduct in the context of the American Indian families.¹⁵⁷ Therefore, ICWA is a strong statement recognizing that these cultural differences are not a good basis for determining whether parents are unfit, and sets up alternative guidelines for child protection workers to follow.¹⁵⁸

ICWA is triggered whenever an Indian child¹⁵⁹ is the subject of a child protection proceeding.¹⁶⁰ Tribes have exclusive jurisdiction to determine child placement for children who are residents of the reservation. They can then request a transfer from state

¹⁵¹ 25 U.S.C. § 1901. The congressional findings further went on to state that the states have "failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families" during child custody proceedings. Id. See supra nn. 109–113 and accompanying text. ICWA served as a precursor to the Adoption Assistance and Child Welfare Act of 1980, which worked to focus the child welfare system towards family preservation. Natl. Indian Child Welfare Assn., supra n. 150, at 20. See supra nn. 100–104 and accompanying text.

¹⁵²  Jaffke, supra n. 150, at 736. The explicit policy of the ICWA was:

[T]o protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture.

25 U.S.C. § 1902. Thus, the statute recognized and supported the collectivistic values that the assimilation policies worked so hard to eliminate. Id.


¹⁵⁴  Jaffke, supra n. 150, at 736–37.


¹⁵⁶  Id. at 19.

¹⁵⁷  Id. at 18.

¹⁵⁸  Id.

¹⁵⁹  ICWA defines "Indian child" as "any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." 25 U.S.C. § 1903(4).

¹⁶⁰  A child custody proceeding is defined in the Act as (1) "foster care placement," (2) "termination of parental rights," (3) "preadoptive placement," and (4) "adoptive placement." Id. at § 1903(1).
to tribal court in cases concerning an American Indian child with ties to the tribe, and grants tribes a right of intervention in state court proceedings. ICWA contains a placement hierarchy to be applied whenever an out-of-home placement is required for an American Indian child. However, some state courts have narrowly interpreted ICWA language and have developed exceptions to limit the scope of when ICWA applies. For example, the "existing Indian family" exception, which is a judicial exception, bars application of the ICWA when "either the child or the child's parents have not maintained a significant social, cultural, or political relationship with his tribe." Despite a lack of response from Congress, several states have taken a proactive approach to prevent similar judicial circumvention of the spirit of ICWA. These measures remove the difficult issue of child protection from state courts into tribal courts, thus eliminating the fear and distrust surrounding state removal of American Indian children. In tribal courts, tribal customs and preferences can look out for the best interests of tribal families.

Another opportunity for tribes to overcome the lingering effects of the boarding school era is Tribal TANF. Authorized as part of the PRWORA, Tribal TANF provides federal funding to tribes so they can administer their own TANF programs. The benefit to Tribal TANF is that subject to approval by HHS, it is not bound by the same activity and time restrictions as state programs. This allows tribes to take local economic conditions, community size, and other issues into account to tailor programs that will best serve their communities. While the Tribal TANF programs do provide more culturally sensitive programming for participants, this factor is often negated by poor economic conditions on the reservation, including high unemployment rates. Furthermore, many tribes have not taken advantage of the ability to offer Tribal TANF,

161. Id. at § 1911(a)-(c).
162. Id. at § 1915. For adoptive placements, the order of placement includes first placing the child with a member of that child's extended family, second with a family from the child's tribe, and finally with another American Indian family. Id. at § 1915(a). In foster care or preadoptive placements, the order of placement preference is a member of the child's extended family, then a foster home licensed, approved, or specified by the child's tribe. 25 U.S.C. § 1915(b). As with other sections of the act, tribal culture and customs control, the definitions are operative terms. Id. at § 1915(d).
163. Albertson, supra n. 109, at 195–96 (discussing various misinterpretations and the "existing Indian family" exception).
164. Jaffke, supra n. 150, at 741–42 (describing the "existing Indian family" exception and arguing that it is a back door approach to achieving exactly what ICWA was designed to guard against, the imposition of the Euro-American nuclear family on American Indian families).
167. Id.
168. For example, tribes can define "work" broadly to include certain types of education and cultural programs, as well as certain subsistence activities such as fishing, hunting, or weaving. Id.
169. Id.
because they lack the administrative expertise or because program overhead is cost prohibitive. 170

Another limitation to Tribal TANF is that it tends to only reach American Indians living on reservations, and does not reach urban American Indians. 171 Recognizing this problem, and facing a disparity in outcomes for American Indians, Ramsey County, Minnesota, partnered with the American Indian Family Law Center to develop a strategy to improve outcomes for American Indian MFIP participants. 172 Both their findings and their strategies are culturally specific. For example, they found that most service providers' primary method of contact with clients was by telephone, which was a barrier to open communication for American Indian clients. 173 Two county financial workers were relocated to the American Indian Family Law Center to facilitate more face-to-face contact and re-open lines of communication. 174 These are modest changes when viewed in the context of the overall system, but because important cultural differences are being openly acknowledged, they are likely to have a big impact in improving relations between government service providers and American Indian recipients.

VI. CONCLUSION

In some respects the tribal policies of the U.S. government have come full circle. Policies transitioned from those of the assimilation era, focused on removing American Indian children from their homes and their culture, hoping they would adopt the lifestyle of the Euro-Americans in order to elevate their economic standing, to those of the current era that focus on keeping children in the home where they can learn and benefit from tribal culture. It seems that that state and federal governments are finally recognizing that, at least when it comes to providing services to American Indians, one size does not fit all. As the U.S. government begins to see tribal culture as a tool to increasing tribal prosperity, tribes will have an opportunity to exert more influence over their own communities.

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170. Id.
171. Friedman, supra n. 166.
172. Am. Indian Fam. L. Ctr., supra n. 100, at Introduction.
173. Id.
174. Id.
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