American Indian Law Review

Volume 5 | Number 2

1-1-1977

Children: Indian Juveniles in the State and Tribal Courts of Oregon

Michael J. O'Brien

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

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

Recommended Citation

Michael J. O'Brien, *Children: Indian Juveniles in the State and Tribal Courts of Oregon*, 5 AM. INDIAN L. REV. 343 (1977),
<https://digitalcommons.law.ou.edu/ailr/vol5/iss2/5>

This Note 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 Law-LibraryDigitalCommons@ou.edu.

NOTES AND COMMENTS

CHILDREN: INDIAN JUVENILES IN THE STATE AND TRIBAL COURTS OF OREGON

Michael J. O'Brien

High rates of juvenile delinquency have long been associated with economic deprivation and inferior social status, along with such related phenomena as poor housing, unemployment, inadequate health care, alcoholism, drug abuse, and domestic instability. For American Indians, the social disabilities of poverty have been compounded by racism and cultural disintegration. The latter phenomenon may be partly attributable to a long history of federal policies seeking to assimilate Indians into the mainstream of American society.

This study focuses on juvenile delinquency as one component of the equation of poverty and cultural dislocation in American Indian communities, with particular emphasis on the Warm Springs Reservation of central Oregon.

The Warm Springs Reservation has been selected for special study for several reasons. First, it is the only reservation in Oregon which was not subjected to state jurisdiction pursuant to Public Law 83-280.¹ Thus, the concept of tribal sovereignty retains considerable vitality at Warm Springs, and the tribal government is relatively free to develop its own approaches to the problem of delinquency. Second, the Warm Springs Reservation has enjoyed a degree of prosperity in recent years, which suggests that some progress has been made in attacking the economic roots of delinquency. Finally (and paradoxically), there is evidence that the delinquency rate at Warm Springs is higher than in any other Oregon community—whether Indian or non-Indian, urban or rural.

The juvenile court statistics presented in parts II and III, *infra*, are derived from raw data contained in the annual reports of Oregon counties² to the Research and Statistics Section of the Children's Services Division in Salem, Oregon. Although these reports are not mandatory, 30 of Oregon's 36 counties have participated in this statistical program during recent years, including all counties with large Indian populations. The Warm Springs Confederated Tribes file a separate report, and tribal statistics are excluded from the reports of Jefferson and Wasco counties. Thus, it is possible to obtain a complete and detailed accounting of the

operation of the Warm Springs Tribal Court, as well as precise information as to types of offenses for which juveniles are referred to the court. In order to make comparisons more meaningful, the raw data from the reports has been converted to percentages.

I. The Setting: A Brief Profile of the Warm Springs Indian Reservation

The Warm Springs Indian Reservation was created by the Treaty of June 25, 1855.³ It extends over approximately 1,000 square miles of the arid Columbia Plateau in central Oregon, including portions of Wasco and Jefferson counties. The western third of the reservation is mountainous and heavily forested with dense stands of Ponderosa pine and Douglas fir. The eastern portion is primarily dry, rolling grassland sparsely covered with sagebrush and juniper.

Due to the rainshadow effect of the Cascade Mountains, most of the reservation receives less than 15 inches of annual precipitation. The harshness of the climate and the natural poverty of the soil for crop growing have combined to discourage non-Indian settlement at the external boundaries of Warm Springs.⁴ Consequently, Warm Springs lacks the checkerboard pattern of land tenure which is characteristic of many reservations. The relative homogeneity of the population has tended to facilitate tribal self-government and minimize jurisdictional disputes with the state of Oregon.

The Warm Springs Reservation is the only portion of Indian country in Oregon exempted from the operation of Public Law 83-280.⁵ The legislative history of Public Law 83-280 indicates the basis for this exemption:

[Warm Springs] has a tribal law-and-order organization that functions in a reasonably satisfactory manner.... The Warm Springs Tribe expressed its fear that its members would not be treated fairly in the State courts. The Warm Springs Tribe constitutes an isolated population group. The reservation is located in two counties and the seat of each county government is some distance from the reservation. It has been reported that these two counties are poorly financed and heretofore have been unable to render any appreciable assistance to the Indians on the reservation.⁶

Warm Springs is unique in yet another significant way, *i.e.*, its relative prosperity. The reservation contains 337,000 acres of commercial timberlands, or approximately 17 per cent of the total

forest resources in Indian country in the Pacific Northwest.⁷ The rapid economic development of Warm Springs over the last decade is primarily due to the tribe's increased exploitation of these forest resources. The tribe has exercised a virtual monopoly over timber production within the reservation. It presently owns a large sawmill, two plywood mills, and a stud mill employing a total of 367 persons, including 118 Indians. The tribe also operates the popular Kah-Nee-Tah Hot Springs Resort near the eastern boundary of the reservation. The tribal corporation is the largest employer within the reservation.⁸

The various enterprises owned by the tribe have yielded \$2-3 million in annual revenues in recent years. A portion of the net income is distributed among enrolled members of the tribe in a comprehensive profit-sharing scheme. Each adult enrollee receives \$60 per month, or \$720 annually. Children receive \$45 monthly; the \$15 balance is held in a trust account on their behalf until they attain the age of majority. The remainder of the tribe's net income has been reinvested in its ongoing timber operations.⁹

The recent economic development of Warm Springs has had dramatic demographic effects. While many reservations suffered a net loss in population during the 1960-70 census period, the population of Warm Springs increased significantly. During this same period, the number of Indians considered "urban" in the United States more than doubled, increasing from 147,525 to 360,229.¹⁰ Thus by 1970 43.5 per cent of all Native Americans were considered "urban" compared to 26.7 per cent in 1960.

The national trend toward urbanization reflects, at least in part, the effects of federal termination policies and related relocation schemes such as the Employment Assistance Program, operated by the Bureau of Indian Affairs. Under the relocation programs (in the words of one supporter), "increasing thousands of energetic, healthy, skilled Indians compete successfully in our cities, bring their families into new modern homes, and thus in effect remove many conditions of their earlier wardship."¹¹ Federal policies were evidently founded on the belief that "the new school for civilization was to be the city. Jobs and not farming became the key to civilization."¹²

In Oregon, as elsewhere, urbanization of Indian populations was the dominant trend during the 1960-70 census period. The following changes were recorded in the Indian populations of selected Oregon counties.

Table I indicates that Jefferson County was the only "rural" county in Oregon with a significant Indian population to show a

Table I

Per Cent Increase or Decrease in
Indian Population
(1960-70)

Jefferson Co.(Warm Springs)	36.6
Umatilla Co.	6.0
Klamath Co.	-2.8
Multnomah Co. (Portland)	120.5
Lane Co. (Eugene)	205.6
Marion Co. (Salem)	84.0
Statewide (Indians)	68.7
Statewide (non-Indians)	18.2
National (Indians)	51.0
National (non-Indians)	13.0

substantial population increase from 1960 to 1970. It also reveals that the growth rates for the Indian population were about four times greater than the rates for the general population, both in Oregon and elsewhere in the United States.

At present there are 2,179 enrolled members of the Confederated Tribes of Warm Springs, including about 1,050 persons under the age of eighteen.¹³ An estimated 200 non-Indians reside on the reservation, primarily in the town of Warm Springs. Most non-Indian residents are employed either by the Bureau of Indian Affairs or the tribal mills.¹⁴

Although Warm Springs' recent economic development is clearly a major factor in its demographic growth, other less tangible factors may be equally important, including the tribe's cultural, social, and political cohesion. Whatever the relationship of these factors may be, the apparent durability of Warm Springs contrasts sharply with the disintegration and rapid urbanization of reservation populations elsewhere.

The ability of the tribe to provide continuous employment is a significant factor in its stability. As Table II indicates, the unemployment rate at Warm Springs is relatively low.

The statistical patterns established above suggest that Warm Springs may be viewed as a prototype for economic development of reservations under current federal policies favoring exploitation

Table II
Unemployment Rates in
Selected Areas (1975) ¹⁵

Warm Springs Res.	8.2
Umatilla Res.	43.2
Oregon (non-Indian)	9.1
U.S. (All reservations)	37.0

of tribal resources through tribal initiative. These policies are founded on the assumption that the development of tribal enterprises will eventually increase employment and income on the reservation, resulting in gradual improvements in living standards. Thus, a "dependent" Indian community may finally achieve a degree of self-sufficiency, reducing the need for continuing federal assistance and supervision.¹⁶

Paradoxically, however, there is compelling evidence that Warm Springs' increased prosperity has been accompanied by a deepening rift in the social fabric of the tribe. In addition to the widespread alcoholism, which afflicts virtually all Indian communities, Warm Springs currently suffers from major increases in juvenile delinquency (as discussed in detail in Part III, *infra*). As a result, the Tribal Court is increasingly called upon to intervene in the domestic relations of tribal members—a characteristically Anglo "solution" which in itself indicates the extent to which the cultural autonomy of the tribe has been eroded.¹⁷ Alcoholism has been identified as the greatest single social problem confronting the tribe, for adults and juveniles alike.¹⁸ Alcoholism and delinquency appear to have a common source in "the need to relieve tensions caused by the basic insecurity of reservation life, the poverty, the hopelessness and the desolation of reservation life, the conflicts between two cultures and the apparent absence of means of escape."¹⁹

Although there has been significant improvement in material conditions at Warm Springs in recent years, it appears that the realities of reservation life remain unchanged. In fact, the dimensions of the crisis in juvenile law at Warm Springs suggest that economic development may intensify rather than alleviate the endemic social dislocations of tribal life on the reservation.

II. Tribal Sovereignty at Warm Springs

Jurisdiction and the Tribal Code

Due to Warm Springs' exemption from the operation of Public Law 83-280, the jurisdiction of the Tribal Court is virtually exclusive as to most civil and criminal matters arising within the boundaries of the reservation. There are, however, some significant exceptions. The federal courts retain criminal jurisdiction over certain categories of offenses specified in the Major Crimes Act²⁰ and the Assimilative Crimes Act.²¹ The Indian Civil Rights Act of 1968 places further restraints on tribal jurisdiction, for example, by limiting the maximum punishment a tribal court can impose to six months' imprisonment and/or a fine of \$500.²² In actual practice, the Tribal Court is precluded from trying felonies committed by adults.²³

The state presence at Warm Springs is comparatively slight. The Oregon State Police patrol the two federal highways that pass through the reservation. The state tax on gasoline sales is imposed indirectly on the tribe's wholesalers in the nearby town of Madras, located outside the boundaries of the reservation. Oregon's Attorney General has argued that the state has the power to impose such a tax even where the transaction occurs within the reservation. However, the tribe is evidently entitled to a tax refund for gasoline consumed within the external boundaries of the reservation, excluding state highways.²⁴

The Attorney General has also maintained that state criminal jurisdiction extends to offenses committed on the reservation by persons who are not "tribal" Indians, presumably including the estimated 300 "nontribal" Indians who reside at Warm Springs.²⁵ This position may be vulnerable to attack in view of a recent district court memorandum opinion holding that a "tribe may exercise its powers of local government over a *non-Indian* who enters within the tribe's territorial jurisdiction and commits an offense defined as a crime by its local tribal laws"²⁶

The Warm Springs Tribal Council has acted affirmatively to establish tribal sovereignty in those areas not preempted by Congress in the exercise of its plenary power to regulate Indian affairs.²⁷ In 1973, the council adopted its current Law and Order Code "in the exercise of the sovereign powers reserved in the Treaty of June 25, 1855" (as stated in the Preamble to the Code). These "sovereign powers" have been described as follows:

[T]hose powers which are lawfully vested in an Indian tribe 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 The first element of sovereignty, and the last which may survive successive statutory limitations of Indian tribal power, is the power of the tribe to determine and define its own form of government. Such power includes the right to define the powers and duties of its officials, . . . the rules they are to observe in their capacity as officials, and the forms and procedures which are to attest the authoritative character of acts done in the name of the tribe."²⁸

The Code is contained in a single volume which covers the following general areas: I, "Establishment of Tribal Court,"; II, "Civil Actions"; III, "Probate"; IV, "Domestic Relations"; V, "Sentences"; VI, "Offenses"; VII, "Juvenile Code"; VIII, "Traffic Code."

In general, the provisions of the Tribal Code are similar to the corresponding Oregon statutes. There are, however, some significant variations. For example, the Tribal Code contains several provisions relating to "victimless" crimes which were repealed by the Oregon legislature in 1971, *e.g.*, "Illicit Cohabitation" (Ch. VI, § 29), "Fornication" (Ch. VI, § 33), "Unnatural Sex Acts" (Ch. VI, § 47), and "Giving Venereal Disease to Another" (Ch. VI, § 31) are prohibited. Perhaps the most significant difference, at least for juveniles, is in the Tribal Code's provisions relating to alcohol and narcotics. The Tribal Code provision²⁹ is considerably harsher than Oregon's liberalized Criminal Activity in Drugs statute³⁰: violators are subject to six months' imprisonment or a fine of \$360, or both. In practice, only the fine is imposed in most cases.³¹ Possession or consumption of alcohol is forbidden everywhere on the reservation except at the Kah-Nee-Tah Resort.³²

The Tribal Code provides that the criminal jurisdiction of the Tribal Court shall extend to "any violation of a tribal ordinance committed by an Indian within the reservation, or committed by a member of the tribe outside the reservation while exercising any treaty reserved right."³³ An "Indian" is defined as "a member of the Confederated Tribes" or "any other person of Indian blood who is a member of a recognized Indian tribe under Federal jurisdiction or any other person on the reservation who is recognized by the community as an Indian."³⁴

Tribal Court judges are appointed by the Tribal Council. They must qualify for an appointment under the standards set forth in Chapter I, § 4(4)(a).³⁵

The Tribal Code is silent on the question of representation by

counsel at court proceedings. Nontribal attorneys are generally excluded from the Tribal Court by an informal court rule limiting admission to attorneys who can understand the tribal languages, culture, and people.³⁶ This rule appears to be in conflict with the Indian Civil Act of 1968, which provides that a criminal defendant shall have the right "at his own expense to have the assistance of counsel for his defense."³⁷ In most other respects, however, the Tribal Code conforms closely to the constitutional requirements imposed by the Civil Rights Act.³⁸

*Warm Springs Juvenile Court:
Jurisdiction, Procedures and Facilities*

As in adult criminal cases, questions of jurisdiction may be exceedingly complex in juvenile matters: "In juvenile cases . . . the court with proper jurisdiction may be determined by the severity of the act (major or minor crimes), place where the act was committed (on or off the reservation), and the racial status of the accused and the victim (Indian or non-Indian)."³⁹ Where a serious offense has allegedly been committed on a reservation by an Indian juvenile, federal jurisdiction generally obtains under the Major Crimes Act⁴⁰ or the Assimilative Crimes Act.⁴¹ However, a juvenile accused of committing an adult offense will not be tried in federal court unless the Attorney General certifies that (1) the state has no jurisdiction, or refuses it, and (2) the state lacks adequate programs and services for the rehabilitation of the minor.⁴² Without such certification, the state is granted jurisdiction over the juvenile. But where certification has occurred, the juvenile may elect to be tried either as an adult or a delinquent under the 1974 Amendments to the Federal Juvenile Delinquency Act.⁴³

An analogous procedure has evolved at Warm Springs as a result of a recent district court case involving a tribal juvenile. In *United States v. Switzler*,⁴⁴ the defendant was charged with assault with a dangerous weapon, an offense which normally invokes federal jurisdiction under the Major Crimes Act.⁴⁵ The charge was dismissed upon motion of the United States Attorney with the understanding that the Tribal Court would assume jurisdiction over the defendant.

As a result of *Switzler*, the Tribal Court is authorized (subject to the discretion of the United States Attorney) to exercise jurisdiction over *all* juvenile cases arising on the reservation, regardless of the severity of the offense. In practice, the federal courts will not proceed against a tribal juvenile unless the Tribal Court declines to assert its jurisdiction over the youth.⁴⁶ Thus, there is a "presump-

tion" of tribal jurisdiction in virtually all juvenile matters arising within the reservation.⁴⁷

The result in *Switzler* was anticipated (perhaps inadvertently) by the drafters of the Tribal Code. Chapter VII, Section 2 of the Code provides that the Tribal Court shall have "original jurisdiction" over any juvenile who violates "a law or ordinance of the United States, or a State or county, or the Warm Springs Tribal Code . . ." (emphasis supplied). Thus, the Tribal Court is expressly authorized to assume jurisdiction over juveniles who commit offenses cognizable under federal law.⁴⁸

In most other respects, the Tribal Court operates in a manner similar to juvenile courts on other federally supervised reservations.⁴⁹ Most juvenile complaints (or "referrals") are filed by the Tribal Police. They are received by the Juvenile Officer, who must choose between two dispositional alternatives:

(1) "official disposition: The Juvenile Officer can file a petition to the Tribal Court, eventually resulting in a court appearance for the juvenile; or

(2) "unofficial" disposition: A petition is not filed with the Tribal Court, and no court appearance results. The Juvenile Officer may decide to dismiss the case, return the juvenile to the custody of his or her parents, place the juvenile on probation, or take other informal action.

During this "intake" phase of juvenile procedures, considerable discretion is vested in the Juvenile Officer. The decision to proceed "officially" or "unofficially" is based on an evaluation of the juvenile's past record and the gravity of the offense charged.⁵⁰

Petitions are filed in most cases in which an "adult" offense is charged. Where a status offense is charged, however, juveniles at Warm Springs are far more likely to appear before the court than juveniles in other Oregon jurisdictions, as indicated in Table III.

Once a petition is filed, the Tribal Court is granted broad discretionary powers similar to those conferred upon state juvenile courts.⁵¹ The court may take one or more of the following actions: dismiss the case, assume wardship, return custody to the parents, place the juvenile in detention, impose a probationary period, or place the juvenile in a group or foster home. Although the danger of abuse is always present in any juvenile court proceeding, such discretionary power has certain unique advantages on an Indian reservation.

The law and order personnel on each reservation are in a unique position to know the needs of each juvenile. Due to the size and the population of the reservations, the personnel

Table III
Status Offenses
Handled "Officially"
(Per Cent)*

Warm Springs (1972-74 av.)	58.7
Oregon (26 counties)	16.6
Jefferson Co.	13.4
Wasco Co.	17.3
Klamath Co.	20.1
Umatilla Co.	26.7
Multnomah Co.	11.8
*(1971-73 av.)	

usually know the juvenile's family and the family's background. Each juvenile in this respect may be given the care and treatment—jail or warning—best suited to his particular situation. Discretion in some degree is therefore desirable. The real inadequacies in the procedures stem from a lack of personnel, from general lack of facilities available to those who are genuinely interested in the youth, or from lack of interest by the law and order personnel.⁵²

The Juvenile Code is silent on the question of representation by counsel at court hearings, although Chapter VII, Section 6 allows a spokesman for the juvenile to be present. Four status offenses ("Special Juvenile Offenses") are recognized in Chapter VII, Section 7(12) of the Code: curfew violations, truancy, minor in possession of alcohol, and illegal use of firearms. Runaways come under the jurisdiction of the Tribal Court under a separate section, Chapter VII, Section 2(2)(e).

The tribe has established an enforcement apparatus which includes ten uniformed police officers, three investigators, four jailors, five range-riders, one truant officer, and one fish and game control officer. The tribal jail is designed to accommodate a maximum of 40 persons in six individual cells and one "drunk tank."⁵³

Juvenile facilities operated by the tribe include a group home and "satellite" home (for children under 12). At present the tribe does not have a detention facility. Detained juveniles are placed in "segregated" cells in the tribal jail, or in detention facilities

operated by Jefferson County.⁵⁴ The tribe has obtained federal grants for the construction of a detention facility which should be completed by 1978.

*Jurisdiction Over Juveniles:
Potential Areas of Tribal-State Conflict*

If a tribe of Indians shall become so degraded or reduced in numbers, as to lose the power of self-government, the protection of local law, of necessity, must be extended over them....The exercise of the power of self-government by the Indians, within a state, is undoubtedly contemplated to be temporary.... It is a question, not of abstract right, but of a public policy....[T]heir existence within a state, as a separate and independent community, may seriously embarrass or obstruct the operation of state laws. If, therefore, it would be inconsistent with the political welfare of the states and the social advance of their citizens that an independent and permanent power should exist within their limits, this power must give way to the greater power which surrounds it....⁵⁵

Ever since Indian tribes were characterized as "domestic dependent nations" in *Cherokee Nation v. Georgia*,⁵⁶ the concept of tribal sovereignty has been subjected to continual erosion by successive extensions of federal and state jurisdiction. In 1882, for example, state criminal jurisdiction was extended to non-Indians within an Indian reservation.⁵⁷ Disputes over the extent of state criminal jurisdiction on the reservation continue to the present day. For example, in a recent case, the Supreme Court of North Dakota held that an Indian suspect located on a reservation is amenable to the state's criminal process where the crime was committed off the reservation.⁵⁸ Each such incursion may further compromise a tribe's separate identity, thus inviting further penetration by the state.

Another trend has emerged in recent years, however. A number of court decisions have acted to reinforce tribal independence in such areas as taxation,⁵⁹ hunting and fishing rights,⁶⁰ civil and criminal process,⁶¹ water rights,⁶² and religion.⁶³ These decisions are rarely based upon any concept of tribal sovereignty; instead, they rely upon federal preemption as a bar to state action.⁶⁴

Given the dimensions of juvenile delinquency on most reservations, the effectiveness of a tribe's response to the problem may have important implications for its future relationship with the

state. Inadequate facilities, apparent indifference to juveniles, or a lack of trained personnel may increase pressures on state authorities to intervene on the reservation. A lack of adequate resources for the rehabilitation of delinquent juveniles has been observed at a number of reservations. Tribal jails, for example, are often "too small to provide real segregation between juveniles and adults."⁶⁵ Due in part to the lack of separate facilities, juvenile offenders are frequently treated as adults by tribal judges.⁶⁶ Additionally, juveniles are frequently placed in non-Indian foster homes or other facilities located outside the reservation (although this practice is now disfavored at Warm Springs).⁶⁷ Many tribes, realizing the implications of such placements for the future of the reservation, have undertaken serious efforts to revise tribal codes and improve their juvenile facilities.⁶⁸ Due to inadequate funding and lack of personnel, however, these efforts have had only limited success.⁶⁹

Some commentators have concluded that individual tribes can accomplish little without massive federal or state assistance, including access to state juvenile facilities (which are purportedly "almost always superior to reservation facilities.")⁷⁰ Concurrent or "limited" state jurisdiction over juvenile matters arising on the reservation has been proposed as one solution to the problems of delinquency and inadequate tribal resources.⁷¹

In view of *Kennerly v. District Court*,⁷² it seems doubtful that such "limited jurisdiction" could be assumed without affirmative action by both the tribal membership through a referendum) and the state legislature. Unilateral action by either a tribal government or a state legislature would not conform to the explicit procedural requirements of the 1968 Indian Civil Rights Act.⁷³ Thus, in *Blackwolf v. District Court*,⁷⁴ the Montana Supreme Court invalidated a remand procedure in a tribal code which authorized the state to assume jurisdiction over delinquent juveniles.

The result in *Blackwolf* has been criticized as "generally a denial [to Indians] of the same quality of treatment, care and rehabilitation available to all other juveniles in this country."⁷⁵ "Jurisdictional games" between states and tribes must be subordinated to the welfare of children, according to another commentator.⁷⁶

Perhaps in response to such criticism, the Montana Supreme Court has retreated from the strict position asserted in *Blackwolf*. In *State ex rel. Iron Bear v. District Court*,⁷⁷ the court upheld state jurisdiction in a divorce proceeding. In so doing, it set forth a test for determining when the state may properly exercise subject-matter jurisdiction on a reservation. Among the factors to be con-

sidered is "whether the Tribal Court is currently exercising jurisdiction or has exercised jurisdiction in such a manner as to pre-empt state jurisdiction."⁷⁸ Presumably the state is free to act in those areas which have not been preempted, provided that state action would not "infringe on the right of the Indians to govern themselves."⁷⁹

More recent cases in Montana indicate that the concept of tribal sovereignty is again under judicial attack, notwithstanding *Kennerly* and *Blackwolf*. In *Bad Horse v. Bad Horse*⁸⁰ the Montana Supreme Court stated:

The myth of Indian sovereignty has pervaded judicial attempts by state courts to deal with contemporary Indian problems. Such rationale must yield to the realities of modern life, both on and off the reservation . . . Only by throwing off the strictures of Indian sovereignty can state courts enter the arena and meet the problems of the modern Indian.⁸¹

The traditional right of Indian tribes to regulate internal domestic relations is seriously undermined by *Bad Horse*.⁸² Other implications of the court's position are equally disturbing. It is assumed, for example, that Indian problems cannot be confronted successfully until the state is able to "enter the arena." The court seems to have concluded that Indians are simply incapable of solving their own problems. It follows, of course, that reservation Indians must be brought under the guidance, benevolent or otherwise, of white judges, lawyers, police, social workers, psychologists, and juvenile counselors. Delinquent Indians could be removed from the "unhealthy" environment of the reservation and placed in state facilities where they could be "reeducated" in the ways of the dominant culture.⁸³ Such a solution is ultimately little more than a warmed-over "state" version of federal paternalism. It would contribute to the further disintegration of tribal culture and the erosion of political autonomy. Above all, it would do nothing to eliminate the social and economic causes of delinquency on the reservation.

As noted above, a different approach to delinquency on the reservation may be evolving in Oregon—in practice, if not in court opinions. The emphasis appears to be on expanding tribal jurisdiction rather than limiting it through increasing state intervention. Such an approach may reflect a growing recognition that Indian courts and Indian communities are uniquely qualified to deal with the problems of Indian juveniles.⁸⁴

The very high delinquency rate among Indians living off the

reservation indicates that few Indian juveniles really benefit from the purported "advantages" of state jurisdiction and facilities. Delinquency appears to be a critical problem in Indian communities *wherever* they are located.

III. *Indians in State and Tribal Juvenile Courts*

Given the socio-economic status of Native Americans, both urban and rural, it is not surprising that high levels of delinquency prevail in most Indian communities in the United States. In 1970, for example, the average per capita income for rural Indians was \$1,140 annually, compared to \$2,108 for urban Indians.⁸⁵ Thus, 48 per cent of all rural Indians were living on incomes below the official poverty level; the comparable figure for urban Indians was 26 per cent.⁸⁶ It has been noted that "such extreme economic deprivation, and the resulting strains it places upon intra-family relationships, can have devastating effects upon the psychological development of Indian children."⁸⁷

Inadequate housing and poor health care compound the problems of poverty. Two-thirds of all rural Indians live in houses without water, a figure eight times the national average.⁸⁸ In 1971, the infant mortality rate for Indians was 29.6 per 1,000 live births, as compared to the overall national rate of 19.2.⁸⁹ Alcoholism is rampant among urban and rural Indians alike. Partly as a result of alcoholism, "Indian death rates in traffic accidents are over four times the national rate, even though a lower percentage of Indians own automobiles."⁹⁰ In fact, accidents may be the leading cause of death among Indians.⁹¹

Despite these hardships, the Indian population increased at a rate four times greater than the national average during the 1960-70 census period.⁹² As a result, the Indian population is increasingly youthful: the median age is only 20.4 years.⁹³ At Warm Springs, for example, an estimated 48 per cent of the population is less than 18 years of age.⁹⁴

Single-parent households are increasingly common and about one-third of all Indian children (twice the national average) live with only one parent, usually the mother.⁹⁵ The problems faced by Indian mothers are particularly severe: "Nationally they have the lowest income of any group, with 80 percent of those who work earning less than four thousand dollars per year."⁹⁶

Under these conditions, crime and delinquency rates among American Indians have become significantly higher than among most other groups in the general population. For example, one recent study of juvenile referral patterns on the Wind River (Wyom-

ing) Reservation reveals a delinquency rate "approximately comparable to that in the highest delinquency areas of America's largest cities."⁹⁷

In Oregon, as elsewhere, disproportionate numbers of Indian youths are brought into the juvenile court system. In 1973, for example, 7 per cent of all persons referred for juvenile offenses were Indians, while Indians constituted only .64 per cent of Oregon's population. Thus, Indian juveniles were statistically over-represented by a factor of 11. In counties with substantial Indian populations, the disproportion is somewhat less.

Table IV

Overrepresentation of Indians in Juvenile
Departments, Selected Oregon Counties

	Indians as Percent of Total Population (1970)	Indians as Percent of all Juvenile Cases (1972-74 av.)	Over- representation Factor (x1)
Klamath Co.	2.8	11.2	4
Umatilla Co.	2.1	8.0	4
Marion Co.	.5	2.9	6
Warm Springs	90.9	96.6	1
Multnomah Co. (1973)	1.1 (est. ⁹⁸)	1.1	1
Statewide	.64	7.0	11

Of the 1,306 referrals of Indian juveniles statewide in 1973, fully one-third (440) were made to the Warm Springs Tribal Court. Seventy-two per cent of all referrals of Indian juveniles were made in only four counties, those having 53 per cent of Oregon's Indian population:

Table V

Referrals of Indian Juveniles,
Selected Oregon Counties

Percent of All Referrals (Indian Juveniles) Total: 1,306	Percent of State Indian Population (1970)
---	---

Warm Springs	33.7	15.5
Klamath Co.	12.9	10.5
Umatilla Co.	12.9	7.2
Multnomah Co.	<u>12.2</u>	<u>19.8 (est.)</u>
Totals	71.7	53.0

These figures indicate (1) that Indians are over-represented in Oregon's juvenile court system by a factor of 11—a finding which is comparable to those of other studies;⁹⁹ and, (2) that the delinquency crisis is particularly acute at Warm Springs, and somewhat less so in other counties with large Indian populations.

Serious crimes are uncommon among juveniles, regardless of race, although there is convincing evidence that crimes involving violence are increasing dramatically among young people.¹⁰⁰ Nonetheless, approximately 40 per cent of all juvenile referrals are based on status offenses.¹⁰¹ Table VI provides a detailed breakdown of specific juvenile offenses at Warm Springs and three other jurisdictions.

Table VI
Specific Offenses as Percent
of all Juvenile Referrals

	Warm Springs (1972-74 av.)	Wind River ¹⁰² (1967-71)	Oregon (1971)	Multnomah Co., Ore. (1973)
Alcohol	20.5	26.1	14.0	3.9
Drugs	16.4	1.3	2.7	3.3
Runaways	15.1	6.2	22.7	22.8
Curfew	3.0	11.1	7.5	7.6
Truancy	16.1	2.2	2.0	1.6
Larceny	5.7	5.2	13.8	9.8
Ungovernable behavior	3.0	11.8	7.5	15.3
Burglary	2.6	.1	7.0	14.3
Disord. conduct	2.0	3.9	2.0	.7
Auto theft	1.6	.2	2.6	5.4

These comparisons reveal that the incidence of serious offenses is lower at both the Warm Springs and Wind River reservations. On the other hand, the proportion of alcohol-related offense is significantly higher at Warm Springs, and still higher at Wind

River, than in the other jurisdictions. Drug and truancy violations are relatively high at Warm Springs, while they are insignificant elsewhere.

About one-half of all referrals in each jurisdiction were based on status offenses, as indicated by Table VII.

Table VII
Status Offenses as
Per Cent of all Referrals
(1973)

Warm Springs	54.5
Wind River ¹⁰³	42.5
Multnomah Co.	54.2
Oregon	54.5
National (est.) ¹⁰⁴	40.0

Due to the unavailability of complete census data for the juvenile population of Warm Springs, it is difficult to determine a delinquency rate with any precision. Assuming that there are 1,050 persons under the age of 18 on the reservation,¹⁰⁵ the rate can be calculated as follows.

Table VIII
Delinquency Rates ¹⁰⁶

Warm Springs (1972-74 av.)	15.0
Wind River (1967-71 av.)	12.0
National	2.5

The delinquency rate at Warm Springs and Wind River appears to be five or six times the national average.

The rate at Warm Springs reflects an average based on the total number of cases for the period 1972-74. During this period, however, some very dramatic changes occurred. From 1972 to 1973, for example, the total number of delinquency and dependency cases increased 124 per cent (from 174 to 390), while the total number of cases in all categories increased by 84 per cent (from 252 to 463). The workload of the Tribal Court practically doubled in a single year.

There was a slight increase in delinquency and dependency cases from 1973-74, although the total caseload declined slightly. But by 1974 the delinquency rate had reached 23.3—or over nine times the national average. These staggering increases are even more impressive when compared with recent statistics from other counties in Oregon. Table IX indicates that the number of referrals based on status offenses remained stable or actually declined during the period 1971-73.

Table IX

Referrals Based on Status Offenses
Selected Oregon Counties

	<u>1971</u>	<u>1972</u>	<u>1973</u>	<u>1974</u>
Warm Springs	N/A	115	186	236
Crook Co.	279	N/A	202	N/A
Wasco Co.	411	395	428	N/A
Jefferson Co.	152	144	186	N/A
Klamath Co.	635	673	557	N/A
Umatilla Co.	1175	960	980	N/A
Multnomah Co.	4152	4146	3968	N/A
Oregon ¹⁰⁷	18,814	19,305	17,837	N/A

During the period from 1972 to 1974, there were also substantial changes in the types of offenses upon which referrals were based at Warm Springs.

Table X

Increase in Referrals,
Specific Offenses
(Warm Springs)

	<u>1972</u>	<u>1973</u>	<u>1974</u>
Truancy	53	58	32
Drugs	6	67	74
Runaway	16	45	74
Alcohol	39	51	82
Curfew	5	5	16
Vandalism	7	7	20

Thus, Warm Springs has experienced dramatic increases in those categories of offenses which may be associated with the youth "counterculture" of urban areas. Drug, alcohol, and runaway offenses were the basis for 58.1 per cent of all delinquency referrals in 1974 (compared to 35.1 per cent in 1972). Meanwhile, the number of truancy referrals declined rapidly over the same period.¹⁰⁸ This decline may reflect a change in law enforcement priorities rather than a decrease in the actual incidence of truancy, *i.e.*, "[c]riminal statistics indicate not only the incidence of criminal behavior in a population but also the manner in which the law is administered."¹⁰⁹

Approximately one out of every three juveniles referred for delinquency at Warm Springs is female. A similar ratio of males to females obtains in most Oregon counties.¹¹⁰ However, the proportion of males to females may not be uniform throughout all racial categories, as indicated by Table XI. (Table XI here)

Table XI indicates that nearly equal numbers of male and female Indians are referred for delinquency in Multnomah and Klamath counties. Among other racial groups in these counties, males dominate by ratios of 2 to 1 or 3 to 1. Similar ratios are found at the Warm Springs and Wind River reservations.

There are two alternative explanations for these variations in male-female delinquency ratios: (1) a proportionately greater incidence of delinquency among female Indians in Multnomah and Klamath counties; or, (2) differential enforcement patterns based on race, or on a combination of race and sex.

Conclusion

Juvenile delinquency at Warm Springs is characterized by a high incidence of status offenses and other "victimless" crimes, and a relative scarcity of serious or violent offenses. From 1972-74, for example, 58.1 per cent of all referrals to the Tribal Court were in only four categories: possession of alcohol, runaways, truancy, and criminal possession of drugs. Statewide, these offenses comprised 46.9 per cent of all referrals.¹¹²

By comparison with Warm Springs and the Wind River Reservation, the incidence of serious and violent crimes is much higher in Oregon's juvenile population. For example, burglaries, larcenies, and auto thefts constitute 23.4 per cent of all juvenile offenses in Oregon, compared to 9.9 per cent at Warm Springs and 5.5 per cent at Wind River.

Thus, despite the distance of over 700 miles which separates the two reservations, Warm Springs delinquency appears to have

more in common with Wind River than with any county in Oregon. While delinquency rates are high at both reservations, the incidence of serious offense is relatively low. Given the greater proportion of serious crimes in the general population, the "lower" delinquency rate in Oregon may be a more legitimate cause for concern than the "higher" rate at Warm Springs.

Warm Springs has responded to the problem of delinquency by attempting to expand its juvenile resources and facilities. The tribe has already achieved one of its major objectives: a drastic reduction in off-reservation placements of juveniles. The state is no longer expected to assume responsibility for errant juveniles from Warm Springs. Delinquency is perceived to be primarily an internal problem which can best be remedied through creative application of the principles of self-determination and tribal sovereignty.

NOTES

1. 25 U.S.C. §§ 1321 *et seq.* (Supp. 1968).
2. "Reports on Children's Cases," Children's Services Division Form RS-35.
3. 12 Stat. 963. The Treaty of 1855 was signed by leaders of various bands representing two tribes then living in the area: the Wascos, comprising 452 members, and the Walla Walla or "Wayampuns," with about 950 members. While the total population of the reservation in 1855 was about 1,400, it may have been considerably higher earlier in the nineteenth century. Between 1823 and 1832, a series of epidemics decimated many Indian settlements in the Pacific Northwest, probably as a result of the influx of European trappers and settlers. Anthropological and historical materials relating to the Warm Springs Reservation are presented in great detail in *Confederated Tribes of the Warm Springs Reservation v. United States*, 8 Ind. Cl. Comm. 557 (1960), and subsequent related opinions. The available evidence indicates that the area now within the reservation had been occupied by the Paiutes (or "Snakes") from time immemorial. The Paiutes, however, were apparently displaced to the south during the first half of the nineteenth century. The status of the Paiutes as to a proposed distribution of funds is at issue in a pending district court case, *Gold v. Confederated Tribes of the Warm Springs Indian Reservation*, C.A. No. 75-1097 (filed Nov. 26, 1975).
4. Henceforth, the Warm Springs Reservation will be referred to simply as "Warm Springs." In keeping with contemporary usage, "the Warm Springs tribe" or simply "the tribe" will be used instead of "the Confederated Tribes of Warm Springs." The "merger" of separate tribal names into one—usually the name of the reservation—is a common phenomenon, even where the separate tribes were traditionally antagonistic. For example, the Arapahoe and Shoshone tribes residing on the Wind River (Wyoming) Reservation are commonly referred to as "the Wind River Tribe."
5. 25 U.S.C. §§ 1321 *et seq.* (Supp. 1968).
6. 2 U.S. CODE CONG. & AD. NEWS 2413 (1953).
7. BIA, INDIAN FORESTS OF THE NORTHWEST 3 (1962).
8. The total Indian labor force on the reservation is estimated to be 530 persons. They are employed as follows: tribal administration, 210; tribal sawmill, 118; Kah-Nee-Tah Resort, 80; Bureau of Indian Affairs, 37; small businesses, 28; Public Health Service, 10; unemployed, 47. Interview with Mr. Bartlett of the Warm Springs Agency, BIA, Apr. 22, 1976. [hereinafter cited as Bartlett Interview].
9. Interviews with Mr. Neely, Regional Solicitor's Offices, Dep't of the Interior, Portland, on Nov. 17, 1975, and Feb. 12, 1976.
10. Census figures obtained from Sclar, *Participation by Off-Reservation Indians in*

Programs of the Bureau of Indian Affairs and Indian Health Services, 33 MONT. L. REV. 191 (1972). The authors challenge the accuracy of census data pertaining to Indians, particularly in an urban context. Unless otherwise noted, data from the 1960 and 1970 censuses has been obtained from this source or from the Portland Area Office of the BIA.

11. Watkins, *Termination of Federal Supervision: The Removal of Restrictions over Indian Property and Person*, 311 ANNALS 47, 49 (1957). The author was a primary supporter of federal termination legislation during his term of office as United States Senator from Utah.

12. M. PRICE, *LAW AND THE AMERICAN INDIAN* 584 (1973) [hereinafter cited PRICE].

13. Enrollment statistics obtained from the Office of Vital Statistics, Confederated Tribes of Warm Springs. These figures are current as of April, 1976. The office estimates that there may be up to 300 Indians residing on the reservation who are not enrolled members of the tribe.

14. A large majority of the sawmill's 249 non-Indian employees reside outside the reservation, primarily in the nearby town of Madras. Bartlett Interview, *supra* note 8.

15. Unemployment rates at the Warm Springs and Umatilla reservations provided by the BIA. They are current as of April, 1976. National rate on reservations obtained from BIA, *THE AMERICAN INDIANS* 17 (1974). Oregon unemployment rate current as of April, 1976, provided by the State Labor Department, Salem, Oregon.

16. For a comprehensive statement of the objectives of this policy, see Section 2 of the proposed Indian Resources Development Act. The stated purpose of this Act was "to provide Indians with managerial, credit and corporate tools to enable them to participate more fully in American social, economic, educational, and political life; and to permit them to exercise greater initiative and self-determination." The act failed to pass Congress in 1968. It is reproduced in part in PRICE, *supra* note 12, at 596.

17. See Reese, *Obstacles to the Psychological Development of American Indian Children*, 9 FAM. L.Q. 573 (1975) [hereinafter cited as Reese]. The author notes that "there seems to be increased use of legal mechanisms in domestic problems of Indians," at 586. See also Ackerman, *Marital Instability and Juvenile Delinquency Among the Nez Perces*, 73 AM. ANTHRO. 595 (1971).

18. Interview with Tribal Chief of Police Jeff Sanders, Nov. 10, 1975 [hereinafter cited as Sanders Interview].

19. Reese, *supra* note 17, at 577.

20. 18 U.S.C. § 1153 (Supp. 1977).

21. 18 U.S.C. § 1152 (1948).

22. 25 U.S.C. § 1302(7) (Supp. 1971).

23. The Tribal Code authorizes the court to assume jurisdiction over civil matters where the amount in controversy is under \$3,000. Warm Springs Tribal Law & Order Code Ch. I, § 3(2).

24. 31 ATTY GEN. OP. 87 (Ore. 1962-64). The tribe also pays the state liquor tax by purchasing alcoholic beverages for sale at the Kah-Nee-Tah Resort from the Oregon Liquor Control Commission. It would appear that the tribe could purchase its liquor directly from the distilleries, without paying any state taxes. The authority of the state to impose any form of taxation on reservation Indians is questionable in view of *McClanahan v. Arizona Tax Comm'n*, 411 U.S. 164 (1973). See also DEPT OF THE INTERIOR, *FEDERAL INDIAN LAW* 845 (1958), which states, "Indians and Indian property on any Indian reservation are not subject to State taxation except by virtue of express authority conferred upon the State by act of Congress" (quoted in *McClanahan*, *supra* at 171).

25. 20 ATTY GEN. OP. 172 (Ore. 1958-60); 30 ATTY GEN. OP. 11 (Ore. 1960-62).

26. *Oliphant v. Schlie*, Cr. A. No. 511-73C2 (W.D. Wash., Apr. 5, 1974), (memorandum opinion) (emphasis added). The Oregon Attorney General also has stated that "[t]here is no statutory duty or authority whatsoever for a state police officer to enforce Indian tribal laws," 33 ATTY GEN. OP. 232 (Ore. 1966-68). Nonetheless, there are presently two state police officers who have been cross-deputized for the purpose of enforcing the Warm Springs Tribal Law & Order Code.

27. The power to regulate Indian affairs is conferred upon the United States Congress by the Indian Commerce Clause, U.S. CONST. art. I, § 8. The plenary authority of Congress over Indian affairs, including the "power . . . to abrogate the provisions of an Indian treat-

ty," was recognized in *Lone Wolf v. Hitchcock*, 187 U.S. 553, 556 (1903).

28. F. COHEN, *FEDERAL INDIAN LAW* 122, 126 (1972 ed.).

29. Warm Springs Tribal Law & Order Code Ch. VI, § 23.

30. ORE. REV. STAT. § 167.207.

31. Interview with Chief Judge Irene Wells, Warm Springs Tribal Court, Nov. 10, 1975 [hereinafter cited as Wells Interview].

32. Sanders Interview, *supra* note 18.

33. Warm Springs Tribal Law & Order Code Ch. I, § 3 (1).

34. *Id.*, § 2(1).

35. Any resident of the reservation is eligible for appointment, provided he or she is at least 26 years of age. The Chief Judge, however, must have at least three years' experience as a judge, or "two years of experience or college study in related fields." *Id.*, § 4(4)(a).

36. Wells Interview, *supra* note 31. Judge Wells anticipates that practicing attorneys will eventually appear before the Tribal Court on a regular basis. On the Wind River Reservation in Wyoming, licensed attorneys are admitted to practice before the Tribal Court. However, only about 3 per cent of all juveniles appearing before the court were represented by counsel during the period from 1967 to 1971. Forslund & Myers, *Delinquency Among Wind River Indian Reservation Youth*, 2 AM. INDIAN L. REV. 61, 62 (1974) [hereinafter cited as Forslund & Myers].

37. 25 U.S.C. § 1302(6) (1968).

38. Compare, for example:

Warm Springs Law & Order Code Ch. I, §§	25 U.S.C. §
7 (1) and 7 (2) (Juries)	1302(10)
8 (Witnesses)	1302(6)
16 (Arrests)	1302(2)
17 (Search Warrants)	1302(2)
19 (Bail and Bond)	1302(7)

39. Reese, *supra* note 17, at 579-80.

40. 18 U.S.C. § 1153 (Supp. 1977).

41. 18 U.S.C. § 1152 (1948).

42. 18 U.S.C. § 5032 (1974).

43. 18 U.S.C. § 5031 *et seq.* (1974). Where a major felony is charged, the procedure may be different for juveniles 16 years of age or older. They may be proceeded against in district court as either adults or juveniles, at the discretion of the Attorney General. 18 U.S.C. § 5032 (Supp. 1977). For a recent application of this procedure to a juvenile under 16, see *United States v. Mechem*, 509 F.2d 1193 (1975).

44. Cr. A. No. 75-112 (D. Ore. Oct. 29, 1975).

45. 18 U.S.C. § 1153 (Supp. 1977).

46. Wells Interview, *supra* note 31.

47. This practice may reflect, in part, a belief that the Tribal Court is closer to the problems of Indian juveniles than the federal courts. Convenience is also an important consideration because the district court in Portland is over 100 miles from the town of Warm Springs.

48. The Warm Springs Tribal Law & Order Code also gives the Court "the power to summon . . . those juveniles referred to the Court from other jurisdictions." Ch. VII, § 7 (11). Juveniles who commit offenses outside the reservation are often referred back to the Tribal Court, according to Chief Judge Wells. See note 36, *supra*.

49. For a detailed study of juvenile procedures in the Crow, Blackfeet and Northern Cheyenne tribal courts, see Mudd, *Indian Juveniles and Legislative Delinquency in Montana*, 33 MONT L. REV. 233 (1972) [hereinafter cited as Mudd].

50. Telephone Interview with Eugene Scott, Juvenile Officer, Warm Springs Tribal Court, Apr. 23, 1976, [hereinafter cited as Scott Interview]. In recent years, complaints were "substantiated" (equivalent to a finding of guilt) in 96.7 per cent of all juvenile cases at Warm Springs (1972-74 average). At the Wind River Reservation, 87.2 per cent of all

juveniles appearing before the Tribal Court were found guilty during the period 1967-71. Forslund & Myers, *supra* note 36, at 63. 38.6 per cent of all referrals at Warm Springs resulted in detention for one night or longer (1973-74 average), compared to 39.2 per cent at Wind River, *id.* at 64.

51. *E.g.*, compare Warm Springs Tribal Law & Order Code Ch. VII, §§ (1), 7(4), and 7(10) with ORE. REV. STAT. §§ 419.472 to 419.476. See also Mudd, *supra* note 49.

52. Mudd, *supra* note 49, at 250.

53. The Tribal Police Department has a current annual budget of approximately \$330,000, all of which is provided from tribal funds. Sanders Interview, *supra* note 18.

54. Scott Interview, *supra* note 50. The Warm Springs Tribal Law & Order Code Ch. VII, § 6, provides that "the removal of a neglected, dependent or delinquent juvenile from the reservation should be permitted only in extreme cases." Due to a shortage of foster homes in the past, juveniles from Warm Springs were frequently referred to the Children's Services Division for placement elsewhere in Oregon. See also note 67, *infra*.

55. Worcester v. Georgia, 31 U.S. (6 Pet.) 515, 593 (1832) (concerning opinion).

56. 30 U.S. (5 Pet.) 1 (1831).

57. United States v. McBratney, 104 U.S. 621 (1882). Price suggests that *McBratney* may have been a "judicial mistake which now [has] the legitimacy of long acceptance." PRICE, *supra* note 12, at 193. The "long acceptance" of *McBratney* may be coming to an end; see discussion of *Oliphant v. Schlie*, in text accompanying note 26.

58. Fournier v. Roed, 161 N.W.2d 458 (N.D. 1968). But see Arizona *ex rel.* Merrill v. Turtle, 413 F.2d 683 (9th Cir. 1969).

59. McClanahan v. Arizona Tax Comm'n, 411 U.S. 164 (1973).

60. Kimball v. Callahan, 493 F.2d 564 (9th Cir. 1974); United States v. Washington, 496 F.2d 620 (W.D. Wash. 1974).

61. Arizona *ex rel.* Merrill v. Turtle, 413 F.2d 683 (9th Cir. 1969); Morgan v. Colorado River Indian Tribe, 103 Ariz. 425, 443 P.2d 421 (1968).

62. Pyramid Lake Paiute Tribe v. Morton, 354 F. Supp. 252 (D.C. Nev. 1973).

63. People v. Woody, 61 Cal. App. 2d 717, 394 P.2d 813, 40 Cal. Rptr. 69 (1964).

64. PRICE, *supra* note 12, at 676.

65. Reese, *supra* note 17, at 581.

66. *Id.*

67. At present there are only three or four juveniles from Warm Springs in placements outside the reservation. Scott Interview, *supra* note 50.

68. Reese, *supra* note 17, at 585.

69. *Id.* at 581.

70. *Id.* at 580.

71. Mudd, *supra* note 49, at 251; Reese, *supra* note 17, at 588.

72. 400 U.S. 423 (1971).

73. 25 U.S.C. §§ 1321-26 (1968).

74. 158 Mont. 523, 493 P.2d 1293 (1971), citing *Kennerly v. District Ct.*, 400 U.S. 423 (1971).

75. Mudd, *supra* note 49, at 239. The right of reservation Indians to state welfare services was upheld in *Acosta v. San Diego County*, 126 Cal. App. 2d 455, 272 P.2d 92, 54 Cal. Rptr. 574 (1954).

76. Reese, *supra* note 17, at 589.

77. —Mont.—, 512 P. 2d 1294 (1973).

78. 512 P.2d at 1299.

79. William v. Lee, 358 U.S. 217 (1958).

80. 163 Mont. 445, 517 P.2d 893, *cert. denied*, 419 U.S. 847 (1974).

81. 517 P.2d at 897.

82. Like *Iron Bear*, *supra*, *Bad Horse* involved state jurisdiction in a divorce proceeding. As to the origins of a tribe's power to control internal relations, see DEPT OF THE INTERIOR, FEDERAL INDIAN LAW 423 (1958). The "special vestiges of Indian sovereignty" in this area were recently affirmed in a thoughtful opinion by the Maryland Court of Appeals in *Wakefield v. Little Light*, —Md. App.—, 347 A.2d 228 (1975).

83. Considering the lack of success which characterizes state attempts to cope with

non-Indian delinquency, the logic of this position is less than compelling (see note 100, *infra*).

84. Increased federal aid to tribes attempting to expand their juvenile facilities may be one means of attacking delinquency without altering the delicate relationship between the tribe and the state. Moreover, not all forms of state-tribal cooperation are barred by *Kennerly v. District Ct.*, 400 U.S. 423 (1971), *e.g.*, a tribe may contract with the state for placement of a delinquent juvenile in a state-operated group home. See PRICE, *supra* note 12, at 209.

85. BIA, *THE AMERICAN INDIAN* 18 (1974).

86. *Id.*

87. Reese, *supra* note 17, at 575-76.

88. *Id.*

89. *Id.*

90. *Id.* at 577.

91. *Id.* at 576.

92. See Table I, in text accompanying notes 12-13.

93. Reese, *supra* note 17, at 575.

94. Wells Interview, *supra* note 31.

95. Reese, *supra* note 17, at 575.

96. *Id.*

97. Forslund & Myers, *supra* note 36. This source is the only published study of delinquency patterns within a particular reservation. The data provided by the authors was obtained from the records of the Wind River Court of Indian Offenses for the period 1967-71. The author's findings will be compared with those of this study wherever feasible. All Oregon data used in Part III has been derived from the annual reports by the counties (and Warm Springs) to the Children's Services Division in Salem, Ore. See note 2, *supra*.

98. The 1970 Census indicates that the Indian population of Multnomah County (Portland) is only 2,673. The Urban Indian Center in Portland estimates that the actual number may approach 12,000. For purposes of this study, the Indian population of Multnomah County has been estimated (somewhat arbitrarily) at 6,000.

99. See Forslund & Myers, *supra* note 36.

100. The legislative history of the Juvenile Justice Act of 1974, Pub. L. 93-415, 88 Stat. 1109, 18 U.S.C. §§ 5031 *et seq.* (1974), indicates current national trends in juvenile crime. For example, juveniles are considered to be responsible for 51 per cent of all arrests for property crimes; 23 per cent of all arrests for violent crimes; 45 per cent of all arrests for "serious" crimes. From 1960 to 1974, juvenile involvement in violent crimes increased by 216 per cent, in property crimes, by 91 per cent. Juvenile arrests increased seven times faster than total adult arrests from 1960-70. Recidivism rates are 60-75 per cent "and higher." 3 U.S. CODE CONG. & AD. NEWS 5284 (1974).

101. 3 U.S. CODE CONG. & AD. NEWS 5287 (1974).

102. Forslund & Myers, *supra* note 36, at 63.

103. *Id.*

104. 3 U.S. CODE CONG. & AD. NEWS 5284 (1974).

105. Based on an estimate that 48 per cent of the population of Warm Springs is under the age of 18. See note 94, *supra*.

106. Delinquency rates are calculated on the basis of the number of cases per 100 juveniles in the population. Wind River and national rates obtained from Forslund & Myers, *supra* note 36, at 65.

107. Total statewide referrals based on reports submitted to the Children's Services Division by 25 counties over the period 1971-73. Because delinquency and dependency referrals are combined in these statistical tables, it is not possible to obtain separate figures for delinquency referrals.

108. Truancy referrals have continued to decline through 1975. Scott Interview, *supra* note 50.

109. Forslund & Myers, *supra* note 36, at 66.

110. Statewide totals are not available for delinquency referrals by sex. However, 41 per cent of all juveniles referred for status offenses were female. Taking into account the

higher incidence of “runaways” among females, the overall ratio for all delinquent offenses is probably close to two-thirds male.

111. Forslund & Myers, *supra* note 36.

112. See Table VI in text accompanying note 102.