

American Indian Law Review

Volume 1 | Number 1

1-1-1973

The Cheyenne-Arapaho and Alcoholism: Does the Tribe Have a Legal Right to a Medical Remedy?

Robert A. Fairbanks

Follow this and additional works at: <https://digitalcommons.law.ou.edu/air>



Part of the [Indian and Aboriginal Law Commons](#)

Recommended Citation

Robert A. Fairbanks, *The Cheyenne-Arapaho and Alcoholism: Does the Tribe Have a Legal Right to a Medical Remedy?*, 1 AM. INDIAN L. REV. 55 (1973),
<https://digitalcommons.law.ou.edu/air/vol1/iss1/9>

This Article is brought to you for free and open access by University of Oklahoma College of Law Digital Commons. It has been accepted for inclusion in American Indian Law Review by an authorized editor of University of Oklahoma College of Law Digital Commons. For more information, please contact darinfox@ou.edu.

THE CHEYENNE-ARAPAHO AND ALCOHOLISM: DOES THE TRIBE HAVE A LEGAL RIGHT TO A MEDICAL REMEDY?

Robert A. Fairbanks*

Alcoholism, a complex problem currently confronting American society, has reached epidemic proportions among the Cheyenne-Arapaho Indians of western Oklahoma. It is estimated that nearly 75 per cent of the approximately 4,000 remaining tribal members have alcohol problems of some nature.¹ There are reports that 12- and 13-year-old children are addicted.² Moreover, over 90 per cent of the workload of the Indian Health Service Hospital located at Clinton, Oklahoma, is attributed directly to alcohol or alcohol-related disease.³ Thus, unfortunately, the colloquial appellation "drunken Indian" could correctly be applied to the Cheyenne-Arapaho Indians.

What is the cause of this disastrous situation? Who has the responsibility to effect a remedy? What can be done? The purpose of this study is to provide answers to these questions by exploring the etiology of alcoholism among the Cheyenne-Arapaho Indians, by providing an analysis of the moral and legal responsibility of the federal government to provide a remedy, and by presenting guidelines for the resolution of a problem that threatens to extinguish the human remnants of the Sand Creek Massacre and the Battle of the Washita.

To understand Cheyenne-Arapaho alcoholism, the cultural and historical background of the tribe must be examined. Through such an examination and the identification of the medically accepted etiological factors, the basis for a plan to alleviate Cheyenne-Arapaho alcoholism can be established. Since the objective is control of the alcohol condition in the Cheyenne-Arapaho population, the fundamental approach will be to define the nature and extent of their problem, the recognition of causative factors and prevention. Thus, the foregoing dictates the direction of the analysis that follows.

Medical Analysis

Etiology of Alcoholism

The Indian Health Service has identified alcoholism as "one of the most significant and urgent health problems facing . . . Indian . . .

*B.S., University of Oklahoma (1967); M.B.A., Oklahoma City University (1970); J.D. Candidate, University of Oklahoma (Dec. 1973).

people today. Probably no other condition adversely affects so many aspects of Indian life in the United States.”⁴ Thus, it is vital that causes of the disease be identified and analyzed in order to provide a basis for effective remedial programs. The Indian Health Service defines alcoholism as: “A disease, or disorder of behavior, characterized by repeated drinking of alcoholic beverages, which interferes with the drinker’s health, interpersonal relations or economic functioning.”⁵

Thus, it is apparent that the etiology of alcoholism is an extremely complex matrix of physiologic,⁶ psychologic,⁷ sociologic,⁸ and economic⁹ factors. Psychological factors are probably the most important because they operate directly upon the individual and give rise to the emotions of anxiety, frustration, hate, and resentment.¹⁰ It has been shown that the occurrence of these emotions coincides with the presence of certain enzymes which lower an individual’s physiologic resistance to alcohol.¹¹ Thus, an individual who exhibits such emotions on a regular basis will demonstrate a relatively higher susceptibility to alcohol. Moreover, the individual, apart from physiological reasons, who possesses the foregoing emotions exhibits a need for escape therefrom and is able to reach a state of intoxication relatively quickly.¹² However, it is imperative to recognize that the psychologic and physiologic factors are a result of sociologic and economic implications.

Both sociologic and economic factors create the psychologic complex that creates the stressful emotions. For example, the inability to obtain employment gives rise to both sociologic and economic forces. The individual is subjected to ostracism by the society for not taking a position in the labor ranks and concurrently faces the economic pressures of being unable to fulfill familial responsibilities. Therefore, the individual develops psychologic problems which result in the presence of the critical emotions.

There have been suggestions that alcoholism among American Indians is a result of genetic or cultural factors. However, the assertion has not been substantiated and there are several studies that indicate otherwise.¹³ In fact, the Indian Health Service maintains that “no valid evidence is available that Indians differ in any way from others in their physiological or constitutional response to alcohol.”¹⁴

Cheyenne-Arapaho History and Culture

Historically the Cheyenne and Arapaho have been two separate tribes of Plains Indians.¹⁵ However, since the nineteenth century they have formed a close association in commercial and war-making

activities.¹⁶ Nevertheless, each tribe has maintained its individual culture,¹⁷ although there has been considerable intermarriage,¹⁸ and both tribes shared the general characteristic of the nomadic life of the central plains.¹⁹ The most distinguishing characteristic of the traditional Cheyenne or Arapaho is a proud, independent, warlike nature.²⁰

Early History and Culture. The Cheyenne originally resided in Southeastern Minnesota along the Mississippi River.²¹ During this period (ca. 1600) the Tsistsistas, as the Cheyenne call themselves,²² were agrarian and forest hunters.²³ They lived in permanent villages and raised corn, beans, and squash.²⁴ The buffalo increased in importance as a food source as the Sioux, Chippewa, and other tribes began to invade Cheyenne territory. Additionally, in an effort to avoid the advancing white settler, the Cheyenne moved to the upper portions of the Missouri River in North Dakota and Montana.²⁵ Again, they established permanent villages and resumed hunting and farming practices.

After 1742 the Cheyenne acquired the horse,²⁶ and they began to depend upon the buffalo as a primary food source. This dependence resulted in a radical life-style change from permanent-based villagers to wide-ranging nomads following the buffalo herds.

Because of this dependence upon the roving buffalo, the horse became increasingly important to the Cheyenne.²⁷ In order to increase the quantum of the horse herds, the Cheyenne resorted to raiding other Plains Indians.²⁸ The raids reached as far south as Mexico.²⁹

From a cultural viewpoint, these raids and the resultant warfare were a convenient means of allowing the Cheyenne warrior to express his fighting nature, which had been encouraged since early childhood.³⁰ It was through these raids that the Cheyenne warrior was able to exhibit his courage and expose himself to deadly circumstances and thus gain the respect and admiration of the tribal members. All Cheyenne men were members of various military societies,³¹ the most noted of which was the Dog Soldier Society.³² The Dog Soldiers were the most distinguished warriors and were allocated the primary responsibility to defend the tribe upon attack.³³ They were noted for their willingness to die in battle in defense of the tribe. The Dog Soldier Society was so exclusive that its members comprised one of the ten bands of the Cheyenne.³⁴

The Cheyenne had a well developed political organization. A Council of Chiefs, composed of four band chiefs from each of the ten bands and four head chiefs, provided the leadership and formulated tribal policy.³⁵ Chieftainship was attained via performance in

battle and hunting.³⁶ The four tribal head chiefs were allocated a dual responsibility as spiritual priests and were responsible for the major religious ceremonies.³⁷

It was the religious ceremonies that maintained the integrity of the tribe. Because subsistence on the central plains was difficult, the ten bands roamed independently for a major portion of the year. However, during the summer months the bands gathered for annual ceremonies.³⁸ The most important ceremony was the Sun Dance which provided communication with a supernatural deity called Manito.³⁹

The Arapaho were located along the Red River in Northern Minnesota before they assumed the nomadic life of the plains.⁴⁰ Originally, they were considered a part of the Gros Ventre tribe, but split away about the end of the seventeenth century. During this period the tribe was semi-sedentary with corn serving as the economic base.⁴¹ The Arapaho moved onto the central plains for unknown reasons, preceding the Cheyenne. Thus, they became hunters and from their Shoshoni enemies acquired the horse which was used to hunt buffalo and was the catalyst for acquisition of the nomadic life.⁴²

Leadership among the Arapaho was based upon age.⁴³ The members of the tribe were organized into eight societies comprised of groups of approximately the same age.⁴⁴ The highest society was comprised of the older men who had passed through all of the other seven societies and cultural ceremonies.⁴⁵ Because of the respect for age and the fact that the older men held the secrets of the societies through which they had passed, the older men held the positions of authority.⁴⁶ The most experienced and enterprising became head chiefs of the tribe. The laws of the tribe were handed down in secret rites from head chief to head chief, from generation to generation.⁴⁷ The younger men spent a great deal of their time gaining military experience in which they learned not to fear death and to endure great pain in preparation for positions of leadership.⁴⁸

The first encounter of the Cheyenne and Arapaho occurred in the Black Hills toward the conclusion of the eighteenth century.⁴⁹ After recognizing a "kinship" in language⁵⁰ and that the tribes shared mutual enemies,⁵¹ they became allies in order to benefit from the expertise held by each tribe: the Cheyenne in warfare and the Arapaho in commercial activities.

In the century that followed the Cheyenne-Arapaho experienced considerable conflict and warfare with the United States.⁵² The principal conflicts were the Sand Creek Massacre, the Battle of the Washita, and the "Cheyenne Autumn" experience.⁵³

Later History. In 1889 the United States initiated an active program to destroy intra-tribal relationships among the Cheyenne-Arapaho.⁵⁴ The government discouraged "powwows" and traditional feasts to inhibit the tribal leader's ability to keep the tribe unified.⁵⁵ Perhaps the most distressing action taken by the government was that of prohibiting Cheyenne-Arapaho children from speaking their native language. Children who violated the language rule were administered severe punishment.⁵⁶ Additionally, in 1890 the Commissioner of Indian Affairs proposed a plan to change Indian names to ones more acceptable to the majority society.⁵⁷ For example, Row-of-Lodges was changed to Arthur Rowlodges. Moreover, the Cheyenne-Arapaho males were forced to cut their hair, a mark of cowardice to them, and to wear white man's clothing.

The most culturally drastic edict was the banning of traditional religious ceremonies.⁵⁸ This was the time when many Cheyenne-Arapaho turned to the Ghost Dance religion. The main tenet of the Ghost Dance religion was a belief in a new world in which the buffalo would return and the white man would disappear. Of course, and perhaps unfortunately, these hopes did not come to pass.

By the advent of World War I, the style of living of most Cheyenne-Arapaho was outwardly similar to their rural white neighbors. However, the Indians were not successful at farming and the Depression forced many to sell their land.⁵⁹ Thus, the Cheyenne-Arapaho of the present finds himself in a psychologic, sociologic, and economic environment conducive to alcoholism.

Etiological Factors Found in the Cheyenne-Arapaho

As indicated in the foregoing, the etiology of alcoholism is exceedingly complex. However, it can be stated with certainty that all the etiologic factors can be found in the Cheyenne-Arapaho population.

Economic Considerations. The Cheyenne-Arapaho population in western Oklahoma is especially underprivileged economically. The Oklahoma Department of Public Welfare provides welfare assistance to over one-fourth of the Cheyenne-Arapaho families.⁶⁰ Additionally, the Bureau of Indian Affairs Social Service Branch, Anadarko Area Office, provided financial assistance to about 43 unduplicated families per month during fiscal year 1971.⁶¹ Moreover, it is estimated that nearly 50 per cent of the Cheyenne-Arapaho families of western Oklahoma received financial assistance of some nature during a year's time.⁶²

The major cause of unemployment among Cheyenne-Arapaho is

alcoholism.⁶³ This is directly related to the lack of marketable skills possessed by western Oklahoma Cheyenne-Arapaho. It is extremely difficult to locate any Cheyenne-Arapaho in the Clinton area who earn over \$10,000 per annum, or who is engaged in the practice of a profession (law, medicine or dentistry) or who was the proprietor of a business enterprise.⁶⁴ Thus, the conclusion that the Cheyenne-Arapaho of western Oklahoma are economically deprived is inescapable.

Sociological Considerations. The sociological factors, and derivative psychologic factors, are probably the single most important elements of causation of alcoholism among the Cheyenne-Arapaho.

Since the arrival of white settlers upon the central plains, the Cheyenne-Arapaho have experienced a series of severe socio-cultural disturbances. The first such instance was the establishment of Fort Bent in eastern Colorado which resulted in the Cheyenne Nation in 1833 being divided into two segments: the Northern Cheyenne and the Southern Cheyenne.⁶⁵ The division kept the Cheyenne warrior societies from meeting and, thus, interfered with spiritual ceremonies.

Other instances of socio-cultural disturbances which had tumultuous impact upon the Cheyenne-Arapaho include the Sand Creek Massacre of 1864, the Battle of the Washita in 1868, and the "Cheyenne Autumn" experience. These experiences changed the Cheyenne-Arapaho from a "proud, fanatically brave tribe,"⁶⁶ to a defeated and nearly decimated people.

The Sand Creek Massacre was the first of two instances which gave considerable support to a theory held by many that the United States maintained a policy of genocide against the American Indian. At Sand Creek a rather large force of U. S. Cavalry attacked, in a time of peace, a gathering of Cheyenne-Arapaho, killing warriors, women, and children alike.⁶⁷ The attack was unprovoked and caught the Indians by surprise.⁶⁸ The incident gave rise to a general disruption of Indian-United States relations in the period that followed.⁶⁹ However, the significant factor for present purposes is that the Cheyenne-Arapaho suffered irreparable socio-cultural injury from which they were never to recover.

The next such incident was the Battle of the Washita, which occurred near the present location of the Cheyenne-Arapaho in western Oklahoma.⁷⁰ There George A. Custer led a force of about 800 men in a surprise assault against Black Kettle's small, peaceful band of Southern Cheyenne and Arapaho.⁷¹ Custer reported that "he had killed 103 warriors, 16 women and a 'few' children," and that the "United States force lost highly valued officers and men."⁷² How-

ever, other reliable reports indicate that few Cheyenne warriors were in the camp and Custer killed or maimed a substantial portion of the Cheyenne women and children.⁷³ Again, the socio-cultural shock to the Cheyenne-Arapaho was of massive proportions.

The "Cheyenne Autumn" experience was one of the most publicized incidents in United States-Indian relations.⁷⁴ The United States had decided to move the "Northern" Cheyenne, separated from the "Southern" Cheyenne by the establishment of Fort Bent, to Oklahoma. After reaching Oklahoma and being rejoined with the southern segment of the tribe, the northern segment decided to return to the homeland of the north. Departing in the late autumn, the small band suffered severe hardship from the elements and repeated attacks by the United States Cavalry. Although relatively unarmed, a small portion of the Northern Cheyenne survived the winter trip to Wyoming. However, along the way, the Cheyenne suffered another cultural shock when a portion of the returning band decided that the ordeal was too severe and surrendered to the cavalry.⁷⁵ This portion of the band was returned to Oklahoma. This surrender was a severe violation of the "Cheyenne Code"—to die in battle in defense of the tribe when required.

The cumulative effect of the foregoing is that the Cheyenne-Arapaho lost their cultural heritage, customs, and traditional religion. Moreover, they have been unwillingly thrust into a foreign society and culture which most are unable to accept.

Another sociological element is the extreme prejudice endured by the Cheyenne-Arapaho since being settled on the western Oklahoma reservation and to the present. It is a common suspicion, generally accepted as fact, among the Cheyenne-Arapaho that the City of Clinton increases its arrests of Indians when there is a requirement for manual labor to collect the garbage or clean the streets.⁷⁶ Also, the arrest rate for Indians seems to reach a high when the Bureau of Indian Affairs distributes payments derived from rental of Indian trust lands to local white farmers.⁷⁷

Thus, the Cheyenne-Arapaho finds that his social structure and culture has been systematically inhibited and destroyed.

Psychologic Considerations. The psychologic factors present among the Cheyenne-Arapaho are a function of the extreme sociologic stress and disruption experienced by the tribe. Present-day Cheyenne-Arapaho lives are filled with stress, anxiety, and resentment caused by the violent destruction of their cultural value system and loss of identity as a Cheyenne or an Arapaho.⁷⁸ Moreover, stress and resentment are reinforced because of inability to find employment in the contemporary economic environment.⁷⁹ The present-

day Cheyenne-Arapaho have not recovered from the Sand Creek Massacre, the Battle of the Washita, or the "Cheyenne Autumn" experience. Thus, the individual Cheyenne-Arapaho has lost his self-concept as an Indian, and is unable to assume a self-concept as a member of the majority society.

Physiologic Considerations. The physiologic factors are most prevalent among the Cheyenne-Arapaho. The Cheyenne-Arapaho have developed such a physiologic dependence on alcohol that almost the entire workload of the Clinton Service Unit of the Indian Health Service is attributed to alcoholism.⁸⁰ According to Clinton Service Unit officials, several can be found in the final stages of cirrhosis of the liver at almost any time.⁸¹ Hospital officials believe that the physiologic dependence upon alcohol is increasing and that the long-term prognosis is unfavorable.⁸²

Magnitude of Cheyenne-Arapaho Alcoholism

The alcohol problem among the Cheyenne-Arapaho is becoming increasingly acute. In fact, the Clinton Service Unit of the Indian Health Service identified the "Excessive Rate of Alcoholism" as the primary medical problem confronted in the nine-county area served by the hospital.⁸³

Records compiled by the Indian Health Service, Oklahoma City Area Office, Branch of Statistics, indicates a progressive rise of cases of cirrhosis of the liver among the Cheyenne-Arapaho.⁸⁴ Another report indicates that 50 per cent of the American Indian alcoholics in the entire state of Oklahoma reside in the Clinton Service Unit area.⁸⁵

Of the arrests from drunkenness in the nine-county Cheyenne-Arapaho area in western Oklahoma, about 85 per cent involved were Indians.⁸⁶ Many Indians have a history of repeated arrests for drunkenness with their lives consisting of a pattern of arrest, incarceration or hospitalization, and release.⁸⁷

At present there is a significant number of Cheyenne-Arapaho children in the custody of the Oklahoma Department of Public Welfare.⁸⁸ These children have been put in foster homes due to the destruction of family units as a result of alcoholism.

Therefore, from the foregoing it is apparent that the magnitude of the problem can scarcely be sufficiently characterized. It is entirely possible that the entire Cheyenne-Arapaho population will join several other western Indian tribes in extinction⁸⁹ if a corrective program of the proper proportions is not instituted in a timely manner. To fail to initiate a corrective program will be an tacit endorse-

ment of a policy of genocide said to have been formulated in the latter part of the nineteenth century.

Required Corrective Action

Present Program. The present Indian Health Service program to attack the alcohol problem of the Cheyenne-Arapaho is grossly inadequate. This inadequacy is the result of two fundamental factors. First, the present program fails to attack the etiologic factors of the disease. The present program addresses the alcohol problem solely from a clinical perspective; the program extends treatment to the alcoholic Indian only after he has acquired the disease. The only encouraging aspect of the present program is the development of the Cheyenne-Arapaho Alcoholic Rehabilitation Lodge⁹⁰ at Bessie, Oklahoma, by the Cheyenne-Arapaho tribe with the assistance of the Clinton Service Unit. However, even this program element treats the Indian alcoholic after acquisition of the disease and fails to reach the causative factors. Obviously, any program that fails to address the etiological factors of the disease will not meet with success. Thus, the present Indian Health Service program will never solve the problem.

Second, the Indian Health Service does not have the expertise required to alleviate the alcohol problem. This anomalism is the result of the identification of alcoholism as a disease and the nature of the etiologic factors of the disease. Since alcoholism is a disease, alleviation of the problem comes within the jurisdiction of the Indian Health Service. However, a program that will adequately address the etiologic factors requires skills of a character only tangentially within the Indian Health Service inventory. The Indian Health Service, and particularly the Clinton Service unit, is not prepared to develop and institute programs that will adequately address the economic and sociologic etiological factors. Programs of this nature fall more appropriately within the realm of expertise of the Bureau of Indian Affairs. The Indian Health Service can, and does to a limited extent, treat the psychological factors.

Suggested Program. A massive program must be initiated with celerity.⁹¹ The program must address the etiological factors of alcoholism found among the Cheyenne-Arapaho. It is suggested that the program be a joint and coordinated Bureau of Indian Affairs and Indian Health Service effort. This is suggested because skills from both agencies are required: medical skills from the Indian Health Service and economic and educational skills from the Bureau of Indian Affairs.

The basic thrust of the program should be to reestablish the Cheyenne-Arapaho culture. This is absolutely necessary to enable the individual Indian to establish a self-identity and a resultant self-pride. Once the Indian develops a self-concept, or self-pride, the psychological need for alcohol will subside.

The Bureau of Indian Affairs should assume responsibility for a massive two-part educational program that will reestablish the Indian culture and, at the same time, develop the remedial academic skills of the individual Indian. In other words, the Bureau of Indian Affairs should teach the Indian to be a Cheyenne or an Arapaho and assure that he knows how to read and write. Additionally, the Bureau of Indian Affairs must initiate economic aid programs designed to develop the skills of the Indian, individually and collectively, and assist in the establishment of Indian-owned proprietorships.⁹² The Bureau of Indian Affairs is already sponsoring programs to encourage young Indians to acquire higher education and to join the professions.⁹³ Every effort must be made to identify Cheyenne-Arapaho students qualified to attend law school, medical school, and dental school.

The Indian Health Service should expand its present programs of limited psychological assistance and clinical programs to the proportions required to treat the present and projected Cheyenne-Arapaho alcoholics. Considerable emphasis should be placed upon acquainting the Cheyenne-Arapaho with proper nutritional needs, and the Bureau of Indian Affairs should insure that nutritional needs are met.

In addition to the foregoing, a corrective program must include a substantial amount of community involvement. This is probably the most cumbersome obstacle to overcome because of the enormous community prejudice against the Cheyenne-Arapaho in Clinton, Oklahoma, and the surrounding areas.⁹⁴

In the alternative, a similar program could be undertaken by the Cheyenne-Arapaho tribe. The Cheyenne-Arapaho tribe could enter into contracts with the Indian Health Service and the Bureau of Indian Affairs to attack the etiological factors of alcoholism found among the tribal members. This approach would centralize the responsibility for the management of the program. Moreover, the Cheyenne-Arapaho, who have the most vital interest in the resolution of the problem, would benefit from direct involvement. However, there is a severe deficiency of qualified tribal members who have the managerial background necessary to provide the planning, organizing, directing, and controlling requisite in a program of this magnitude and importance. Therefore, at this juncture it would ap-

pear that an Indian Health Service—Bureau of Indian Affairs coordinated program would be much more likely to be successful.⁹⁵ But, over the long term, every effort should be made to allocate as much responsibility to the tribal members and leaders as reasonably possible.

Legal Analysis

Legal Obligation of the Federal Government

The legal obligation of the federal government to render medical services derives from treaties—the most substantial source—between the United States and the Cheyenne-Arapaho Nations, statutory provisions found in the United States Code, and moral obligations resulting from the genocidal-type mistreatment inflicted upon the Cheyenne-Arapaho during times of peace.

Treaty Rights. A total of seven treaties⁹⁶ were entered into between the Cheyenne-Arapaho tribes before Congress terminated the authority of the President to negotiate further treaties with the Indian tribes in 1871.⁹⁷ These treaties are of the same legal character as any other treaty between independent nations⁹⁸ and became the supreme law of the land⁹⁹ under the provisions of the United States Constitution and retained that character after the 1871 termination.¹⁰⁰ The provisions of the treaties cannot be altered or abrogated by the courts¹⁰¹ or state legislatures,¹⁰² nor can the Congress impair vested treaty rights.¹⁰³ Moreover, the provisions of treaties with Indian tribes are to be construed against the United States.¹⁰⁴ The construction of such provisions should reflect the interpretation most likely to have been the understanding of the Indian tribes.¹⁰⁵ Ambiguities will be resolved from the standpoint of the Indians.¹⁰⁶

Several of the treaties between the United States and the Cheyenne-Arapaho tribes specifically acknowledged that the United States assumed the responsibility for the health and medical well-being of the Cheyenne-Arapaho.¹⁰⁷ However, the most substantial commitment to the Cheyenne-Arapaho can be found in the Treaty With the Cheyenne Tribe, 1825.¹⁰⁸ Article 2 provides:

The United States agree to receive the Chayenne [*sic*] tribe of Indians into their friendship, and under their protection, and to extend to them, from time to time, such benefits and acts of kindness as may be convenient, and seem just and proper to the President of the United States.¹⁰⁹

Thus, the United States contracted to protect the Cheyenne tribe from harm and to extend just and proper benefits. A liberal con-

struction of the foregoing provision would encompass medical care. This is especially true when the United States failed to protect the Cheyenne from harm and, in fact, administered great injury upon the Cheyenne during times of peace and without provocation, in the Sand Creek Massacre and the Battle of the Washita. The United States recognized its obligation to the Cheyenne-Arapaho arising from the Sand Creek incident and the need for reparation of the "gross and wanton outrages perpetrated against (the) Cheyenne and Arapahoe Indians" in Article 6, Treaty With the Cheyenne and Arapaho, 1865.¹¹⁰ Certainly, under these circumstances it is "just and proper" that the United States assume an obligation to render health care to the Cheyenne-Arapaho. The conclusion is inescapable that the United States has a continuing legal obligation to provide medical care to the remnants of the Sand Creek and Washita massacres arising from Article 2 of the Treaty With the Cheyenne Tribe, 1825, and that the Cheyenne-Arapaho have a vested treaty right to medical care therefrom.

A later treaty¹¹¹ signed by Motavato, the great Cheyenne warrior and leader known to the United States as Black Kettle, recognized a duty to care for the "aged and infirm . . . (and extend) . . . and further aid from time to time . . . necessary . . . under the provisions of former treaties or articles of agreement and convention . . . best calculated to improve and promote their welfare."¹¹² It can certainly be maintained that, considering the present state of the Cheyenne-Arapaho, that providing medical care to the Cheyenne-Arapaho would be "best calculated to improve and promote their welfare."

Under the provisions of the Treaty With the Cheyenne and Arapaho, 1867,¹¹³ the United States is obligated to provide a "residence for the physician"¹¹⁴ and, if the physician is withdrawn, to provide funding "as will best promote the . . . improvement of the said tribes."¹¹⁵ Again, in the Treaty With the Northern Cheyenne and Northern Arapaho, 1868,¹¹⁶ the United States obligated itself as follows:

ARTICLE 7. The United States hereby agrees to furnish annually to the Indians who settle upon the reservation a physician. . . . and that such appropriations should be made from time to time on the estimates of the Secretary of the Interior will be sufficient to employ such persons.¹¹⁷

Thus, the United States has a continuing legal obligation to provide medical care to the Cheyenne-Arapaho.

Statutory Authority. Statutory authority to provide medical care to American Indians has been vested in both the Bureau of Indian

Affairs and the Indian Health Service. Ironically, the clearest authority for providing medical care is granted to the Bureau of Indian Affairs. Section 13 of Title 25 provides:¹¹⁸

The Bureau of Indian Affairs, under the supervision of the Secretary of Interior, shall direct, supervise, and expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians throughout the United States for the following purposes:

General support and civilization, including education.

For relief of distress and conservation of health. For industrial assistance and advancement . . .

* * *

For the employment of . . . physicians, . . . and other employees.

* * *

However, no regulations have been published by the Bureau of Indian Affairs to exercise this grant of authority, ostensibly as a result of the transfer of all clinical facilities to the Indian Health Service in 1959.¹¹⁹ But, for the present purposes, it is important that the Bureau of Indian Affairs is authorized to extend medical services to American Indians.¹²⁰ Thus, there is statutory authority to allow the Bureau of Indian Affairs to become involved in a comprehensive, coordinated program to alleviate the medical problem of alcoholism among the Cheyenne-Arapaho. The limiting factor would be congressional appropriations to adequately address the problem.

The statutory authority for the Indian Health Service to provide medical care to American Indians is found in Title 42, Sections 2001-4. The statutes are ambiguous and are drafted in terms of transferring the clinical responsibility of the Bureau of Indian Affairs to the Indian Health Service, and constructing and maintaining Indian hospitals. However, implementing regulations are quite clear as to the services to be provided and to whom the services will be extended. Section 36.11 of Title 42, Code of Federal Regulations provides:

Within the limits of available funds, facilities, and personnel, the Public Health Service will make available, within the area served by the local facility, hospital and medical and dental care, including outpatient services and services of mobile clinics and public health nurses, and preventive care including immunizations and health examinations of special groups, such as school children.

These services are available to American Indians.¹²¹ Thus, the Indian Health Service has issued regulations to implement a general-

ized health care delivery program to American Indians, and could combine with the Bureau of Indian Affairs to provide a long-term solution to Cheyenne-Arapaho alcoholism. Moreover, the Indian Health Service has indicated that it will engage in preventive medicine which is especially relevant in regard to alcoholism.¹²² However, the tenor of the regulations indicates clearly that adequate funding is generally not available to meet the full medical needs of American Indians. But, it is clear that Congress has established the federal machinery to implement the United States' legal obligation to provide medical care and services to the American Indians and, particularly, the Cheyenne-Arapaho.

Moral Obligations. The moral obligations of the federal government to provide immediate and adequate funding to establish a comprehensive program to alleviate alcoholism among the Cheyenne-Arapaho is indeed great. The Cheyenne-Arapaho have suffered severely as a result of the Sand Creek Massacre, the Battle of the Washita, and the "Cheyenne Autumn" experience.¹²³ In each of the unprovoked incidents the tribe suffered irreparable harm which can never be adequately corrected. The epiphenomenal consequences of these genocidal affairs threaten to extinguish the remaining members of the Cheyenne-Arapaho. Thus, the moral obligation to provide adequate funding to alleviate Cheyenne-Arapaho alcoholism has evolved into a clear and distinct legal duty on the part of the United States.

Conclusion

There is an alcohol problem among the Cheyenne-Arapaho of Western Oklahoma of massive proportions. Over 75 per cent of the tribal members are directly affected. The magnitude of the problem is such that immediate action is required. Failure to initiate an immediate program of the proper proportions could result in the extinction of the Cheyenne-Arapaho.

Alcoholism is an extremely complex problem with psychological, sociological, and economic etiological factors. At present, neither of the agencies that deal directly with Indian matters—the Indian Health Service and the Bureau of Indian Affairs—have a program directed at etiological factors, but have concentrated their efforts upon the clinical aspects of alcoholism. Additionally, there is no clear allocation of responsibility for the alleviation of the alcohol problem among the Cheyenne-Arapaho. This results from defining alcoholism as a disease which places primary responsibility with the Indian Health Service. However, the Indian Health Services' ex-

expertise is in administering hospitals and providing clinical medical care, not in providing educational and economic programs. Some of the expertise required to adequately attack the problem can be found in the Bureau of Indian Affairs. Thus, what is needed is a coordinated effort by the Bureau of Indian Affairs and the Indian Health Service. Also, substantial tribal and community involvement is necessary to achieve long-term success.

The Cheyenne-Arapaho have a legal right to medical care from the federal government. This right is derived from several treaties entered into between the Cheyenne-Arapaho Tribes and the United States. Additionally, there is a strong moral obligation upon the part of the United States to provide a remedy to this disastrous problem because of the near-genocidal military attacks upon the Cheyenne-Arapaho and the destruction of the aboriginal culture.

EPILOGUE

The Pretty Colored Snake¹²⁴

A long time ago there was a famous hunter who used to go all around hunting and always brought something good to eat when he came home. One day he was going home with some birds he had shot, and he saw a little snake with all pretty colors all over it, and it looked friendly too. The hunter stopped and watched it for a while. He thought it might be hungry, so he threw it one of his birds before he went on home.

A few weeks later he was coming by the same place with some rabbits he had shot, and saw the snake again. It was still very beautiful and seemed friendly, but it had grown quite a bit. He threw it a rabbit and said "hello" as he went on home.

Some time after that, the hunter saw the snake again. It had grown very big, but it was still friendly and seemed to be hungry. The hunter was taking some turkeys home with him, so he stopped and gave the snake a turkey gobbler.

Then one time the hunter was going home that way with two buck deer on his back. By this time that pretty colored snake was very big and looked so hungry that the hunter felt sorry for him and gave him a whole buck to eat. When he got home he heard that the people were going to have a stomp-dance. All the Nighthawks came, and that night they were going around the fire, dancing and singing the old songs, when the snake came and started going around too, outside of where the people were dancing. That snake was so big and long that he stretched all around the people and the people were penned up. The snake was covered all over with all

pretty colors and he seemed friendly; but he looked hungry too, and the people began to be afraid. They told some boys to get their bows and arrows and shoot the snake. Then the boys got their bows. They all shot together and they hit the snake all right. That snake was hurt. He thrashed his tail all around and killed a lot of the people. They say that snake was just like the white men.

NOTES

1. Interview with Leon Robison, Service Unit Director, Clinton Indian Hospital, in Clinton, Okla., July 6, 1973 (hereinafter cited as Robison Interview).

2. Interview with Dr. Frances Schottsteadt, Psychiatric Consultant to Clinton Indian Hospital and staff member of the University of Oklahoma Health Sciences Center, in Oklahoma City, Okla., July 3, 1973 (hereinafter cited as Schottsteadt Interview); Interview with Bernard Albaugh, Chief, Social Work Dept., Clinton Indian Hospital, in Clinton, Okla., July 6, 1973 (hereinafter cited as Albaugh Interview); Interview with Wilbur Barnett, Supervisor, Social Services, Concho Agency, Bureau of Indian Affairs, in Concho, Okla., Aug. 3, 1973 (hereinafter cited as Barnett Interview).

3. Robison Interview.

4. Health Services and Mental Health Administration/Indian Health Service, U. S. Dept. of Health, Education, and Welfare, *Alcoholism: A High Priority Health Problem* 1 (1973).

5. *Id.*

6. At present it cannot be shown that physiologic factors have a causative role in alcoholism, but there is substantial evidence that psychologic factors contribute to physical dependence upon alcohol and the advancement of the disease. American Medical Association, *MANUAL ON ALCOHOLISM* 15 (1968) The American Medical Association explains the physiologic role of alcohol as follows: "[A]fter the alcohol has been metabolized and its depressant effect wears off, the nervous tissue reacts with a period of excitability, observed in the 'morning-after' tremors and agitation which follow heavy drinking. It becomes important to the alcoholic to get relief from the 'excitability' by drinking again. Eventually, it becomes a necessity, and then physical (as well as psychological) dependence on alcohol is established." Committee on Alcoholism and Drug Dependence, American Medical Association, *THE ILLNESS CALLED ALCOHOLISM* 6 (1973).

7. Psychological factors play the primary role in the etiology of alcoholism. However, it must be noted that it is impossible to completely separate the sociologic, physiologic, and economic factors from the psychological factors. It is generally thought that alcoholism is the result of emotional disturbances often rooted in childhood experiences. A concomitant of these emotional disturbances is emotional immaturity. The severity of alcoholism is believed to depend upon the degree of emotional maturity which is a function of the nature of the childhood experience.

Another view is that alcoholism is a learned behavioral pattern. The emotional reward through the reduction of emotional stress achieved by consuming alcohol is initially acquired by accident, but subsequent emotional rewards as a result of the same behavioral pattern act as reinforcement and stimulus to repeat the pattern. Eventually, all stressful situations are relieved by resorting to alcohol and, thus, the individual becomes an alcoholic.

However, whatever the view, basically, the alcoholic turns to alcohol for its

pharmacological qualities as a depressant to relieve the emotions of anxiety, hostility, inferiority, and depression. Although the degree of stress as a result of the appearance of one of the foregoing emotions may be determined by the emotional maturity of the individual, it is clear that sociologic and economic factors may be the primary instigator of psychological stress. American Medical Association, *MANUAL ON ALCOHOLISM*, 17-21 (1968). See E. BLUM and R. BLUM, *ALCOHOLISM: MODERN PSYCHOLOGICAL APPROACHES TO TREATMENT* (1967); O. DIETHELM, *ETIOLOGY OF CHRONIC ALCOHOLISM* (1955); *ALCOHOLISM: BASIC ASPECTS AND TREATMENT* (H. Himwich ed. 1957); 2 *The Biology of Alcoholism, PHYSIOLOGY AND BEHAVIOR* (B. Kissin and H. Begleiter eds. 1972); *ALCOHOLISM AS A MEDICAL PROBLEM* (H. Kruse ed. 1956).

8. Sociological factors play a significant role in the etiology of alcoholism and an adequate etiologic approach should take varying individual and cultural factors into account. The role and effect that alcohol consumption attains depends a great deal upon the cultural values placed upon usage for religious, culinary, psychic, ceremonial, hedonistic, traditional, social, and medicinal purposes. Obviously, the standards of acceptability of the use of alcohol will depend upon the purpose for which it is used. Another role that sociological factors maintain are completely separated from the use of alcohol itself, but concern the degree of aculturation of the individual. If the individual is having difficulty in "fitting into" the society, or accepting the cultural values of a dominant society, either voluntarily or involuntarily, then sociological phenomena cause the psychological emotions of stress and anxiety. American Medical Association, *MANUAL ON ALCOHOLISM* (1968). The cultural view of behavior may be the cause of stress in an individual. If there is conflict concerning whether the individual should behave in a certain manner, he never knows when he may behave and should not behave in a certain manner. For example, if drinking is culturally accepted, it is not a stress factor for the individual unless he abuses the use of alcohol. Additionally, the social circumstances under which an individual first uses alcohol is an important etiologic factor. There is some evidence that the initial drinking experience tends to be clandestine among alcoholics. *ALCOHOLISM AS A MEDICAL PROBLEM* (H. Kruse ed. 1956).

9. The economic etiologic factors are closely related to sociological and psychological factors. In fact, it seems that the economic factors may be primary in the causation of the sociologic and psychologic factors in some cases. For example, individual problems associated with unemployment and dependence upon governmental welfare assistance gives rise to feelings of frustration, worthlessness, and helplessness. In turn, the stress and anxiety created by such feelings lead to the growth of psychologic and sociologic factors. *ALCOHOLISM AS A MEDICAL PROBLEM* (H. Kruse ed. 1956).

10. Health Services and Mental Health Administration/Indian Health Service, U. S. Dept. of Health, Education, and Welfare, *Alcoholism: A High Priority Health Problem*, 6 (1973). See *ALCOHOLISM AS A MEDICAL PROBLEM* 34, 40 (H. Kruse ed. 1956).

11. O. DIETHELM, *ETIOLOGY OF CHRONIC ALCOHOLISM* 7-9 (1955).

12. *ALCOHOLISM AS A MEDICAL PROBLEM* (H. Kruse ed. 1956).

13. O. DIETHELM, *ETIOLOGY OF CHRONIC ALCOHOLISM* 13 (1955). See J. Westermeyer, *Chippewa and Majority Alcoholism in the Twin Cities: A Comparison*, 155 *THE JOURNAL OF NERVOUS AND MENTAL DISEASE* 322 (1972); J. Shore and B. Fumetti, *Three Alcohol Programs for American Indians*, 128 *AMERICAN JOURNAL OF PSYCHIATRY* 11 (1972); G. Littman, *Alcoholism, Illness, and Social Pathology Among American Indians in Transition*, 60 *AMERICAN JOURNAL OF PUBLIC HEALTH* 1770 (1970); *Indian Drinking Problems*, 42 *AMERICAN JOURNAL OF ORTHOPSYCHIATRY*

- 554 (1972); J. Westermeyer, *Options Regarding Alcohol Use Among the Chippewa*, 42 AMERICAN JOURNAL OF ORTHOPSYCHIATRY 398 (1972). See The Sunday Oklahoman, July 1, 1973, at 3, col. 3.
14. Health Service and Mental Health Administration/Indian Health Service, U. S. Dept. of Health, Education, and Welfare, *Alcoholism: A High Priority Health Problem 2* (1973).
15. J. Jordan, *Historical and Cultural Sketch of the Cheyenne and Arapaho Tribes of Oklahoma*, INDIAN ENVIRONMENTAL STUDIES: THE CHEYENNE AND ARAPAHO TRIBES OF OKLAHOMA 19 (1971).
16. V. TRENHOLM, THE ARAPAHOS, OUR PEOPLE 33 (1970).
17. J. Jordan, *Historical and Cultural Sketch of the Cheyenne and Arapaho Tribes of Oklahoma*, INDIAN ENVIRONMENTAL STUDIES: THE CHEYENNE AND ARAPAHO TRIBES OF OKLAHOMA 19 (1971).
18. *Id.*
19. *Id.* at 23.
20. G. GRINNELL, THE FIGHTING CHEYENNES 12 (1915).
21. J. Jordan, *Historical and Cultural Sketch of The Cheyenne and Arapaho Tribes of Oklahoma*, INDIAN ENVIRONMENTAL STUDIES: THE CHEYENNE AND ARAPAHO TRIBES OF OKLAHOMA 20 (1971).
22. *Id.* at 19.
23. *Id.* at 20.
24. *Id.*
25. *Id.*
26. *Id.*
27. *Id.*
28. V. TRENHOLM, THE ARAPAHOS, OUR PEOPLE 110 (1970).
29. *Id.* at 113-4.
30. G. GRINNELL, THE FIGHTING CHEYENNES 12 (1915).
31. J. Jordan, *Historical and Cultural Sketch of the Cheyenne and Arapaho Tribes of Oklahoma*, INDIAN ENVIRONMENTAL STUDIES: THE CHEYENNE AND ARAPAHO TRIBES OF OKLAHOMA 25 (1971).
32. *Id.*
33. M. SANDOZ, CHEYENNE AUTUMN 16, 195 (1953).
34. J. Jordan, *Historical and Cultural Sketch of the Cheyenne and Arapaho Tribes of Oklahoma*, INDIAN ENVIRONMENTAL STUDIES: THE CHEYENNE AND ARAPAHO TRIBES OF OKLAHOMA 25 (1971).
35. *Id.*
36. *Id.*
37. *Id.*
38. *Id.* at 24.
39. P. POWELL, SWEET MEDICINE Vol. II, 1969. See also Circular No. 1665, Dept. of the Interior, Apr. 26, 1921, wherein superintendents in the Office of Indian Affairs are informed by the Commissioner that "the sun-dance and all other similar dances and so-called religious ceremonies [are considered] 'Indian Offences' . . . and corrective penalties are provided."
40. V. TRENHOLM, THE ARAPAHOS, OUR PEOPLE 8 (1970).
41. J. Jordan, *Historical and Cultural Sketch of the Cheyenne and Arapaho Tribes of Oklahoma*, INDIAN ENVIRONMENTAL STUDIES: THE CHEYENNE AND ARAPAHO TRIBES OF OKLAHOMA 22 (1971).
42. V. TRENHOLM, THE ARAPAHOS, OUR PEOPLE 17 (1970).
43. *Id.* at 77.

44. *Id.*
45. *Id.*
46. *Id.* at 78.
47. *Id.*
48. *Id.* at 79.
49. *Id.* at 33.
50. *Id.*
51. *Id.*
52. G. GRINNELL, *THE FIGHTING CHEYENNES* (1915).
53. *See infra* 12-4.
54. V. TRENHOLM, *THE ARAPAHOES, OUR PEOPLE* 280 (1970).
55. *Id.*
56. *Id.*
57. *Id.* at 281.
58. *Id.* at 282.
59. *See* B. Quinten, *Oklahoma Tribes, the Great Depression and the Indian Bureau* 49 *MID-AMERICA* 29-43 (1967).
60. Grant Application, Cheyenne-Arapaho Alcoholic Rehabilitation Center, Dept. of Health, Education, and Welfare, Public Health Service, dated Feb. 25, 1972 (hereinafter cited as Grant Application).
61. *Id.* The Concho Agency, Concho, Okla., which is responsible for the Cheyenne-Arapaho in the Bureau of Indian Affairs hierarchy continues to provide a substantial amount of financial assistance to the Cheyenne-Arapaho. Barnett Interview.
62. Barnett Interview.
63. Grant Application.
64. The writer asked every individual interviewed to identify a Cheyenne-Arapaho that met the above criteria: none were identified. The writer did find that the general population around the Clinton, Okla., area held the Cheyenne-Arapaho in very low esteem. This, apparently, is attributed to several factors including a high rate of alcoholism and unemployment.
65. M. WRIGHT, *A GUIDE TO THE INDIAN TRIBES OF OKLAHOMA* 79 (1951). White pressure grew stronger and in 1851 the Treaty of Fort Laramie with Sioux, Etc., 1851, 11 Stat. 749, recognized the title of the Cheyenne and Arapaho to the land between the North Platte and Arkansas Rivers. However, with the discovery of gold in Colorado in 1859, the white invasion encroached on the prime hunting territory, the livelihood of the tribe, and resulted in violent conflict which ultimately resulted in the Cheyenne-Arapaho being removed to reservations outside the path of the gold rush in 1861. This marked the end of freedom for the Cheyenne-Arapaho. However, some hostilities continued because not all of the ten bands of the Cheyenne were signatories to the Treaty With the Arapaho and Cheyenne, 1861, 12 Stat. 1163 (1861). G. GRINNELL, *THE FIGHTING CHEYENNES* (1915). This period was marked with corruption among the Indian agents administering Indian Affairs. D. BERTHRONG, *THE SOUTHERN CHEYENNES* 152 (1963).
66. *Cheyenne Indians*, 3 *THE WORLD BOOK ENCYCLOPEDIA* 334 (1971).
67. *Indian Wars*, 10 *THE WORLD BOOK ENCYCLOPEDIA* 148 (1971). The historical setting of Sand Creek is quite interesting. In August, 1864, John Evans, Governor of Colorado, instructed all citizens of Colorado to kill all hostile Indians as a service to their country and take everything the Indians had acquired and return it to the "original" white owners. This led to violent attacks by both the Indians and the white settlers. The Indians sought peace and a meeting was held at Camp Weld, Colorado. However, Governor Evans was not interested in seriously meeting with the Indians

because he had represented to Washington, D. C., that the Indians were at war with the whites and he was afraid of being caught in a misrepresentation. In mid-November the U. S. Army launched a full campaign against the Indians at the instigation of Governor Evans. Colonel John M. Chivington, commanding the First and Third Colorado Cavalries, moved to the attack.

At daybreak on the morning of November 29, 1864, the arising Cheyenne noticed soldiers approaching their Sand Creek encampment. Black Kettle, the chief, realizing that the soldiers were hostile and were maneuvering to cut the Cheyenne off from their horse herds, raised both the United States Flag and a white flag of peace to greet the soldiers. However, the troops initiated the attack instead of honoring the flag of peace. The half-dressed Cheyenne tried to flee in the cold morning; some of the older people remained behind and began to sing their death songs. The Dog Soldiers remained to provide as much protection as possible for the fleeing tribe, while other warriors assisted the women and children into hiding. However, at the order of Chivington, the soldiers pursued the fleeing women and children shooting and mutilating the bodies. The bodies were left by the soldiers to be devoured by camp dogs and wolves.

Estimates of deaths among the Indians ranged from 100 to 300, the majority of whom were women and children. Chivington exaggerated the count to promote his hoped-for political career. D. BERTHRONG, *THE SOUTHERN CHEYENNES* 195-223 (1963).

68. *Indian Wars*, 10 *THE WORLD BOOK ENCYCLOPEDIA* 148 (1971).

69. *Indian Wars*, 10 *THE WORLD BOOK ENCYCLOPEDIA* 148 (1971). All along the Plains, the Indians of many tribes engaged in reprisals for the Sand Creek Massacre. An attempt was made to peacefully remove the Cheyenne-Arapaho to a new reservation in Indian Territory (to become Oklahoma) located between the Cimarron and Arkansas rivers. But the government failed to fulfill its promises, and fighting was renewed. D. BERTHRONG, *THE SOUTHERN CHEYENNES* 224-44 (1963).

70. Black Kettle, who survived Sand Creek, had camped along the Washita River in western Indian Territory. On Nov. 27, 1868, while the Cheyenne slept, Colonel George Custer, commanding troops from the Seventh Cavalry, stationed nine companies around the camp. At dawn the troops swept down upon the village and within ten minutes Custer controlled the camp. Again, in keeping with Cheyenne tradition, the Dog Soldiers engaged the troops while other warriors assisted the women and children in escaping. However, a force led by a Major Elliott pursued the fleeing women and children. D. BERTHRONG, *THE SOUTHERN CHEYENNES* 326 (1963).

Since the small village was close to other, larger gatherings of Cheyenne, Arapaho and Kiowa, aid was forthcoming, but not before Custer had killed around nine men and 40 women and children. Custer was forced to retreat after the other Indians arrived to assist Black Kettle's small family gathering. D. BERTHRONG, *THE SOUTHERN CHEYENNES* 328 (1963).

71. J. Morris and E. McReynolds, *Battle of the Washita*, *HISTORICAL ATLAS OF OKLAHOMA* 29 (1965).

72. *Id.*

73. D. BERTHRONG, *THE SOUTHERN CHEYENNES* 328 (1963). See G. GRINNELL, *THE FIGHTING CHEYENNES* (1915).

74. Groups of Northern Cheyenne were moved to Indian Territory after the defeat of Custer at the Little Big Horn. However, a concentration camp atmosphere of little and inferior food rations, issued irregularly or not at all, led to considerable unrest among the Northern Cheyenne and a strong desire to return to their sacred home

grounds in Wyoming. Additionally, they were not able to withstand the climate change and soon fell sick with malaria. After medical supplies were extinguished and a significant portion of the Northern Cheyenne had died, they requested permission to return to their homeland in the north. Their pleas were rejected, but a small band of approximately 353 began the long journey to Wyoming in September of 1878. Although they sent word that they were returning in peace, word spread that the Northern Cheyenne were on the warpath and a great number were killed as they made their way to the north. This situation is now generally referred to as the "Cheyenne Autumn." M. SANDOZ, *CHEYENNE AUTUMN* (1953).

75. *Id.*

76. This conclusion is the result of several informal interviews with Cheyenne-Arapaho who were residents at the Cheyenne-Arapaho Alcoholic Rehabilitation Center at Bessie, Oklahoma, on July 6, 1973. The writer was witness to two arrests which appeared to be without legal foundation. The incident involved two Indians who had come to the Rehabilitation Center to seek assistance. However, shortly after arriving two deputy sheriffs appeared and arrested the two without an explanation as to the charge. When the two asked why they were being arrested they were tersely told to "just come along."

77. Again this conclusion is based upon informal interviews with Cheyenne-Arapaho at the Rehabilitation Center at Bessie, Oklahoma. However, this conclusion is shared by an Indian law student at the University of Oklahoma who wishes to remain unidentified. The student has had considerable experience working with law enforcement agencies in western Oklahoma.

78. Schottsteadt Interview; Barnett Interview; Albaugh Interview.

79. Grant Application.

80. Robison Interview.

81. *Id.*

82. Robison Interview; Interview with John Bjork, mental health worker, Indian Health Service, Oklahoma City Area Office, in Oklahoma City, Okla., in July, 1973 (hereinafter cited as Bjork Interview).

83. United States Government Memorandum from Leon Robison, Service Unit Director, Clinton Indian Hospital, Clinton, Okla., to Chairman, Cheyenne-Arapaho Business Committee, Apr. 25, 1972.

84. Grant Application.

85. Grant Application. Bjork Interview.

86. Grant Application.

87. Grant Application. Albaugh Interview.

88. Grant Application. Barnett Interview. This factor is extremely interesting in that observation by this writer of parent-child relationships among the Cheyenne-Arapaho revealed that the parents did not exhibit any interest in the future of their children. Moreover, they did not exhibit any real interest in their present personal situation, nor future well-being.

89. T. KROEBER, *ISHI IN TWO WORLDS* (1969).

90. The project is funded until May 31, 1975, by the National Institute on Alcohol Abuse. Over \$67,000 was provided to operate the Rehabilitation Center over a three-year period. Cheyenne-Arapaho Alcoholic Rehabilitation Center, Notice of Award, Public Health Service, Grant Number, 1 R18 MH23070-01.

91. Schottsteadt Interview.

92. The Bureau of Indian Affairs is already taking action in this regard through the Concho Agency, Concho, Okla. The Agency has given a contract to the Cheyenne-

Arapaho Tribal Council to develop a heavy equipment training program. Over 50 individuals are currently undergoing training. Future hopes are that the tribe can initiate its own heavy construction company. Barnett Interview.

93. For example, the Bureau of Indian Affairs contracts with the American Indian Law Center, University of New Mexico, Albuquerque, N. Mex., for the Special Scholarship in Law for American Indians. The program provides funding for nearly 150 Indian law students. A recent audit of the program by the Bureau of Indian Affairs revealed that the program was extremely successful and that all graduates of the program were involved with Indian legal matters.

94. One explanation for the prejudice against the Cheyenne-Arapaho in the Clinton, Okla., area is the heavy concentration of members of certain Christian churches such as the Southern Baptist, Mennonite, and Dutch Reform which have taken a very strict view toward the use of alcohol. Additionally, members of these churches have a tendency to reject others who do not accept their strict spiritual philosophies. This is why Oklahoma has a reputation of being the buckle of the "Bible Belt" or the "Baptist Belt." See P. FARB, *MAN'S RISE TO CIVILIZATION AS SHOWN BY THE INDIANS OF NORTH AMERICA FROM PRIMEVAL TIMES TO THE COMING OF THE INDUSTRIAL STATE* 247 (1968); R. Berkhofer, *Protestants, Pagans, and Sequences Among the North American Indians, 1760-1860*, 10 *ETHNOHISTORY* 201-16 (1963).

95. Although at this point it would seem better to allow established institutions to assume the responsibility for management of a corrective program, the Indian Health Service has come under heavy attack for its lack of effectiveness due to the inherent requirements of bureaucracies for self-protection and self-perpetuation. R. KANE, *FEDERAL HEALTH CARE* (1973).

96. Treaty With The Cheyenne Tribe, 1925, 7 *STAT.* 255 (1825); Treaty of Fort Laramie With Sioux, Etc., 1851, 11 *Stat.* 749 (1851); Treaty with the Arapaho and Cheyenne, 1861, 12 *Stat.* 1163 (1861); Treaty with the Cheyenne and Arapaho, 1865, 14 *Stat.* 703 (1865); Treaty with the Apache, Cheyenne, and Arapaho, 1865, 14 *Stat.* 713 (1865); Treaty with the Cheyenne and Arapaho, 1867, 15 *Stat.* 593 (1867); Treaty with the Northern Cheyenne and Northern Arapaho, 1868, 15 *Stat.* 655 (1868).

97. Indian Appropriation Act of 1872, 16 *Stat.* 556, 566 (1871). See Act of March 29, 1867, 15 *Stat.* 7 (1870). See also KINNEY, *A CONTINENT LOST—A CIVILIZATION WON* 159-60 (1937). See generally F. Cohen, *HANDBOOK OF FEDERAL INDIAN LAW, INDIAN TREATIES* 33 (1942).

98. *United States v. New York Indians*, 173 U.S. 464, 19 S.Ct. 487, 43 L.Ed. 769 (1899); *Holden v. Joy*, 17 Wall. 211, 21 L.Ed. 523 (1872); *Worcester v. Georgia*, 6 Pet. 515 (1832). See Miller, 1 *Treaties and Other International Acts of the United States of America* 5 (1931). See also 42 C.J.S. *INDIANS* 682 (1944).

99. U. S. Const. Art. VI, § 2. See *Worcester v. Georgia*, 6 Pet. 515 (1832). 87 C.J.S. *Treaties* 927 (1954).

100. *Holden v. Joy*, 17 Wall. 211, 21 L. Ed. 523 (1872); *Wilson v. Wall*, 6 Wall. 83, 18 L. Ed. 727 (1867); *Doe ex dem. Mann v. Wilson*, 23 How. 457, 16 L. Ed. 584 (1867); *Mitchel v. United States*, 9 Pet. 711, 9 L. Ed. 283 (1835).

101. *Johnson v. Riddle*, 240 U. S. 467, 36 S. Ct. 393, 60 L. Ed. 752 (1916).

102. *Worcester v. Georgia*, 6 Pet. 515 (1832).

103. *Holden v. Joy*, 17 Wall. 211, 21 L. Ed. 523 (1872).

104. *Tulee v. Washington*, 315 U. S. 681, 62 S. Ct. 862, 86 L. Ed. 1115 (1942); *United States v. Shoshone Tribe*, 304 U. S. 111, 58 S. Ct. 794, 82 L. Ed. 1213 (1938); *Winters v. United States*, 207 U. S. 564 207 S.Ct. 207, 52 L. Ed. 340 (1908); *Worcester v. Georgia*, 6 Pet. (U. S.) 515 (1832). See *Indians of Fort*

Berthold Indian Reservation v. United States, 71 Ct. Cl. 308 (1930). See also Art. 11 of Treaty of September 9, 1849, with Navajo, Art. 9 Stat. 974 (1849).

105. Tulee v. Washington, 315 U. S. 681, 62 S. Ct. 862, 86 L. Ed. 1115 (1942); United States v. Stotts, 49 F. 2d 619 (D.C. Wash. 1930).

106. It is well settled that all ambiguities in Indian treaties are to be interpreted in favor of the Indians. Carpenter v. Shaw, 280 U. S. 363, 50 S. Ct. 121, 74 L. Ed. 478 (1930); Winters v. United States, 207 U. S. 564 (1908); Worcester v. Georgia, 6 Pet. 515 (1832).

107. Treaty with the Cheyenne Tribe, 1825, 7 Stat. 255 (1825); Treaty with the Arapaho and Cheyenne, 1861, 12 Stat. 1163; Treaty with the Cheyenne and Arapaho, 1867, 15 Stat. 593 (1867); Treaty with Northern Cheyenne and Northern Arapaho, 1868, 15 Stat. 655 (1868).

108. 7 Stat. 255 (1825).

109. 7 Stat. 255, 256 (1825).

110. 14 Stat. 703, 705 (1865).

111. Treaty with the Arapaho and Cheyenne, 1861, 12 Stat. 1163 (1861).

112. 12 Stat. 1163, 1165 (1861).

113. 15 Stat. 593 (1867).

114. 15 Stat. 593, 594 (1867).

115. 15 Stat. 593, 595 (1867).

116. 15 Stat. 655 (1868).

117. 15 Stat. 655, 658 (1868).

118. Statutes, such as this section, passed for the benefit of Indians and Indian communities are to be liberally construed. Ruiz v. Morton, 462 F. 2d. 818 (Ariz. 1972). There is not a single case that discusses the legal right of American Indians to medical care.

119. It is important to recognize that only the transfer of hospital facilities and maintenance thereof was effected by 42 U.S.C. § 2001 (1971) and repealed 25 U.S.C. § 444-449 effective in 1959.

120. 25 U.S.C. § 13 (1971).

121. 42 C.F.R. § 36.12 (1972).

122. 42 C.F.R. § 36.11 (1972).

123. See *infra* 12-4.

124. SPADE AND WALKER, CHEROKEE STORIES 22-23 (1966).

