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The Causal Effect: Implications of Chronic Underfunding in School Systems on the Navajo Reservation

Adriana M. Orman

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THE CAUSAL EFFECT: IMPLICATIONS OF CHRONIC
UNDERFUNDING IN SCHOOL SYSTEMS ON THE NAVAJO
RESERVATION

*Adriana M. Orman**

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I. INTRODUCTION

Tucked away and hidden from the outside world in a remote valley surrounded by red sandstone resides a small, K-12 school district located on the Navajo Reservation. It is a place that time appears to have forgotten. Large, institutional buildings painted in

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bland, government-issued paint juxtapose the haunting beauty and intense colors of the Southwest. The buildings are old and in various states of disrepair. It is 2018, and the buildings are likely not up to code and are painfully uninspiring. Most still have asbestos and obsolete heating, cooling, and wiring systems that are faulty and perhaps even dangerous.¹ The school is surrounded by an eight-foot chain-link fence with slats that make it impossible to see past school grounds. The school, on first impression, looks like a prison. There is a general sense of low morale. Unfortunately, this scenario is far from unusual. Schools on the Navajo Nation, like many Indian reservations throughout the country, have been historically and systematically overlooked. Structures that elsewhere would be condemned continue to operate on reservations, standing for the proposition that American Indian students and their education continue to be deprioritized and undervalued. Solutions addressing American Indian education, over its 200-year history, remain scant and disproportionate.

It took the government over one-hundred years after the inception of schools for American Indian students to address the social status of American Indians around the country.² This was accomplished in the 1928 Meriam Report, which served as the first ever formal government initiative aimed at addressing the grim realities of life for American Indians nationally.³

In 1965, the Elementary and Secondary Education Act established Title I, a program specifically aimed at providing support for education programs serving economically disadvantaged children.⁴ In 1969, the U.S. Senate's Subcommittee on Indian Education's dismal report on American Indian education,

1. See generally Maggie Severns, *How Washington Created Some of the Worst Schools in America*, POLITICO (Nov. 25, 2015), <https://www.politico.com/story/2015/11/how-washington-created-the-worst-schools-in-america-215774> [<https://perma.cc/29UN-NHTZ>] (explaining the conditions of schools on Indian reservations throughout the country).

2. INST. FOR GOV'T RESEARCH, *The Problem of Indian Administration* 8 (1928) (Lewis Meriam, Technical Director); see also *The Treaty of Doak's Stand Choctaw-U.S.*, Oct. 18, 1820, 7 Stat. 210. This treaty agreement, between the Choctaw Nation and federal government, is the earliest treaty detailing a proposed process of providing education to tribes.

3. *Id.*

4. 1965 Elementary and Secondary Education Act, Pub. L. No. 89-10, § 2, 79 Stat. 27 (1965).

titled *Indian Education: A National Tragedy—A National Challenge*, decried the government's failure in addressing the needs of American Indian students, to whom the government has recognized obligations.⁵ The Kennedy Report observed that of approximately 160,000 elementary and secondary tribal students nationwide, one-third were in Bureau of Indian Education schools and two-thirds were in public schools, but virtually all of the students were receiving an inadequate education.⁶ The Kennedy Report lauded the then-new Rough Rock Demonstration School on the Navajo Nation as being “the only example of a successful school under tribal control.”⁷ Today, Rough Rock Community School, as it has been renamed, maintains a strong Navajo Immersion Program that is recognized throughout the Navajo Nation.⁸

In response to the Kennedy Report, renewed attention was given to American Indian education, leading to the passage of The Indian Education Act of 1972, which authorized funding to support three new initiatives aimed at assisting Indian students: (1) the formula grant program for the special educational needs of Indian students; (2) the discretionary grant program for a broad range of educational improvement initiatives; and (3) special Indian adult education and literacy grants.⁹ The prime aspect of this Act, which still stands today, is the formula grant program.¹⁰ The formula grant program requires public school districts to meet with parents and form parent committees.¹¹ By mandating more community participation, the Indian Education Act established that equity of voice would replace unilateral decision making when it comes to matters involving education, consistent with the notion of tribal consultation.

5. See generally Senate Special Subcomm. on Indian Educ., Comm. on Labor & Public Welfare, *Indian Education: A National Tragedy--A National Challenge*, S. Rep. No. 91-501 (1969) [hereinafter The Kennedy Report].

6. *Id.* at ix.

7. *Id.* at 130.

8. PETER IVERSON, DINÉ: A HISTORY OF THE NAVAJOS 301 (2002).

9. See Act of Sept. 30, 1950, Pub. L. No. 92-318, §§ 401-453, 86 Stat. 235, 334-45 (codified as amended at 20 U.S.C. §§ 241aa-241ff, 1211a, 1221f-1221h, 3385-3385b), *repealed by* Indian Education Act of 1988 § 5301, 25 U.S.C. § 2601 (*repealed by* the Improving America's Schools Act of 1994, Pub. L. No. 103-382, § 367, 108 Stat. 3976 (1994)) (*repealed by* No Child Left Behind Act of 2001, Pub. L. No. 107-110, 20 U.S.C. § 6301 (2001)).

10. 20 U.S.C. §§ 7421-7429 (2015).

11. 20 U.S.C. § 7425 (2015).

Several other laws and measures pertaining to Indian education were passed between the 1970s and the twenty-first century. In 1998, President Bill Clinton issued Executive Order No. 13096,¹² formally addressing American Indian education through comprehensive measures. After a series of meetings with tribes and the multi-organizational efforts in compiling an Indian education policy statement entitled *Comprehensive Federal Indian Education Policy Statement*,¹³ the Clinton Administration issued the Order. The Order addressed the “unique political and legal relationship of the Federal Government with tribal governments”¹⁴

In 2001, following the reauthorization of the 1965 Elementary and Secondary Education Act, came the controversial No Child Left Behind Act, which required greater accountability of schools for teacher quality and results of high-stakes testing through implementation of “scientifically based research instruction.”¹⁵ No Child Left Behind, which has now been replaced by the Every Child Succeeds Act of 2015, contained many provisions regarding tribal governance in education.¹⁶ In light of No Child Left Behind’s passage came a new Executive Order, this time signed into effect by President George W. Bush in July 2002.¹⁷ The Order was

12. American Indian and Alaska Native Education, Exec. Order No. 13096, 63 Fed. Reg. 42,683 (1998).

13. Nat’l Cong. of Am. Indians et al., *Fed. Comprehensive Indian Educ. Pol’y Statement* (proposing national guidelines that direct federal agency implementation of Indian education policies in a coordinated and comprehensive manner and provide direction for new Indian education initiatives from Congress and the Administration) [<https://perma.cc/4PPV-7ZEC>].

14. Exec. Order. No. 13096, *supra* note 12.

15. No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425, 1907 (2001); *See also* Alyson Klein, *No Child Left Behind: An Overview*, ED WEEK (Apr. 10, 2015), <https://www.edweek.org/ew/section/multimedia/no-child-left-behind-overview-definition-summary.html> [<https://perma.cc/6E3H-MXHA>].

16. No Child Left Behind Act of 2001, *supra* note 15; *see also Provisions in the No Child Left Behind Act of 2001 (Pub. L. No. 107-110 (2002)) Expressly Mentioning Tribal Education Departments or Tribal Education Codes*, NAT’ L INDIAN LAW LIBRARY, https://narf.org/nill/resources/education/no_child_left_behind.html [<https://perma.cc/29R3-AJVB>].

17. Tribal Colleges and Universities, Exec. Order No. 13270, 67 Fed. Reg. 45,288 (2002).

intended to assist tribal students in meeting the rigorous academic standards of the No Child Left Behind Act in a manner consistent with tribal traditions, languages, and cultures.¹⁸

In 2011, President Barack Obama issued a similar Executive Order, specifically addressing American Indian education and the need for the federal government, tribes, and other organizations to respond with a sense of urgency.¹⁹ The Order declared that federal agencies must help improve educational opportunities for all American Indian students in the public school setting, in schools operated by the Bureau of Indian Education, and in the postsecondary setting.²⁰ Like its predecessors, it drew attention to the disparities in American Indian education, highlighting a general lack of access to high caliber teachers and strong, culturally congruent resources.²¹ It also drew attention to dropout rates and access to postsecondary opportunities.²² Federal agencies were to, in a collaborative fashion, engage in the collection and dissemination of data with tribal educational agencies, independent organizations, and state entities to develop sustainable strategies to address the issues raised within the Order.²³

Today, education is at the forefront of social concern, with educators leaving the profession in droves after post-recession budgets have dwindled to historic lows.²⁴ Nationally, schools are being forced to cut out invaluable resources in the effort to retain what few high-quality teachers remain.²⁵ States such as West

18. *Id.*

19. Improving American Indian and Alaska Native Educational Opportunities and Strengthening Tribal Colleges and Universities, Exec. Order No. 13592, 76 Fed. Reg. 76,603 (2011).

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. Michelle Hackman & Eric Morath, *Teachers Quit Jobs at Highest Rate on Record*, WALL STREET J. (Dec. 28, 2018), <https://www.wsj.com/articles/teachers-quit-jobs-at-highest-rate-on-record-11545993052> [<https://perma.cc/NLG8-PHWY>].

25. C. Kirabo Jackson, et al., *The Effects of School Spending on Educational and Economic Outcomes: Evidence from School Finance Reforms* 41 (Nat'l Bureau of Econ. Res., Working Paper No. 20847, 2015), <https://www.nber.org/papers/w20847> [<https://perma.cc/722R-WY7Y>] (“Our findings indicate that state school finance reform policies can improve student outcomes and help reduce the intergenerational transmission of poverty. Money

Virginia, Oklahoma, Colorado, North Carolina, and Arizona have endured walk-outs lasting weeks as educators and others demand education funding be prioritized.²⁶ Nationally, education is being confronted with deteriorating conditions, something school systems in Indian Country have known for too long. Yet, amidst the renewed national attention to education, the conversation concerning American Indian education appears non-existent.

Compounding the crisis are concerns that the Trump Administration, which has proposed deep budget cuts to the Department of Education and the Department of the Interior, will compromise efforts in closing the achievement gap for American Indian students nationwide.²⁷ In February 2018, the Trump Administration unveiled its 2019 Budget, proposing a five percent cut to the Department of Education and a fourteen percent cut to the Department of Interior.²⁸ Within the Department of Interior, significant cuts were proposed to the Bureau of Indian Education with respect to construction, from \$133 million to \$72 million.²⁹ Further, significant reductions in operating costs, eliminating \$141

alone may not be sufficient, but our findings indicate that provision of adequate funding may be a necessary condition.”); see also Bruce Baker, *Does Money Matter in Education?*, 8 (2012), <http://www.shankerinstitute.org/resource/does-money-matter> [https://perma.cc/5TWH-VXJF].

26. Simon Romero, *Teachers in Arizona and Colorado Walk Out Over Education Funding*, N.Y. TIMES (Apr. 26, 2018), <https://www.nytimes.com/2018/04/26/us/teacher-walkout-arizona-colorado.html> [https://perma.cc/A2D7-7FGT].

27. See generally *Trickle Down Cuts to Education*, CTR. FOR AM. PROGRESS (2017), <https://www.americanprogress.org/issues/education-k-12/reports/2017/10/26/441418/trickle-down-cuts-to-education/> [https://perma.cc/KXB3-B4WB] (“There is no wiggle room for states to overcome the severe federal education funding decreases that would be the inevitable result of Trump’s proposed budget or the bill passed by the House Appropriations Committee . . .”).

28. *Fact Sheet: President Trump’s FY 2019 Budget*, U.S. DEP’T OF EDUC., 1 (2018), <https://www2.ed.gov/about/overview/budget/budget19/budget-factsheet.pdf> [https://perma.cc/Y7S8-JDYL]; *Fiscal Year 2019 Budget Summary and Background Information*, U.S. DEP’T OF EDUC. (2018), <http://files.constantcontact.com/9d91773f001/373487e3-6a64-4d29-9361-05cd26341343.pdf>; U.S. DEP’T OF INTERIOR, *Fiscal Year 2019: The Interior Budget in Brief*, BH-89 (2018), https://www.doi.gov/sites/doi.gov/files/uploads/2019_highlights_book.pdf [https://perma.cc/92RW-2WNG].

29. U.S. Dep’t of Interior, *supra* note 28.

million from total budget of \$892 million, were also proposed to the Bureau of Indian Education.³⁰ Perhaps most striking is the proposal to eliminate the Johnson O'Malley Act.³¹ Elimination of JOM funds in the proposed budget would reduce the program from \$14 million to \$0 if the Administration's proposal is followed.³² For reasons that are explained in more detail in this analysis, this decision would deliver a severe and perhaps unrecoverable blow to Indian education.

Deep budget cuts operate to undermine past Administrations' efforts in cultivating a sustainable framework for federal agencies to build partnerships with tribes and independent organizations, as outlined in the Clinton, Bush, and Obama era Executive Orders, to meet the government's obligation toward American Indians.

The goal of this article is to highlight the unique challenges faced by American Indian students in the context of education on the Navajo Nation and how funding decisions have a palpable impact on the quality of education that students receive. Research shows that proper funding helps support the programmatic, human, and physical resources that are critical to a high-quality education.³³ Education is a key determinant to one's quality of life and in breaking the cycle of poverty.³⁴

Part I of the article explores the characteristics of the Navajo Nation, the second-largest federally recognized tribe and largest reservation geographically in the United States. It examines barriers in access to typical amenities, such as grocery stores, healthcare, running water, electricity, and paved roads—obstacles that pose challenges in accessing education on a regular basis. Part II provides an overview of guiding principles and jurisprudence in Indian Law as an essential backdrop to understanding the current status of American Indian education. Part III reviews the major periods of

30. *Id.*

31. *Id.*; see also Johnson-O'Malley Act of April 16, 1934, ch. 147, 48 Stat. 596 (codified as amended at 25 U.S.C. §§ 452-56 (2012)) [hereinafter JOM].

32. U.S. Dep't of Interior, *supra* note 28.

33. Kira Barrett, *The Evidence is Clear: More Money For Schools Means Better Student Outcomes*, NAT'L EDUC. ASS'N (Aug. 1, 2018), <http://neatoday.org/2018/08/01/money-matters-in-education/> [<https://perma.cc/L775-JMWU>].

34. Barbara J. Low & M. David Low., *Education and Education Policy as Social Determinants of Health*, 8 AM. MED. ASS'N J. OF ETHICS, 756 (2006) (explaining how education is determinant of health and thus, overall quality of life).

American Indian policy in our Nation's history of which termination and assimilation through education were central. In Part IV, traditional modes of education funding on American Indian reservations are reviewed, revealing the complicated nature and history of the funding process. Part V examines educational outcomes on the Navajo Nation and demonstrates a causal connection between chronic underfunding and educational attainment. It highlights general characteristics of the school setting on the Navajo Nation and the limited availability of school resources, including enrichment programs, regular access to counselors, school nurses, and the recruitment and retention challenges that often stem from a troubled fiscal position. Finally, Part VI of the article explores the "township model" of Kayenta, Arizona, a municipality within the Navajo Nation, as a possible model for other communities on the Navajo Nation to emulate with the aim of increasing economic development and tribal self-determination. The conclusion offers some final thoughts on the status of American Indian education broadly.

II. CHARACTERISTICS OF THE NAVAJO RESERVATION

The Navajo Nation is home to the second-largest federally recognized tribe in the United States.³⁵ It encompasses over 27,000 square miles of arid terrain in the remote Four Corners region of the United States.³⁶ Spanning across Northern Arizona into Utah and New Mexico, it is home to over half of its 332,129 enrolled members.³⁷ Nestled between the Four Sacred Mountains and Four Sacred Rivers, it is one of the few reservations that was established within the boundaries of sacred ancestral homelands.³⁸

35. CTR. FOR DISEASE CONTROL, *2009-2013 American Indian and Alaska Native State Populations* (Oct. 29, 2018), <https://www.cdc.gov/tribal/tribes-organizations-health/tribes/state-population.html> [<https://perma.cc/RE7J-7QS2>].

36. IVERSON, *supra* note 8, at 1.

37. NAVAJO NATION PLANNING AND DEV., *Demographic Analysis of the Navajo Nation Using 2010 Census and 2010 American Community Survey Estimates* (2013), <http://www.nec.navajonnsn.gov/Portals/0/Reports/NN2010PopulationProfile.pdf> [<https://perma.cc/5GPF-XD7R>].

38. Treaty Between the United States of America and the Navajo Tribe of Indians, U.S.-Navajo, art. 2, June 1, 1868, 15 Stat. 667; *see also* IVERSON *supra*

Today, the Navajo Nation is a place where ancient traditions are balanced against modernity. Contrasted against mobile homes that dot the landscape, sit Hogans, traditional Navajo dwellings, that face east to greet the morning sun.³⁹ It is not uncommon for individuals to consult with traditional healers for physical and psychological ailments.⁴⁰ It is a place where people walk in two worlds.

While today's generation has become increasingly urbanized, because of its seclusion, Navajos have been able to retain much of their language and customs.⁴¹ Similarly, because of its isolation, the Navajo Nation largely lacks the infrastructure to support economic development and jobs.⁴² The Navajo Nation remains one of the most under-developed and disenfranchised areas of the United States.⁴³

The current unemployment rate on the Navajo Nation is an estimated forty-eight percent,⁴⁴ compared to Arizona's statewide

note 8, at 14 (detailing the boundaries of the Navajo Reservation in a map) [<https://perma.cc/SFU4-TNSS>].

39. IVERSON, *supra* note 8, at 34-35 (demonstrating through a series of photographs the traditional dwellings Navajos call home).

40. See generally ROBERT A. TRENNERT, *WHITE MANS'S MEDICINE: GOVERNMENT DOCTORS AND THE NAVAJO: 1863-1955* (1998) (explaining the historical tension between government physicians and age-old healing practices); see also WADE DAVIS, *HEALING WAYS: NAVAJO HEALTH CARE IN THE TWENTIETH CENTURY 1-14* (2001).

41. IVERSON, *supra* note 8, at 1 ("Because their history is so long and so complicated, because their community is so sizeable, because their land base is so extensive, because their culture is so rich, countless writers have attempted to tell a portion of their story."); see also *American Indian Urban Relocation*, NATIONAL ARCHIVES, <https://www.archives.gov/education/lessons/indian-relocation.html> [<https://perma.cc/Z7DA-VJ6B>]. The Bureau of Indian Affairs Urban Relocation Program from 1953 to 1968 sought to "urbanize" and thereby assimilate Native Americans.

42. See generally Lorraine Turner Ruffing, *The Navajo Nation: A History of Dependence and Underdevelopment*, 11 REV. OF RADICAL POL. ECON. 25 (1979) (explaining how U.S. economic and political domination of the Navajo Nation has caused and perpetuates its underdevelopment.).

43. *Id.*; see also Gaby Galvin, *Tribal Housing Reveals Inequalities in Indian Country*, U.S. NEWS (Sept. 23, 2017, 12:00 AM), <https://www.usnews.com/news/best-states/articles/2017-09-23/across-the-us-disparities-in-indian-country-emerge-through-tribal-housing>.

44. James Singer, *Navajo Nation Government Reform Project*, DINÉ POL'Y INST. 1, 22 (2007),

unemployment rate of five percent,⁴⁵ and the nation's four percent.⁴⁶ The Navajo Nation's per capita income is approximately \$7,300,⁴⁷ compared with Arizona's \$42,280.⁴⁸ Approximately forty percent of the Navajo Nation's residents do not have access to running water or electricity.⁴⁹ In an area roughly the size of West Virginia, there are only ten full service grocery stores,⁵⁰ six hospitals, and seven health clinics.⁵¹ A substantial portion of the economy on the Navajo Nation is informal: a network of artisans selling crafts such as Navajo rugs and jewelry at the local "Flea Markets," which are typically set up once a week in the more populated communities throughout the reservation.⁵² The Navajo Nation also benefits from tourism, which comprises a substantial portion of the local economy.⁵³ Ranching, the coal industry, the Indian Health Service, schools, and the Navajo Tribal Government

<https://www.dinecollege.edu/wpcontent/uploads/2018/04/GovernmentReformDraft.pdf> [<https://perma.cc/YVG3-JK8F>].

45. *Economy at a Glance: Arizona*, BUREAU OF LAB. STAT., (Oct. 29, 2018), <https://www.bls.gov/eag/eag.az.htm> [<https://perma.cc/6UWY-95CY>].

46. NAT'L CONF. OF ST. LEG., National Employment Monthly Update (Sept. 12, 2018), <http://www.ncsl.org/research/labor-and-employment/nationalemployment-monthly-update.aspx> [<https://perma.cc/9A8V-8PZ3>].

47. Singer, *supra* note 44.

48. *Arizona Per Capita Personal Income*, ARIZ.'S ECON. ELLER ECON. & BUS. RES. CTR., <https://www.azecconomy.org/arizona-per-capita-personal-income/> [<https://perma.cc/F2Z3-7S5J>].

49. Fred de Sam Lazaro, *How off-the-grid Navajo residents are getting running water*, PBS NEWS HOUR (June 20, 2018, 6:20 PM), <https://www.pbs.org/newshour/show/how-off-the-grid-navajo-residents-are-getting-running-water> [<https://perma.cc/7RF2-N4BV>] ("Nearly 40 percent of the homes in the Navajo Nation lack running water or sanitation, and many are in such remote areas that they will never be able to connect to a water line.").

50. Diné Food Sovereignty: A Report on the Navajo Nation Food System and the Case to Rebuild a Self-Sufficient Food System for the Diné, DINÉ POL'Y INST. 1, 54 (2014), <https://www.dinecollege.edu/wp-content/uploads/2018/04/dpi-food-sovereignty-report.pdf> [<https://perma.cc/3L5P-477B>].

51. *Id.*

52. *Navajo Nation Informal Economy: Survey Results from Flea Markets*, DINÉ POL'Y INST. 1, 2 (2017), <http://hooghan.dinecollege.edu/institutes/DPI/docs/Navajo-Informal-Economy.pdf> [<https://perma.cc/63LS-CG7D>].

53. *Employment by Sectors of Economy: The NN, AZ, NM, AN [sic] The USA*, NAVAJO NATION DIV. OF ECON. DEV. (2004), <https://navajobusiness.com/pdf/FstFctspdf/Tb118emplSectorscmprd.pdf>.

remain the largest sources of employment and infrastructure on the Navajo Nation.⁵⁴

The Navajo Nation is renowned for being situated amidst some of the most beautiful landscapes in the country and is known for the Navajo peoples' strong adherence to their culture. The government's lamentable treatment and oversight of Native peoples throughout our Nation's history, however, has served to stifle progress and ultimately keeps students from breaking the cycle of poverty.

III. AN OVERVIEW OF INDIAN JURISPRUDENCE IN THE UNITED STATES SUPREME COURT

In order to truly understand the status of American Indian education, it is important to first be acquainted with the history of legal principles governing Federal Indian Law. These principles serve to set the framework for how life on reservations have and continue to operate today. Specifically, Federal Indian Law embodies the collection of treaties, statutes, executive orders, administrative decisions, and case law.⁵⁵ These foundational principles in Indian Law come from the United States Supreme Court's interpretation of these enactments, which stand for the proposition that there is a fundamental and ongoing "contract" between Indigenous people and the United States, which guarantees of the peoples' land and resources. Together, they have come to define the unique status of the 5 federally recognized American Indian and Alaska Native tribes that reside in the United States.

Underlying this history are three fundamental principles. First is the principle that federally recognized American Indian and Alaska Native tribes are independent, sovereign entities, separate from the States and Federal government.⁵⁶ Black's Law Dictionary defines sovereignty as "supreme dominion, authority, or rule."⁵⁷ Felix S. Cohen, in his authoritative and extensive work, explained the nature of the sovereignty of Indian tribes:

Perhaps the most basic principles of all Indian law supported by a host of decisions is the principle that those powers which are lawfully

54. *Id.*

55. ROBERT T. ANDERSON, et al., AMERICAN INDIAN LAW: CASES AND COMMENTARY 1 (3d ed. 2015).

56. *Id.* at 391.

57. *Sovereignty*, BLACK'S LAW DICTIONARY (10th ed. 2014).

vested in Indian tribes are not, in general delegated powers granted by express acts of Congress, but rather inherent powers of a limited sovereignty which has never been extinguished. Each Indian tribe begins its relationship with the Federal government as a sovereign power, recognized as such in treaty and legislation. The powers of sovereignty have been limited from time to time by special treaties and laws designed to take from the Indian tribes control of matters which, in the judgment of Congress, then, must be examined to determine the limitations of tribal sovereignty rather than to determine its sources or its positive content. What is not expressly limited remains within the domain of tribal sovereignty.⁵⁸

In 1823, the Supreme Court first considered the legal status of tribes in *Johnson v. McIntosh*, a case involving a land dispute between two white settlers.⁵⁹ Chief Justice John Marshall held that the plaintiff, who had purchased lands from an Indian tribe pre-Revolutionary War, did not have title to the land as Indian tribes were preempted from obtaining title because of European discovery rights. Marshall explained:

[T]he rights of the original inhabitants were, in no instance, entirely disregarded; but were necessarily, to a considerable extent, impaired. They were admitted to be the rightful occupants of the soil . . . but their rights to complete sovereignty, as independent nations, were necessarily diminished, and their power to dispose of the soil at their own will, to whomsoever they pleased, was denied by the original fundamental principle, that discovery gave exclusive title to those who made it.⁶⁰

The Court's holding in *Johnson* severely limited tribal sovereignty. Ten years later, the Supreme Court affirmatively recognized inherent tribal governmental power in *Cherokee Nation v. Georgia*.⁶¹ In *Cherokee Nation*, the Court held that the Cherokee tribe was not a "foreign state" within the meaning of Article III of the U.S. Constitution,⁶² so as to bring them within the jurisdiction

58. Felix S. Cohen, *Handbook of Federal Indian Law* 122 (1945).

59. *Johnson v. McIntosh*, 21 U.S. 543 (1823).

60. *Id.* at 574.

61. *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831).

62. U.S. Const. art. III, § 2, cl. 1. ("The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States

of the federal courts.⁶³ The Court characterized the tribe as a state, but not a “foreign state,” which effectively barred tribes from bringing suit directly to the Supreme Court.⁶⁴ Justice Marshall opined:

So much of the argument as was intended to prove the character of the Cherokees as a state, as a distinct political society, separated from others, capable of managing its own affairs and governing itself, has, in the opinion of a majority of the judges, been completely successful.⁶⁵

Once more in *Worcester v. Georgia*, the Supreme Court discussed the legal status of tribes. Chief Justice John Marshall explained:

The Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial, with the single exception of that imposed by irresistible power, which excluded them from intercourse with any other European potentate than the first discoverer of the coast of the particular region claimed.⁶⁶

In 1966, the Fifth Circuit in *Maryland Cas. Co. v. Citizens National Bank North Hollywood* reaffirmed the long-standing doctrine that tribes as nations are sovereign entities, free from state intrusion:

From the beginning of our government, Indian nations or tribes have been regarded as dependent political communities or nations; and as possessing the attributes of sovereignty, except where they have been taken away by Congressional action. They are quasi-sovereign nations. Indian nations, as an attribute of their quasi-sovereignty, are

shall be a party;--to controversies between two or more states;--between a state and citizens of another state;--between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.”).

63. *Cherokee Nation*, 30 U.S. at 16.

64. *Id.*

65. *Id.*

66. *Worcester v. Georgia*, 31 U.S. 515, 559 (1832).

immune from suit, either in the federal or state courts, without Congressional authorization.⁶⁷

Taken together, the trail of cases has crystallized tribal status within our country as sovereign, “domestic dependent”⁶⁸ nations, distinct in position from a local or state government.

The second foundational principle stands for the proposition that, unless Congress provides otherwise, the sovereignty of federally recognized American Indian and Alaska Native tribes generally extends over their federally recognized lands, including over the activities and conduct of tribal members and non-tribal members within that territory.⁶⁹ In 1934, Solicitor Nathan Margold explained:

Over tribal lands, the tribe has the rights of a landowner as well as the rights of a local government, dominion as well as sovereignty. But over all the lands of the reservation, whether owned by the tribe, by members thereof, or by outsiders, the tribe has the sovereign power of determining the conditions upon which persons shall be permitted to enter its domain, to reside therein, and to do business, provided only such determination is consistent with applicable Federal laws and does not infringe any vested rights of persons not occupying reservation lands under lawful authority.⁷⁰

This principle was made salient in *United States v. Mazurie*, where the Court dealt with the issue of federal and tribal power to regulate the sale of liquor by non-Indians within an Indian reservation.⁷¹ The Court explained that “Indian tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory Indian tribes within ‘Indian

67. Maryland Cas. Co. v. Citizens National Bank North Hollywood, 361 F.2d 517, 520 (1966).

68. *Cherokee Nation*, 30 U.S. at 17.

69. See *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.* 523 U.S. 751 (1998) (holding that tribes have sovereign immunity with regard to activities whether on or off the reservation, even when the activity is commercial rather than governmental); *Michigan v. Bay Mills Indian Community*, 134 S. Ct. 2024 (2014) (reaffirming the holding in *Kiowa*); see also ANDERSON, *supra* note 55, at 391.

70. See *Powers of Indian Tribes to Exclude Nonmembers From its Jurisdiction*, 55 Interior Dec. 50 (1934).

71. *United States v. Mazurie*, 419 U.S. 544 (1975).

country' are a good deal more than 'private voluntary organizations.'"⁷²

The final principle is that the sovereignty of these federally recognized tribes is inherent and exists unless, and until, Congress takes it away.⁷³ In other words, by virtue of Congress's plenary authority, Congress may modify or reverse the first two principles as it sees fit.

In 1903, the Court in *Lone Wolf v. Hitchcock* was presented with an issue involving a treaty with the Kiowas and Comanches, which served to set aside lands to be held communally by the tribes.⁷⁴ The treaty provided that no further cessions of land could be made without the consent of three-fourths of the adult male Indians of the tribes.⁷⁵ Congress, years later, unilaterally passed a statute ceding those additional lands without the requisite consent of three-fourths vote as outlined in the treaty.⁷⁶ The Supreme Court deferred to Congress and upheld the statute, reasoning that giving the treaty legal effect would restrict future exercise of Congressional power involving tribes.⁷⁷ The Court explained that "[t]he power exists to [abolish] the provisions of an Indian treaty . . ."⁷⁸ Through this decision, there is no doubt in Congress's ability to unilaterally abolish treaties in part or in whole, based on their plenary authority.

The United States promised tribes the right of continued self-governance and the right to exist as permanently distinct entities through treaty making and in Supreme Court rulings. This responsibility guarantees that the federal government will provide adequate resources to tribes and Native-serving programs, such as education, in order to sufficiently address the needs of Native peoples and strengthen the inherent sovereignty of nations. When the federal government fails to meet its responsibilities, alarming consequences follow, as evidenced by the disproportionate graduation rates experienced throughout Indian country as compared with off-reservation counterparts.⁷⁹ But first, in order to compel the federal government to meet their obligations, a deep

72. *Id.* at 557.

73. ANDERSON, *supra* note 55, at 391.

74. *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903).

75. *Lone Wolf v. Hitchcock*, 19 App. D.C. 315, 322 (1902).

76. *Id.* at 321.

77. *Lone Wolf*, 187 U.S. at 565.

78. *Id.* at 566.

79. *See infra* note 140.

understanding of the history and ongoing status of American Indian life must be understood, acknowledged, and addressed on a consistent basis, as opposed to when periodic national outcries demand it.

IV. THE IMPOSITION OF EUROCENTRIC EDUCATION ON NATIVE AMERICANS: ASSIMILATION AND REPRESSION

A. Treaty Making

Schools aimed at the acculturation and assimilation of American Indian students date back as early as 1820, when treaties typically stated that the federal government, and not the states, would be responsible for providing education to tribes as a form of payment for land ceded by tribes.⁸⁰ Beginning at this time, Congress began formally making appropriations for Indian Education.⁸¹ From the first treaties in the 1780s following the Revolutionary War to the end of treaty making in 1871, hundreds of treaties were entered into between the federal government and tribes across the United States.⁸² The treaty provisions on Indian education were fulfilled by the federal government mainly through contracting with sectarian missions and churches.⁸³ These policies became part of the federal government's general policy on the "civilization" of Indians, which coincided with the height of America's Westward Expansion in the wake of the Louisiana Purchase in 1803, the defeat of the British in the War of 1812, and Andrew Jackson's Removal Act.⁸⁴ These assimilationist laws continued well into the Termination Era, which

80. Treaty of Doak's Stand, *supra* note 2; see also Aaron Stewart, *Acting for the Left Behind: How the Native Class Act Could Close the Gaps in American Indian Education*, 36 AM. INDIAN L. REV. 347, 348-49 (2012).

81. Treaty of Doak's Stand, *supra* note 2.

82. FRANCIS PAUL PRUCHA, *THE GREAT FATHER: THE UNITED STATES GOVERNMENT AND THE AMERICAN INDIANS 19-22*, 164-66 (abr. ed. 1986).

83. *Id.* at 52-53.

84. After obtaining a sizeable portion of land in 1803 through the Louisiana Purchase and the subsequent winning of the War of 1812, a young United States faced far less competition from foreign countries. Land acquisition became a primary goal during this era because it was believed that an agrarian society would be both economically and socially beneficial. The federal government, then, had only one "problem" remaining: that of the Indians. See PRUCHA, *supra* note 82, at 24.

lasted from 1947 to 1961.⁸⁵ In 1871, Congress passed a law signaling the end of the Treaty Era.⁸⁶ The law provided that no new treaties would be made with tribes.⁸⁷ Congress did, however, provide that all existing treaties continue to be honored, and were not to be invalidated or altered.⁸⁸

B. Allotment and Assimilation Era

The second major period in American Indian education began after the American Civil War, in what is known as the “Allotment and Assimilation Era,” which began in approximately 1871 and lasted until 1928.⁸⁹

During this Era, policy regarding American Indians was far less tolerant and Congress and the Court would sanction assimilationist measures without the need for consent.⁹⁰ The treatment of American Indians during this period became markedly more violent, as settlers pushed westward, guided by an increasingly powerful government and military.⁹¹ During this period, the federal government became actively involved in Indian education, systematically developing a series of contract schools.⁹² Under the guise of fulfilling treaty promises to American Indians on the education of their youth, the American government would begin the methodical process of assimilation in order to gain more land.⁹³

85. PRUCHA, *supra* note 82, at 340-56.

86. Act of March 3, 1871, ch. 120, § 1, 16 Stat. 566 (codified as amended at 25 U.S.C. § 71 (2015)). On March 3, 1871, a provision ending treaty-making was slipped in as a rider at the end of a long Indian appropriations act marking the end of treaty making.

87. *Id.*

88. *Id.*

89. ANDERSON, *supra* note 55, at 105.

90. *Id.*

91. PRUCHA, *supra* note 82, at 167-80 (explaining that the post-Civil War period was marked by continual warfare amongst the government and Indian tribes).

92. *Id.* at 280-88.

93. Act of Feb. 8, 1887, ch. 119, § 1, 24 Stat. 388 (codified as amended at 25 U.S.C. § 331 (2008)). This Act authorized the President “whenever in his opinion any reservation or any part thereof of such Indians is advantageous, for agricultural and grazing purposes, to cause said reservation to be surveyed and to allot the lands in severalty.”

By the 1880s, Indian education took on a new urgency. In 1884, the Lake Mohonk Conference declared:

The Indian must have a knowledge of the English language, that he may associate with his white neighbors and transact business as they do. He must have a practical industrial training to fit him to compete with others in the struggle for life. He must have a Christian education to enable him to perform the duties of the family, the State, and the Church.⁹⁴

The primary goal of Indian education during this Era was to make Indian citizens self-sufficient, in an aim to decrease government reliance. Schools thus focused on manual labor and vocations and were located primarily off-reservation and far from home. The prevailing thought was, as remarked by Commissioner of Indian Affairs Luke Lea in 1877, “the exposure of children who attend day-only [on-reservation] schools to the demoralization and degradation of an Indian home neutralized the efforts of the schoolteacher, especially those efforts which are directed to advancement in morality and civilization.”⁹⁵ This sentiment was echoed in the now-infamous speech given by Captain Richard H. Pratt on the status of Indian education:

A great general has said that the only good Indian is a dead one, and that high sanction of his destruction has been an enormous factor in promoting Indian massacres. In a sense, I agree with the sentiment, but only in this: that all the Indian there is in the race should be dead. Kill the Indian in him, and save the man.⁹⁶

While boarding schools were already in existence, Pratt’s Carlisle Boarding School would become the model reformers would seek to emulate: a military style, off-reservation boarding school set up as an industrial training institute.⁹⁷ The painful legacy that has followed is known around Indian Country as the “Boarding School Era.”

The Navajo Treaty of 1868, like other treaties, provided that the federal government would be responsible for providing education

94. PRUCHA, *supra* note 82, at 232.

95. *Id.* at 233.

96. Capt. Richard H. Pratt, *The Advantages of Mingling with Whites*, Official Rep. of the 19th Ann. Conf. of Charities and Correction 46-59 (1882).

97. PRUCHA, *supra* note 82, at 234.

for Navajo children.⁹⁸ The first classroom was a Presbyterian Mission school, headed by missionary James Roberts, who soon abandoned his efforts.⁹⁹ By 1874, the Commissioner of Indian Affairs called on the establishment of boarding schools for Navajo students specifically, and by the 1880s, echoing the national disposition on Indian education, Navajo students began being forcibly removed from their families, the majority to schools far away from their homes.¹⁰⁰ Fewer than four dozen Navajo students attended Captain Pratt's Carlisle Indian School, but countless others were sent to Mt. Pleasant in Michigan, Morris in Minnesota, Grand Junction in Colorado, and a handful of others in the West.¹⁰¹ Navajo students, like other Indian pupils, endured the traumatic policies of cutting hair upon arrival, the forbidding of speaking one's native tongue, and from practicing one's religion.¹⁰² Students were, in all ways, to suppress the Indian inside of them.

In 1924, American Indians were finally recognized as citizens of the United States, giving way to the fact that state operated public schools would now be required to educate those students who before were the primary responsibility of the federal schooling system.¹⁰³

C. *The Indian Reorganization Era*

The Indian Reorganization Era, promulgated by John Collier, marked a shift from assimilationist and paternalistic rhetoric to one of helping tribes revitalize their governments, preserve culture, and achieve a sense of healthy self-reliance.¹⁰⁴ A corollary of this outlook was the move toward state control of Indian education.¹⁰⁵

98. See Treaty Between the United States of America and the Navajo Tribe of Indians, *supra* note 38, at art. VI.

99. IVERSON, *supra* note 8, at 81.

100. *Id.* at 85-86.

101. *Id.* at 83-86.

102. See *infra* note 109; see also Andrea A. Curcio, *Civil Claims for Uncivilized Acts: Filing Suit Against the Government American Indian Boarding School Abuses*, 4 HASTINGS RACE & POVERTY L. J. 45 (2006) (detailing the abuses commonplace in Indian boarding schools).

103. Act of June 2, 1924, ch. 233, 43 Stat. 253 (codified at 8 U.S.C. § 1401(b) (1982)) (authorizing the Secretary of the Interior to issue certificates of citizenship to Indians).

104. PRUCHA, *supra* note 82, at 314.

105. *Id.*

In 1934, the JOM was passed, allowing the federal government to contract with states and tribes to provide services that were previously the exclusive domain of the federal government.¹⁰⁶ This included education. However, Congress made it so JOM contracts could only be granted to state public schools, and not tribes directly.¹⁰⁷ In 1934, Navajo was finally allowed to be spoken in schools,¹⁰⁸ but Navajos today agree that the forbidding of speaking one's language persisted well into the 1960s and even 1970s, near the end of the Boarding School Era.¹⁰⁹

D. Self-determination Era

Since the 1970s, American Indian education has improved drastically as a result of legislative reform, most notably in 1975 when the Indian Self-Determination and Education Assistance Act was passed.¹¹⁰ Through this Act, the federal government recognized the obligation of the government to provide for maximum participation by American Indians in federal services and programs in American Indian communities.¹¹¹ One of the primary goals of the law was to provide education and services permitting Indian children to succeed, and it declared a commitment to maintain the federal government's trust relationship and responsibility to individual Indians and tribes.¹¹² The Act reads:

106. Johnson-O'Malley Act, *supra* note 31.

107. The JOM allowed for contracting exclusively with states and territories. *See* §1, 48 Stat. 596.

108. DINÉ DEP'T OF EDUC., *Historical Timeline of Diné Education* 16 (2018), [http://www.navajotreaty1868.navajonnsn.gov/Portals/0/Files/ay_Navajo%20Education%20Timeline%20\(1-28-2015\)_4_18_2018.pdf?ver=2018-04-18-151315-897](http://www.navajotreaty1868.navajonnsn.gov/Portals/0/Files/ay_Navajo%20Education%20Timeline%20(1-28-2015)_4_18_2018.pdf?ver=2018-04-18-151315-897) [<https://perma.cc/39HG-X9MW>].

109. *See generally* Luci Tapahonso, *For More Than 100 Years, the U.S. Forced Navajo Students Into Western Schools. The Damage Is Still Felt Today*, SMITHSONIAN (July 2016), <https://www.smithsonianmag.com/history/decades-us-government-forciblyplaced-native-students-western-schools-effects-felt-today-180959502/> [<https://perma.cc/W424-UGZX>] (discussing the effects of forcibly placing students in boarding schools).

110. Indian Self-Determination and Education Assistance Act of 1975, 25 U.S.C. § 450f-458ddd (1975).

111. *Id.*

112. *Id.*

(A) The Congress hereby recognizes the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of education as well as other Federal services to Indian communities so as to render services more responsive to the needs and desires of those communities.

(B) The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with and responsibility to the Indian people through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from Federal domination of programs for services to Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services.

(C) The Congress declares that a major national goal of the United States is to provide the quantity and quality of educational services and opportunities which will permit Indian children and adults to compete and excel in the life areas of their choice, and to achieve the measure of self-determination essential to their social and economic values.¹¹³

By the 1980s, the great majority of boarding schools closed their doors, marking the end of a century-long painful legacy that is still felt today.¹¹⁴ Recognizing the devastating effects of language and culture loss, the federal government passed the Native American Languages Act in 1990.¹¹⁵ The aim of this law was to “preserve, protect, and promote the rights and freedom of Native Americans to use, practice, and develop Native American languages.”¹¹⁶ While many schools on the Navajo Nation sought to revitalize their native tongue and culture through mandated Navajo language classes in the K-12 setting, many families chose to refrain from teaching their children and grandchildren the language because speaking their language brought back painful memories of being punished in the boarding school setting.¹¹⁷

113. 25 U.S.C. § 450(a) (1975) (codified as amended at 25 U.S.C. § 5301 *et seq.*).

114. IVERSON, *supra* note 8, at 195.

115. Native American Languages Act of 1990, 25 U.S.C. §§ 2901-2906 (2002).

116. 25 U.S.C. § 2903(1) (2018).

117. The traumatic legacy of the boarding school era is well known throughout Indian Country and it is general knowledge on the Navajo Reservation that generations of parents chose to teach their children English only. *See* Danielle Geller, *Annotating the First Page of the First Navajo-English Dictionary*, THE

Today, the status of education on the Navajo Nation is still in conflict with Western styles of pedagogy.¹¹⁸ Mandates setting forth increased school and teacher accountability through high-stakes testing have led public schools on the Navajo Nation to acquiesce to the keeping of Eurocentric curricula, perpetuating the imbalance and disconnect between the promotion and preservation of Navajo styles of learning and values on the one hand, against the need to demonstrate student achievement on the other.¹¹⁹ When certain forms of school funding are contingent on student performance, it is clear to see how Navajo language and culture revitalization efforts take a back seat.¹²⁰

NEW YORKER, Nov. 7, 2017, <https://www.newyorker.com/culture/personal-history/annotating-the-first-page-of-the-first-navajo-english-dictionary> [<https://perma.cc/LE57-9CW2>] (“There are many reasons parents do not teach their children the Navajo language: U.S. monolingual policies, violence experienced in boarding schools, and perceived status. Those who speak English well will have a better chance for escape.”).

118. Andre Cramblit, *10 Rules for Teaching Native Students*, INDIAN COUNTRY TODAY, Aug. 10, 2014, <https://newsmaven.io/indiancountrytoday/archive/10-rules-for-teaching-native-students-5zjLbVUsVkWqk69IOxy5Xg/> [<https://perma.cc/8ZZK-DK4N>] (“Western education models, by and large, are not the best option to teaching many Native learners.”).

119. See generally Teresa McCarty, *The impact of high-stakes accountability policies on Native American learners: Evidence from research* 1, 9 (2008) https://www.qcaa.qld.edu.au/downloads/approach2/indigenous_research_mccarty.pdf [<https://perma.cc/4X97-3JD5>] (“[t]he combination of English standardized tests as the sole measure of AYP, the high stakes attached to the tests, and mandated Reading First programs create enormous pressure on schools to reallocate instructional time toward test preparation . . . [t]his comes not only at the cost of Native language and culture instruction but also to the detriment of student performance on the tests.”).

120. See generally Donald B. Gratz, *The Problem With Performance Pay*, 67 ED. LEADERSHIP 76 (2009), <http://www.ascd.org/publications/educational-leadership/nov09/vol67/num03/The-Problem-with-Performance-Pay.aspx> [<https://perma.cc/6WV4-2BHW>] (explaining how schools and teachers are rewarded based on performance on high-stakes standardized tests).

V. AT THE GOVERNMENT'S MERCY: THE BUREAUCRACY OF SCHOOL FUNDING ON THE RESERVATION

Nationwide, public schools are financed through a combination of state and local revenue.¹²¹ Local revenue is typically comprised of a combination of business, sales, and property taxes.¹²²

On federal lands throughout the country, however, including military installations and reservation land, local revenue is lost amidst non-taxable federal activities.¹²³ With little to no local revenue to rely on, the unpredictable nature of federal funding, constantly faced with the prospect of Congressional sequestration, providing a quality education for students becomes a daily challenge.¹²⁴ With no local taxes to support the education of Native American students, the JOM of 1934 served as the first acknowledgment by the federal government of its obligation to the local school district for educating children residing on federal reservation lands by providing financial assistance.¹²⁵

In 1950, President Harry S. Truman signed the Impact Aid Program into law, which serves as the primary source of funding for most schools located on reservations, including the Navajo Nation.¹²⁶ Since then, Congress has provided financial support to

121. NAT'L ASS'N OF FED. IMPACTED SCHOOLS, *The Basics of Impact Aid the Original K-12 Federal Education Program Title VII Ever Student Succeeds Act 11* (2018), https://www.nafisc.org/wp-content/uploads/2018/09/The-Basics_Fall-2018.pdf [<https://perma.cc/JZU8-GTDQJ>].

122. *Id.*

123. *Id.*

124. See Dina Titus, *The Impact of the 2013 Congressional Sequester Cuts on Programs Affecting Women and Children*, 40 J. LEGIS. 154, 156-57 (2013-2014) ("Title I was intended to even out disparities between richer and poorer school districts, but sequestration is widening that gap. Title I provides funding to school districts with large concentrations of disadvantaged children, like Cleveland, Ohio, where almost half of the school district's 50,000 students live in poverty, or my own state, Nevada, where 13,000 children benefit from Title I. Sequestration means loss of reading and math teachers, tutoring, early literacy intervention programs and expanded learning time."); see also Jefferson Keel, *Upending and Education Crisis in Indian Country*, ED. WEEK (Dec. 3, 2013), https://www.edweek.org/ew/articles/2013/12/04/13keel_ep.h33.html?tkn=TUPFztPIUyiIK0BEKvhXH9TJ%2BDDh8o5L%2Fmj%2B&cmp=clp-edweek [<https://perma.cc/685K-4MNT>].

125. Johnson O'Malley Act, *supra* note 31.

126. See Impact Aid Act of 1950, ch. 1124, 64 Stat. 1100 (codified as amended at 20 U.S.C.A. §§ 7701 *et seq.*).

school districts located on federal lands and to districts that have experienced an increase in expenditures due to the enrollment of federally-connected students. Impact Aid funds are appropriated annually by Congress and disbursed directly to schools, bypassing state involvement.¹²⁷ Most Impact Aid can be used at the discretion of the school district, allowing the district freedom and flexibility in appropriating funds to areas of the greatest need.¹²⁸ However, because Impact Aid remains subject to Congressional sequestration, recipients of Impact Aid are at the mercy of complete government discretion¹²⁹ This can result in either delayed appropriations if Congress is amidst a continuing resolution, a government shutdown, or a decrease in the overall amount of funds received.¹³⁰ The result is that districts operating exclusively on Impact Aid struggle to pay day-to-day operational costs. The nearly \$70 million sequester of Impact Aid during the 2013 fiscal year was devastating to federally impacted schools, resulting in both teacher and non-instructional staff reductions,¹³¹ increased class sizes, and cuts to after-school enrichment programs.¹³² While Impact Aid was almost fully restored during the 2014 fiscal year, bringing about much needed relief, caps on discretionary spending through 2022 continue to be a source of concern for federally impacted schools.¹³³

On the Navajo Nation, the great majority of the twenty-six public school districts located within or near its boundaries rely almost exclusively on Impact Aid and Johnson O'Malley funds.¹³⁴

127. 20 U.S.C. § 7702(h).

128. §§ 7703(d)(2); 7707(4); 7707(5)(ii); and 7707(b) explain the parameters of use of funds.

129. See generally Titus, *supra* note 124.

130. *Id.* at 155.

131. School nurses, counselors, paraprofessionals, and other support staff are included.

132. Valerie Strauss, *Duncan warns Congress on impact of 'sequestration' on education programs*, WASH. POST, February 14, 2013, https://www.washingtonpost.com/news/answer-sheet/wp/2013/02/14/duncan-warns-congress-on-impact-of-sequestration-on-education-programs/?utm_term=.fc073a296f0e [<https://perma.cc/WQ77-XSVX>]; see also Congressional Budget Office, *Final Sequestration Report for Fiscal Year 2013*, March 2013, <https://www.cbo.gov/sites/default/files/113th-congress-2013-2014/reports/44021-Sequestration.pdf>. <https://perma.cc/X3X4-6643>

133. *Id.*

134. DINÉ DEP'T OF EDUC., Report: Impact Aid on the Navajo Nation 10 (2017),

It is the lifeblood of most districts on reservations. Nationally, public schools expend on average over \$13,000 per pupil.¹³⁵ On the Navajo Nation, public schools on average spend less than \$5,000 per pupil.¹³⁶

Without the means to augment federal dollars, districts on the Navajo Nation stand to lose what they can't afford to.

VI. WHEN THERE IS NO LADDER TO CLIMB: EDUCATIONAL ATTAINMENT ON THE NAVAJO RESERVATION AND GENERAL ATTRIBUTES OF THE SCHOOL SETTING

The school bus rumbles down a dirt road in the still of the morning darkness. The sun has not come up yet, and the air is crisp, permeated by the smell of cedar oil from the woodstoves that heat nearby homes. The road weaves past a cattle guard, and eventually stops at a small home, which is actually a garden shed. Garden sheds as primary residences have become ubiquitous across the Navajo Nation.¹³⁷ The student gets on the bus and departs for the hour bus ride to school, down the washboard road and down an outdated, two-lane highway. When they arrive at school, they will eat breakfast, a welcome respite from the hunger pangs of a dinnerless night.¹³⁸ Later, when the student gets home, they will be exhausted from the long day, having had to endure the long ride back, to a home where there might not be running water to take a hot shower, electricity to do homework, or an adult to help.

http://navajonationdode.org/uploads/FileLinks/b4d670052e6e4746805ede981b0601aa/Impact_Aid_Report_AG_PDF.pdf [<https://perma.cc/8EJR-G3XF>].

135. NAT'L CTR. FOR ED. STAT., *Fast Facts: Expenditures* (2018), <https://nces.ed.gov/fastfacts/display.asp?id=66> [<https://perma.cc/YW38-36Q9>].

136. DINÉ DEP'T OF EDUC., *supra* note 134.

137. Alysa Landry, *Navajo Housing Authority builds homes—and trust—on Navajo Nation*, INDIAN COUNTRY

TODAY, Jul. 21, 2017, <https://newsmaven.io/indiancountrytoday/archive/navajo-housing-authority-builds>

[homes-and-trust-on navajo-nation-gDo33NLwd0eEL4mJPHfUUw/](https://perma.cc/37YG-93F6)

[<https://perma.cc/37YG-93F6>] (“[N]avajo citizens live in overcrowded homes or storage units, and hundreds of near-finished homes sit abandoned and vandalized.”).

138. No Kid Hungry, *Child Hunger Facts* (2018), <https://www.nokidhungry.org/who-we-are/hunger-facts>

[<https://perma.cc/SWV7-HXMV>] (last visited March 21, 2019) (explaining the general phenomenon of child hunger in low-income and food insecure families across the U.S.).

In the 1980s, the dropout rate for American Indian students was estimated between forty-five and fifty percent but some estimates have concluded that figure was as high as eighty-five percent in the most socially and economically depressed areas.¹³⁹

Today, about seven in ten students who start kindergarten will graduate high school in the public-school system.¹⁴⁰ The Bureau of Indian Education, which remains federally underfunded, produces dismal outcomes, with a 2017 figure estimating a fifty-three percent graduation rate nationwide.¹⁴¹

On the Navajo Nation, of almost 92,000 people surveyed over the age of twenty-five, approximately twenty percent had not finished the ninth grade, fifteen percent had gone to high school but had not received a diploma, and only seven percent had attained a bachelor's degree or beyond.¹⁴²

The schools themselves are often outdated and unable to support modern technology that schools increasingly rely on to deliver instruction.¹⁴³ In the more remote parts of the Navajo Nation, some schools haven't seen updates since their construction in the 1960s and 1970s.¹⁴⁴ In an effort to recruit and retain educators, most, if not all schools, on the reservation provide accommodations for teachers and support staff that are typically located on or very near the school's campus in what would be an incentive for young graduates with student loan debt.¹⁴⁵ Schools charge a modest amount for rent,

139. OFF. OF INDIAN EDUC. PROGRAMS, *Bureau Of Indian Aff., Report On Bia Education: Excellence In Indian Education Through The Effective School Process* 135 (1988),

<https://babel.hathitrust.org/cgi/pt?id=pur1.32754004466359;view=1up;seq=3>
 [https://perma.cc/P5UF-JH32].

140. Helen Oliff, *Graduation Rates and Native American Education*, PARTNERSHIP WITH NATIVE AMERICANS (May 16, 2017), <http://blog.nativepartnership.org/graduation-rates-american-indian-education/> [https://perma.cc/WS47-XYJE].

141. *Id.*

142. ARIZ. RURAL POL'Y INST., *Demographic Analysis of the Navajo Nation Using 2010 Census and 2010 American Community Survey Estimates* 57 (2012), https://gotr.azgovernor.gov/sites/default/files/navajo_nation_0.pdf [https://perma.cc/3ZDX-XH5T].

143. Severns, *supra* note 1.

144. *Id.*

145. Navajo Teachers Change Rally Cry to "Rez for Ed", FRONTERAS (May 3, 2018), <https://fronterasdesk.org/content/638697/navajo-teachers-change-rally-cry-rez-ed> [https://perma.cc/9PQ6-REEQ] ("School districts on the rez we have

which goes into a “pot” for repairs and daily maintenance. Most of these homes, however, are just as outdated and in just as poor condition as the school buildings themselves.¹⁴⁶ By modern standards, the condition of many of the school provided homes would raise habitability concerns.¹⁴⁷ Commonly, lack of fiscal resources and manpower keep the homes from undergoing much needed renovations.¹⁴⁸ What could serve as an incentive for teachers to remain for the long-haul has instead increased the burden on schools who must, in addition to focusing on student achievement, serve as “landlords” and effectively manage teacher housing.

With lack of access to housing and the complex nature of land leasing for more permanent homes, recruiting and retaining teachers, counselors, and nurses becomes that much more of a challenge. Further still, non-Native educators often find the cultural differences and remoteness of the reservation—including lack of access to typical amenities like high-speed Internet, shopping, movies, and restaurants—simply too difficult to sustain.¹⁴⁹ With a lack of certified Navajo teachers to fill vacancies, schools are left with a disproportionate amount of non-teachers—substitute teachers with no formal background in education—to fill

to provide staff housing.”); see also Lee Hale, *‘Will you be here next year?’: Keeping Teachers on the Navajo Reservation*, NPR UTAH, Mar. 14, 2018, <https://www.kuer.org/post/will-you-be-here-next-year-keeping-teachers-navajo-reservation#stream/0> [<https://perma.cc/CVE9-TPTL>] (“I live in teacher housing — you can’t have a house on the reservation.”). Reservation lands are typically held in trust by the U.S. federal government. The Bureau of Indian Affairs manages this land for tribal benefit. Land that is held in trust is not fee land, so it cannot be deeded. Accordingly, home ownership is almost non-existent on the Navajo Reservation. Instead, the tribe issues “home site leases” to individuals for a period of 75 years. Families earn a lease hold interest on the plot of land and can build homes, but the lack of permanency coupled with factors such as poverty, predatory lending practices from banks, and distance from stores that offer building materials makes home ownership on the reservation a distant aspiration for many. For non-Indians, housing is limited to staff housing provided by the Indian Health Service, Bureau of Indian Education, or public-school system.

146. Severns, *supra* note 1.

147. *Id.*

148. *Id.*

149. Hale, *supra* note 145.

classrooms, exacerbating the opportunity-to-learn gap.¹⁵⁰ Like almost all isolated schools in rural America, schools on the Navajo Nation face challenges when attracting talent because of structural and fiscal difficulties. Apart from the schools themselves being in various states of disrepair, school administrators must navigate the dizzying maze of overlapping laws—tribal, state, and federal—that they are often ill-equipped to confront. Having to deal with heavy bureaucracy, school leaders are taken away from their primary mission: to improve student outcomes by focusing on improvements to the campus, curriculum, and attracting highly qualified educators to fill classrooms. When certain forms of school funding are contingent on student performance, it becomes clear that the competing priorities faced by school officials interferes with this purpose. If schools cannot attract and retain talented individuals to teach, then students are automatically placed at a severe disadvantage.¹⁵¹

It has also been documented that low-income schools, in an attempt to meet the pressures of high-stakes testing culture, have mandated prescribed curricula that has known a negative effect on instructional practices.¹⁵² The imposition of constrained curricula affords teachers less autonomy and often leads teachers to “teach to the test,” a phenomenon that results in less authentic instruction and learning, among other ethical dilemmas within the school.¹⁵³

150. Corina Vanek, *Tuba City teachers add class periods to combat teacher shortages*, THE DAILY SUN, Aug. 16, 2015, https://azdailysun.com/news/local/tuba-city-teachers-add-class-periods-to-combat-teacher-shortage/article_5a015ede-9246-5d76-bcf3-c3405767430c.html [<https://perma.cc/L7LB-KFPK>] (noting that the teacher shortage has led the school district to rely on substitute teachers to fill positions). Tuba City Unified School District is a public-school district on the Navajo Reservation.

151. Mary Ellen Flannery, *Back to School Without a Qualified Teacher*, NAT’L EDUC. ASS’N. (Sept. 5, 2018), <http://neatoday.org/2018/09/05/unqualified-teachers-in-public-schools/> [<https://perma.cc/DL6R-L9Q2>].

152. See generally David Kaufmann, *Curriculum Prescription and Curriculum Constraint: Second-Year Teachers’ Perceptions 5* (Harvard Graduate Sch. of Educ.: Project on the Next Generation of Teachers, Working Paper, 2005), https://projectngt.gse.harvard.edu/files/gse-projectngt/files/prescription_constraint.pdf [<https://perma.cc/MYJ6-WFJV>].

153. *Id.* at 35 (explaining that curriculum prescription consists of certain curriculum components: (a) Cover[ing] certain general topics, objectives, or standards; (b) Teach[ing] specific content (skills and/or knowledge); (c) Follow[ing] a particular timeline or sequence for the year – this could include

This one-size-fits-all approach, however, coupled with the demands of recent accountability measures, has proved disastrous in Indian Country.¹⁵⁴ Between 2005 and 2011, American Indian and Alaska Native students were the only major ethnic group to demonstrate virtually no improvement on fourth grade reading assessments administered by the National Assessment of Education Progress, or NAEP.¹⁵⁵ On the 2013 NAEP, American Indian and Alaska Native students posted gains in eighth grade mathematics, but only marginally posted gains in the fourth-grade reading and math exams.¹⁵⁶ In the years following the enactment of No Child Left Behind, there has been virtually no appreciable growth in commonly tested subjects such as reading and math for American Indian and Alaska Native students, a testament to the overall conditions of education on reservations.¹⁵⁷

Consistent with ideals of tribal sovereignty and self-governance, tribes should be able to decide for themselves the manner in which their children will be educated. Confronted with laws, policies, and the resulting curricula that reflects these measures, American Indian students must often navigate material that is inconsistent with their own knowledge base and values.¹⁵⁸

Tribal sovereignty is under threat by the current status of education not only on the Navajo Nation, but throughout most reservations nationwide. Children are a tribe's most vital resource to continuing tribal traditions, language, and culture, but without student success in education—education that is relevant and culturally appropriate—tribal governments may be left with entire

following the textbook, teacher's guide, or curriculum guide; (d) Us[ing] a particular approach to teach the subject; (e) Follow[ing] prepared lesson plans from the teacher's guide, the textbook, a detailed curriculum guide, or another source; (f) Periodically administer certain tests or other assessments (not including standardized tests).

154. Lesli A. Maxwell, *Education in Indian Country: Running in Place*, ED WEEK (Dec. 4, 2013), <https://www.edweek.org/ew/projects/2013/native-american-education/running-in-place.html> [<https://perma.cc/4CHP-HL9B>].

155. *Id.*

156. *Id.*

157. *Id.*

158. See generally Sunni Ali, et al., *Merging and Creating Culturally Relevant Pedagogy in Public Schools*, 1 J. OF RES. INITIATIVES 39 (2013) (discussing the importance and implications of introducing culturally reaffirming and relevant instruction.).

generations who are unable to break free from the stubborn confines of poverty.

VII. EMPOWERMENT THROUGH AUTONOMY: TAX-GENERATING MUNICIPALITIES

The lack of economic development and infrastructure on the Navajo Nation, like many rural and impoverished communities, is a major contributory factor in creating and sustaining intergenerational poverty and resulting social issues that communities on the reservation face.¹⁵⁹ Functioning economies, including micro-economies and specialty niches, where citizens engage in commerce, lend to more robust and healthy communities where services are offered, where citizens can find meaningful employment and services, and where expendable income is placed within the stream of commerce, producing valuable tax dollars that are put back to work.¹⁶⁰ On most reservations, this cycle is almost non-existent.¹⁶¹ Because of the sheer remoteness of the communities on the Navajo Nation, reservation residents must travel to distant communities to conduct everyday business, including grocery shopping, going to the bank, eating at restaurants, or even going to the movies.¹⁶² The outflow of cash, because of the minimal transactions that occur within the reservation, “tend to benefit state economies but do little to promote economic flourishing on reservations.”¹⁶³ In fact, this outflow tends to demonstrably contribute the continual impoverishment of reservation communities.¹⁶⁴ Put simply, tribal governments can

159. See Robert Miller, *Creating Economic Development on Indian Reservations*, PROP. AND ENV'T RES. CTR. (2012), <https://www.perc.org/2012/09/14/creating-economic-development-on-indian-reservations/> [https://perma.cc/X5YE-V37K]; see also THE ECONOMIST, *Business in the Navajo Nation: Capitalism's Last Frontier* (Apr. 3, 2008), <https://www.economist.com/business/2008/04/03/capitalisms-last-frontier> [https://perma.cc/5ATX-QQQZ].

160. *Id.*

161. *Id.*

162. Distances from the most populated communities on the Navajo Reservation to urban localities providing regular amenities include: Kayenta, AZ to Flagstaff AZ, 151 miles one-way; Kayenta, AZ to Albuquerque, NM, 300 miles one-way; Chinle, AZ to Phoenix, AZ, over 300 miles one-way.

163. Miller, *supra* note 159.

164. *Id.*

help solve this problem by increasing the number of privately and tribally-owned businesses on reservations. But how can tribes accomplish this, and what is the starting point?

To begin, one of the most fundamental powers of any government is the power to levy taxes.¹⁶⁵ This power is an essential attribute of any sovereign nation, including tribes.¹⁶⁶ This ability, the ability to self-govern and self-determine, deriving from inherent sovereignty, cannot be taken away without Congressional approval.¹⁶⁷

In 1982, in the seminal case of *Merrion v. Jicarilla Apache Tribe*, which upheld the right of tribes generally to tax non-Indians who do business on tribal land, Justice Marshall explained the territorial base of tribal sovereignty in the opinion of the Court:

The power to tax is an essential attribute of Indian sovereignty because it is a necessary instrument of self-government and territorial management. This power enables a tribal government to receive revenues for its essential services. The power does not derive solely from the Tribe's power to exclude non-Indians from tribal lands, but from the Tribe's general authority, as sovereign, to control economic activities within its jurisdiction, and to defray the cost of providing governmental services by requiring contributions from persons or enterprises engaged in such activities.¹⁶⁸

The power to levy taxes, however, is not enough. As Robert Miller, professor of law and expert on tribal economic resurgence, explains:

Tribal governments . . . need to provide the laws, regulations, and independent court systems that will assist and protect business and property rights; no one, whether tribal citizen or a non-Indian, will locate their business and risk their time and money on a reservation where the odds against being successful are too high. In short, Indian nations must make reservations fair and reasonable locations for businesses to locate if they expect to attract investment and build economies.¹⁶⁹

Communities on the Navajo Nation, with their proximity to natural wonders like the Grand Canyon, Navajo National

165. U.S. CONST. art. I, § 8, cl. 1.

166. *Id.*

167. *E.g., Lone Wolf*, 187 U.S. 553.

168. *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 137 (1982).

169. Miller, *supra* note 159.

Monument, Antelope Canyon, and the overall grandeur of the Southwest and its history, make for prime locations for business opportunities.

Today, the small community of Kayenta, Arizona, or *Tó Dínéshzhee* as it is called in Navajo, is the embodiment of the Court's decision in *Merrion*. Located approximately twenty-seven miles south of Monument Valley, the Kayenta Township is the only municipal-style government within the Navajo Nation, functioning as a city-type government that is largely self-governing.¹⁷⁰

On November 5, 1985, the Navajo Tribal Council agreed to set aside over 3,000 acres of Navajo trust land to establish the Kayenta Township project.¹⁷¹ Born out of the 1962 Navajo Tribal Council resolution on land use and planning, the Kayenta Township has developed into a groundbreaking model for self-governance on Indian Lands.¹⁷² In 1996, the Navajo Nation Council adopted a resolution which established the Kayenta Retail Sales Tax Project, with the purpose of empowering the Township to carry out business operations autonomously.¹⁷³ The intent of the tax project was to provide a consistent source of revenue for operation of the Township government.¹⁷⁴ As a result of this variation, the Kayenta Township is empowered with the authority to approve, manage, enforce and monitor business site leases within the boundaries of the Kayenta Township.¹⁷⁵ After its inception, the Township levied a 2.5 percent sales tax on select local businesses.¹⁷⁶ The result of the municipality variance allows Kayenta to bypass political bureaucracy and red tape when attempting to establish revenue-producing businesses within the Township. Revenue from local business stays within the town and helps fund town projects.¹⁷⁷

Robert Miller helps explain the benefits of revenue staying with a locality using Keynesian economics:

170 . KAYENTA TOWNSHIP HIST., <http://kayentatownship-nsn.gov/Home/index.php/2-uncategorised/14-township> [<https://perma.cc/RUY3-N8NY>].

171. IVERSON, *supra* note 8, at 282.

172. *Id.* at 283.

173. *Id.*

174. KAYENTA TOWNSHIP, *supra* note 170.

175. *Id.*

176. IVERSON, *supra* note 8, at 283.

177. KAYENTA TOWNSHIP, *supra* note 170.

[The] “multiplier effect” . . . defines the situation where every dollar that is spent by one person ends up as profit and salary in the hands of another person, whether it is the business owner or an employee of that business. This new person will then also spend that one dollar and pass it on to additional people who will also spend it. In this fashion, one dollar reverberates throughout an economy and becomes pay, profit, and spending money for a greater number of people as long as the dollar stays within the local economy.¹⁷⁸

The formation of Kayenta’s municipality should serve as a model for other communities located within the bounds of reservation lands to emulate. Putting control in the hands of the community government is consistent with principles of sovereignty, self-governance, and self-determination.

Communities on the Navajo Reservation are primarily controlled by “Chapters,” sub-branches of the main government body of the Navajo Nation’s capital in Window Rock, Arizona. Communities must resolve all prospective business matters through the “Chapter House,” which then reports to the main government body. Attaining “Township” status, however, works to operate like a local chamber of commerce, having the effect of bypassing the main government. As one account explains:

[T]he lack of zoning, inadequate housing, and other limitations in the infrastructure of Kayenta made it difficult, if not impossible, to attract business. The BIA and Navajo government bureaucracies hindered development as well, with their seemingly endless supply of white tape. So, too, did the chapter system. “The chapter will have a meeting and ask if everyone says OK to your using a piece of land. If one person says ‘no,’ if one person make a claim to using the land to graze sheep, then you’re in trouble.”¹⁷⁹

Township status provides an effective solution for tribes to control the direction of their own community. Moreover, it simultaneously opens the door for precious business tax revenue to be generated and subsequently dispersed throughout the community.

Moreover, the formation of municipalities within the bounds of reservation lands can decrease dependency on vulnerable Federal dollars. While not a stand-in for supplemental Federal Aid, business tax revenue can cover costs for less cost-burdensome school

178. Miller, *supra* note 159.

179. IVERSON, *supra* note 8, at 282 (quoting Richard Mike, entrepreneur).

initiatives, such as afterschool programs and equipment, books, and simple improvements to aesthetics—even a simple paint job can have the effect of taking a school setting from cold and institutional to warm and inviting.¹⁸⁰ Business revenue can help alleviate the burden on schools in managing teacher housing themselves. Instead, revenue can be used to outsource to private, professional management companies. Investing in teacher housing to provide attractive, safe, and comfortable accommodations will have a positive impact on the recruitment and retention of high-caliber educators and subsequently, student success. More to the point, business revenue can help aid in campus beautification projects, creating an inviting atmosphere more conducive to learning. Research suggests that a positive climate, both aesthetically and in terms of who fills a school, helps students “lower the affective filter,” a term of art in education meaning that students from challenging backgrounds typically come to school guarded and suspicious of their surroundings, a barrier that can impede learning.¹⁸¹ By honoring a tribe’s ability to self-govern, especially with regard to the levying of taxes, the United States government can continue to honor their obligations towards tribes while simultaneously allowing tribes to dictate their futures, in line with American Indian jurisprudence.

The benefits that stem from the power to self-govern are undeniable. However, communities on the Navajo Nation and beyond should first seek to ensure that beyond exercising the power to levy taxes, that systems of support are in place to ensure that business owners will be afforded the legal protections that are necessary to attract businesses in the first place. The stability provided by the tribal judicial system and tribal government will incentivize business owners to establish businesses on reservations and in turn, encourage people to work. The Township model of Kayenta remains unprecedented on the Navajo Nation and is a positive step in the right direction toward self-governance and the ability to collect tax revenue. Tribes can begin helping themselves by enacting codes, like the Uniform Commercial Code, that are

180. See ERIC JENSEN, *Teaching with Poverty in Mind* 96 (2009) (detailing action steps that schools can take to help combat mental fatigue in children who come from challenging environments. Suggestions include student projects, cleaning up graffiti, encouraging teachers to teach some lessons outside, letting fresh air into the room, putting up attractive posters, and bringing in live plants).

181. *Id.*

fundamental to contract law in the business setting. Faced with the prospects of Congressional sequestration, government shutdowns, and shifting priorities, if tribal governments are to become self-sufficient and less reliant on what has become an increasingly unpredictable and unreliable source of funding, tribes must enact measures that will help develop tax-generating business enterprises. By doing so, tribes can begin to restore their communities into the thriving and healthy communities that existed before the imposition of federally mandated reservation life.

IIX. CONCLUSION

The future of education on the Navajo Nation, and indeed, elsewhere, remains largely unknown.¹⁸² While the preservation of culture and language has gained increased recognition in modern times, there is much work to be done. Tribal education has advanced over the years with legislation impacting a variety of issues. However, tribal sovereignty is still a frequently forgotten aspect of Indian education policy.¹⁸³ Undermining tribal sovereignty affects tribes' most vital resource to continued tribal self-determination and self-governance: their children. This forgotten aspect of Indian education leaves students out of balance, with too little exposure to their own language, culture, and values within the education system. This disharmonious approach has a dramatic impact on tribal sovereignty at its very core. But in order to effectuate real change, and to bring about much needed improvements to the Indian education system, a hard look at tribal sovereignty overall must be examined.

The United Nations Declaration on the Rights of Indigenous Peoples has declared that indigenous people have “the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities” and the right to be “entitled to just and fair redress for deprivations of subsistence and

182. See Nizhone Meza, *Indian Education: Maintaining Tribal Sovereignty Through Native American Culture and Language Preservation*, 2015 BYU EDUC. & L.J. 353, 361 (2015).

183. *Id.* at 365–66.

development.”¹⁸⁴ The same declaration also expresses that Indigenous Peoples have a right “to the improvement of their economic and social conditions, including. . . education.”¹⁸⁵ Without the ability to spur economic development, entire communities will continue to suffer from the effects of generational poverty. Gaining at least some economic independence from federal dollars will empower communities to begin the process of healing and change.

This article begs the question: will students fare better if educational institutions receive more money? In short, the answer is a resounding “yes.” American Indian students remain a marginalized population in the United States and are frequently overlooked when it comes to education. What is commonplace in communities throughout America remains a scarce luxury on the reservation: the freedom to operate and make decisions independently. Without this freedom, the Navajo Nation has come to experience the devastating effects of abject poverty that can typically only be escaped with opportunities to learn and advance through educational attainment. The vicious cycle that is poverty is perpetuated on reservations throughout the country from the lack of ability to regulate and manage the land from which taxes can be derived to improve quality of life for those who call the reservation “home.”

True self-determination, unfortunately, remains a distant aspiration in all but just a few communities around the nation. Time and again, tribes have been denied the opportunity to control their own destinies, to make decisions, be held accountable, and help shape their children’s future as the next generation of tribal members. As declared more than forty years ago in the first International Non-Governmental Conference on the Discrimination Against Indigenous Populations:

The indigenous communities of the Americas must be guaranteed the control and supervision of both the form and content of education for their people. Action must be taken in support of this principle and in

184. U.N. GAOR, 61st Sess., 107th plenary mtg., U.N. Doc A/RES/61/295 (Sept. 13, 2007).

185. *Id.* art. 20.

opposition to the subversion of Indian society and culture by existing methods and programmes of education.¹⁸⁶

Tribes must have this legal autonomy for improved student outcomes and success and to continue the legacy of strong cultural identity and adherence. Achieving true sovereignty will allow tribal leadership to honor and continue the traditional ways of life for the tribes. This self-determination exists down to the ability of a tribe's members to maintain a respectful awareness of their cultural heritage, to utilize tribal languages and customs, and to govern and be governed in the traditional manner of their peoples. Without this longstanding sovereignty, Native American tribes would no longer be able to protect their cultural identities. They would be a minority within the vast collection of the American peoples, subject to the laws, morals, and cultural influences that drive the majority of the population.

As tribes garner more self-reliance and self-determination, it is imperative that they retain their core identities. Indeed, in order to reverse the hundreds of years of cultural genocide, we must afford tribes this right. Tribes should be granted the independence to control and dictate their own affairs, especially when it comes to educating children, their most precious assets. Former Secretary of Education Arne Duncan proclaimed in 2012, “. . . tribal leaders, teachers, and parents are best suited to identify and address the needs of their children, and tribal communities deserve to play a greater role in providing American Indian and Alaska Native students with the tools and support they need to be successful in school and beyond.”¹⁸⁷

It is important the U.S. Government continue to honor and uphold treaty provisions, as a reminder that the government must continue to provide educational support for American Indian tribes.¹⁸⁸

186. The Geneva Conf., Int'l Ngo Conference On Discrimination Against Indigenous Peoples (1977), https://ipdpowwow.org/%201977_conference%20ITTC%20Report%20copy.pdf.

187. Video Press Release, Secretary Arne Duncan, U.S. DEP'T OF EDUC., *Secretary Duncan Announces the Launch of the STEP Pilot Program* (May 7, 2012), at <http://youtu.be/ROIJgmPIQf0>.

188. See *Prince v. Bd. of Educ.*, 543 P.2d 1176, 1184 (N.M. 1975) (“We recognize that the federal government, in compliance with its treaty obligations

The United States Declaration of Independence reads in pertinent part that “. . . all men are created equal and independent, that from that equal creation they derive rights inherent and inalienable, among which are the preservation of life, liberty, and the pursuit of happiness” It is time we extend these virtues to the original peoples of our country.¹⁸⁹

to the Navajo Tribe, has a duty to provide for education and other services needed by Indians.”).

189. U.S. CONST., art. I, § 8, cl. 8.