

Native American youth and justice

Laurence A. French, Haris Halilović, Goran Kovačević

Abstract

Youth and delinquency issues have long been problematic among Native Americans groups both on- and off-reservation. This phenomenon is further complicated by the cultural diversity among American Indians and Alaska Natives scattered across the United States. In address these issues, the paper begins with a historical overview of Native American youth.

This history presents the long tradition of federal policies that, how well intended, have resulted in discriminatory practices with the most damages attacks being those directed toward the destruction of viable cultural attributes – the same attributes that make Native Americans unique within United States society.

Following the historical material, the authors contrast the pervasive Native American aboriginal ethos of harmony with that of Protestant Ethic that dominates the ethos of the larger United States society. In addition to providing general information on Native American crime and delinquency, the paper also provides a case study of Native American justice within the Navajo Nation, the largest tribe, in both size and population, in the United States. The paper concludes with a discussion of issues specific to Native American youth and efforts to address these problems.

Keywords: *racial groups, Native American, youth, delinquency, POSIT, Justice*

Introduction

Native Americans, also known as American Indians and Alaska Natives (AI-AN) by the Federal Government, traditionally have received little attention relevant to other minority racial and ethnic groups in the United States.

However, this trend is changing with a greater focus recently given to health and social problems among Native Americans; both those living in Indian Country (federally-recognized tribes and bands) and those living off-reservations, including the substantial population of urban Indians. Part of the problem in past was the isolation of reservations as well as the relative concealment of Native Americans among mainstream society. Even then, youth and delinquency issues have long been problematic among Native Americans groups both on- and off-reservation. This phenomenon is further complicated by the cultural diversity among American Indians and Alaska Natives scattered across the United States. In address these issues, the chapter begins with a historical overview of Native American youth. This history presents the long tradition of federal policies that, how well intended, have resulted in discriminatory practices with the most damages attacks being those directed toward the destruction of viable cultural attributes – the same attributes that make Native Americans unique within United States society.

Following the historical material, the chapter contrasts the pervasive Native American aboriginal ethos of harmony with that of Protestant Ethic that dominates the ethos of the larger United States society. In addition to providing general information on Native American crime and delinquency, the chapter also provides a case study of Native American justice within the Navajo Nation, the largest tribe, in both size and population, in the United States. The chapter concludes with a discussion of issues specific to Native American youth and efforts to address these problems.

1. Historical background

It is important to note that the concept youth or adolescent did not exit during pre-Columbian aboriginal times. It was a process that was absent during the tribal aboriginal acculturation process. Native Americans traditionally subscribed to a socialization/enculturation process involving three developmental stages as against the eight-stages commonly associated with western cultures. These stages were: (1) infancy/childhood, (2) adulthood, and (3) elders. The first stage allowed considerable freedom of behavior for most aboriginal groups, the exception being when silence was necessary during hunting or fighting. The transition from childhood to adulthood involved a marked ceremony whereby a group of young boys or girls were initiated into their respective adult roles. This rite-of-passage linked the newly anointed adults to both their peers in particular and the tribe or band in general. The adult stage of life was one of being a responsible member of the clan and tribe. It was during this stage that individuals were expected to *count coup* – that is to experience life in the raw, taking chances in order to demonstrate one's

survival skills and abilities. These experiences helped defined the adult, male or female, as an individual within an otherwise cooperative society.

The last stage of life reaped the rewards of successfully *counting coup* during the adult years. This last stage was significant in that other tribal members saw elders, both men and women, as those who had tested life and survived. For this reason, elders were generally afforded the most respect in aboriginal societies. Tribal elders were both teachers of the children and valued advisors to all tribal members. Elders were also the tribal librarians in these non-literate societies where tradition was passed on orally through myths and stories. An iconic Native American artifact, one widely replicated today among Native Americans, is that of the *story teller* – a sculpture of an elderly women surrounded by children. This socialization process was common to North American Indian groups from northern Mexico to Canada. It still exists among those tribes that have been able to retain their language and significant cultural rites and customs, notably the Pueblo tribes of the U.S. southwestern, and the Athapaskan linguistic groups in both the United States (Navajo and Apache) and Canada as well as the Inuit (Eskimo) clans in Alaska and northern Canada.

Elements of the aboriginal socialization process exist even today in isolated, homogeneous native groups in North America from the Copper Canyon in northwestern Mexico to the desert tribes of the United States and northern bands and clans in Alaska and Canada. Even then elements of the larger western-oriented societies in North America have penetrated the most isolated groups via mass communication devices such as television. The rare exception would most likely be in isolated pockets of Central and South America. One of the attributes to survive within these traditional cultures is the clear transition from childhood dependency to the status of a mature adult, thereby avoiding the intermediate step of adolescence. However, for this transition to be successful, the clans/bands/tribes need to have sufficient support for the new adult roles the initiates are expected to hold. Otherwise what the larger society would consider to be juvenile problems readily become adult problems within the tribe regardless of the age of the individual tribal member. Post-rite of passage constitutes adulthood regardless if the person is still a teenager in the eyes of the dominant society.

In stable culture environments within folk societies in general, the transition between childhood and adulthood is usually marked by a distinctive rite-of-passage. Munn (1973) defined the social/cultural significance of this process as it applied to aboriginal groups in the Americas as well as those in other cultures in Asia and Africa:

[R]itual is seen as a kind of adjustive procedure for settling the disturbance caused by the diachronic play of life change or movement across the backdrop of a structurally compartmented

sociocultural space. The dynamism of life processes requires transition across the boundaries (e.g., from one status to another, from one temporal category or phase to another, etc.); this can be affected primarily by ritual action that dramatized transition and thus articulates the various life processes requiring change with the static, positional ordering of sociocultural categories (p. 602).

The clearly defined transition between childhood and adulthood, usually at the onset of puberty, leaves little doubt as to the individual's identity and peer group affiliation, regardless of gender, and status vis-à-vis others sharing the same sociocultural environment. The rite of initiation into adulthood was employed in order to avoid or correct deviance among isolated folk societies as well as among traditional Native American groups in aboriginal North America. However, the purpose of correcting deviant behavior was mainly to maintain harmony thus reflecting an informal method of restorative justice as opposed to formal restitution or retributive justice, as is often the case among Western and industrialized societies (French, 1977).

Prior to European contact, North American Indians were a varied lot, comprised of hundreds of separate social units further divided into a number of linguistic groups. Yet they shared a common metaphysical belief system, one based upon harmony with their natural environment. While myths of origin vary from group to group, they all share a common theme – that of a cooperative, harmonious ethos, especially regarding norms pertaining to their group in particular. Accordingly, many indigenous native groups referred to themselves as *the people*, a label signifying strong in-group ethnocentrism. While they may have felt strongly about their own group, most American Indians had a rather humble perception of themselves within their total natural environment. They showed considerable respect not only for powerful natural phenomena but for other living organisms sharing their ecosystem. They usually referred to their tangible natural environment as *Mother Earth* while viewing extraterrestrial elements, those interacting with earth, as constituting *Father Sky*. Within the aboriginal *harmony ethos*, order and control were dictated by folkways, mores, and customs, without the aid of formal institutions such as those existing within Western-type societies. Even so, traditional Indians were exposed to a complex system of socialization, one involving all aspects of their existence especially from adulthood until death. This folk-socialization/enculturation process was transmitted orally from generation to generation mainly by clan elders.

1.1. Contradictory Federal Policies and Increased Indian Marginality

Five centuries of Euro-American contact, including complex, and often contradictory, policies toward the Indians have essentially destroyed the

aboriginal traditionalism of Native Americans along with the age-old transitional process from childhood to adulthood, adding another critical dimension to Indian marginality. Briefly stated, these policies ranged from outright physical genocide, from first contact until the 1890s, to a more subtle process of cultural genocide, lasting from first contact until the present. Official U.S.-Indian policies included *Removal* (1830-1880); *Allotment* (1860s-1907); *Indian Reorganization* (1930s); *Termination/Relocation* (1950s-1970s); and the current policies of *Self-Determination/New Federalism*. Together these often contradictory policies served to create a marginalized Indian population – a social/cultural milieu where “being Indian” or “Eskimo” was seen as constituting inferior status within the larger dominant U.S. society (French, 1994; 2007).

1.2. Official U.S.-Indian Policy

Removal involved using the U.S. Army to forcibly uproot tribes and relocate them from their traditional lands often under dire conditions with an armed military escort so that white settlers could claim these vacated lands. Tens of thousands died during these forced removals, an early form of *ethnic cleansing* involving dozens of tribes and broken treaties. The removals best illustrate this process, the 1838 Cherokee removal known as the *Trail of Tears*, and the 1864 removal of the Navajo known as the *Long Walk*. Tribes were removed regardless of their compliance with U.S. customs and laws. Most tribes were removed west of the Mississippi River to the newly acquired lands designated as *Indian Territory*, currently the state of Oklahoma. Following the War-between-the-States (Civil War), whites intruded into Indian Territory, whereby the U.S. Congress again reneged on treaties forcing removed tribes onto smaller allotted lands freeing up most of Indian Territory as surplus land for white settlers. During this process many Indian landowners were subsequently cheated out of their allotments in white courts where their word meant little against that of the white settler. American Indians were not given the same legal status as whites until 1924. Finally, Indian Territory was dissolved by the U.S. Congress in 1907 when it was renamed Oklahoma and recognized as a state (French, 1987; 2007).

Attempts at preserving Indian Country from complete dismantlement began during the Depression years with President F.D. Roosevelt’s administration. *Indian Reorganization* was essentially a form of federal paternalism where tribes were compelled to adopt U.S.-style tribal governments with limited participation in their own governance. Under this system, the Federal government retained ultimate political, economic, and judicial authority over the nation’s Indian wards thereby conferring the status of perpetual adolescence to residence of Indian Country regardless of their age or gender.

Then, in the 1950s, under President Eisenhower's administration, efforts were again made to forcibly dissolve Indian Country, along with all past treaty obligations. The idea now was to forcibly change the protective status of Native Americans and instead forcing them into a capitalist cooperation where each enrolled member now would become a stockholder. This plan set the stage for both the Federal policies of *Termination* and *Relocation*. Termination indicated the end of federal protective status subjecting Native Americans to the laws, regulations, including taxation, of the states and local governments where their reservation resides. The other component of this plan was *Relocation*, a plan to entice young tribal members away from reservations, and the cultural-support system offered by Indian Country, into magnate urban centers. Clearly, the process of Relocation was successful in that it resulted in creating large, urban Indian ghettos devoid of native language and traditional tribal values and customs. The down side was that Relocation also greatly increased Indian youth's identity crisis, a process known as psycho-cultural marginality, as well as corresponding mental health, physical health and social problems, high unemployment and increased crime and delinquency. This law created "Public Law 280 states" which unilaterally awarded these states criminal, juvenile and civil authority over the tribes residing within their boundaries. Termination, Relocation and state policing in Indian Country all proved to be dire failures, even though remnants of these programs still exist - to the dismay of those tribes afflicted by these policies (French, 1987; 2007).

Self-Determination began in the 1970s, following passage of the Civil Rights Bills of the mid-1960s. The first application permitted tribal involvement in education in Indian Country. Religious rights soon followed. While these policies provided tribes more say in tribal matters, they were again followed by attempts to diminish federal treaty responsibilities. Indeed, the New Federalism aspect of Self-Determination forced tribes to compete for limited federal resources via grants when, in fact, these monetary resources were already guaranteed by treaty obligations. The impact of Self-Determination and the New Federalism continues today, with some tribes still fighting for more control over tribal matters. The massive lawsuit against the federal government over the mismanagement of some \$10 billion of Indian trust monies from the sale of tribal resources (Individual Indian Money or IIM fund) began under the Clinton administration with a resolution only recently offered by the Obama administration (French, 2003; 2007; *Cobell v. Babbitt, Sumners, and Gover*, 1996).

2. Contrasts in ethos

Clearly, the United States judicial system is based upon the tenets of the Protestant Ethic with its focus on individual, and not group, responsibility. Marked differences exist between the aboriginal Native American harmony

ethos and the Protestant Ethic. Individual culpability, competitiveness, and guilt—all critical to the Protestant Ethic – were alien to the native harmony ethos. Instead, group cooperation, not individual competitiveness, was the basic social value associated with aboriginal life. In order to insulate the individual from the internalization of excessive guilt or frustration resulting from the complex demands of the clan's avoidance networks, stressful conflict situations were conveniently resolved during aboriginal times through the use of real or imaginary third persons or objects, which often took the form of fictional figures from their respective "creation" myths (French, 1994; Weber, 1958).

Elements of the harmony ethos exist even today in Indian Country especially among those tribes that still retain their language and traditional rituals, including some members the largest Indian tribe in the United States – the Navajo. Characteristics of the harmony ethos that conflict with the dictates of the majority society, including the dictates of the criminal justice system, are the resentment of imposed authority; a hesitancy to command others; a reluctance to refuse requests made by others within the tribe or clan; an obligatory hospitality and sharing with kinfolk; an impassivity regarding greetings and exchanges (including a lack of eye contact with others, notably non-clan members); a refusal, or unwillingness, to contradict others; and the absence of gestures in public speaking. Caught between the dictates of two different social systems, many Native Americans, notably youth now forced into the nontraditional adolescent developmental stage, become marginalized. French (2003) coined this process of being torn between two seemingly contravening worlds, without fully belonging to either, as *psychocultural marginality*.

The consequences of psychocultural marginality among Native Americans today are reflected in health and crime statistics. Native Americans have the highest addiction rate of any group in the United States, as well as one of the most difficult prevention and treatment record. The National Institute on Alcohol Abuse and Alcoholism, in a 1994 study, found that alcohol is the major factor in five leading causes of death for American Indians – motor vehicle crashes, alcoholism, cirrhosis, suicide and homicide (Gordis, 1994). This addiction has its greatest impact on Native American youth. In addition to alcoholism, notably fetal alcohol syndrome (FAS) and fetal alcohol effect (FAE), inhalation abuse is also rampant among this population. These problems continue according to a 2011 Indian Health Service *Fact Sheet*:

- American Indian and Alaska Native people have long experiences lower health status when compared with other Americans due mainly to inadequate education, disproportionate poverty, discrimination in the delivery of health services, and cultural differences...

- Diseases of the heart, malignant neoplasm, unintentional injuries, diabetes mellitus, and cerebrovascular diseases are the five leading causes of American Indian and Alaska Native deaths...

- American Indians and Alaska Natives die at higher rates than other Americans from tuberculosis (500% higher), alcoholism (514% higher), diabetes (177% higher), unintentional injuries (140% higher), homicide (92% higher) and suicide (82% higher). (HIS, 2011).

With comes a host of morbid health and social issues, such as obesity, hypertension, Type II diabetes, child abuse, family violence, suicide, homicide, and a high accident rate including drunk driving. Moreover, the official federal reaction has traditionally been to incarcerate those charges with certain offenses (e.g. drunk driving, child abuse, family violence...) rather than treating the underlying causing of these problems. With this approach, the government in the past merely exacerbated these problems (French, 1994; 2003; 2007; Park, 1950; Sellin, 1938; Stonequist, 1937). The nature of this phenomenon is illustrated by looking at the justice model available among the largest U.S. tribe which has maintained its language and has a high degree of blooded Indians -- the Navajo.

2.1. The Navajo Example

The Navajo Nation is the largest Indian tribe in the United States in both population and size. The Navajo Nation covers some 25,000 square miles in an area of the Southwest that includes sections of three states: Arizona, New Mexico, and Utah. It is estimated to be the size of West Virginia and is home to half the enrolled members of American Indian tribes. The Navajo Nation estimates its population to be nearly 200,000 enrolled members with about 80% residing on the reservation. About 10,000 non-Navajo Indians also reside on the reservation. The tribe's complex social system revolves around the clan and the *Beauty Way* - the Navajo's manifestation of the Harmony Ethos. The Navajo call themselves, the Dine (the people). According to their mythology (Genesis) the four original clans were the Towering House Clan, the One-Walks-Around Clan, the Bitter Water Clan, and the Mud Clan (Kluckhohn & Leighton, 1946).

According to the Beauty Way, the purpose of justice is the restoration of harmony (*Hozoh*). As in most Native American aboriginal belief systems, the Navajo view their world as divided into four quadrants with Mount Blanco protecting them from the East, Mount Taylor providing the southern barrier, Mount Humphrey defining the western boundary, and Mount Hesperus providing protection from the North. Moreover, the four Navajo colors are white, yellow, blue and black, with the first two representing the day and the last two, the night.

There is a widespread conception among the Dine that the Navajo Nation is an independent, totally sovereign, country. Officially, however, the Navajo Nation, like all the other 564 federally-recognized and administered tribes and bands constituting Indian Country, fall under the supervision of the U.S. Government, mainly the U.S. Department of the Interior (Bureau of Indian Affairs or BIA) and the U.S. Department of Justice (Federal Bureau of Investigation (FBI) and Federal Courts). Indian health services are provided by the U.S. Department of Health and Human Services (Indian Health Service – IHS), while the U.S. Department of the Treasury serves as the manager of Indian trust funds, including the Individual Indian Money (IIM) fund. The U.S. Department of Education, in conjunction with the BIA, regulates many of the Indian schools, including the Johnson-O'Malley (public schools adjacent to Indian Country) and Self-Determination schools. Moreover, the U.S. Congress holds ultimate authority over all matters in Indian Country, including the Navajo Nation.

The Navajo Nation has a two tier court system, consisting of tribal district courts and the Navajo Nation Supreme Court. The Supreme Court serves as the appellate court for the tribal district courts. There are seven judicial districts within the Navajo Nation; each with a district court, and five of the district courts also has its own family court. Together, the district courts serve all 110 chapters (representative entities) comprising the Navajo Nation. The Navajo judiciary consists of seventeen judges, including fourteen district trial judges and a three-member Supreme Court bench. Despite the tribe's claim of national autonomy, the Navajo Nation's courts are, in fact, BIA Courts of Indian Offenses regulated by the authority of the United States' Annotated Title 25, under the heading, "Indians."

Juvenile court judges are appointed in the same manner as other justices and have the same qualifications as judges of the tribal district (trial) courts and also serve all seven districts. Juvenile courts hold original jurisdiction within the Navajo Nation for the following situations:

- any child who is alleged to have violated any Federal, tribal, state, or local law or municipal ordinance, regardless of where the violation occurred;
- any child who is neglected or dependent or is beyond the control of his/her parent, custodian, or school authorities;
- the determination of the custody of any child or the appointment of a guardian of the person of any child who comes within the purview of the court's jurisdiction under other provisions of this chapter;
- the determination of the legal parent-child relationship, including the termination of residual parental rights and duties as to a child who comes within the purview of the court's jurisdiction under other provisions of this chapter;

- judicial consent to the marriage of a child, the employment of a child, or the enlistment of child in the armed forces, and to emergency medical or surgical treatment of a child who comes within the purview of the court's jurisdiction under other provisions of this chapter;
- the treatment or commitment of a mentally defective or mentally ill child who comes within the purview of the court's jurisdiction under other provisions of this chapter (French, 2003).

The juvenile court also has exclusive original jurisdiction to try all adults within the Navajo Nation for offenses committed against children. It is important to remember that tribal jurisdiction included only enrolled members within the confines of the reservation. Navajo youth or adults arrested out of the tribal jurisdiction are not protected by the tribal laws of the reservation. Thus, a Navajo arrested in Los Angeles, Salt Lake City, Phoenix, or Albuquerque is not protected by Navajo tribal law. The tribe, however, does have jurisdiction over enrolled members adopted by nontribal members, even if the parents or the child resides off the reservation. This overview of the Navajo judicial process, including that for children and youth, provides a picture of the criminal justice system in Indian Country. It should also be noted that, according to Public Law 280, those courts within the reservations covered by this statute have a more complex criminal and juvenile justice process in that American Indians and Alaska Natives are commonly adjudicated under state statutes.

French and Pichall-French's (1998) study on marginalized youth clearly indicated that the Navajo sample was disproportionately at-risk in comparison to their white, Hispanic (Mexican-American), Mexican and African-American counterparts. The National Institute on Drug Abuse (NIDA) 139-question Problem-Oriented Screening Instrument (POSIT) used in this study showed that Navajo girls were at highest risk followed by Navajo boys. These findings indicated a heavy reliance on substance use, notably alcohol and inhalants. The Navajo youth profile also indicated deficits in mental health interventions, poor family and peer relations as well as inadequate social and educational/vocational skills.

3. The nature and extent of delinquency in Indian Country

The most recent data on juvenile justice in Indian Country is found in the 2011 Final Report (Revised) provided by the Urban Institute, Justice Policy Center, entitled *Tribal Youth in the Federal Justice System*" (Adams & Samuels, 2011). The authors note that gleaning accurate data from Indian Country is a complicated task: "There is no reliable source of information regarding tribal youth who come into contact with these systems, and currently, there is limited information available about tribal youth cases handled in the federal system"

(Adams & Samuels, 2011: vi). Part of this problem is that there is no federal juvenile justice system and juvenile justice in Indian Country accounts for a very small proportion of all federal prosecutions due mainly to the small population of American Indians and Alaska Natives vis-à-vis the larger U.S. population. Nonetheless, three factors determine criminal/juvenile offenses in Indian Country:

- the nature of the offense;
- the status of the victim and offender as Indian or non-Indian; and
- the existence of legislation conferring state jurisdiction.

The latter refers to the complications emerging from the 1953 enactment of Public Law 280 where in some state jurisdictions are shared between the state and federal government. Indeed, in some PL 280 states the federal government has no role in prosecuting crimes in Indian Country while the federal jurisdiction is restricted in other PL 280 states. The Public Law 280 states are: Alaska, California, Minnesota (except Red Lake Reservation), Nebraska, Oregon (except Warm Springs Reservation), and Wisconsin (except the Menominee Reservation) (French, 2007).

From the existing data available, the Final Report on tribal youth provides the following assessment:

1. There are relatively few juvenile cases in the federal system. From 1999 to 2008 juveniles represented less than 1% of the criminal caseload at every stage in the federal system.
2. Tribal youth represent about 40-55% of all juveniles in the federal system. These proportions correspond to about 120 arrests, 100 juveniles in cases files, 190 entering the Bureau of Prisons custody, and 120 entering post-conviction supervision per year.
3. From 1999 to 2008, the number of juveniles, as well as tribal youth, in the federal system decreased substantially. These reasons for these decreased are unclear at the present time.
4. Most juvenile cases were concentrated in a small number of federal judicial districts. These include the five federal judicial districts with substantial Indian Country jurisdiction (South Dakota, Arizona, Montana, New Mexico, and North Dakota), along with two other Southwest border districts (California-Southern and Texas-Western).
5. The non-tribal juvenile population included numerous defendants from the Southwest border accused of drug and immigration violations.
6. Most Indian Country youth cases involved violent offenses: 60% violent, 22% public order, 12% property, 3% weapons, and 1% drug, and less than 1% immigration. Among violent offenses, the most common charges were for sexual abuse, assault, and murder.

7. The offense distribution for Indian Country juveniles differed substantially from non-Indian Country juveniles. The offense distribution for non-Indian Country federal juvenile cases included 7% for violent crimes, 27% public order offenses, 16% property crimes, 7% weapon offenses, 25% for drug offenses, and 16% for immigration offenses.

8. A vast majority of juvenile defendants were convicted with 85% of all juvenile defendants brought before the federal courts from 1999 to 2008 convicted or adjudicated through guilty pleas.

9. Most adjudicated Indian Country juveniles (about 6 in 10) were committed to the custody of the Bureau of Prisons by “probation with confinement conditions.” The pattern for juveniles prosecuted as adults was similar for both Indian Country and non-Indian Country juveniles. The average time served for juveniles overall increased from 14 to 31 months. The average time served in Bureau of Prison facilities doubled for both Indian Country and non-Indian Country juveniles. (Adams & Samuel, 2011: ix-xi).

3.1. The Tribal Law and Order Act (TLOA)

In 2010, the U.S. Congress passed the Tribal Law and Order Act relevant to the issue of public safety in tribal communities by promoting better coordination among federal, state and tribal agencies in order to strengthen tribal justice system. The major tenets of the TLOA include the following:

- Increasing the maximum penalties tribal courts may impose from one to three years of imprisonment and from \$5,000 to \$15,000 in fines. In order to qualify for these changes, tribal courts must provide qualified defense counsel and tribal judges must be licensed and legally trained.

- The appointment of Tribal Liaisons in U.S. Attorney’s Offices within judicial districts serving Indian Country.

- Increase the involvement of federal officials in tribal court system, including the requirement that they must testify in tribal prosecutions and share evidence with tribes.

- Enhance the collection, analysis, and dissemination of tribal crime data by federal agencies, including requirements that U.S. Attorneys’ Offices and FBI publish annual reports of the types of cases they decline to prosecute or investigate.

- Increase the police presence in Indian Country, including enhanced recruitment and training opportunities and expedited background checks for tribal police officer applicants.

- Provide adequate provisions to combat sexual assault and domestic violence in tribal communities.
- Have the BIA develop a long-term plan, in collaboration with tribes and Department of Justice, to address needs for tribal detention facilities.
- Provide the options to tribes in the six original Public Law 280 states to request that federal jurisdiction be concurrent with state jurisdiction on their reservations.

4. Prevention and intervention of delinquency in Indian Country

New laws, in themselves, will not fix child and youth problems in Indian Country. Clearly, the best preventive and intervention methods need to be tribal-centric, involving not only traditional tribal customs but also trained Native American professionals from that cultural group. It has only been since the mid-1980s that culturally oriented programs been endorsed by the federal government for use in Indian Country. The premise of these programs is to foster a positive cultural ethnic identity before the root causes of addiction can be effectively addressed. Past abuses in Indian Country were devastating for American Indian and Alaska Native youth. Changes only came about with Congressional investigations and the passing of new laws addressing existing shortcomings within the Bureau of Indian Affairs. These changes occurred following the disclosure of rampant sexual exploitation of Indian youths, mainly by non-Indian p

An expansion of Indian Self-Determination relevant to child abuse in Indian Country came with the *New Federalism* model initiated in 1989. Congressional findings of chronic child abuse in Indian Country, especially those abuses committed by non-Indian BIA teachers, provided a new impetus for tribal control of Indian education. The New Federalism also expanded child protection laws to include Indian Country. The Final Report and Legislative Recommendations of the U.S. Senate's Special Committee on Investigation of the Select Committee of Indian Affairs also reviewed the potential for corruption and fraud in Indian Country.

The committee found that paternalistic federal control over American Indians had created a federal bureaucracy ensnarled in red tape and riddled with fraud, mismanagement, and waste. The committee found that federal officials in every agency, and at every level, had know of the abuses but did

little or nothing to stop them. Federal agencies had known, for example, that the hundreds of millions of dollars spent on the government's program to promote Indian economic development had been largely drained by shell companies posing as legitimate Indian-owned firms. Moreover, in federally run schools for Indians, BIA officials knew that school administrators had hired teachers with prior offenses for child molestation. The BIA also knew that its employees had failed to report or investigate repeated allegations of sexual abuse by teacher (New Federalism, 1989).

Following the Senate investigation, the federal government, in 1990, established, for the first time, an Indian child protection statute, Title IV of Public Law 101-630 (Miscellaneous Indian Legislation) providing the *Indian Child Protection and Family Violence Prevention Act*. The major elements of this act are to:

1. Require that reports of abused Indian children be made to the appropriate authorities in an effort to prevent further abuse;
2. Authorize such actions as are necessary to ensure effective child protection in Indian Country;
3. Establish the Indian Child Abuse Prevention and Treatment Grant program to provide funds for the establishment on Indian reservations of treatment programs for victims of child sexual abuse;
4. Provide for the treatment and prevention of incidents of family violence; and
5. authorize other actions necessary to ensure effective child protection on Indian reservations (Public Law 101-379, 1990).

One of the outcomes of this law was that Indian Health Services established a dozen Regional Youth Treatment Centers throughout Indian Country serving as critical pretrial diversions for marginalized Native American youth with mental health problems that have the potential for expression in delinquency or criminal activity (French, 1997). And the U.S. Department of Justice established a Tribal Youth Program at the Office of Juvenile Justice and Delinquency Prevention (OJJDP). The OJJDP's mandate is to support and enhance tribal efforts in preventing delinquency and to improve the juvenile justice system for American Indians and Alaska Native youths. These are promising initiatives which continue to date with a number of current programs including: *OJJDP's Program of Research for Tribal Youth*; *Tribal Court CASA: A Guide to Program Development*; and *Strengthening Indian Country through Tribal Youth Programs* (www.ojjdp.gov/typ/publications.html).

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Biographies

Laurence (Larry) Armand French, PhD, served as a senior Fulbright scholar at the Faculty of Criminal Justice, Criminology and Security Studies, University of Sarajevo, Sarajevo, Bosnia and Herzegovina, during the academic year 2009–2010. He holds the BA, MA, and PhD degrees in sociology from the University of New Hampshire, Durham, and the PhD in cultural psychology from the University of Nebraska, Lincoln. He is a professor emeritus of psychology at Western New Mexico University, Silver City, NM, and a senior research associate with the Justiceworks Institute, University of New Hampshire-Durham.

Haris Halilovic, PhD, was born in Bosanska Gradiska, Bosnia and Herzegovina in 1972. He holds the BA in Criminal Law from the University of

Zagreb, MS and PhD degrees in Criminal Justice and Criminal Law from University of Sarajevo. He currently serves as Assistant professor on the Faculty of Criminal Justice, Criminology and Security Studies at University of Sarajevo, Bosnia and Herzegovina.

Goran Kovacevic, MS, was born in Sarajevo, Bosnia and Herzegovina in 1982. He holds the BA, MS degrees in Criminal Justice and Criminal Law from the University of Sarajevo, Sarajevo. He is currently completing his doctorate degree and serves on the Faculty of Criminal Justice, Criminology and Security Studies at University of Sarajevo, Bosnia and Herzegovina.