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A one-year subscription to The Review costs $15.00 for an individual and $20.00 for an institution. For individuals and institutions outside the United States, rates are $27.00 and $32.00, respectively.

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Preface

Last fall, with President Clinton's Initiative on Race drawing to a close, the editorial board of The Georgetown Public Policy Review made a special call for papers to invite continued dialogue on issues where race and public policy intersect. We soon found a common theme emerging from the pool of submissions: seeking justice in this and other nations requires the critical perspectives of native peoples—perspectives that are too often only addendums to the broader race dialogue. An understanding of the dynamics between a nation and its native peoples seems the logical point of departure for understanding all other relationships between its majority and minority populations. However, little of the race relations spotlight falls on any such investigation. We are pleased to offer a venue for such research and analysis in the Spring 1999 issue of The Review.

First, we begin with a series of interviews in which four leading scholars and policymakers reflect on the evolution of the role of race in American life—and the continuing changes we might anticipate into the 21st century. Orlando Patterson, Professor of Sociology at Harvard University, offers his views alongside those of former governor Thomas Kean (R-NJ), who served on the President's Initiative on Race. Bill Lann Lee, Acting Assistant Attorney General for Civil Rights at the US Department of Justice, adds his perspective as does Ingrid Duran, Executive Director of the Congressional Hispanic Caucus Institute.

Next, we present the work of our three featured authors, whose analyses contribute to the search for meaningful remedies to some major social problems native peoples face. In "A Black and White Issue: The Invisibility of American Indians in Racial Policy Discourse," Steve Russell addresses the consequences of our nation's general lack of understanding about the realities of American Indian life. Eileen Luna offers results from her recent study entitled, "Law Enforcement Oversight in the American Indian Community." At a time when the nation's largest police force faces criticism over its relationship with the minority community, Luna's description of the framework and apparent success of tribal police oversight programs may provide direction for law enforcement policy in the US. Our last featured article comes to us from Australia, a country whose prison population reflects disproportionately high incarceration rates for Indigenous peoples—much like the situation with America's minority inmates. Rick Sarre recommends alternative strategies for reducing rates of incarceration and custodial death in his article, "The Imprisonment of Indigenous Australians: Dilemmas and Challenges for Policymakers." In the final section of this issue, we offer concise reviews of five new books on the race and policy scene, dealing with issues of conflict and intolerance, health care, education and community politics.

We hope that this special issue will engage your interest in a broader conception of race relations, and in developing lasting solutions to policy dilemmas like those presented by our contributors. As always, we are grateful for your support and invite your comments.

Jean J. Lim
Editor-in-Chief
The tension between the ideals embedded in the Declaration of Independence and the periodic efforts over the course of our nation's history to differentiate people on the basis of creed, ethnicity or skin color forms one of the key components of the "American story." From the very first interactions between Europeans and Native-Americans in the early 17th century, to the most recent debates over affirmative action and immigration, generations of Americans have battled, sometimes literally, over what it means to form "a more perfect union."

In this issue, The Review has asked four leading scholars and policy practitioners to help us understand the role that race has played in America, and how we ought to think about this important topic as we enter the next century. To do this, Executive Editor Samuel Seidel and Academic Editor Patrick Aylward interviewed the former governor of New Jersey and member of President Clinton's race initiative, Thomas Kean. In addition, Mr. Seidel spoke with Harvard sociologist Orlando Patterson, Congressional Hispanic Caucus Institute Executive Director Ingrid Duran, and Acting Assistant Attorney General for Civil Rights at the US Department of Justice, Bill Lann Lee. Together, these interviews are intended as a contribution to the continuing discussion of race, both in this country and abroad.

Interview with Orlando Patterson,
Professor of Sociology at Harvard University

In your book, The Ordeal of Integration, you say that we need to understand the deep underlying factors of race relations and how we go about the task of making sense of them. How would you address this challenge?

There are at least two aspects of race relations I think we have to understand. One is the language of race itself: the mode of discourse, the way we talk about race, the way we interpret race, the way we use it as a mode of explanation. So the discourse of race is one set of problems.

The other has to do with the actual condition of the people who are most involved when we talk about race, namely people of color, especially African-Americans. How have they progressed, and what is the nature of their interaction?

The reason that this question is important, if not often recognized as such, is that how we talk about race is often as much a part of the problem as the actual condition of the groups being spoken about. We sometimes racialize issues that are not racial and occasionally, too, we fail to see the ethnic aspect of issues that do have a racial component. I think many of the problems of the contemporary underclass are basically not race problems. These problems may have originated in America's history of racial domination, but today they are essentially the problems of structural irrelevance, of a lack of skills, of a whole set of attitudes that increasingly make people irrelevant to the
mainstream society and what the economy needs. To see this as a race problem is an example of what I mean by racializing an issue which is not racial.

But it also goes further than that. The language of race itself is loaded, and it is so often the case that in a conversation, as soon as race is introduced, it changes everything. It introduces a new dimension that makes it very nearly impossible to think straight about the subject. Right now I have a student doing a thesis on just this problem. He is looking at a conflict that emerged here in the Boston area around a public institution. This conflict clearly began as a matter of differing educational philosophies and remained that way until someone interjected race. It just happens that one of the essential persons is an Afro-American. It is not just that rationality was thrown out, but a whole new logic emerged and this came to dominate the discussion and in many ways became the problem. The original problem, a conflict over educational philosophies, was sidelined.

On the other hand, there are cases that we insist on not interpreting as ethnic—I prefer the term ethnic rather than racial—which indeed do originate in our peculiar history of race relations. My favorite example of that comes from my most recent book, *Rituals of Blood*. It has to do with the Afro-American family and the problems that Afro-Americans have in their gender relations—their extraordinary situation of low marriage rates, high rates of divorce and high rates of paternal abandonment of children. Ironically, we tend to interpret this as a class problem—as a problem of poverty. In fact, it is only partially a class problem. Being poor does not predispose one to this kind of marital and familial behavior. This indeed is a problem that originates in the peculiar ethnic/racial history of America going back to the period of slavery.

So you have your two examples where serious issues get obscured by the fact that we racialize very often when we shouldn’t and vice versa.

*You also say in The Ordeal of Integration that this is "the best of times and the worst of times" for African-Americans. How so?*

I use that Dickensian trope—and it is interesting how many people picked up on that—to refer to the fact that by most indices—economic, political, cultural—the condition of the top two thirds of Afro-Americans is better than it’s ever been. The middle class is larger than it has ever been. Gains have been made in education, in the military, and in cultural life—particularly the enormous influence of Afro-Americans in popular culture. These are the best of times from that point of view, certainly the best of times for the middle classes, but also for the majority of hardworking, solidly God-fearing Afro-Americans.

However, for the bottom 25 percent of the African-American population, we have had a real crisis that in many ways may be the worst of times for them in the sense that they are isolated from more successful Afro-Americans and from the society at large. They are also suffering from increased ghettoization and a persistent poverty that they don’t seem to be able to get out of.

In addition, they are plagued by the small minority of underclass who are parasites on them. It is very important that we do not confuse the poor, most of whom are hard-working, God-fearing people, with the small but cancerous eight to ten percent of people in the urban areas who wreak havoc on the lives of people who live in neighborhoods where they are too terrified to walk. The poor used to live in communities where they had the fellowship of
Afro-Americans. I don’t want to idealize it—at no point was the situation ideal—but poverty in a context in which you have some sense of community makes life a little more bearable. Being poor and isolated in ghettos in which you are too terrified to walk or even to send your kids out to play must be a nightmare. In that sense, it must be the worst of times, at least since slavery, for the bottom quarter of the Afro-American population.

You also state in *The Ordeal of Integration* that America is not a meritocratic society but a plutocratic society. Can you explain the meaning of this distinction, and what its implications are in terms of race?

A pure meritocratic society doesn’t exist anywhere. We live in a society in which merit is important but in which wealth is probably more important. Nothing succeeds like wealth. To the degree that merit in fact accounts for wealth, it obviously is an important indirect factor. This is increasingly the case.

Unfortunately, society is powerfully influenced by the wealthy and their interests. From that point of view, as a student of democracy, things may be getting worse given the complete incapacity to do anything about campaign finance laws and the outrageous influence of special interests on the Congress and on the presidency. I mentioned this in the book because I was thinking of the attack on affirmative action.

In one of the chapters I try to make the case that, from a philosophical or sociological point of view, there is also an affirmative action for the rich. There are many groups who are privileged and, for various reasons, have unearned entitlements and advantages. I made the argument more fully in my discussion of the crisis of conservative advocacy. I am not just thinking of group preferences that existed before, such as veterans’ benefits and the large-scale efforts of the government after the Second World War that amounted to a massive affirmative action program for the lower middle class. The GI Bill and Fannie Mae are both forms of that, and they both excluded African-Americans. I am also thinking of corporate welfare systems and those for the farming community. These are all examples of a society in which people do not receive their wealth or position purely on merit.

But, of course, most important of all is the non-meritocratic principle of passing on one’s wealth and influence to one’s children. It is blatant in America. Look at the political field right now. We have a Bush, the son of Bush, who is the most likely GOP candidate. We have a Gore, the son of Gore. They even have the same first names as their fathers. And we have, in the coming senatorial and presidential races, Clinton the wife of Clinton and Dole the wife of Dole. Not to mention Dan Quayle in the wings, a man of little merit who holds his position almost totally on the basis of his parents’ influence.

I am not so naive as to believe there could be a purely meritocratic society. I am not sure I’d want such a society myself; I’d like to make that clear. I think a purely meritocratic society may well be a disaster from a purely sociological point of view. But it is just disingenuous of people to get up and say that America is based on a wholly meritocratic principle and that this principle is being violated by those who try to offer a leg up to those who have been persecuted.

*Over your career, you have written much about slavery. In your view, what*
has been the impact of American slavery on American society?

First of all, race has played a central role in American society for so long. We’re getting over it finally, but we still have a way to go. The social construction of race emerged from slavery. Racism was largely the product of slavery. But more importantly, there was a distinctive kind of racism in America, in which African-Americans were seen as the quintessential “other,” and Euro-Americans were seen as the “we.” That strongly influenced the Republic and our conceptions of democracy in many ways, going all the way back to colonial Virginia. Virginia was the first democracy in the modern world where the majority of adult males voted, and that was made possible precisely because of slavery. As the historian Edmund Morgan showed, the use of racism and racial division prevented the incipient solidarity between the oppressed groups of indentured Euro-Americans and enslaved African-Americans and disinherited Indians. It also established a solidarity among “we whites” which became the basis of the demos, the Republic.

There are many studies now showing that this wasn’t confined to slavery and the South. In the North, in what [Alexander] Saxton calls the “rise of the white republic,” there is equally the construction of the use of race to incorporate many immigrants of Europe who originally had nothing in common with each other. An Irish potato farmer fleeing the famine, a German metalworker, a Swedish peasant and an Italian working-class person, not to mention a Sicilian, had absolutely nothing in common. But then they came to America and they discovered this thing, this incredible construction, which was “whiteness,” a race, a new inclusive identity. This whiteness was of course an enormously valuable social asset, and they eagerly embraced it. This positional good of whiteness, however, required the presence of African-Americans—the slave or ex-slave, the domesticated enemy, the outsider within who gave meaning to “we the white people, we the true citizens.”

Today, there is still this thing called “racial identity.” Americans place it on the same level as their gender identity. We have made race and racial identity one of the critical identities. Slavery also explains why, in the post-bellum South, Afro-Americans were used as ritual objects in human sacrifice, which is what a good part of lynching was in the South. In more modern times, the single most important political/social event of the second half of the 20th century in America was the Civil Rights Movement, which was important in beginning to address America’s greatest shame.

Culturally, the Civil Rights Movement was the final act in the abolition of slavery. It was important also for the broader society in that it did several things. It presented a model of how other minority groups could struggle—and not just minority groups, but how women could struggle. In that sense it created a model of struggle which was to influence all of American political life. But it also initiated the rights revolution and reinvigorated the Bill of Rights that had remained moribund for well over 150 years.

We are living through the era of the rights revolution, and that is the product of America’s attempt to undo it’s shameful history of slavery and racial oppression. So both in the creation of racial domination and in the destruction of racial domination, we have had a society which has been enormously influenced by this institution.
In *The Ordeal*, I suggest that the salience of race may be fading. However, one of the tragic ironies of our times is that many African-American leaders seem now committed to maintaining the salience of race in the society, as much as many reactionary racists do.

In the opening chapter of the report from President Clinton's "One America in the 21st Century: The President's Initiative on Race," the authors of that document state that "Each minority group shares a common history of legally mandated and/or socially and economically imposed subordination to white European-Americans." To what degree do you think that minorities in this country have shared a common experience? To what degree do you think minority groups in this country have had experiences unique to their group?

First of all, the statement of the report is inaccurate and badly phrased. Minority groups have included many people. It depends on what you mean by a minority group. Many Euro-Americans experienced this sense of subordination. So it irritates me as a historical sociologist to hear it phrased this way.

What they may have meant to say was that many minority groups have experienced some form of discrimination. That is certainly true of the Jews, and it is certainly true of the Irish and Italians—many of whom had to struggle for the status of whiteness. Having achieved it, of course, they defended it with a vengeance vis-à-vis the group that makes whiteness important, namely African-Americans.

There are similarities of minority status; the experience of racial and ethnic prejudice is similar. However, the African-American and Native American experiences are unique—unique not only in the sense of the degree and length of the persecution but also unique in their kind. There are attempts by neo-conservatives to say that what the African-Americans experienced was really no different from what Euro-Americans went through. But none of these groups experienced slavery and slavery was peculiar. None of these groups experienced Jim Crow. Most important of all, none of them suffered the level of economic discrimination in the sustained way that excluded them from the industrial process.

The point here is that the Irish laborer who was being underpaid was nonetheless still a laborer and had a regular job and experienced the industrial workplace and could pass that on to his children. To be completely excluded from industrialized America, which African-Americans were for so long, was just an outrage and a tragedy from which African-Americans are still recovering.

Yes, it is true that the Irish lived in ghettos, that the Jews did, and that the Italians did. But the similarity ends as soon as one looks more closely, as Douglas Massey and others have done. There is absolutely nothing in the experience of the Irish, the Italians or the Jews to compare with the typical ghetto in the cities of America. The typical Italian ghetto, or Jewish ghetto or Greek ghetto was very rarely really more than 40 or 45 percent comprised of these populations. Only in some Italian communities in some cities was the population over 50 percent Italian, but it never reached 80 or 90 percent as is the case in most African-American ghettos today. So, European immigrants did not experience the hyper-segregation and exclusion that African-Americans did and still do.

There was some prejudice against Euro-Americans, but they were included eventually, and they did intermarry, and this is another major, major
difference. One of the extraordinary things about America is that all its immigrant groups could intermarry. Intermarriage has been very important in American cultural and social history. When people intermarry, they exchange not just material dowries but, more importantly, they exchange what I call cultural dowries.

Part of the dynamism of this great society springs from that exchange of cultural dowries which came from the enormous intermarrying of peoples from different backgrounds. They bring long histories of ways of doing things—ways of bringing up children, ways of networking, ways of tackling problems. And when you throw all that together, you get a dynamic process that results in the explosive creativity of this culture—in science, in literature, in the arts and so on. People haven't paid enough attention to this simple fact.

But the point I am making here is that one group was systematically excluded from this generative civilizational process: Afro-Americans.

Many studies have found that blacks are overrepresented as both the victims and the offenders of crime and that blacks often receive more severe punishments for similar crimes. Does this overrepresentation speak of structural flaws in the American system of justice?

It does speak of structural flaws in the American criminal justice system, but I don't think you should stop there. It also speaks of some cultural and structural flaws within the African-American community, and I have addressed both in my writing.

When I address the first, the structural flaws in the criminal justice system, the liberals all hail. But I also try to say that it is not just because of unfair sentencing, though that's a major factor. It's not just because of racist police, though that is certainly a factor. It is also because African-Americans are committing more serious crimes disproportionately, and however you want to explain it, that is a fact.

Right now we're preoccupied, and I certainly am, with the amazing rise of what is called the prison-industrial complex, the large number of people who are being incarcerated, and the unfairness and counterproductive nature of it. A high proportion of the criminals in jail are non-violent people who are being made into hardened criminals. Here I am really disappointed with the Clinton administration, which has done a lot in other respects for Afro-Americans, but certainly has not only turned its back on this problem, but also has worsened it. The vast growth of the prison system came under Clinton's watch, and he, because of his own problems, has found it necessary to take a "tough on crime" stance. I'm tough on crime, too, as are most African-Americans. They are the main victims of the criminals among them. But you can be tough on crime and do the right thing in terms of imprisoning people. Put those who are violent behind bars, but also emphasize preventive programs and rehabilitative programs, and make sure that you do not create a prison system which ends up creating criminals—exactly the problem we are having now.

Having said all of that, there is also a serious problem within the Afro-American community. Not only do they need to fight the prison-industrial complex that's emerging and the unfair sentencing system, particularly in relation to the drug laws, but they've also got to fight on the internal front. They increasingly need to ask themselves, "Why are there so many criminals in the African-American community, and what internal failures account for the fact
that so many young people take to crime?"

To talk simply about jobs—and the lack of jobs—is just not the answer. My own research indicates that this cannot be the answer. There is a level of crime due to material needs and to desperation. But my sense is that there are jobs out there for people who are willing to work and accept the salaries for the skill levels that they have. A small proportion of people become criminals for material reasons and lack of jobs, but that cannot be the whole answer. The answer is partly found in the crisis of Afro-American families, in the fact that 60 percent of Afro-American children have been abandoned by their fathers.

You were a special adviser to the late Prime Minister of Jamaica, Michael Manley. You have written about the history and sociology of Jamaica. What have these different perspectives taught you about the study and the practice of policy?

Doing policy does inform the analytic process, especially for social scientists. It is good that we get out there and get involved—not only to help change the conditions we describe, but also to learn what it’s like trying to change. That does add depth to one’s work when one gets back into the act of interpretation and analysis.

What do you think America will look like in 100 years?

There will be enormous changes in the ethnic composition of this society. You’ve heard about the demographic predictions. I think some of them are a little loopy. Euro-Americans, or people who look like Euro-Americans, will continue to be the dominant group demographically. But what I think will change is the centrality of race. [W.E.B.] DuBois predicted at the end of the 19th century that the 20th century would be the century of the color line. The 21st century will be the century of the removal of the color line but there will still be lines—new class divisions, perhaps new culture wars.

One important change, which is already on the way, is that America’s peculiar conception of race—what I call “the binary conception of race,” in which you are either white or not white—is going to disappear. The binary conception of race only works when there are two main groups, in this case Afro-Americans and Euro-Americans. With the introduction of many other groups who are neither Euro-Americans nor Afro-Americans, the binary distinction gets clouded. Hispanics are very important in this regard, because they refuse to be identified as either black or white. And you have Asians coming in, who are also very important. They tend to come in at the middle and top of the economic ladder. So the traditional system of racial categorization is already being shaken up.

What is going to replace it is interesting. Are we going to get a Latinization of the system? This would be very different, but not necessarily better. If you have been to Brazil, you know that they love to celebrate their racial democracy, but that is just ideological poppycock, a smokescreen. They are, in their own way, just as racist as anyone. Similarly, Cuba has a different system but still with some of the worst racism in the New World.

My sense is that, on the whole, the salience of race is going to decline in this society and, secondly, far more intermarriage is going to take place. It is already happening to a considerable degree among the different ethnic groups of Euro-Americans. The rate of intermarriage of Hispanics is very high, as it is among Asians. And although
the Census Bureau insists on perpetuating the myth of race by inventing racial categories instead of abolishing them, my sense is that the enormous salience of race in American culture—which has been there from the beginning right up to the end of the 20th century—is waning and, by the end of this century, will have gone.

I think, too, that the enormous centrality of gender distinction will decline. Gender will remain salient always because men and women are different in ways that we thank the Lord for. But gender discrimination will decline. I can anticipate full equality of women long before the end of the century. I can see that within the next 30 years, we will have a woman president. Almost certainly, we will have an African-American president. Colin Powell does not have a monopoly on those qualities. There are lots of Colin Powells out there, although it is very likely that they may come from the military, as he did.

So, ethnic and gender discrimination will decline significantly. And society is going to become much browner, as Asians and Hispanics and, increasingly, African-Americans intermarry with Euro-Americans. So here is a nice, quirky prediction—the suntanning industry is going to suffer quite significantly by about the year 2050.

It is also true that the century that is emerging—the global century—is also going to be an American century. Its influence will grow, not only in military terms, but also in cultural terms. I don't fear this, as many people do, because America is so much influenced by the world. The book I am writing now, *Eccumenical America*, argues that in fact America's ecumenism is a filter through which the cultures of the world pass. The world came here and influenced powerfully the thing that became American culture. So we shouldn't be surprised when the rest of the world finds American culture seductive, because they are partly seeing reflections of themselves.

American culture is uniquely a global culture, created by immigrants from the world. Therein lies its genius, its dynamism and its power to seduce the world. And one group stands out in its contribution to the irresistible attraction of American popular culture to the world's peoples—Afro-Americans, the domestic outsiders whose cultural creations came to define what is most quintessentially American to non-Americans. The outsiders within have made possible the cultural conquest of the outsiders without. That is the great irony of ecumenical America as it prepares to seize the 21st century.

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Orlando Patterson, a professor of sociology at Harvard University, has written widely on the subject of race and slavery in Western history. His 1991 book, *Freedom in the Making of Western Culture*, won the National Book Award. He is also a fellow at the American Academy of Arts and Sciences.
Interview with Former Governor
Thomas H. Kean (R-NJ), member of
President Clinton’s Initiative on Race

The spring issue of The Georgetown Public Policy Review is focusing on the question of race relations, both in this country and abroad. Given your personal and professional history, what do the words “race relations” mean to you?

Well, because of the generation I am from, race means to me the relationship between black and white in the United States. I was of the generation that grew up in the Civil Rights Movement. I was with Dr. King, a member of the Southern Christian Leadership organization, and my generation was very much a part of the movement to integrate the country. So when you say race relations to me, I know academically and intellectually it should be defined in a much wider context, but because of my background and my history, I think in terms of black and white.

You have long had an interest in education and its importance in American life. As a governor, you were confronted with many of the difficult questions about such issues as disparities in school funding, busing and affirmative action. While a great amount of political and social energy has gone into trying to ensure equal opportunity of education, nevertheless, there persist inequalities in educational opportunities and outcomes closely correlated with race. Where does this leave us as a nation, and how should we move forward?

In the past, we have viewed those questions in a relatively simple manner. In other words, we’ve said that, if we could increase funding for people who were black or for people who were Hispanic, then we could solve the problem. But it is much more complex than that. We now recognize that. The problems are caused not just by funding. And in the cities where the funding issue has been addressed, inequalities still exist in terms of outcomes.

So, until we get into the neighborhoods, until we understand that it is a question of the family and the strengthening of the family, until we recognize that it is a question of health care, especially for younger children, until we recognize the problem of order in the streets, until we look at the complexity of the issues affecting young children who grow up in poverty, we’re not going to be able to solve that problem. Schools alone are not the easy answer. Addressing inequalities in school funding is important. We should continue to work in that regard. Now, however, we’re looking at the issue in a much more complex and realistic way. And there are places where a whole variety of these issues are being addressed, and where progress is being made. But it is difficult, it is slow, and it takes the cooperation of all elements of society, and that sometimes is very difficult to achieve.

Many studies have found that blacks are overrepresented as both the victim’s and the offenders of crime and the blacks often receive more severe punishments for similar crimes. Does this overrepresentation speak of structural flaws in the American
criminal justice system? If it does, what would be remedies for it?

There has been a lot of anecdotal evidence, particularly in recent days, that people are not being treated equally. Racial profiling—or what looks to be profiling in a number of states—not just by local police but by state police organizations, is going on. We had important examples of what may well be police brutality in the city of New York.

I hope that this will make us look at the whole question of police training, and cause us to review police actions. At the same time, we must support the law enforcement function of the police, and recognize the fact that you've got to maintain morale in a police organization. That can be very difficult. But it has to be done. To me, there's enough evidence right now of inequality of treatment under the law that it must be addressed, but it's got to be addressed in a way that maintains the morale and the function of the police forces.

President Clinton recently instituted “One America in the 21st Century: The President’s Initiative on Race” to look at the issue and history of race in this country. While Mr. Clinton is often credited for showing his sensitivity to the question of race, some have argued that the Initiative focused on black/white issues at the expense of other groups, such as Hispanics and Native-Americans. You were an advisory board member of the Initiative. In what ways did you feel that the Initiative succeeded? In what ways did it fall short?

Well, the idea of whether or not we were going to focus on black/white issues as opposed to the broader issues of Hispanic-Americans, Asian-Americans or Native-Americans was raised at the very first meeting by Angela Oh, one of our members. That question was always out there in the air, but we never really answered it satisfactorily. We never really concentrated on the black/white issue either.

If I have a criticism of the commission, it is that we weren't bold enough. If you are going to address the issue of race in the United States, you've got to say some uncomfortable things, and you've got to confront some people who are not used to being confronted. The commission was reluctant to do that, the staff was reluctant to do that, and the White House was reluctant to do that, so it never was done. But a commission that is going to look at race in America has got to make a lot of people uncomfortable, and we didn't do that.

I think that we're losing an opportunity. This president is more capable of promoting racial healing in this country than any president in my lifetime. And we're missing the opportunity to take advantage of his leadership. This president understands the racial divide. This president has very strong relationships with people in the minority community. They understand him. They respect him in ways that they have not always respected presidents of either party, which gives this president a tremendous opportunity to advance racial understanding. And every day that goes by, we're losing that opportunity. I have no idea whether the next president, whether Republican or Democrat, will be able to do that. If past history is any guide, he or she will not be.

What I was given to believe when we started the Race Initiative was that the commission that I participated in was only going to be a small part of it. I understood that our job was to kick off what was going to be the last major initiative of the last two years of the Clinton administration—an effort to promote racial healing in this country. My
personal recommendation was that the president address Congress on the subject of race in this country. The subject is that important. But other issues have taken over the agenda, or the administration has lost interest, or politically they don't want to do it—whatever the reason—the understanding and the ability of the president in the area of race is not being utilized, and we're losing a great opportunity.

I believe this is one of the areas where Bill Clinton is totally sincere. I believe every fiber of him wants to address the issue of race in this country. I've known him a long time, and he's always been that way. He was that way as governor, and he is that way as president. And I think that comes through. When he talks about race, people understand the sincerity. Secondly, as a Southerner, from a state like Arkansas, he has a much deeper understanding of race than those of us who have grown up in other states. Third, he has strong relationships with community leaders, particularly in the African-American community. He's worked with many of them for years, and they trust him. So that enables him to say and do things that people will take on faith, where they might question the same statement if it came from another leader.

Some argue that for many minorities, there exists a tension between the desire to be integrated into mainstream American society, and the desire to maintain their connection to their ethnic or racial identity. Does this tension exist? How is it getting resolved in America today?

That tension will never be resolved and it is a healthy tension, and it affects all of us. I mean, I've got some Irish ancestry in me. I want to go down and march in the St. Patrick's Day parade. So, on the one hand I'm proud of that heritage. On the other hand, I subscribe totally to our Constitution, and I honor those who are not Irish-American in our history, and I believe I'm a good American.

I believe every group has that tension. And it is right in this country to be proud of who you are. It is right to be proud of our heritage. There isn't a racial or ethnic group in this country that doesn't have things to look back on with pride. On the other hand, we're unique in this country. We're the only country founded on an idea. We're not 95 percent Han, like the Chinese. The French are mostly all French. We are made up of a polyglot of races and cultures and ethnic groups and therefore these ideas that hold us together are very important. So, we've got to not only be proud of who we are ethnically or racially, but we'd better embrace the ideas in the Declaration of Independence and the Constitution. They hold us together, and we ought to talk about them, so we can unite as Americans. Otherwise, we're going to balkanize. And if that happens, this democracy is not going to survive.

There has been much written and said recently about the relationship between the Republican Party and minorities in this country. Some of it has been positive, but much of it negative. How would you characterize the relationship between the GOP and minorities, and how would you urge the discussion of race be carried forward in the political sphere through this upcoming presidential election and beyond?

First of all, the Republican Party at its best is the party of Lincoln, and it has been the party to carry out and follow through on Lincoln's ideas. And many of our great leaders throughout history, as Republicans, have followed Lincoln and are proud of their record. There have been Republicans who haven't followed those ideas, but they have never been the mainstream of the party. The Republican Party should be the party of equal
opportunity. And the Republican Party should be supporting all measures toward equal opportunity for all the country’s citizens. When we do, the voters respond. When I ran for governor in New Jersey, I received 60 percent of the African-American vote.

The media has to strike a delicate balance when dealing with many important issues. What role does the media play in forming our understanding of ourselves as a nation in terms of our diversity? Do you have ideas about how they might do that better?

I think that by and large, the media plays a negative role. It sensationalizes the problems of race rather than illuminating them. It allows, certainly in the mass media, stereotyping of racial and ethnic groups, which is very harmful. It does not promote racial healing, and it gives headlines to those who promote racial division. So I’m fairly negative about the media. I think as a whole, they are a negative force, with notable exceptions. Obviously, there are some wonderful columnists, some wonderful newspapers, some wonderful specials on television, which go entirely in the right direction. But when you take the whole media, which to me is all the television stations, all the newspapers from The New York Times to the supermarket tabloid, the overall impact is negative, not positive.

Do you feel there is a way to change that?

Any change has got to be within the industry, because our First Amendment protects media from the government, and rightly so. So it has got to be within the media. Particularly in the visual media, the television, because as much as some of us like newspapers, that is not where most Americans get their news. And children, we know, spend more time in front of the television set than they do in school, and certainly more than they do talking to their parents. So that is where they get their images. What needs to be reformed is television, and it can only be reformed by those people who are now making huge dollars as studio heads and anchors and writers. So the people who produce these very popular sitcoms, shows that are seen by millions and millions of people every day, need to ask themselves, “What is the America we all would like to strive for? How do we depict people of other races in our programming? How can we celebrate people who are trying to heal the racial divide in this country?”

What will America look like 100 years from now?

Our best hope is that the race question solves itself, and it may well do that. The tremendous intermarriage that is going on isn’t really adequately documented right now, because our statisticians don’t ask people questions that would reveal their mixed heritage. More and more, people are going to have the blood of all races and ethnic groups in their veins. It is very hard for people to be prejudiced against an Asian or an African if your family is part Asian or African.

Thomas H. Kean, governor of New Jersey from 1982 to 1990, is currently the president of Drew University. A life-long advocate for issues of education and equality in American society, he was appointed by President Clinton to serve as an advisory board member on “One America in the 21st Century: The President’s Initiative on Race.” Along with his duties at Drew, he also serves as the chairman of the Carnegie Corporation.
Interview with Bill Lann Lee, Acting Assistant Attorney General for Civil Rights, US Department of Justice

The spring issue of The Georgetown Public Policy Review is focusing on the question of race relations, both in this country and abroad. Given your personal and professional history, what do the words “race relations” mean to you?

The words “race relations” mean to me the interactions between peoples of different races, colors and ethnicities in our country. I guess this interaction started early in our history. The pilgrims came here and encountered the Indians. The Constitution included language which made slaves a fractional portion of a person. So, I see this term “race relations” as having to do with the history of different groups of people in this country.

In 1997, the Civil Rights Division of the Justice Department celebrated its 40th anniversary. In that time, it has participated in many of the most important, if not divisive, debates about the nature of American society, particularly those related to race. As such, the Civil Rights Division has played a fundamental role in shaping American society. What is the battle over civil rights really about?

The Civil Rights Division is a very interesting outfit. It exists only because Congress has seen fit to create a part of the Department of Justice that has a rather unique role—to enforce the nation’s civil rights laws. We have had two historic periods in civil rights legislation. One was immediately after the Civil War. The second one began in 1957 with the passage of the Voting Rights Act and the laws that set up the Civil Rights Division. I say that the role is unique because when I meet leaders from other countries, they usually don’t have an office that is charged with the job of enforcing civil rights guarantees. A lot of countries have wonderful-sounding laws on the books that guarantee equality. It sounds fantastic, but if you look at the reality, it sometimes is very different.

In our country, we not only have laws on the books that guarantee equal opportunity and fairness, but we also have an entity within the government whose job it is to make sure that those laws are really enforced—that promises are translated into reality.

The Civil Rights Division has played a role in race relations in this country, because Congress has seen fit to have an outfit with the responsibility of standing up for these basic principles.

It is an important role. I also think it is a unifying role. When people stop and think about it, it speaks well of our country that we set aside time and resources to translate promises into reality. When people complain to the Department of Justice that their rights have been violated—that they have been denied jobs because they’re women or because they’re African-American, or they’ve been denied housing because they’re Hispanic, or they’ve been subject to hate crimes for any number of reasons—there is someone in the federal government whose job it is to look at the complaint and see if it falls within the four corners of our jurisdiction. Then we enforce those
laws. That is a really important function. It recasts debate about race relations into one about law enforcement. Our laws stand on the side of freedom from discrimination and exclusion. It is the job of the Civil Rights Division to be the constant guardian of those rights.

The Civil Rights Division of the Justice Department is charged with enforcing the laws that prohibit discrimination in education, employment, credit, housing and voting, as well as in other fields. While the Civil Rights Division has enumerated the areas where it ought to take action, are there areas of the law where you feel that the Civil Rights Division should not participate? What are the boundaries of your mandate?

The boundaries are pretty clearly set out in our statutes. We have jurisdiction where Congress has given us jurisdiction. We don't have jurisdiction where Congress has not given us jurisdiction. When a lawyer from the Civil Rights Division showed up in Mississippi at the height of the Civil Rights Movement in the 1960s and 1970s, that lawyer was acting not on his own but in obedience to law, in obedience to the jurisdiction that had been given to the Division. So we act when we've been given the authority to act, and we don't act when we haven't been given the authority to act. That's very important.

Are there ever times when there is some ambiguity about the boundary of your mandate?

In the beginning of enforcement efforts on any new statute, there is going to be some uncertainty. We see that uncertainty worked out in the courts. Most of the statutes we administer were passed long ago, and the courts have generally agreed with us on where the boundaries of our jurisdiction are. We do have a relatively new statute, the Americans with Disabilities Act (ADA), and the Supreme Court handed down some decisions last term on it. Those, along with some upcoming cases, will help us work out some of the issues with regard to the ADA. It is important to get any uncertainty worked out. It is important for the American people, the people who are affected by civil rights statutes and laws, to know what the law stands for. In my experience, I have found that there really aren't too many disputes over where our jurisdictional boundaries stand.

Recently, issues surrounding questions of police abuse have taken the national stage. In New York, for example, an unarmed African immigrant was shot 41 times by police. There has also been much made of racial profiling. The police have the responsibility of maintaining public safety. The federal government has the responsibility to protect the civil rights of all Americans. What is the position of the Civil Rights Division with regard to the question of racial profiling?

The position of the Civil Rights Division is that the job police perform in our society is critical. Without the police providing security for people day in and day out, our society really wouldn't function very well.

That people should feel safe in their homes, in their cars, on the streets, is fundamental in our society. In many ways, the security that gives us that sense of freedom is what sets us apart from other societies. The Department of Justice devotes a lot of congressionally appropriated resources to support the work of local police and to encourage programs such as community policing.

The Civil Rights Division has two kinds of jurisdiction. We make sure
that when the police do their job of providing security for all citizens, they do their work fairly and in an even-handed fashion. We have criminal jurisdiction so that if excessive force is used—and it is important to bear in mind that the use of force in most police-citizen encounters is both very rare, and very rarely excessive—we have the ability to prosecute police officers for engaging in that kind of conduct.

How often is our criminal jurisdiction used? Over the last five years, the Civil Rights Division and US Attorneys Offices have prosecuted some 300 police officers. This is a back-up jurisdiction. The arm of government that principally polices the police is the local district attorneys and the state attorneys general. It is important, however, for the federal government to have that back-up jurisdiction, because sometimes in our nation's history, the local authorities have not prosecuted the police when they have engaged in misconduct. That hasn't happened as a systemic matter in many years. But it is still important that the federal government have that jurisdiction. Congress has been pretty supportive of our work, in terms of giving us the statutory authority and the funding, and I think it is an important demonstration that we consider not only policing to be important, but fair policing to be important.

We also have civil jurisdiction to bring "pattern of practice" cases against police departments that engage in systemic practices of abuse—usually the result of a lack of training, a lack of discipline, or a lack of managerial oversight. We have this jurisdiction under the Crime Control Act of 1994, and we've used the jurisdiction, in my opinion, in a very restrained way. We have two settlements, one involving the police department in Pittsburgh, Pennsylvania, and the second one with Steubenville, Ohio. Both of those cases were resolved through settlement agreements that were reached after intensive investigations. Those cities agreed to initiate training efforts and "early warning systems" so that they could track problem officers to make sure they received help before engaging in grievous misconduct.

For most Americans, the police are the people who personify government. It is important that when citizens encounter police they be treated fairly and with respect.

I remember having a tremendous amount of respect for police officers as a child, and I would like to make sure that, in this country, children growing up today have that same kind of respect for the police. Back then, I think we thought of police officers as helpful people, and that is an important thing when you are a child. I hope there are children growing up in this country with the same view of the police, and we, as citizens, need to take a look at that in our communities.

Many studies have found that blacks are overrepresented as both the victims and the offenders of crime and that blacks often receive more severe punishments for similar crimes. Does this overrepresentation speak of structural flaws in the American system of justice? What should government, and particularly the Justice Department, do to address this?

Anyone in government, when they encounter any indication of possible unfairness, should take a look at that. I think our system of justice is a pretty good one. It is pretty fair, especially when you compare it to the rest of the world. But that doesn't mean we can't do better. One concern is the feeling by some people that the quality of justice you obtain in this country varies based on what color you are or how much
money you have in your pocket. That shouldn't be. Whether we're in Congress or in the executive branch, we should take a close look at any indications of unfairness to make sure that we're satisfied that there aren't problems, structural or otherwise.

Some argue that for many minorities, there exists a tension between the desire to be integrated into mainstream American society and the desire to maintain a connection to their ethnic or racial identity. Does this tension exist? How is it getting resolved in America today?

I think in our history, one of the bad things has been that some people were not given the chance to enjoy the benefits of American society because of some immutable characteristics. The example that comes to mind obviously is African-Americans, who were enslaved. It didn't matter what their desires were—they were enslaved.

There are also other groups of individuals who have encountered similar problems. Women couldn't vote for much of our nation's history. Only those who had property could vote.

I think we've moved beyond some of those barriers. I think what's important is that no individual be barred in some artificial way from becoming the kind of person that he or she wants to become, whether that means joining the mainstream or not joining the mainstream. The important thing is that individuals have choices and that they have the freedom to choose how they live.

I personally think it is important for Asian-Americans and other minorities to join the mainstream. I know that things are lost when we break out of ghettos, but things are also gained. I think the challenge is at the family level—to preserve family traditions and your unique history, while at the same time living in an American society.

My father believed very strongly that all of us should have the right to be just like everybody else. My father owned a humble little laundry. That was our livelihood. But he felt we were as good as anybody else. I remember that he would insist that we speak English as much as possible, even though my mother didn't speak very much English. He thought it was important that we, as immigrants, should assimilate as much as we could and be able to be a part of this country.

Our country is becoming a more diverse society. As a child, had to learn to speak English, and was encouraged to do so by immigrant parents, but my children go to a public school in Fairfax County where there are a lot of kids who don't speak English. My children speak English very well, and that is because they grew up speaking English. The teachers use them as model English speakers for these other kids—whether they are Somali, Romanian, or kids from other parts of the world.

I believe very much that we all should have the opportunity to become as much a part of our society as we want to be. I think we should assimilate as much as possible. There are wonderful things to be gained. But at the same time, we should try as much as possible to preserve family traditions and the things that are special to us. This is not an issue for minorities alone. This is an issue for all American families because all of us have something in our backgrounds that is unique and special. I see this as part of a larger picture in which we participate fully in American society, but at the same time we preserve things in our heritage that make us special and help us remember from whence we came.

We also ought to be very catholic about what our notion of the mainstream
is. The mainstream includes all Americans. It is a very diverse mainstream. It isn't just white people; it's people from all over the world. I think about my kids' elementary school. It is a school in which all of the kids are American, but they're from different parts of the world. They're different colors, have different heritages, but they get along just fine.

*What will America look like 100 years from now?*

I am not sure I know what America will look like. I suppose if you had asked someone 100 years ago, at the end of the 19th century, you'd get a view that was colored by that person's own background and his own life experience. The America I would like to see is one in which race, ethnicity and color—all those artificial barriers—would fade away, and that we all just be Americans, whatever that looks like.

Bill Lann Lee, the Acting Assistant Attorney General for Civil Rights in the US Department of Justice, has served in that capacity since December 1997. Prior to that, he served as Western Regional Counsel for the NAACP Legal Defense and Education Fund, an organization established by the late Justice Thurgood Marshall. The son of immigrant parents, Mr. Lee grew up in New York City and is a graduate of Columbia University Law School.
Interview with Ingrid Duran, Executive Director of the Congressional Hispanic Caucus Institute

The spring issue of The Georgetown Public Policy Review is focusing on the question of race relations, both in this country and abroad. Given your personal and professional history, what do the words “race relations” mean to you?

“Race relations” is the ability to build coalitions across different communities, whether it be black/brown, brown/Jewish, black/Jewish, whatever the case may be; it is the ability to build coalitions to work together without all of the barriers that have been put up in the past.

The mission of the Congressional Hispanic Caucus Institute is to develop the next generation of Latino leaders. Yet Hispanic-Americans trace their roots to many different societies—from South America to Cuba to Mexico and beyond. What unifies the concept of Hispanic?

What unifies us as a community is our culture and our language. All the differences in the many ethnicities that make up the Latino culture is something that brings us together, that unifies us. We’re together on immigration, education, business and economic development. But at the same time, this diversity is also one of the biggest things that divides us. We are not like the African-American community, where everybody is African-American and has the same basic heritage.

We come from so many different countries. The issues that tend to divide us more are the international relations issues that pertain to particular countries. As a result, each country will have its own interest. This means that the issues that divide us are more regional. Cuba and the question of Puerto Rican statehood are two good examples. But in general, we’re unified.

Just as a side note, you see the difficulty in getting consensus with the Hispanic Caucus. On those issues, they aren’t going to get a consensus, so they stay away from them, which is probably smart.

Hispanics have made great gains recently—politically, economically, and otherwise. Yet Hispanics continue to lag behind Anglos in such categories as income and levels of education. What, in your view, have been the gains and the stumbling blocks over the past few decades for Hispanics? What are the barriers?

One of the biggest barriers for the Latino community has been immigration because of the perceived threat that Latinos are coming in droves and that we are taking jobs. That’s been one of the biggest challenges, especially in African-American/Latino race relations. Latinos are moving in to African-American neighborhoods, and they’re taking jobs. But the reality is that Latinos are very hard workers, and they are taking jobs that no one else wants. So they are contributing to society. However, you’re seeing a little bit more of the perception that we’re a threat again, as we are starting to move forward, and Latinos are being recognized as a political force.
Feature Interviews: Ingrid Duran

For example, you're starting to see legislation coming out—like the English-only and the immigration legislation—that's all stemming from this perceived threat from this growing community. These are some of the barriers we are facing now. There is a fear that "Oh my God, these people are moving in and taking over," but that is really not the case. Latinos are moving in in larger numbers, but we're also contributing. We're voting and we're becoming one of the fastest growing communities of small business owners. Our purchasing power has increased from $380 billion to $425 billion. So we are contributing members to society.

Probably the most prominent gains have been our increases in voter participation. We've seen a steady increase since the late 1970s until now. Our numbers have been on the rise and our community has become more educated on the issues. We're not a monolithic community anymore. We're not just Democrats.

You're starting to see a shift from Democrats to Republicans and Republicans to Democrats. It is a mixed bag. You saw it in Florida and you saw it in Texas, where people were voting off the party ticket, or were voting for a Republican in one instance and a Democrat in another on the same ticket. That is probably one of our biggest gains. Now we are being recognized as a political force, as the true swing vote for 2000.

Some of the stumbling blocks have been in terms of education. Our students have not been given the opportunities to compete on the same level as Anglos. So when you hear about reverse discrimination and anti-affirmative action, when you look at things from the perspective of professions, most sectors are dominated by Anglos. That really is not a level playing field. So the anti-affirmative action, the reverse discrimination just doesn't make sense, since our kids aren't being given the same opportunities.

What are some of the main concerns of the Congressional Hispanic Caucus Institute at the current time?

Our mission is to develop the next generation of leaders. So we want to make sure that when the people who are currently in power leave, we have young Latinos ready to take their place—young Latinos who are educated, who understand the issues, and who understand the political situation that they are currently in, because it has changed over the years. It is not the same as it was in the 1960s or the 1970s. Our community needs to learn to work across bridges and to build coalitions, so that is one of the things that we are focusing on. We are teaching our young people the values and the tools that they need to proceed.

President Clinton recently instituted "One America in the 21st Century: The President's Initiative on Race" to look at the issue and history of race in this country. While Mr. Clinton is often credited for showing his sensitivity to the question of race, some would argue that he has done poorly in making sure Hispanics have been sufficiently represented in his administration. How would you assess the level of access to power currently exercised by Hispanic-Americans, and what implications does that have for our nation as we move into the 21st century?

In terms of the Initiative, I think that the job that was done was not sufficient to bring Latinos into the fold. It was clearly a black/white agenda. Latinos were not part of the picture.

When the issue was brought to the administration's attention, we were added as an afterthought, and there were small, little events to make sure
that we were placated. In terms of how Clinton's administration looks with regard to race, he hasn't done too bad of a job. We have people like Maria Echeveste who is deputy chief of staff. We have people like Mickey Ibarra [who is director of intergovernmental affairs in the White House]. So in terms of having people who look like us at the highest levels, I think Clinton hasn't done too bad.

Most of the Initiative forums that they held were often black/white forums. So they were talking about the African-American community and how it relates to the Anglo community. You'd see a token Latino in each of the forums, but they were dominated by African-Americans and Anglos. And when it came to Latino-specific concerns, you'd see little events. I can think of one that was pulled off at the last minute in Houston, in Congressman Gene Green's district, on the topic of the Census. That one was an afterthought. They realized that they did leave out a community, and so they made sure that they included us. That event was predominantly Latino.

But again, the majority of the Initiative was black-and-white driven. Our issues were not dealt with, and that could be because of where the president comes from. He comes from Arkansas, and there aren't very many Latinos in Arkansas. Now it could be more than this. It could be a combination of things—one of which certainly is that we haven't been as vocal as a community as the African-American community has been. We have been a community that has been very polite. We come to the table and say, “Thank you, Mr. President, thank you for your Initiative. We appreciate your efforts.”

But had it been in reverse and we had followed the same pattern as our brothers and sisters in the African-American community, I think we would have been out there screaming and yelling. But we haven't gotten to that level yet. So I think that has got a lot to do with it. People know that Latinos are not going make a big deal. We are not going to scream and yell. That hasn't been historically how we've dealt with things. Historically, we've taken what we can get, and we keep moving forward. But I think we need to start looking at how we do things and look at the African-American model as something to follow and to pattern ourselves after because it seems to work.

To what degree do you think that minorities in this country have shared a common experience? To what degree do you think minority groups in this country have had experiences unique to their group?

I think there are some similarities in terms of the experiences of minorities, but in terms of the immigration issue—and I think that is a big one, especially in states like California and Texas—that experience is unique. We can't compare it to any other experience because in some cases, in a lot of cases, you have Latinos who have been in California and Texas since before they were states. They were part of Mexico. You now have this sentiment that is anti-immigrant, anti-Latino. It is not anti-Asian, it is not anti-Jewish, but it is anti-Latino. And that experience is very unique. It is one that our community has had to deal with over and over again, with generations in our families that have come here or that have been here.

Then there are some similarities with discrimination. Every minority community has dealt with discrimination at one time or another. I think the educational issues are similar, with maybe the exception of the bilingual education issue. It is always interesting
to see that the majority of society urges their children to take languages and to become fluent, to become bilingual. But when you have children who are bilingual, who speak Spanish and are trying to learn English, it is discouraged. They are discouraged from speaking their native language. They are basically encouraged to speak English only.

_Having said that, what is your view of bilingual education?_

Personally, I think that the system has broken down in some cases. In some programs, it clearly is not working, but that doesn't mean that you throw out the program in its entirety. What that means is that you look at best practices, and you take those best practices and implement them in the places that it is not working. Because in some cases it is working. You can't put “a one-size fits all” model out there for people and say, “Now, we expect you to learn English in two years, and if you don't, we're going to put you in with the slower kids.” It just doesn't work. Some kids may master it in less than the two years, and some kids may take a little bit longer, but that doesn't mean that they are slower. So, my personal view is that bilingual education is necessary, and that we need to look at a best practices model, recognizing that there are some places where the program has broken down and you fix it.

_Some argue that for many minorities, there exists a tension between the desire to be integrated into mainstream American society and the desire to maintain a connection to their ethnic or racial identity. Does this tension exist? How is it getting resolved in America today?_

I think this tension does exist, and what you've seen over the generations is that the older generations are hanging on to their culture, because it is part of who they are, part of where they came from. Because it is discouraged in the society to maintain your culture, you are starting to see the younger generations let go of it and try to assimilate. What we have tried to do as Latino organizations is educate the community that because you're assimilating, it doesn't mean that you're giving up who you are, where you come from, your culture, your values. You need to maintain that because that is part of who you are, part of what makes up the Latino community, and you need to hang on to that. You're not giving up one at the expense of gaining something else. It should be a joint thing. I have tried to do that with the National Association of Latino Elected Officials, and our citizenship program. We tried to let people know that just because you're becoming a citizen doesn't mean you're giving up your Mexican roots, your Cuban roots, whatever the case may be. You still are who you are, but you are becoming a part of this society, and you're keeping your values and your traditions and your culture and your language.

_What are your views on affirmative action?_

Affirmative action has been a major issue. It was a major issue last Congress. And I think it is all about how people perceive things. It is all perception. If it were an ideal situation and it was a level playing field for everybody, maybe we would get to the point where we wouldn't need affirmative action. But until then, affirmative action is still very much needed. You see it in the disparities just between women and men, not even looking at the racial issues. Pay equity is still a big problem.
Women are not getting paid the same as men. So if that exists, and then you have minority communities that aren't even on an equal level with the Anglo community, how can you say that opportunities are equivalent? It is not the case that the same opportunities exist for everybody.

Immigrants that are coming in are just starting out. You have your generations of Latinos that have been here, and who have established themselves and who are financially sound and who are starting small businesses and who are contributing. And then you have your new immigrants who are coming in who haven't become citizens yet, who are just migrating into the US. Their median income level is going to be below that of native-born Latinos who have been in the US. So their opportunities are going to be even less than those of the native-born. There is the language barrier; there is the educational barrier. A lot of them may not come in with a professional skill set. They may come in with a labor skill set. So they are going to be looking for jobs out there, and for the most part, immigrants are willing to take any job. It is a sense of pride. They are going to do the work; they're going to earn their stay here. They are not willing to take a free ride at government expense.

What will America look like 100 years from now?

I think that over the next few years, what you are going to see is an increase of Latino elected officials, an increase of Latinos in key positions, wherever that may be. You are going to see more Latinos take professional roles. You are also going to see—because right now we are the youngest minority—a whole generation of Latinos being developed with these ideals and these new directions. This generation is coming in to take their place in society. Hopefully what you'll see is an America that is reflective of what it should be: a true ethnic mix of people that are equal. That way you won't need the affirmative actions. We do these things so that eventually we won't need them anymore. So, in 100 years, hopefully we will have gotten to the point where there is pay equity between the genders and there is equity between the minority communities. One hundred years is a long time. Maybe we'll see a Latino president, hopefully sooner than 100 years from now.

Ingrid Duran is the Executive Director of the Congressional Hispanic Caucus Institute, a national non-profit, non-partisan organization whose mission is to develop the next generation of Latino leaders. Prior to joining the Institute, she was the director of the Washington office of the National Association of Latino Elected Officials. A former corporal in the US Marine Corps, Ms. Duran graduated from Park College in Virginia.
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A Black and White Issue: The Invisibility of American Indians in Racial Policy Discourse

STEVE RUSSELL
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The President’s Initiative on Race concluded little about American Indians, except that they are in dire circumstances. This article describes those circumstances and the difficulties that face policymakers in addressing Indian problems. Indians grappling with issues of economic development, education and internal democracy find themselves in a policy crossfire among federal, state and tribal governments. Policies that tend to empower individuals do so at the expense of tribes, and policies that tend to empower tribes do so at the expense of the states. This confusion results from the nation’s inconsistent definitions of race and nationality. Federal Indian policy should be redefined to resolve those definition-based conflicts, and thereby empower Indians to assimilate or to preserve their distinctiveness as peoples.

INTRODUCTION

Our nation is moving toward two societies, one black, one white—separate and unequal (Report of the National Advisory Commission on Civil Disorders, 1968, “The Kerner Commission”).

It is hard to say what American Indians were supposed to make of this famous conclusion of the Kerner Commission, the first governmental investigation of race in our generation. Were we to think that riots on the reservations were a political necessity to achieve governmental recognition of racism against Indians? Were we to think that too few of us survive to warrant recognition?

This Indian was a GI Bill college student when the Kerner Report was published, and in all honesty I felt no crushing sense of exclusion. Having no place for Indians as Indians in even a racially divided society did not seem unusual—it even seemed normal. The African-American civil rights movement, having at that time made the transition from colored to Negro to black, plainly held the moral high ground on the national agenda. It seemed then, as it does today, that the only time Indians even make it on to that agenda is when they manage to acquire something that yonega1 want: land, water, minerals, timber, oil and gas, fishing rights, or casino revenues.

Discussion of non-Indian racial problems centers upon tearing down the barriers erected by discrimination. The current focus is more on economic equality than social equality. Cultural distinctions, where they exist, are buried in economic distinctions. The idea of separation to conserve culture is discredited because it appears from a distance to be indistinguishable from separation as practiced by the dominant culture. Segregation is bad; integration is good—for most minorities.
Indians are tribal peoples. What makes an Indian is connection with the land and with others. It is not a connection with other Indians, but with other Cherokee, Lakota, Pequot—the list is approximately 558 tribes long if narrowed to federally recognized tribes. Tribal identification is not the connection to another time on another continent that ethnic identification is for Euro-Americans and African-Americans, and it is still less like a labor union or a fraternity. Tribal roots grow straight down.

For Indians, the question is not one of full integration but of how to cross the bridge into the 21st century as distinct peoples, with lessons of language and culture, autonomy and survival to pass on to Indian children. That question subdivides into issues to be addressed by governments: federal, state, and tribal.

Education has always been an issue for Indian policy. It was an issue when the government's stated policy was forced assimilation, and remained so when the policy was to relocate individual Indians and terminate tribal status. The currently stated policy of self-determination likewise requires educated people. Indian education may, in our time, finally be separated from forced acculturation by the tribal colleges, operating under the auspices of tribal governments. Most tribal governments, however, lack the financial resources to put higher education and professional training within the reach of their members.

Tribal governments face the problems of all governments, exacerbated by recurring crises of legitimacy rooted in historical federal-tribal and state-tribal relations. Too many tribal governments have been unable to attain both legitimacy within their communities and legitimacy in the eyes of the United States government. A serious commitment to self-determination and therefore to tribal sovereignty is, inescapably, also a commitment to democracy within tribes.

Most attempts to encourage tribal democracy draw the criticism that they are in fact paternalistic threats to sovereignty. I will try to show that these criticisms are misguided. Most tribal corruption comes from structures that were imposed by the federal government in the first place. Encouraging change by Indians from within is little different from examining the human rights record of a foreign country when debating foreign aid.

The key to preserving Indian sovereignty is to make it unnecessary to resort to federal or state courts. This will require both the forbearance of the federal government and the ingenuity of the tribal governments. The federal government needs to accept that the power to govern oneself may in some cases mean the power to govern oneself poorly, or at least not in accord with federal wisdom. Tribes need to think in terms of their members having individual rights, a concept easily lost in the necessity to defend tribal rights.

The policy issues are difficult enough, but viable solutions must also fit within the often irrational template of federal Indian law. The best that can be said of the Supreme Court's pronouncements is that they allow Congress and the president to treat Indian nations fairly. It is perhaps too much to ask that they would require it.

Last year's contribution to federal investigation of racial issues, the report of the Advisory Board to the President's Initiative on Race, hereafter "Advisory Report" (1998), is centered, rightly, upon encouraging understanding among peoples and creating equality of opportunity. In spite of its lack of Indian membership, the Board was exposed to the idea that the claims of Indians are
radically different from the claims of
the mainstream civil rights movement
(Deloria 1969), and that perhaps In-
dian input to the president should
come only “in the form of an appro-
priate government-to-government

Indians were invisible in the Kerner
Report’s sweeping conclusion on race
relations and an afterthought to Presi-
dent Clinton’s Advisory Board. In this
article, I propose substantive policies to
address problems identified in the
Advisory Report. Reasonable people
may differ on my policy suggestions. I
hope no one will disagree that it is time
to bring American Indian identity into
the national conversation about race.

Race and Identity:
Of Melting Pots and Mosaics

American Indians are among the most
disadvantaged Americans according
to many available indicators, such as
poverty rate and median income, al-
though comparable data for this group
are sparse due to their small represen-
tation in the population (Council of
Economic Advisors 1998).

The Advisory Board to the
President’s Initiative on Race (Ex-
ecutive Order No. 13050, June 13,
1997) returned after more than a
year of hearings, media events, and
bureaucratic tree-shaking with, at
least, a firm grasp of the obvious. The
Advisory Report is not, however, a
place to look for the subtleties or even
the absurdities of federal Indian
policy. The Board did listen to tribal
leaders and faithfully reported some
of their agendas. In fairness, the
Board had neither the time nor the
expertise for a nuanced interpreta-
tion of the policy options. The very
first question of Indian policy, for
example, is defining “Indian,” and as
we shall see, the answer to that ques-
tion drives all subsequent questions.

The Census relies on self-identifi-
cation to count American Indians,
leading demographers to note that the
Indian population is growing more rap-
idly than can be explained by birth
rates (Council of Economic Advisors)
and Indians to joke that the largest
tribe in the United States soon will be
the “Wanabi.” However, an unknown
and perhaps unknowable number of
newly self-identified Indians are prob-
ably legitimately reclaiming an identity
that their elders thought unsafe or at
least unwise to acknowledge. Most
Indians attached no stigma to skin
color. Many of the early colonizers
were unattached men, and intermar-
riage started soon after the first contact
with Europeans and continues apace
to this day, with a majority of Indians
choosing exogamous marriages (Advi-
sory Report; Council of Economic
Advisors).

The first reported intermarriage
between Indians and the colonists was
in 1690 (Strickland 1975). “White
Cherokees” were numerous by 1810
(Strickland 1975), and it was the one-
eighth Cherokee great-grandson of a
Scots trader, Chief John Ross (Moulton
1978), who led the tribe into the tragic
confrontation with Euro-American
greed that culminated with the death
of thousands on the Trail Where We
Cried, known in the dominant culture
as the Trail of Tears (Thornton 1990).
The race/ethnicity/phenotype issue
is further complicated by Cherokee
intermarriage with blacks and with
other tribes of Indians (Thornton
1990). In addition, a number of ethni-
cally African-American freedmen were
enrolled as tribal members after the
Civil War ended chattel slavery
(Halliburton 1977; Littlefield 1978;
Perdue 1979; Thornton 1990). Even
in the early 19th century, “… it was
difficult to define who was a Cherokee.

The Cherokee Nation, like the United States, was multiracial. There were different kinds of Indians living among them—Catawba, Creek, Uchee, Osage; various Europeans—British, Spanish, French, American; and there was a growing body of Africans (some freedmen, some slaves)" (McLoughlin 1986).

This admixture demonstrates the absurdity of "race" as a determinant of Indian identity. An example of this is the election of Buddy Red Bow and Jimi Hendrix, the guitar playing prodigy of African-American phenotype and Cherokee descent, as the first inductees to the Native American Music Hall of Fame. Whether the "racial" mix is African or European, the matrilineal customs of the Cherokee led to the children of a Cherokee mother being described as fullbloods on early rolls (Thornton 1990; Strickland 1975).

If color does not identify a Cherokee, the dominant society might look to tribal enrollment. There are three federally recognized Cherokee bands: the Eastern Band (North Carolina), the United Keetoowah Band (Arkansas and Oklahoma), and the Cherokee Nation of Oklahoma. However, many ethnic Cherokees are not enrolled either by accident of geography or as a matter of political principle.

Enrollment in the Cherokee Nation of Oklahoma or the United Keetoowah Band (or both) requires descent from a person whose name appears on the Dawes Rolls. In order to be listed, one's ancestor had to be physically present in Indian Territory at the time the Dawes Rolls were taken, which many Cherokees were not. Among those who were physically present, there was widespread resistance to enrollment because the purpose of taking the rolls was to break up the Cherokee Nation into individual parcels and open the remaining Indian land to white settlement.

The Eastern Band is made up of descendants of the people who avoided the troops who were sent in to accomplish the ethnic cleansing of Georgia, Tennessee, North Carolina, and Alabama (Finger 1984). This list of federally recognized bands does not include all the people who tried to escape the tide of colonization in various ways (Everett 1990; Thornton 1990). Further, only the Cherokee Nation of Oklahoma has no blood quantum requirement for membership.

Blood quantum is a peculiar and inexact marker of Indian identity. It first became important as a determinant of when an individual Indian would be allowed to alienate an allotment of land acquired under the Dawes Severalty Act of 1887. A "whiter" Indian was thought to be more sophisticated and able to deal with land speculators (Debo 1940). The Dawes Rolls noted blood quantum, but among Indians, determination was perceived to be notoriously slipshod.

Even a correct blood quantum hardly fits in a discussion of "race." By blood quantum, fullbloods become halfbloods because their parents are from different tribes. Also, blood quantum appears to be irrelevant to other racial classifications. An infamous example in American law is the 1896 case of the "octoroon" Homer Plessy, who considered himself white but was found to be not white enough to sit where he pleased on public transportation.

Comparing Plessy's one-eighth African-American blood to Cherokee Chief John Ross' one-eighth Cherokee blood is a forceful reminder that "race" is a social construct rather than a biological one (Montagu 1997; López 1994). Unlike Plessy, Ross could become "white" by simply walking away from the Cherokee people (Toro 1995). Race is defined to answer political needs, and it has no significance outside of politics. A broad
A Black and White Issue

definition of race served the need to keep African-Americans in their place while a narrow definition of race served the need to make Native Americans disappear.

The only consistency in the definition of race is that it consistently served the interests of the colonial government. Rape of slave women—or consensual sexual relationships, if sex between master and slave is ever consensual—was not effectively regulated (K. Russell 1998), so white blood as a potential ticket to freedom could threaten the entire institution of chattel slavery, particularly after importation of Africans was outlawed.

In the case of Indians, blood quantum became a means to limit the number of "recognized" Indians and therefore the responsibility of the federal government (Jaim es 1992). Indian entitlement programs to this day are often conditioned upon blood quantum (commonly one-fourth), and most tribes limit enrollment based upon blood quantum, with concern for the economic incentives created by limited tribal resources.

Whether tribes follow economic incentives in the matter of blood quantum is, in the final analysis, up to tribal governments. A question for the federal government would arise only if it wished to deal with individual Indians directly for some purpose. It is the difference between having scholarships administered by tribes for their members or having scholarships administered by colleges for "Indians" as defined by Congress, a policy that would be criticized as "race-conscious."

Bordewich (1996) points out correctly that Indian sovereignty is popularly understood as race-conscious law. Race-conscious law presupposes that the government will assign racial labels or review the reasonableness of self-identification (Ford 1994). The history of governmental race labeling is not a distinguished one (Gross 1998), and arguments against it are formidable (Lundin 1997).

However, Indians are sui generis, and the tribes are capable of determining their own memberships without advice from the federal government. This is not to say the matter is uncomplicated. For example, some tribes have reserved fishing and hunting rights on their ancestral lands, and it is possible to imagine commercial traffic in tribal enrollment akin to selling indulgences from state fish and game laws. This is something to be worked out with the tribal governments that hold the hunting and fishing rights, not by federal ukase.

At the root, it is tribal sovereignty that defines an Indian as certainly as it is tribal sovereignty that legitimizes the treaties that ceded the land upon which the United States rests. If the tribes did not have sovereign rights at the time of the treaties, then they could not have conveyed sovereign rights to the United States. A sovereign determines the bona fides of its own citizens.

The problem of the numerous tribes the federal government either never recognized or chooses to regard as extinct is serious. The federal government has every incentive to make tribal recognition difficult in order to limit its potential responsibility. State governments tend to oppose recognition of Indian tribes within their borders out of fear that Indian governments may bring casinos. Indian people affected by lack of recognition can only huddle together and keep good family records. By waiving any interest in casino gambling, they might argue for state recognition as a stepping stone to federal recognition, or they might confederate with a recognized tribe. If these options do not pan out, they are relegated to self-identification as Indian in the Census and, for all other purposes, invisibility.
The Advisory Report calls American Indians "America's most invisible minority." It goes on to recognize the inadequacy of the "melting pot" metaphor or even the newer "mosaic" metaphor to describe contemporary race relations. As to Indians, neither metaphor captures the current state of affairs or a desired future.

If we need a metaphor to describe the relationship of Indian nations to Euro-America, "tapestry" seems appropriate. Reservation economies are intertwined with those of the states in which they are situated and Indian blood has been spilled in every war since the American Revolution. Add intermarriage, and it is clear that Native America is woven together with Euro-America, even though not exactly part of it or wishing to be so.

Because of choices made by Indians to intermarry, color is not a reliable marker of ethnicity. Because of choices made by the federal government, tribal enrollment is not a reliable marker of ethnicity. Gunter's (1998) study of the Lemhi tribe's recognition effort imputes to the federal government a Foucauldian power technology (Foucault 1979) in its control of the terms of racial discourse. Gunter's analysis may be a more sophisticated tool than the task of explaining governmental race labeling requires, but he is correct about the result. Until the government quits defining Indians by its 18th and 19th century policy needs, bending them into fit subjects for colonial discourse, the courts are left to sort out the rights of individual Indians.

**Race and Rights: Of Law and Power**

As the twentieth century draws to a close, the debate over rights intensifies. One voice argues that rights provide the only sure way to include disempowered and marginalized persons in the mainstream of society and protect them against discrimination. Another voice asserts that rights disrupt social relationships, that they create oppositions rather than forge bonds, that they ultimately harm and even degrade those they are meant to help. The continual expansion of rights claims, from this perspective, threatens to undermine our sense of community (Engel and Munger 1996).

The principal source of race-determined rights in the Constitution is the Fourteenth Amendment guarantee of "equal protection of the law." The Reconstruction Amendments fundamentally altered the American social contract (Ackerman 1998) and made the federal government rather than state governments the primary guarantor of individual rights. While the original intent was to grant civil rights to the freed slaves, the Fourteenth Amendment has been held to require strict scrutiny of all race-based policy classifications.

This general obstacle to race-based classifications is the legal basis for contemporary challenges to affirmative action policies, just as in the past it was the underpinning for the legislative victories of the African-American Civil Rights Movement (S. Russell 1998). The Fourteenth Amendment is of course only an obstacle and not a complete bar to race-conscious policies. The general rule is that policy classifications must have a "rational basis."

The idea that racial policy classifications must be subjected to "strict scrutiny" was first articulated in a legal challenge to the internment of Japanese-Americans during World War II, Korematsu v. United States. The challenge was turned away for a reason that would later have profound legal
consequences for American Indians. Korematsu was being inconvenienced, the Court opined, “not . . . because of hostility to him or his race . . .” but “because we are at war with the Japanese Empire.”

This distinction between race understood as ethnicity and race understood as nationality or political affiliation has become fundamental to Indian law and therefore to Indian policy (Frickey 1997). Delineating its limits has become crucial to making policy for American Indians and for peoples who are similarly situated, such as Native Hawaiians (Benjamin 1996).

The principal cases on the tribal/ethnicity distinction, Morton v. Mancari16 and United States v. Antelope,17 cut appropriately enough in both directions in terms of Indian interests. The ability of the tribal/ethnicity sword to cut in both directions puts the heavy responsibility that goes with plenary power on Congress, and makes public opinion a crucial component in the formation of Indian policy.

Mancari upheld a benefit that would not stand outside of Indian law, a hiring preference for Indians in staffing the Bureau of Indian Affairs (BIA). The Court did advert to the status of Indians “as members of quasi-sovereign entities whose lives and activities are governed by the BIA in a unique fashion,”18 but the Mancari holding was clearly not limited to the BIA.

Three years later, the Antelope case showed the other edge of the tribal/ethnicity blade. Indians were prosecuted in federal court under the Major Crimes Act19 for a crime containing fewer elements than would have to be proven in state court, where non-Indians would be prosecuted. In essence, it took less evidence to punish an Indian than to punish a non-Indian for the same conduct. The Court upheld this scheme against an equal protection challenge. Together, Antelope and Mancari stand for “the Federal Government’s broad authority to legislate with respect to enrolled Indians as a class, whether to impose burdens or benefits.”20

Indian policy, therefore, is lawful if it has any rational basis, and few governmental actions are without any rational basis. As Cardozo (1921) put it, “the thing that matters is not what I (the judge) believe to be right. It is what I may reasonably believe that some other man of normal intellect and conscience might reasonably look upon as right.”

If the equal protection clause provides no shelter for Indians understood as tribal people, they at least have the treaties, government-to-government undertakings that legitimized the ethnic cleansing of North America. If many of the treaties were entered under duress or signed by persons with little understanding of their significance, all the more reason why they should today bind the party which held the power to dictate terms.

The potential shelter of treaty obligations disappeared in 1903 with Lone Wolf v. Hitchcock,21 wherein the Supreme Court placed its imprimatur on unilateral abrogation of Indian treaties. Now, if “abrogation” meant voiding the treaty and returning both parties to the status quo ante, then Lone Wolf would have gone home happy with his Kiowas in possession of much of the Southern Plains. However, “abrogation” in the colonial courts meant that the Kiowa lands stayed in white hands and the Kiowa reservation was “allotted”—split into individual parcels in the name of individual Indians with the balance opened for white settlement. After allotment, even the relatively well-educated “Five Civilized Tribes” were soon fleeced of the remaining land (Debo 1940). After Lone Wolf, “Native Americans were at
the mercy of the political system without the traditional checks of the judiciary" (Wunder 1994).

In 1924, Congress added insult to injury by unilaterally declaring Indians born within the territorial limits of the United States to be citizens, a status some tribes refused but most ignored because the plenary power of Congress to manage Indian policy was already firmly established in Supreme Court precedents. Citizenship was not a benefit in a political context, but another way of making Indians disappear. If Indians are all United States citizens, Indian policy could move toward dilution of tribal sovereignty in the name of equality.

The equality rhetoric of the African-American Civil Rights Movement cut both ways for Indians. On one hand, the idea of Indians as an inferior race lost support along with the idea of Africans as an inferior race. On the other hand, non-Indians cannot ever be equal to Indians among Indians unless they immerse themselves in a language and culture for longer than the garden variety Wanabi attention span. Tribal membership appears, from the outside, to confer significant benefits beyond the reach of other Americans. That appearance (quite illusory outside of a miniscule number of tribes) might be called "sovereignty" or it might be called "all that Indians have left."

In modern times, as Congress has backed its robust authority away from termination of the tribes and the executive branch has embraced self-determination, the Supreme Court has in Oliphant v. Squamish Indian Tribe stripped tribes of criminal jurisdiction over non-Indians who commit crimes on Indian land. In Moe v. Confederated Salish and Kootenai Tribes required tribes to collect state taxes from non-Indians doing business on the reservation, and in Cotton Petroleum Corp. v. New Mexico allowed a state to collect a severance tax on top of a tribal severance tax. The list could go on, with each case having obvious and dire consequences for tribal sovereignty.

Seminole Tribe v. Florida held that Congress had no authority to allow Indian tribes to sue states without the states' consent, and therefore an Indian tribe could not complain about the failure of a state to negotiate in good faith for a gaming compact under the Indian Gaming Regulatory Act. Indian nations are therefore denied the relatively neutral forum of the federal courts to settle disputes with the states. State courts are of course more than willing to follow the Supreme Court's lead in diminishing Indian sovereignty (Dubin 1997), and states' conflicting interests create a real or perceived hostility toward tribal claims in state courts (Feldman 1994).

It is only Indian sovereignty, its partial surrender in treaties often of dubious origin, and the concomitant responsibility of the federal government, that makes the term "Indian policy" intelligible. To abandon the idea of Indian sovereignty would be to expose the treaties as legal fig leaves to cover ethnic cleansing. Indian sovereignty made possible the cession of enough resources to create the wealthiest nation in human history, leaving Indians less than one percent of the population of that nation and in a condition of dependency on that wealth.
RACE AND POLICY:  
OF SOVEREIGNTY AND DEPENDENCY

Setting aside the early period of exploration by the European powers, and taking only the recent years of American history as a guideline, the policy of the United States with respect to the Indian tribes has been one of expediency grounded only in the political considerations of the moment and without any lasting understanding of the nature of peoples, laws, governments, or responsibilities (Deloria 1985).

While Indians defined by tribal status are at the mercy of the federal government, Indians defined by ethnicity enjoy the fruits of the African-American Civil Rights Movement: civil rights statutes and court decisions invoking strict scrutiny under the Fourteenth Amendment—at least as individuals outside of their reservations. Even lawyers are often shocked to hear for the first time that American Indians on reservations have no recourse to the Bill of Rights, no free speech or press, no protection from unreasonable search and seizure, or against self-incrimination beyond (since 1968) a federal statute. Some of this makes perfect sense. A theocracy cannot ban establishment of religion. A right to counsel in the mainstream sense is without import where there are no lawyers. To most Indians, civil rights have meant collective entitlements for which their ancestors bargained rather than individual rights with which they were born. Assertion of rights against one’s own people was unthinkable.

While some tribes remain cohesive, many have developed social fissures mirroring those of the dominant culture in addition to traditional clan rivalries. Tribal governments are, with significant exceptions, appendages created for the purpose of dealing with the federal government. Since most reservations are not economically viable, the tribal government becomes a conduit for federal aid, and the tribal office becomes a place from which to determine—in the midst of severe unemployment—who will work and who will not.

The Council of Economic Advisors Report offers very little data broken out as to Indians (1998) but still reports the conclusion, based upon census data, that “in 1989 the poverty rate for American Indians was higher than that of any other group.” The BIA puts overall reservation unemployment at 49 percent, but does not indicate how many who are employed remain so at the pleasure of the tribal governments.

The federally encouraged tribal constitutions (Wunder 1994) were not designed to deal with government under such circumstances. Separation of powers is far from universal in tribal constitutions. Moreover, the American governments (federal and state) upon which many of those constitutions were based have undergone some dramatic changes since tribal constitutions were written: constitutional apportionment, expansion of due process requirements, and the proliferation of sunshine laws (open records, open meetings). Few of these reforms have made their way to Indian reservations.

The artificiality of many tribal government structures in terms of traditional values has led those Indians who see themselves as guardians of traditional culture to either complete apathy toward the federally recognized tribal government or attempts to gain influence within it, hampered by an unbridled political spoils system. This situation cries out for an individual understanding of civil rights and civil liberties that would be incomprehensible.
sible in the days when the good of the people as a people always came first.

The problem with meeting corrupt and dictatorial tribal governments head-on is that empowerment of individual Indians often comes at the expense of what is left of tribal sovereignty (Porter 1997b). Awareness of this threat leads to Indian protectionism and a reluctance to criticize even the most rank abuses. I share that reluctance, so I will not name specific Indian nations. However, there are several examples of corruption: the nation with a substantial absentee population wherein a corrupt chief retained power by denying his opponents access to the voter registration lists; the tribal government that used violence to limit reservation smoke shops to those run by cronies; and the tribal chairman who entered into unfair contracts to exploit the natural resources of his reservation in return for kickbacks. These things happen in yonega government, of course, but under state and federal laws there are procedural protections for individuals who want to root out corruption. Indians have the Indian Civil Rights Act, which applies a watered-down version of the Bill of Rights to Indian Country by federal statute, but offers individuals only a writ of habeas corpus in case the conferred rights are denied. To apply for the writ, the aggrieved party must normally be in custody (McCarthy 1998). The lack of money damages or injunctive relief limits the effectiveness of the Indian Civil Rights Act, but the more fundamental problem is that the remedy must be sought in federal court. For Indians to bring their disputes into federal court is an act in derogation of tribal sovereignty. Even many Indians who have been denied rights considered fundamental in mainstream America—starting with the right to criticize the government—would not support an expansion of the remedies available in federal court.

It was the paternalistic grafting of Euro-American political structures onto tribal governments that created this situation. Ironically, it will take more of the same to end it. Those tribal governments that are dependent upon direct federal grants can be forced to become more internally democratic by essentially the same method that forced their creation in the first place. Those tribes that have become completely self-supporting from casino money are, contrary to folklore, few and far between, as will be discussed more fully below. The few that have become self-supporting in other ways have developed economically in part because they do not suffer from enough systemic corruption to cause difficulty in attracting capital (Ferrara 1998).

The key to dealing with corruption in tribal governments is to give Indians the same tools to deal with it from within that other Americans take for granted. If conditioning economic aid upon commitment to democracy (a common policy goal in other kinds of "foreign aid") is paternalistic, it remains less so than subjecting tribal governments to the oversight of federal courts or simply accepting corruption as inevitable.

With internal recognition of individual political rights in place, the tribal governments themselves could agree on structures to guarantee remedies with or without federal support. For the last two years, the Tribal Law and Governance Center at the University of Kansas Law School has convened an "Indian Nations Supreme Court" composed of tribal court judges. Before this "court," the law school has sponsored reargument of Lone Wolf v. Hitchcock and Cherokee Nation v. Georgia for pedagogical purposes (Porter 1997a). There is no persuasive reason why the
A Black and White Issue

The general trend of less federal oversight of state governments and increased reliance upon federal block grants to states and cities to pursue implementation of policies only vaguely outlined at the federal level.

Self-determination remains circumscribed by economic reality on most reservations. Contrary to the popular image of Indian gaming as the “new buffalo,” the National Indian Gaming Commission has only approved 75 Class III (casino) gaming ordinances.37 That number represents less than one fifth of the federally recognized tribes. Other tribes object to gambling on moral grounds, or own land too far from population centers, or are embroiled in disputes with state governments over gaming compacts. Under the 75 approved casino ordinances, most casinos were built on borrowed money and have not yet created substantial revenue streams for the tribes. Finally, gambling is vulnerable to state competition and market saturation, and, in some cases, gambling may eat away the fabric of the very culture the tribes sought to protect by entering the casino business under economic duress (Mezey 1996).

Tourism has created revenues for some tribes (Duggan 1997), but catering to tourists often means reinforcing stereotypes to a degree that may threaten the very values which tribal self-determination seeks to maintain (French 1977; Smith 1982). Cherokees in tipis or Navajo kachinas are as authentic as beaded “Indian” trinkets from Taiwan, and some Indians are understandably reluctant to distort already endangered cultures for the sake of the tourist trade.

Finally, there is entrepreneurial initiative such as that shown by the Mississippi Choctaws (Bordewich 1996; Ferrara 1998). Tucked away in a region of low wages, the Choctaws successfully
sold their labor for light manufacturing and leveraged the resulting resources to diversify until the tribe reached full employment and was able to employ white and black workers from communities near the reservation.

There is no silver bullet that will slay the economic beast for all tribes. There is, however, one policy that attacks the problem while also offering something to those who still want Indians relocated and assimilated: free quality education. This is not to recommend enrollment preferences (although there is no constitutional bar to preferential admissions), or lowered academic standards—just a lowering of the financial barriers. Indian dropout rates at all levels are breathtaking.

The Council of Economic Advisors presents a discussion of education that excludes Indians (1998) except for a graphic representation showing Indians on the bottom. "(T)ribal and linguistic diversity, geographic dispersion, and preponderance in remote rural areas have made national studies of this population very costly and beyond the reach of most education researchers" (Pavel and Curtin 1997). Scholars place Indian secondary school dropout rates from 30 to 60 percent (Backes 1993; Ledlow 1992; Reyhner 1992). A few Indian students go on to become "the least successful ethnic group in higher education" (Benjamin, Chambers and Reiterman 1993). The problem persists in professional education (Tate and Schwartz 1993). "Obviously, the academic pipeline for the American Indian people is leaking badly" (Dingman, Mroczka and Brady 1995).

Part of the reason for this difficulty, in addition to general hopelessness, is the specific hopelessness caused by the inability to see higher education as something that happens on this planet, at this time. Tribal colleges are making heroic efforts to make school a real option (Bordewich 1996), and they appear to do a good job of preparing Indian students for mainstream campuses, in spite of being shoestring operations. The Advisory Report recommends implementation of the American Indian and Alaska Native education policy outlined in Executive Order No. 13096 (August 6, 1998).

Those who believe assimilation is the correct policy cannot oppose funding for Indian education, because without education there cannot be assimilation. It is true enough that Indians have a history of using education to protect what is left of their sovereignty, but that risk should be acceptable to those who believe in the superiority of the dominant culture's ideas. Those who believe self-determination is the correct policy, of course, understand the need for Indian professionals to avoid tribal government by consultants, a dependency that can crush self-determination just as quickly as economic dependency.

CONCLUSION

The belief that Indians are somehow fundamentally different from other Americans, however romantically the idea may be expressed in terms of native "tradition" or magical notions of affinity for the earth, implies a failure of basic American values, for it leads inexorably toward moral acceptance of political entities defined on the basis of racial exclusion (Bordewich 1996).

Bordewich washes a lot of dirty Indian laundry publicly in a way that Indian intellectuals are unlikely to do and points out correctly that the aberrations in some tribal governments are inimical to attracting capital to reservations. His
book, *Killing the White Man's Indian*, may be flawed in a number of fundamental ways, but it has stimulated discussion of Indian policy among the people Bordewich has offended—virtually everyone, *yonega* and Indian—concerned with Indian policy. For this stimulation, Indian intellectuals should thank him even as they go on the attack. Given the status of Indians in constitutional law, the importance of public opinion to Indian policy can hardly be overstated.

Public opinion is the only constraining power on federal dealings with tribal Indians, and American public opinion is uninformed but vaguely sympathetic. In spite of the lacunae in public education about Indians (Advisory Report), most people understand that North America was not uninhabited when *yonega* came here. The exact body count is subject to debate (Stiffarm and Lane 1992), but the fact that there was a body count is not.

In modern times, homicide as official policy is no longer tenable, and has not been tenable since photography brought the massacre of non-combatants at Wounded Knee in 1890 to the attention of the world. Churchill and Vander Wall (1994) present a running body count of Indian activists on the Pine Ridge Reservation, but the government is responsible only in the sense that the likely killers were serving government interests and the Federal Bureau of Investigation (FBI) is responsible for homicide investigations that have not borne fruit.

The killing fields of Pine Ridge led to the American Indian Movement's (AIM) forcible occupation of the Wounded Knee Massacre site in 1973, an action now called Wounded Knee II. The occupation and subsequent 71-day stand-off with federal troops produced 562 arrests and 185 federal indictments, including prosecution of Russell Means, Dennis Banks and virtually all of AIM’s leadership (Matthiessen 1991). It may be one measure of the public's understanding of self-defense that the Wounded Knee II prosecutions resulted in a 7.7 percent conviction rate in a federal circuit where the conviction rate was generally 78.2 percent (Sayer 1997).

Political violence has died down, but the causes still simmer, and violence remains a daily reality in Indian Country. The Bureau of Justice Statistics recently released an analysis of five years of crime statistics showing American Indians to be not only more likely to experience violent victimization than any other ethnicity, but also more likely to be victimized by persons of another ethnicity (Greenfeld and Smith 1999). Killing Indians is no longer a government policy, but removal of jurisdiction from the tribes in the Major Crimes Act makes the responsibility for making reservations safe from crime a federal matter, one that has lacked serious attention.

Overt forced acculturation is now probably also out of the question but Indians have always recognized that the government has a policy interest in assimilation. Perhaps it is time that we recognized that interest as valid. Indians in distinct cultural enclaves are expensive and embarrassing. When destruction of Indian culture was official policy, it was pursued with similar alacrity by conservatives who found it to be the condign result of the Indian wars and liberals who found it necessary to “kill the Indian to save the man.”

This shorthand expression of the forced assimilation policy was attributed to Richard Henry Pratt, founder of the Carlisle Indian Industrial School, who in fact used the phrase in a paper read in Denver in 1892 (Prucha 1973). It was sometimes reported as “kill the Indian child” (Eastman 1935). In either iteration, it is an apt description of the policy
Pratt, of course, had no motive to harm Indians (Pratt 1987). Separating Indian children from their hair, their language, and their heritage was done with the best of intentions (Prucha 1973).

Forced acculturation was not limited to Indian children. In 1872, the Commissioner of Indian Affairs literally divided up the tribes among Christian sects for the purpose of conversion (Prucha 1990). “Courts of Indian Offenses” punished such traditions as the potlatch, the sun dance and the practice of traditional medicine (Prucha 1990). Those of us who recoil from the forcible aspects of the policy must try to remember that there is a legitimate governmental interest in assimilation.

Not only is assimilation a valid policy objective for the United States, a certain amount of it is inevitable. At least half of all Indians are now Christians. A majority of Indian men and women are choosing exogamous marriages (Advisory Report 1998; Bordewich 1996). Perhaps most important, most reservations are not now, and are unlikely to become, economically self-sufficient in the short run. People who leave the reservation to work bring back culture as well as money.

If Indians can understand the advantages to the government in assimilation, perhaps the government could also recognize that Indian nations have an interest in a certain amount of separatism. To refer to tribal membership as “defined on the basis of racial exclusion” is to ignore history, law and common sense. Bordewich carries his claim over the edge of rationality by calling it “obvious to anyone that legitimizing segregation for Indians will set a precedent for its potential imposition upon black, Asian, and Hispanic Americans.”

American Indians did not choose to end their common practice of adopting white people and in some cases black people. To this day, they practice exogamous marriage. “Racial exclusion” was and is a method for the federal government to limit the number of people who can make claims based upon treaties or upon the trust relationship (Mintzner 1997) that the courts have imposed on the federal government as a price for plenary power over Indians. Indeed, Congress in 1888 tried by statute to stop white men from marrying into tribes. 40

Pommersheim (1995) argues that this country’s commitment to pluralism can be measured by federal Indian policy. Turning around Bordewich’s later claim that reservations somehow legitimize a return to the petty apartheid of the Jim Crow laws, Pommersheim sees in respect for Indian self-determination a respect for cultural diversity that is among the primary goals of the Advisory Report.

Bordewich is profoundly correct that there can no longer rationally be one “Indian policy” but rather there needs to be a tribal policy that takes into account the different histories and different contemporary wishes of Indian people. Some tribes may wish to intermarry themselves out of existence, and some tribes may wish to liquidate assets and self-terminate as government entities if they could produce a genera-
tion educated enough to make their way in the dominant culture.

The United States has benefited and continues to benefit from land and resources looted from Indian nations. It is morally and politically wrong to now wish those Indian nations into oblivion because tribal members have intermarried, forgotten their language or drive trucks instead of riding horses. Involuntary termination was a mistaken policy. Self-determination means that the next federal commission to report on race relations should take notice of Indian America: over 500 societies, equal in opportunity, separate by choice, surviving as distinct cultures because they refused to die and because finally the American people were great enough to turn away from genocide.

Notes

1I am admonished now and then that the Cherokee word yonega (literally, "white") or the Lakota wasichu (literally "fat-takers," connoting greed) or similar words from Native languages are "racist speech." If so, they should be tolerated in a culture peppered with "American Indian," "Native American," "Redskin," "Brave," "Buck" and "Squaw." This last word is known among Indians as "the S____ word", as we resist this application to our women relatives of a corrupted term for the female organ, coined to describe an Indian woman kept for sexual use. Even our tribal designations in the parlance of the dominant culture are often words appropriated from our enemies. So please understand that my purpose is not to offend, but to accentuate the dissimilarities between us.

2This was the number as of December 21, 1998, subject to minor differences in how political subdivisions are counted. Federal Register 63(250): 71941-71946 (December 30, 1998). A list of alleged tribal entities that had petitioned for federal recognition as of March 3, 1998, is at http://www.doi.gov/bia/statsndx.html (March 8, 1999).


724 Stat. 388.

8This was the case in Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978), wherein fullblood Indian children were denied tribal enrollment and therefore access to services, because the Pueblo used a patrilineal method of determining tribal enrollment. The Supreme Court upheld the Pueblo’s power to determine its own membership. It would be interesting to see how this power would fare if exercised to grant tribal membership to a white person, something that used to be common among many tribes.

9Plessy v. Ferguson, 163 U.S. 537 (1896).

10His refusal to do so led to losing his wife on The Trail Where We Cried (Moulton 1978, p. 100-101).

11"Colonial" in this context refers to the relationship between Indians and the British colonies, the French colonies, the Spanish colonies, the Confederation, and the United States.

12The others are the Thirteenth, abolishing slavery, and the Fifteenth, extending the franchise.

13While some of the anti-affirmative action lawsuits have been brought under Title VII of the Civil Rights Act of 1964, the federal government derives its power to enforce that Act from the Fourteenth Amendment.

14323 U.S. 214 (1944).

15323 U.S. at 223.


18417 U.S. at 554.
21187 U.S. 553.
22Indian Citizenship Act, 43 Stat. 25.
25517 U.S. 44 (1996). In all probability, the same analysis will bar suits in federal court under existing gaming compacts (Wolf 1995).
31187 U.S. 553 (1903), legalizing unilateral treaty abrogation by the United States.
3130 U.S. 1 (1831), wherein Chief Justice John Marshall created from whole cloth the characterization of Indian tribes in constitutional law that survives to this day, “domestic, dependent nations.” 30 U.S. at 17.
32Somewhat more difficult but theoretically possible would be an agreement to submit disputes between tribes to such an intertribal tribunal. The gap between theory and practice could only be closed as the institution gained legitimacy by demonstrating both jurisprudential competence and cultural sensitivity.
3416 Stat. 544, 566.
38I was raised in Oklahoma after the government allotted the Cherokee Nation. My relatives, like most others, quickly lost their allotments. College did not cross my horizon until I became eligible for the GI Bill. The military was taking high school dropouts because it was wartime. Like most Indian youth today, I would not have qualified for the all-volunteer peacetime military and so, without the Vietnam War, college (let alone graduate school) would have been entirely out of reach.
39Barbara Landis and Genevieve Bell have created an outstanding resource on the Carlisle School and the boarding school movement generally, on the world wide web at http://home.epix.net/~landis/ (Feb. 24, 1999).
4025 Stat. 392. The so-called Five Civilized Tribes (Cherokee, Choctaw, Chickasaw, Seminole and Creek) were excepted in Indian Territory, perhaps because the process was already advanced too far to regulate.

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Steve Russell is an Assistant Professor of Social and Policy Sciences at the University of Texas at San Antonio and President of the Texas Indian Bar Association. Judge Russell would like to thank the academic and practitioner members of the Internet discussion list triballaw, particularly Martha E. Ture, for their invaluable assistance in this project.
The National Center for Education in Maternal and Child Health provides national leadership to the maternal and child health community in three key areas—program development, policy analysis and education, and state-of-the-art knowledge—to improve the health and well-being of the nation’s children and families.

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Law Enforcement Oversight in the American Indian Community

EILEEN M. LUNA
University of Arizona

American Indian tribal governments have recently begun to create and implement tribal police departments. While the provision of such services can contribute to tribal sovereignty, police misconduct endures in tribal communities. In response, tribal governments have developed law enforcement oversight systems, which allow for community input into police policies and procedures and into the propriety of specific police conduct. A survey of tribal police departments reveals that their oversight systems share similar characteristics to systems found in the non-Indian community and that they enjoy the support of tribal police officials. This article suggests reasons why these particular oversight systems are viewed as effective and highlights concerns about the independence of community oversight boards and the partiality of their members. Areas for more exhaustive research into tribal law enforcement oversight are suggested, as they may illuminate success factors for police oversight in all US communities.

INTRODUCTION

Civilian oversight of police is an increasingly important policy practice in the United States and dates back more than 30 years. Recent studies have determined that there are now more than 90 different civilian review procedures in the United States and that three-fourths of the nation's 50 largest cities have some form of civilian review (Walker 1998b). In particular, it now appears that civilian oversight systems are becoming more prevalent in Indian Country. Furthermore, while police throughout the United States are generally opposed to civilian oversight, American Indian tribal police departments are outspoken in their support of the concept and its implementation in the communities they serve.

To date, there has been little research on tribal law enforcement, or the systems of oversight of tribal law enforcement. A number of studies have been conducted on civilian oversight systems in the non-Indian community, generally focusing on urban police departments with highly developed systems of supervision and administration. The findings of these studies may not be relevant to community oversight in Indian Country, where tribal police departments generally serve highly rural communities with widely dispersed populations. These police departments, moreover, have little access to technology and tend to be significantly under-staffed.

The combined prevalence of crime victimization and tribal police misconduct in the American Indian community renders crucial some form of law
enforcement oversight. This paper seeks to identify the unique characteristics of police accountability systems in Indian Country. The particular successes achieved there may help to inform efforts to enhance law enforcement accountability in all of our nation’s communities.

**LAW ENFORCEMENT MISCONDUCT IN INDIAN COUNTRY**

The need for assurance that policing is being conducted in an accountable and reasonable manner is as necessary for Indian Country as it is for the non-Indian community. A study conducted by the Bureau of Indian Affairs (BIA) in 1974-1975 stated that there was an absence of discipline in the ranks of those who provided police services to Indian Country, and that both BIA and tribal police failed to maintain adequate standards of professional conduct (US Bureau of Indian Affairs 1975). Officers who have been arrested and incarcerated have often been subsequently allowed to continue in their jobs. Recruiting difficulties, including low wages, have inhibited the disciplining of officers proven guilty of misconduct. Other studies have confirmed these findings (Barker 1998; US Commission on Civil Rights 1981; US Bureau of Indian Affairs 1975; Etheridge 1977). Tribal police were found to have “a singularly bad reputation as being among the worst police forces in America, plagued by nepotism, poor training, high job turnover, and low pay” (Harrington 1982, 102). Clem and Rumbolz (1982, 68) observed that Indian reservations in South Dakota are plagued by an “often sorry state of law enforcement.”

Unfortunately, tribal police misconduct continues to occur. Tribal police departments struggle to deal with allegations of misconduct against personnel:

- In Arizona, a much-honored tribal police officer was fired from a position with the Fort McDowell tribal police department after the BIA accused him of stealing gang files during his previous employment with the Salt River tribal police department (Wagner 1997). After leaving tribal law enforcement, he was subsequently arrested in a domestic dispute (Walsh 1998); and
- In Ontario, Canada, a non-Indian couple complained to the Royal Canadian Mounted Police of harassment, threats, improper vehicle detentions and high-speed pursuits by Indian tribal police (Brunet 1993).

Although there are difficulties with the direct provision of law enforcement services by tribal governments, providing such essential services advances the cause of tribal sovereignty. That sovereignty has suffered recent attacks at the federal level. In *Alaska v. Native Village of Venetie Tribal Government* (96 U.S. 1577 1998), the US Supreme Court held that an Alaskan Native Village did not have the same tribal sovereignty as Indian tribes in the contiguous 48 states. The Court ruled that the land held by the native village did not fit the definition of Indian Country, and thus the village was denied the right to exercise taxation jurisdiction over its land. The 105th Congress made several attempts to pass legislation (including five Senate bills introduced by Sen. Slade Gorton (R-WA)) that would have required waivers of tribal sovereign immunity. These actions amount to an explicit assault on the sovereign status of American Indian tribal governments. However, even though de jure tribal sovereignty—that which flows from legislation and court decisions—is under attack, de facto sovereignty continues to advance. De facto sovereignty, that which naturally results from the assertion of authority and responsibility over necessary services (whether or not ex-
plicitly permitted under existing laws), is heightened by the movement of tribal governments to provide law enforcement services to their members.\textsuperscript{9}

The provision of necessary services requires that the services be competent, responsible and supported by comprehensive procedures and protocols. This is particularly true with the provision of law enforcement services, where appropriate mechanisms to ensure the proper exercise of police authority represent essential protections for the public. Many tribes have looked to the concept of community oversight to aid them in this endeavor.

As the idea of law enforcement accountability becomes more prevalent, we must give consideration to the structure and implementation of such procedures in different communities. The procedures developed must be culturally sensitive and appropriate to the communities they are to serve, not simply modeled after those that may already exist in urban environments. In urban areas, even with the best intentions, a review board may find itself underutilized by racial minorities. The problem is that many people of color feel excluded from the inner workings of government. Although some people of color have successfully pressured for change as outsiders, this role may not be the most productive when dealing with the development of law enforcement policy, or when conducting careful review and examination of allegations of misconduct.

While this paper focuses on community oversight of tribal police, native people in urban areas also experience problems with law enforcement. The more complex problems of racism, stereotyping and cultural norms can combine with varying levels of information regarding the propriety of specific law enforcement conduct, creating a situation where native people hesitate to hold law enforcement accountable for individual acts of misconduct or for systemic failures to provide appropriate services.\textsuperscript{10} However, the problems of community oversight of tribal police are even more intricate, particularly given tribal politics, poverty, soaring crime rates and inadequate employment, education and housing in Indian communities.

Regardless of the difficulties inherent in developing and implementing community oversight of tribal police, the need to promote faith and trust in tribal law enforcement is critical. A recent study by the US Department of Justice Bureau of Justice Statistics underlines what many American Indians already knew: crime victimization rates in the American Indian community are significantly higher than in the US population at large (Greenfeld and Smith 1999). Alarmingly, these rates are more than twice as high as they are in the next-highest demographic category, the African-American community. The rate of violent victimization for American Indian women was found to be almost 50 percent higher than that for African-American men. American Indian women are also more than twice as likely to report being stalked than women of other racial or ethnic backgrounds, and approximately 70 percent of restraining orders obtained against stalkers are violated. The study paints a portrait of a population victimized by persons of a different race, where the perpetrator is under the influence of alcohol, and where the act of violence is much more likely to result in injuries that require medical treatment and/or hospitalization.

In light of this situation, it is crucial that American Indians feel comfortable and safe in contacting their police and in reporting criminal victimization. As American Indian populations attempt to cope with violence, they must...
have confidence that their tribal police departments are held to the highest standards of policing. They must be assured that these officers are competent guardians, free of the racism and brutality that unfortunately permeates some police departments today. Community oversight of tribal police can increase community confidence in the professionalism and accountability of tribal police services.

LEGAL BACKGROUND

Tribal funding of law enforcement has grown considerably since 1995, when only 114 tribes had tribally-funded police departments (US Bureau of Indian Affairs 1995). Of the now approximately 170 reservations that have their own law enforcement departments, 164 tribal governments have received Community Oriented Policing Services (COPS) grants (Reno 1995). The COPS grants have funded more than 450 law enforcement positions within 140 tribes (Kress 1996). The rest of the tribes that received funds have used the additional funding for needed operational expenses. Either the Federal Bureau of Indian Affairs Law Enforcement Service (BIA-LES) or the states, through Public Law 83-280 (hereafter PL 280) in 1953. This law has allowed state and local police forces to act in Indian Country without being accountable to tribal councils or tribal laws.

Tables 1a and 1b display a list of all states that have some level of PL 280 authority, and what that authority is, by tribe, in some areas. PL 280 arose during an era when the federal government sought to terminate the federal relationship with tribes. The law shifted the responsibility for the provision of civil and criminal services to the states. Those states with the largest populations of American Indians ("mandatory" states) were required to provide such services while other states ("option" states) were allowed to opt for such jurisdiction.

Under PL 280, six states (see Table 1a) were delegated criminal jurisdiction over reservation Indians and civil jurisdiction over cases arising against Indians in Indian Country. PL 280 essentially gives the named states the power to enforce the same criminal laws inside Indian Country that they enforce outside of it. Other states were permitted to assume such jurisdiction, pursuant to the passage of appropriate state statutes and/or state constitutional amendments. Subsequent to the pas-
sage of legislation, ten states assumed such jurisdiction.

PL 280 established state jurisdiction without abolishing tribal jurisdiction. The tribes in the named states often operate their own police departments, even though the states, under PL 280, are required to provide law enforcement services. In instances such as these, tribal and state powers are concurrent, even though some states—particularly California—have denied that such tribal jurisdiction exists (Goldberg-Ambrose 1995).

**Structures and Functions of Civilian Oversight Systems**

Studies of civilian oversight of police departments in the non-Indian community have determined that there are five basic types of systems (Walker and Wright 1995). Major dimensions of these systems are displayed in Table 2. In Class IA and IB systems, individual citizen complaints are received and investigated by persons who are not sworn police officers. Class IA procedures require that the investigative reports be reviewed by a board that makes recommendations to the police executive. These recommendations are advisory only, and the boards do not have the authority to hire or fire. Class IB procedures are headed by an executive director who sends recommendations to the police executive. There is no board in this structure.

In Class II systems, citizen complaints are investigated internally by sworn police officers. The investigative reports are then forwarded to a civilian oversight system—either a board or a single person—that reviews the report and makes recommendations to the police executive.

In Class III systems, citizen complaints are investigated and disposed by the police department. There is an appellate procedure that allows a civilian oversight system to review the complaint disposition upon request of the complainant.

Finally, Class IV systems include an "auditor" component. Complaints are investigated and disposed by the police department. The auditor moni-
Table 1b: State by State Overview of the Status of PL 280

<table>
<thead>
<tr>
<th>Option States</th>
<th>Areas of State Jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arizona</td>
<td>Air and water pollution.</td>
</tr>
<tr>
<td>Florida</td>
<td>All Indian Country within the state.</td>
</tr>
<tr>
<td>Idaho</td>
<td>Seven areas of subject matter jurisdiction: compulsory school attendance; juvenile delinquency and youth rehabilitation; dependent, neglected and abused children; insanity and mental illness; public assistance; domestic relations; motor vehicle operation. Full state jurisdiction if tribes consent.</td>
</tr>
<tr>
<td>Iowa</td>
<td>Civil jurisdiction over Sac and Fox Reservation.</td>
</tr>
<tr>
<td>Montana</td>
<td>Criminal jurisdiction over Flathead Reservation. Full state jurisdiction where tribes request, counties consent and governor proclaims (retrocession accepted for Salish and Kootenai Tribes).</td>
</tr>
<tr>
<td>Nevada</td>
<td>Full state jurisdiction; later amendment required tribal consent. Counties may opt out (retrocession accepted for all covered reservations).</td>
</tr>
<tr>
<td>North Dakota</td>
<td>State civil jurisdiction only, subject to tribal consent.</td>
</tr>
<tr>
<td>South Dakota</td>
<td>Criminal and civil matters arising on highways. Full state jurisdiction if US reimburses costs of enforcement.</td>
</tr>
<tr>
<td>Utah</td>
<td>Full state jurisdiction if tribes consent.</td>
</tr>
<tr>
<td>Washington</td>
<td>Eight subject areas of jurisdiction (retrocession accepted for Confederated Tribes of the Chehalis Reservation, Quileute Reservation, Swinomish Tribal Community, Colville Indian Reservation, Port Madison Reservation and Quinault Reservation).</td>
</tr>
</tbody>
</table>

Source: Luna 1998

tors the operations of the complaint process, but is not involved in individual complaints.

While civilian oversight systems have been in place in American cities for many years, there have been few scientific studies of their long-term effectiveness in making substantive improvements in the police departments over which they have jurisdiction. A report published by the Open Society Institute Center on Crime, Communities and Culture notes that while civilian oversight systems have proliferated in cities in response to incidents of police misconduct, there is only limited evidence of their success in controlling such incidents (Walker 1998a). However, this report concludes that results from municipal civilian oversight systems provide for “cautious optimism.”

Additional studies, including those by academics such as Samuel Walker (1998b), Andrew Goldsmith (1991) and Douglas Perez (1994), and studies funded and published by the cities of Albuquerque, NM (Luna and Walker 1997), Tucson, AZ (City of Tucson 1996), and Portland, OR (Office of the City Auditor 1993), among others, have come to the conclusion that external oversight of law enforcement can be an
Table 2: Significant Characteristics of Civilian Oversight Systems

<table>
<thead>
<tr>
<th>Class</th>
<th>Structure</th>
<th>Initial Investigator</th>
<th>Jurisdiction</th>
<th>Dispositive Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>IA</td>
<td>Independent board and paid staff</td>
<td>Non-police agency</td>
<td>Original</td>
<td>Advisory to police chief</td>
</tr>
<tr>
<td>IB</td>
<td>Independent director</td>
<td>Police agency</td>
<td>Original</td>
<td>Advisory to police chief</td>
</tr>
<tr>
<td>II</td>
<td>Independent board or director</td>
<td>Police agency</td>
<td>Original</td>
<td>Advisory to police chief</td>
</tr>
<tr>
<td>III</td>
<td>Independent board or director</td>
<td>Police agency</td>
<td>Appellate</td>
<td>Advisory to police chief</td>
</tr>
<tr>
<td>IV</td>
<td>Auditor or contracted attorney</td>
<td>Police agency</td>
<td>Audits records</td>
<td>Advisory to municipality</td>
</tr>
</tbody>
</table>

Source: Walker and Wright 1995

Essential part of effective police accountability. Even though the scientific studies are few, and most information regarding effectiveness is anecdotal, the cities cited above and others have established and/or strengthened civilian oversight of their law enforcement agencies.

Any of the classes of oversight systems can prove effective. All establish the principle of police accountability, serve as sources for information about police misconduct and act as early warning systems for police administrators. In addition, they serve to empower communities. They give voice to the concerns of the citizens of the community and ensure that law enforcement officials hear those concerns.

A Survey of Community Oversight Systems in Indian Country

Methodology

Given the recent growth in American Indian tribal police departments, the opportunity now exists to look at the development and implementation of police accountability systems in Indian Country. To this end, a survey was conducted of the 170 Indian tribal governments that have developed tribal police departments. Of the 170 surveys that were mailed, 49 usable surveys were returned, a response rate of approximately 29 percent. It is not known whether there are significant differences between those tribal police departments that answered the survey and those that did not. Frequent turnover of tribal police personnel, and the need to prioritize the administrative and service functions of newly-created tribal law enforcement departments, may have contributed to the low response rate.

Although the survey response rate for this study is low, that rate is comparable to those researchers received in similar studies. Barker (1998) also obtained a 29 percent response rate in his survey and subsequent on-site visits to tribal police departments. In their study of the jurisdictional problems that tribal police face, Skibine, Oliviero and Fagan (1980) received a response rate of only 24 percent. A study with a response rate this low may not allow us to draw definitive conclusions, but this study was intended to be exploratory in nature. Because the literature on tribal
police is so sparse, this information should prove important and useful.

Follow-up telephone interviews were conducted of those tribal police departments that responded that they had a formal procedure for handling complaints against police personnel (25 of the 49 respondents). Telephone interviews of tribal police chiefs or administrative staff were completed with 22 of these 25 departments, and three interviews could not be completed with appropriate personnel.

The interviews consisted of questions regarding the composition and structure of the oversight systems, when the systems were established, how members were selected, and whether there were members that represented law enforcement or had law enforcement experience. Questions were asked about whether there were any public hearing components of the systems, and whether police personnel records were kept confidential. The jurisdiction of the community oversight systems were determined based on responses in these areas: whether the powers of the system were advisory or mandatory; whether there were any constraints as to what types of allegations could be reviewed; and whether the system had the authority to review and recommend policy. The interviewees were asked questions regarding law enforcement's general feelings about the systems and, in particular, about any specific concerns that had been expressed. The questions were asked in an open-ended manner, with follow-up questions asked as necessary.

Findings

Of the 49 American Indian tribal police departments that responded to the survey, 25 indicated that community oversight components were part of their police complaint procedures. Their responses indicate that community oversight in Indian Country is not a new phenomenon. While many oversight systems have been formed recently—seven have been created since 1996 and two were being adopted by tribal councils at the writing of this article—the majority have been in existence since their particular tribal police departments were created.19

Structure of community oversight systems

Community oversight structures in Indian Country closely resemble those found in the non-Indian community. Table 3 outlines significant aspects of the 22 community oversight systems studied. Fourteen of the 22 tribal community oversight systems consist of an elected or appointed board, independent from either the tribal council or the tribal police department. Two tribal community oversight systems consist of an Independent Auditor/Ombudsman who maintains independent authority over the police complaint process, and others consist of tribal council subcommittees that have authority over law enforcement.

Although an in-depth analysis of Indian Country police oversight systems has not yet been attempted, an initial survey of these systems indicates that they generally fall within the classifications established in the previous section. Every tribal law enforcement oversight system contacted for this study was a Class II, Class III or Class IV system. Complaints are received by either the tribal police departments or the oversight systems, and in most cases either one is acceptable.20 Law enforcement completes the initial investigation of citizen complaints in those tribal communities studied. In certain instances where serious allegations of misconduct arise, the investigations are completed by a geographically adjacent police department or federal agency,
<table>
<thead>
<tr>
<th>Tribe</th>
<th>State</th>
<th>Composition of Board</th>
<th>Officers on Board</th>
<th>Authority</th>
<th>Policy Authority</th>
<th>Public Meetings</th>
<th>Confidentiality of Records</th>
</tr>
</thead>
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<tr>
<td>Navajo</td>
<td>AZ</td>
<td>TC</td>
<td>Yes</td>
<td>Advisory</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>San Carlos</td>
<td>AZ</td>
<td>TC/ Law Enf. Committee</td>
<td>No</td>
<td>Advisory</td>
<td>Yes</td>
<td>Yes</td>
<td>Unknown</td>
</tr>
<tr>
<td>White River</td>
<td>AZ</td>
<td>Independent</td>
<td>Yes-half officer/half community</td>
<td>Advisory</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Mohegan</td>
<td>CT</td>
<td>Ombudsman</td>
<td>Yes</td>
<td>Advisory</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Fort Hall</td>
<td>ID</td>
<td>Independent</td>
<td>Yes</td>
<td>Advisory</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Kickapoo</td>
<td>KS</td>
<td>Independent</td>
<td>Yes-half officer/half community</td>
<td>Mandatory</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Hannaville</td>
<td>MI</td>
<td>Independent/T'</td>
<td>No</td>
<td>Advisory</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
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<td>MT</td>
<td>Independent</td>
<td>Yes</td>
<td>Advisory</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Rocky Boy's</td>
<td>MT</td>
<td>TC/ Law Enf. Committee</td>
<td>No</td>
<td>Advisory</td>
<td>Yes</td>
<td>Yes</td>
<td>Unknown</td>
</tr>
<tr>
<td>Omaha</td>
<td>NE</td>
<td>Ombudsman</td>
<td>Yes</td>
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<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
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<td>NM</td>
<td>TC</td>
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<td>NY</td>
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<td>No</td>
<td>Advisory</td>
<td>No</td>
<td>Yes- upon request</td>
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<td>Spirit Lake</td>
<td>ND</td>
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<td>Yes</td>
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<td>Yes</td>
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<td>Yes</td>
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<td>Yes</td>
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<td>No</td>
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<td>Yes</td>
</tr>
<tr>
<td>Creek</td>
<td>OK</td>
<td>Independent elected</td>
<td>No</td>
<td>Advisory</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Cheyenne River</td>
<td>SD</td>
<td>Independent/T'C</td>
<td>Yes</td>
<td>Advisory</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Pine Ridge</td>
<td>SD</td>
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<td>No</td>
<td>Advisory</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Rosebud</td>
<td>SD</td>
<td>Independent appointed</td>
<td>Yes</td>
<td>Advisory</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Lummi</td>
<td>WA</td>
<td>Independent appointed</td>
<td>Yes</td>
<td>Advisory</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
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<td>WA</td>
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<td>No</td>
<td>Mandatory</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Lac du Flambeau</td>
<td>WI</td>
<td>Independent</td>
<td>No</td>
<td>Mandatory</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Menominee</td>
<td>WI</td>
<td>Independent</td>
<td>No</td>
<td>Advisory</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Source: Author survey
such as the BIA-LES or the FBI.

**Jurisdiction**

The jurisdiction of the tribal community oversight systems identified is generally very broad. One striking finding was that of the 22 oversight systems studied, 75 percent had policy authority. Policy authority, viewed by many experts as an extremely important component for law enforcement oversight systems, entails the ability to examine the policies and procedures of the police department and to make recommendations for new policies. Review of police policy is a proactive approach that may serve to improve policing and to prevent problems before they occur.

More than 85 percent of the community oversight systems identified may look at any allegation of misconduct they choose. More than 75 percent of these systems are advisory to the tribal police chief, while the rest have mandatory authority. In some cases, however, the recommendations by systems with advisory powers were treated as mandatory by the tribal police department. This has not occurred in civilian oversight mechanisms generally.

One tribal government has specifically addressed the problem of accountability of surrounding local law enforcement. The Muckleshoot tribe in Washington (a PL 280 state) recently contracted with a county sheriff’s department and a city police department to provide law enforcement services to the reservation. A specific provision of the contract was the creation of a tribal community oversight system with authority to participate in the selection of officers employed by the county and city agencies to serve on the reservation. The tribal oversight committee will also participate in the complaint process for the city police selected for reservation service, and any disciplinary recommendations made by this committee will be treated as mandatory by the employing agency.

**The role of law enforcement**

In general, tribal communities were open to the inclusion of law enforcement in their oversight systems. Although only five boards actually had law enforcement members at the time of the survey, many did at one time. The Kickapoo and White Mountain oversight structures actually require that law enforcement be represented on the community oversight board.

The inclusion of law enforcement representatives on the community oversight board as full voting members raises the issue of independence. Oversight systems generally are constructed to inject a non-police viewpoint into the analysis of the propriety of police conduct. This analysis is then juxtaposed with the police viewpoint when the disposition of the case is rendered. Involving police personnel in both the community analysis and fact-finding, as well as in the disposition phase, may dilute the community analysis of the issue and call the independence of the process into question.

**Board membership**

Most tribes require that the members of oversight boards be both tribal members and reside on the reservation. The Menominee and Lummi boards, however, contained tribal members who do not live on the reservation. The Fort Hall tribe designates a position on the community oversight board for someone who resides in an adjacent community and who is not a tribal member.

**Confidentiality**

All of the tribal oversight systems consider police personnel records confidential. In some instances members of the community oversight system may view the records, but this is rare. Meet-
ings held by the community oversight boards are generally public, although this is not the case in every instance. In three tribes the meetings are confidential and in one tribe the meeting may be public upon request of the subject officer.

Tribal police response

Unlike police in the non-Indian community, the tribal police contacted were overwhelmingly supportive of community oversight. This support stands in stark contrast with the common experience in the non-Indian community that "police officers bitterly oppose civilian review" (Walker 1992, 290). Interviews with tribal police officials elicited comments such as: "[the oversight system is] protection for the public," and "we all know each other, we're all related clanwise."

The opinions expressed in support of community oversight by police in this study have been substantiated by other researchers. In one study of a Great Plains tribal police department it was observed that "none of the distrust and rancor typical of relations between police and civilian oversight commissions elsewhere was in evidence" (Barker 1998, 93). That study further found that tribal police viewed the community oversight system as helpful in accomplishing the professionalism that the police department wanted to achieve.

In a few instances, however, tribal law enforcement did acknowledge that it had encountered problems with community oversight. Four of the 22 police personnel interviewed noted some concerns with how the community oversight systems operate. The concerns included lack of experience of oversight system members, the effects of nepotism on system decisions, questions of conflict of interest, and feelings that the participants in the oversight system either were adversarial with the police department or did not undertake sufficient advocacy on their behalf. However, even in these instances the concerns did not outweigh the support and positive comments made by police administrators for the concept of community oversight.

CONCLUSION

The development of community oversight systems in Indian Country provides researchers with a unique opportunity for a deeper analysis of the civilian oversight movement. To date there has been little research into which civilian oversight system works best and why some oversight systems fail after a few years. Failure is usually attributed to budgetary constraints, weak investigative staff or a general failure of the political will (Amnesty International 1998). The study of community oversight systems in Indian Country may help to clarify why these systems are generally viewed as successful and are supported by tribal law enforcement.

One reason for the success of tribal community oversight systems may be the fact that most were created concurrently with the formation of the tribal police departments. The integration of the system with the department from the beginning may help to create an effective working relationship and ease the concerns that can result when the oversight system comes about as a result of particular problems or issues. One tribal police administrator credited the police support of community oversight to the department's commitment to community policing. He stated that there were issues between "traditional" members (meaning those officers who participated in traditional cultural activities) and "professional" members of the department. He asserted that these differences were alleviated by the integration of the police and the community.
Another possible reason for the perceived success of tribal community oversight may be the ability of most of these systems to deal with law enforcement policy, rather than simply dealing reactively to allegations of misconduct. The inability to deal with law enforcement policy has been seen as a major weakness of civilian oversight systems in the non-Indian community (Amnesty International 1998).

For community oversight to be successful, the concerns voiced by tribal police administrators must be addressed. Of primary importance is that decisions of the boards be viewed as fair and impartial. Any decision that seems nepotistic or motivated by a conflict of interest will significantly erode the trust that law enforcement and members of the community have in the community oversight process. It is also essential that board members become knowledgeable in the law and police protocols and that they conduct themselves in a non-adversarial manner.

The development and implementation of tribal community oversight systems may indicate how significant the establishment of “early warning systems” is on the retention of police officers. Early warning systems allow police administrations to intercede before patterns of misconduct become established. Officers can then be retrained or counseled at an early stage of improper behavior, rather than dismissed as a result of egregious misconduct. The implementation of such procedures in Indian Country will increase our knowledge of the importance of such monitoring throughout the field of policing.

In addition, the independence of community oversight boards is of concern to both the Indian and non-Indian communities. The composition of those boards should therefore be given careful consideration. Generally, civilian oversight systems where persons external to the police department complete the investigations are considered more independent (Luna and Walker 1997). Thus, community oversight systems where all investigations are done by tribal police themselves should be examined for adequacy and impartiality of investigations, as well as for community support of dispositions.

While this exploratory study has scratched the surface of tribal community oversight, it has also raised new questions about the practice. Further research will help to illuminate the extent to which tribal communities support the tribal police that serve them, the sufficiency of established mechanisms for police discipline and the desired level of police accountability in tribal communities. In light of the high rates of crime victimization in American Indian communities, additional research should also focus on how community oversight could be enhanced in Indian Country. The following are suggested areas for future research:

- the role that concurrent implementation of tribal police departments and community oversight systems plays in the acceptance of those systems by members of the police departments;
- how the training background of tribal police, their approach to community policing and the role of tribal members in policy formulation influences police acceptance of community oversight;
- to what extent codes, ordinances and police protocols improve the accountability of tribal police in communities with oversight systems, and whether the implementation of those rules reduces recidivism of misconduct;
- whether holding public meetings on police misconduct or policy development has an effect on public support for
tribal police; and

- whether granting law enforcement oversight systems the ability to evaluate and recommend policies reduces the level of police misconduct, and how that authority shapes community and law enforcement perceptions of oversight.

While this research could be of significant benefit to American Indian communities, it could also assist in the development of civilian oversight systems that facilitate the participation of all segments of US society. Citizens and policymakers who value good policing and the concept of police accountability must consider ways in which the idea of civilian oversight can fit different peoples with differing world views. Working with police agencies to reduce the frequency of misconduct and to hold individual officers accountable is a critical step in improving the relationship between law enforcement and the populations it serves.

Notes

1 Civilian review boards were in existence in some major cities during the 1960s; the oldest continuing functioning civilian review board in the United States is the Police Review Commission (PRC) of Berkeley, California. The PRC was established by a voter initiative in 1972.

2 The term “Indian Country” is used as defined in 18 U.S.C.A. 1151. Additionally, the term “American Indian” will be used, even though it is problematic in many ways, as this is the term Indian people use the most in reference to themselves.

3 Examples abound of this troubled relationship between police and civilian oversight systems in the non-Indian community, from frequent lawsuits filed by police associations to individual refusals by police officers to cooperate. For more on this subject see American Civil Liberties Union (1992).

4 See, for example, Luna and Walker (1997).

5 Information obtained by research conducted by the author. Although the terms "civilian review" and "citizen review" are generally used in the non-Indian community, the term "community review" or "oversight" seems more appropriate for Indian Country, and thus will be used throughout this paper in reference to oversight systems for American Indian tribal police.

6 See also Koehler (1989).

7 118 S. Ct. at 955-956.


9 For more on sovereignty in general see Getches, Wilkinson and Williams (1993) and Cohen (1982). For more on sovereignty as it relates to American Indian tribal police see Luna (1998).

10 In research conducted by the author, for example, during the years from 1983 to 1992, only two complaints were filed by Native Americans in the cities of Berkeley and San Francisco, California.

11 Such assurance is especially important in light of the fact that many tribal police officers are not American Indian. Of the 49 tribal police departments that responded to this article's survey, 37 (75 percent) reported that their departments employed non-Indian police officers. Only 10 percent of responding departments had policies that required their officers be American Indian.

12 This and the following information regarding the number of law enforcement agencies of different types operating in Indian Country was obtained from the Bureau of Indian Affairs draft document entitled "Listing of Reservations Where Major Crimes Act Applies By Area Office
and Type of Law Enforcement Program” (March 31, 1995).

13 The Major Crimes Act (18 U.S.C.A. 1153) grants jurisdiction to the federal government over the following crimes: murder, manslaughter, assault with intent to commit murder, kidnapping, rape, statutory rape, assault with intent to commit rape, incest, assault with a dangerous weapon, assault resulting in serious bodily injury, arson, burglary, robbery and larceny.

14 This table was first published in Luna (1998).

15 Retrocession is the return of state PL 280 jurisdiction to the federal government.

16 Some of the tribal police departments in PL 280 states that were queried for this study include Fort Hall in Idaho and Lac du Flambeau in Wisconsin.

17 While federal law enforcement agencies have jurisdiction throughout Indian Country, there currently is no civilian oversight system with jurisdiction over misconduct by federal law enforcement, including the FBI (Amnesty International. 1998. United States of America: Rights for All. Amnesty International Publications, United Kingdom: 47). This limits the ability of tribes to effectively deal with misconduct allegations made against federal law enforcement.

18 For more on this see Luna (1998).

19 Spirit Lake, Menominee, Fort Hall, Kickapoo, Lummi, Mohegan and Fort Peck oversight systems were created in the years since 1996. The Muckleshoot and Rosebud tribes were creating such systems at the time of this article’s writing.

20 At Fort Peck, the community oversight system is designated specifically to do the intake of complaints.

21 See, for example, Luna and Walker (1997), Walker and Kreisel (1996), and American Civil Liberties Union (1992).

22 The St. Regis Mohawk community oversight system may only examine incidents on appeal. The Fort Peck oversight system performs an intake function only.

23 In an interview with one department, the author was told that although the community oversight board had been legally established with advisory powers only, the board had begun to assert the power to hire and fire officers, actions that had been supported by the tribal council.

24 Author’s note: Although I have worked in the field of civilian oversight for 16 years and have been a consultant in the field for another five years, I find novel a situation in which the police department or municipal government vests authority in an oversight system other than that which was allowed in the enabling ordinance. The transformation of a board’s powers from advisory to mandatory is unheard of in the field.

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Funding for the tribal police study was provided through the University of Arizona Foundation, the University of Arizona Office of the Vice-President, and the University of Arizona American Indian Studies Programs. The author gratefully acknowledges the assistance of Tom Holm of the University of Arizona, American Indian Studies Program and Samuel Walker of the University of Nebraska, Omaha, Criminal Justice Department in the preparation of this article.
The Imprisonment of Indigenous Australians: Dilemmas and Challenges for Policymakers

RICK SARRE
University of South Australia

When compared with non-Indigenous Australians, the presence of Indigenous peoples in Australian police "lock-ups," criminal courts and prisons is disproportionately high. Australia's Indigenous peoples represent approximately two percent of the Australian population yet, as of June 1997, approximately 3,000 of Australia's 18,400 prisoners (almost 17 percent) were Indigenous Australians. This disproportionality has significantly contributed to the high number of Indigenous deaths in custody, and has broader implications for Australia's domestic race relations, its socioeconomic well-being, and its international reputation. This paper reviews the historical genesis of the problem and explores the findings of both the watershed Royal Commission into Aboriginal Deaths in Custody in 1991 and the nationally embarrassing Amnesty International report published in 1993. It posits that current strategies to tackle Australia's crime problems may frustrate reform efforts in this area. These strategies will simply perpetuate a criminal justice regime that increases, not decreases, the rates of Indigenous imprisonment. It concludes that strategies designed to improve police relations, explore non-custodial sentences and encourage Indigenous self-determination are far more effective policies for reducing the rates of Indigenous incarceration and custodial deaths.

INTRODUCTION

The legacy of Australia's two-century colonial period is a hostile criminal justice landscape for Indigenous Australians (Brennan 1991; Council for Aboriginal Reconciliation 1994a). Researchers agree that, to correct the current malaise, policymakers should seek ways to keep Aborigines and Torres Strait Islanders out of police contact and out of prison (McDonald and Cunneen 1997; Cunneen and McDonald 1997a, 1997b). Despite this, current Australian policing and sentencing practices and policies seem to have the opposite effect. Any criminal justice system where rates of arrest, remand in custody and sentences of imprisonment can be predicted simply on the basis of race cannot be deemed satisfactory in modern society (Harding 1995). The failure of the Australian criminal justice system to address a plight recognized and documented as long ago as 1991 should be regarded as a national embarrassment. Researchers have only begun the effort required to provide blueprints for reform within the past decade. The empirical work, still in a nascent form and essentially correlative, is growing, but very slowly. The reasons for this are probably driven by three perceptions: the population at risk is small; their
political influence is insignificant; and the problem is essentially intractable. This paper will first provide an historical overview of the issue, then give a summary of the two most significant reports on the topic in the last decade, and finally, review policy options that may reverse the current situation.

BACKGROUND

The British Colonization of Australia

The roots of the current situation lie in the legal interpretations following the first occupation of the Australian continent by European colonists two centuries ago. When the first settlers set sail for Australia from England late in 1787, they planned to establish a South Seas penal settlement. Thereafter, for 200 years, legal scholars have recorded that Australia was uninhabited when the first ships, carrying convicts and their keepers, arrived in January 1788. English law, insofar as it was applicable to the colony, was assumed to have been brought with the settlers. In a British legal decision a century after the arrival of the “First Fleet,” the Privy Council confirmed that the Australian colony had “... consisted of a tract of territory practically unoccupied, without settled inhabitants or settled law, at the time when it was peacefully annexed to the British dominion” (Cooper v Stuart (1889) 14 Appeal Cases 291).

Indeed, the entire life of the Indigenous inhabitant or occupier was irrelevant, according to the international law of the day. As the European jurist Vattel wrote in 1758:

But now that the human race has multiplied so greatly, it could not subsist if every people wished to live after that fashion [as hunters and gatherers]. Those who still pursue this idle mode of life occupy more land than they would have need of under a system of honest labour, and they may not complain if other more industrious Nations, too confined at home, should come and occupy part of their lands (Vattel 1758, Chapter 7, § 81, p 38).

Furthermore, colonizing countries were also at liberty to claim any land that was not, in their opinion, being used appropriately. The standard was, quite conveniently and not unexpectedly, a subjective one.

There is another celebrated question which has arisen principally in connection with the discovery of the New World. It is asked whether a Nation may lawfully occupy any part of a vast territory in which are to be found only wandering tribes whose small numbers cannot populate the whole country...[W]hen the Nations of Europe, which are too confined at home, come upon lands which the savages have no special need of, and are making no present and continuous use of, they may lawfully take possession of them and establish colonies in them...[W]e are not departing from the intersections of nature when we restrict the savages within narrower bounds (Vattel 1758, Chapter 18, § 209, p 85).

Thus, the international law position at the time permitted a colonizing country to ignore the legal status of the Indigenous peoples if the country were deemed “unoccupied.” By contrast, if the inhabitants were conquered, local laws prevailed until the conquerors installed a new legal order (Brennan 1991). Australia was deemed by inter-
national legal scholars to be unoccupied (terra nullus or "land of no-one"), and thus a legal vacuum existed which British law gradually filled. As a result, the customs and laws of the original inhabitants of Terra Australis were rendered irrelevant.

Fortunately, international law has changed significantly from the position described by Vattel, by virtue of the Convention on the Prevention and Punishment of the Crime of Genocide (signed by Australia on December 11, 1948), the International Convention on the Elimination of All Forms of Racial Discrimination (signed by Australia on October 13, 1966), the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (both signed by Australia on December 18, 1972). In addition, international law is rapidly developing a jurisprudence of the rights of Indigenous peoples the world over, although there is still some distance to go before full recognition is clarified. Regardless, for 200 years, a Vattellian-style attitude entrenched a legal status quo that assigned Indigenous Australians second-class status in social life in general, and in the criminal justice system in particular.

The Colonial Years

The early colonial settlers made very little attempt to forge relationships with local Aboriginal tribes, preferring to ignore them as much as possible. Since there was no professional police force in colonial Australia until well into the 19th century, the military performed policing roles. When trouble brewed between Aborigines and settlers, and Aboriginal resistance became more widespread and deadly, an unofficial policy of eradication of Aboriginal tribes was enforced by the military. The history of this phase of Australia’s colonial settlement is complete with stories of waterhole poisonings, shootings, massacres and other savagery (Elder 1988).

As rural settlements expanded and farming prospered, it became clear that Aboriginal labor was cheap and accessible, and attitudes changed. Pastoralists, if they were to survive, required an Aboriginal workforce. Eradication was abandoned, replaced by a 19th century paternalistic policy of protection.

In the 20th century this policy was, in turn, replaced by assimilation (from about 1937), and later integration (about 1962). Around this time, the governments of the various Australian states adopted the widespread practice of taking “half-caste” children from their families and placing them in “proper” Christian homes. Although this policy was carried out with honorable social and religious intentions, the consequences for Aboriginal societies were devastating. The historic and persisting effects on the family life of Indigenous communities and families are well documented (Cummings 1990; HREOC 1997).

Disenfranchisement of Indigenous peoples continued well into the twentieth century. Aborigines could not vote in Australian federal elections until as recently as 1962. Each of the six Australian states finally granted the vote to all of their constituents, regardless of race, in 1965. It was not until 1967 that section 51 (xxvi) of the Australian Constitution was altered to recognize Indigenous peoples. In that same referendum, section 127 was altered so that Aboriginal people could, for the first time, be counted in a census. Universal suffrage and the recognition of the worth of all persons, regardless of race, have therefore only become official policies in the last 30 years.

In the last decade there has been a formal shift, politically and legally, to a
policy of *multi-culturalism* in Australia. This position eschews former integration or assimilation policies in favor of the recognition of the inherent right of all peoples to preserve and cherish their cultural and traditional heritage. "Self-determination" and "self-management" by and of Indigenous peoples, concepts unimaginable a generation ago, are key components of current Australian political life by virtue of the federal *Aboriginal and Torres Strait Islander Commission Act of 1989*.9

A major legal judgment in 1992 had challenged the official historical position of *terra nullius*. The Australian High Court's ruling in *Mabo v Queensland* (1992) 107 ALR 1 recognized the Indigenous peoples' right of first ownership to land. This right to title, said the Court, preceded colonization and survived the assertion of sovereignty by colonizers in some situations (Sarre 1994; Butt and Eagleson 1998). The High Court challenged many of the legal and moral assumptions of British settlement, and used international law to question the assumption of the legal irrelevancy of Indigenous peoples in the life of the early Australian colonies.

If it were permissible in past centuries to keep the common law in step with international law, it is imperitive in today's world that the common law should neither be nor be seen to be frozen in an age of racial discrimination. The fiction by which the rights and interests of Indigenous inhabitants in land were treated as non-existent was justified by a policy which has no place in the contemporary law of this country (*Mabo v Queensland* (1992) 107 ALR 1 at 27 per Brennan, J.).

The *Mabo* judgment, arguably, brought Australia further in line with international thinking (especially the United States, Canada and New Zealand) on the rights of Indigenous peoples. But it was only a small step, and one that has brought little change to the social, economic and cultural reality of Indigenous Australians.

**The Findings and Recommendations of Two Key Australian Studies**

In 1990, the sociologist Colin Tatz confirmed what most Australians knew instinctively: Indigenous Australians are at vastly greater risk of threat to life, liberty and health than non-Indigenous Australians (Tatz 1990). He painted a pessimistic picture of the personal violence, child neglect, destruction of property and alcoholism that pervaded many, if not the majority, of Indigenous communities. The effect of "monoculturalism," he said, led to the demise of Aboriginal spiritual and legal restraints and drastically eroded the security, health, cultural integrity and self-esteem of Australia's Aboriginal peoples and wider Australian communities. Indigenous Australians had a life expectancy 15 to 17 years lower than non-Indigenous Australians, and infant mortality was more than twice the rate for the national population as a whole (Altman 1991; Council for Aboriginal Reconciliation 1993: 4.6).

Concurrent to the *Mabo* judgment and the publication of Tatz's article, a heightened awareness of Indigenous issues emerged in Australia, and the federal government made a laudable commitment to seek reconciliation with Indigenous Australia. Two Australian reports are worthy of particular mention in this context: a Royal Commission report requested by the government, and a report produced by the non-
governmental organization Amnesty International. The reports' authors suggest that a significant interrelationship exists between Indigenous Australians' social, economic, legal and political status and the criminal justice system.

**The Findings of the Royal Commission into Aboriginal Deaths in Custody**

In 1987, the Australian parliament established a Royal Commission to undertake an investigation into the deaths in custody of 99 Aboriginal people between 1980 and 1989. The release of the US$20 million, five-volume Final Report in May 1991 (Royal Commission 1991) had the potential to establish a renaissance in Aboriginal/non-Aboriginal legal and social relations. It criticized Australian criminal justice processes that permitted over-representation of Aborigines in police lock-ups, detention centers and prisons. Moreover, it isolated the high imprisonment rates of Indigenous Australians as a significant cause of the disproportionate rate of Aboriginal deaths in custody. Taking Australia as a whole, there were, at the time of the study, 75 Aboriginal deaths in custody per 100,000 Australian adults compared to 3.3 non-Aboriginal deaths in custody per 100,000 people (Biles 1990).

The authors concluded that the criminal justice process exacerbated, not alleviated, the problem. The report also noted that high rates of Aboriginal death in custody could not be explained as simply the product of high levels of offending in Aboriginal communities. As one commentator wrote,

...underlying issues such as racism, alienation, poverty and powerlessness resulting in hopelessness and alcoholism all contributed more significantly to the imprisonment of Aboriginal people than any degree of criminality (Payne 1992, 33).

Royal Commissioner Johnston reflected upon the causes of the significant interaction between Indigenous Australians and the criminal justice system and concluded:

...[history shows] the deliberate and systematic disempowerment of Aboriginal people, starting with dispossession from their land and proceeding to almost every aspect of their life...Decisions were made about them and for them and imposed upon them...Gradually many of them lost their capacity for independent action, and their communities likewise. With loss of independence goes a loss of self-esteem...In some places, it totally destroyed population. In others, dependency, despair, alcohol, total loss of heart wrought decimation of culture... (Royal Commission 1991, 8).

The Final Report made 339 recommendations suggesting that respect for Indigenous cultural heritage be built into Australian institutions and that access to educational and economic resources be increased. In relation to the criminal justice arena, 179 recommendations concerned the criminal justice system and the functions and duties of the coroner. Justice agencies were challenged to ensure that imprisonment was always used as a sanction of last resort, and that, as far as possible, alternatives to custody be employed, especially in the period soon after arrest (Australia 1994; South Australia 1994; Royal Commission Government Monitoring Unit 1997). With abundant evidence of institutionalized police racism (Cunneen 1991a, 1991b), the report made recom-
mendations that police officers be re-trained in non-racist attitudes and practices.

The Findings of Amnesty International

A 1993 report released by the international human rights watchdog Amnesty International characterized the Australian criminal justice system as one that exposes Indigenous Australians to "highly disproportionate levels of incarceration and to cruel, inhuman or degrading treatment" (Amnesty 1993, 5).

The Amnesty report writers based their findings on evidence that many Aboriginal communities were burdened with very high police-community ratios (1993). In the remote "outback" New South Wales town of Walgett, for example, where 18 percent of residents are of Aboriginal descent, they found that there was one police officer per 96 residents. In contrast, the average for the rest of the State of New South Wales, where just 1.8 percent of the population is of Aboriginal descent, was one police officer per 459 residents. The report concluded that disproportionate levels of surveillance, arrest and detention were very likely to follow such intense over-concentrations of police power. Furthermore, it found that Aboriginal persons were less likely than non-Aboriginal Australians to have access to an attorney, legal aid and family and societal support structures when they confronted the criminal justice system. They determined that over-representation of Aboriginal people in criminal justice statistics violated their human rights. The report's recommendations mirrored the Royal Commission's calls for greater scrutiny of police racism, the use of imprisonment as a last resort and the empowerment of Indigenous communities to become self-managers in relation to law and order issues:

Amnesty International urges the Australian authorities to clearly examine the patterns of incarceration of Aboriginal people, and to give particular consideration to systemic elements...which... reinforce their status as a vulnerable group (Amnesty 1993, 27).

These issues were further addressed and confirmed in a short follow-up report four years later (Amnesty 1997).

The Current Criminal Justice Landscape for Indigenous Australians

The above two studies, as well as other indirectly related reports (Australian Law Reform Commission 1992; Australian National Committee 1990; Human Rights and Equal Opportunity Commission 1991), have not influenced the political and legal landscape for Indigenous Australians. As a result, they are arguably no better off than they were in 1993. In fact, they may be worse off. Despite specific commitments from governments to endorse and implement the 1991 Royal Commission recommendations, little has changed in the interface of Aboriginal Australians and the justice system. Specifically, sentencing practices remain the same, and as a corollary, the rate of prison deaths has not fallen. Indigenous Australians between 1989 and 1996 were 16.5 times more likely than non-Indigenous Australians to die in custody (Social Justice Commissioner 1996).10

Moreover, according to 1997 findings, Indigenous Australians still face higher homicide victimization rates than the general Australian population. Aborigines and Torres Strait Islanders comprise but two percent of the Australian population,11 yet make up 14 percent of homicide victims and 18 percent of homicide perpetrators (James and Carcach 1997). An Indig-
Table 1: Indigenous Persons as Percent of Population vs. Percent of Prison Population, by Jurisdiction, 1997

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Percent Indigenous Population</th>
<th>Percent Prisoners Who Are Indigenous</th>
</tr>
</thead>
<tbody>
<tr>
<td>New South Wales</td>
<td>1.5%</td>
<td>12.7%</td>
</tr>
<tr>
<td>Northern Territory</td>
<td>28.4%</td>
<td>72.4%</td>
</tr>
<tr>
<td>Queensland</td>
<td>3.2%</td>
<td>24.5%</td>
</tr>
<tr>
<td>South Australia</td>
<td>1.6%</td>
<td>18.0%</td>
</tr>
<tr>
<td>Tasmania</td>
<td>4.0%</td>
<td>12.9%</td>
</tr>
<tr>
<td>Victoria</td>
<td>0.5%</td>
<td>5.0%</td>
</tr>
<tr>
<td>Western Australia</td>
<td>3.2%</td>
<td>33.4%</td>
</tr>
<tr>
<td>Australia</td>
<td>2.0%</td>
<td>16.3%</td>
</tr>
</tbody>
</table>


A non-Indigenous Australian adult is 18 times more likely to be in prison than a non-Indigenous Australian adult, and Aborigines and Torres Strait Islanders comprise 17 percent of Australia's current prison population, up from 14.6 percent in 1987 (Brown 1997). Between 1988 and 1995 imprisonment of Indigenous Australians increased 61 percent. Non-Indigenous imprisonment rose only 38 percent in the same period (Social Justice Commissioner 1996). The jurisdictional breakdown of the various percentages of Indigenous populations compared with imprisonment percentages is shown in Table 1 above.

In 1997, 1,620 per 100,000 Indigenous Australian adults were in prison, compared to an imprisonment rate of 126 per 100,000 Australian adults.

Sentence length does not appear to be a factor in high imprisonment rates. In fact, prison sentences of Indigenous Australians are usually shorter than average. Sixty-two percent of Indigenous prisoners in Australian prisons are expected to serve sentences of 24 months or less. The percentage of all prisoners generally who serve sentences of this length is 53.7 percent (Australian Bureau of Statistics 1998, 28, 72).

The levels of over-representation, especially in police custody, persisted through 1995, as illustrated in Figure 1. In 1995, the rate of Indigenous Australians in police custody was 2,228 per 100,000 people compared to 83 per 100,000 for non-Indigenous Australians (McDonald and Cunneen 1997, 92). Thus, Aboriginal and Torres Strait Islander peoples are taken into police custody at 27 times the rate that non-Indigenous Australians are. In Western Australia, the rate is especially pronounced: 39 times that for non-Indigenous Australians. There is little reason to suspect any recent variation in these figures (Carcach and McDonald 1997).

In relation to remand in custody, in circumstances where there is a plea pending (and a presumption of inno-
Aboriginal over-representation is still apparent in all jurisdictions. What the following graph illustrates (Figure 2) is that, despite a commitment of governments to attempt to remand Indigenous Australians in non-custodial options, they are routed into remand centers at highly disproportionate rates. For example, in South Australia, 20 percent of prisoners remanded in custody awaiting trial are Indigenous, in a jurisdiction where only 1.6 percent of the population is Indigenous.

**REFORM CONSIDERATIONS**

Why did these reports fail to improve treatment of Indigenous Australians in the criminal justice system? The answer, seemingly, involves a mixture of poor implementation practices (Royal Commission Government Response Monitoring Unit 1997) and the passage of laws that violated the recommendations of the above reports (Bernardi 1998). While the numbers of deaths in police lock-ups appear to have been reduced Australia-wide (perhaps because new, clearer guidelines dictate how an Aboriginal person must be treated when first taken into custody (Council for Aboriginal Reconciliation 1994b; McDonald and Cunneen 1997)), little has changed on just about every other front. Indeed, the situation, especially in relation to so-called "public order" offenses, is now worse than before (Jochelson 1997).

**FIGURE 1: POLICE CUSTODY RATES PER 100,000 PEOPLE BY JURISDICTION, INDIGENOUS RATE VS. NON-INDIGENOUS RATE, JUNE 30, 1994**

Source: Cunneen and McDonald (1997a, 21).
Police Practices

Both reports recommended that governments improve Aboriginal-police relationships, essentially by eradicating racism and encouraging greater "indigenization" of police services. Researchers note that where there is racial conflict with police, there will be high arrest rates (McCorquodale 1984a). In this area, positive signs have emerged. "Professional partnership policing"—where Aboriginal people are given a key role in controlling anti-social behavior, minor infractions and serious breaches of the law—has been widely reported as successful (Etter 1993). Other schemes involving police "aides" and newly-devised multi-racial recruitment practices, training in non-racist attitudes and cultural awareness programs have received some attention by police administrators (Cunneen and McDonald 1997b).

By the same token, however, significant problems in policing persist, including the use of custody for trivial offenses and for dealing with intoxicated persons (Social Justice Commissioner 1996). Furthermore, the
so-called “zero tolerance” policies in the Northern Territory increased pressures on police to arrest offenders for minor infractions. As a consequence, some police have chosen to ignore anti-social behaviors, rather than place offenders in prison for infractions that do not warrant custody. These policies have proven decidedly unsettling for Aboriginal-police relations (Flynn 1997). As Palmer has written,

...the more general issue of over-representation of Aboriginal people at all stages of the criminal justice system requires us to think very carefully about the potential for a “Zero Tolerance” campaign to undermine the various efforts introduced to limit the intervention and negative impact of the criminal justice system on Indigenous people (Palmer 1997, 236).

**Sentencing Practices: Imprisonment as a Last Resort?**

It appears that imprisonment remains the pre-eminent punishment for Indigenous Australians, despite the strongly worded statement found in Recommendation 92 of the 1991 Royal Commission report that imprisonment was to be a punishment of last resort. According to the Commission, “The first strategy to reducing the number of deaths in custody is to reduce the number of Aboriginal people coming into custody in the first place” (Royal Commission 1991, 133). Luke and Cunneen (1998) concluded that Aboriginal offenders in the Northern Territory, for example, have about twice the chance of receiving a prison sentence as non-Aboriginal people, even controlling for prior record. They concluded that if non-Aboriginal sentence patterns for each level of prior record were applied across the board, the number of Aboriginal people sent to prison would be halved.

Juvenile detention numbers and imprisonment rates tell a similar story (Wundersitz 1990). Aboriginal and Torres Strait Islander young people are over-represented in all juvenile justice systems, and in New South Wales, Victoria, Queensland and Western Australia at about twice the rate of adult over-representation (Council for Aboriginal Reconciliation 1994b). The rate of detention of Aboriginal children aged 10–17 is 21 times the rate for non-Aboriginal children (Atkinson and Dagger 1996).

There thus appears to have been little effort in any state to adopt the Royal Commission’s recommendation, and one might suspect that lip-service has predominated over true reform (Smith 1992; Cunneen and McDonald 1997a; Cunneen and McDonald 1997b).

The impact of new sentencing laws on imprisonment numbers is unknown. However, these laws are suspected to be major contributors to high Indigenous imprisonment rates. There is now mandatory imprisonment for first-time property offenders in the Northern Territory under the Sentencing Amendment Act (No. 2) 1996 (Northern Territory) and the Juvenile Justice Amendment Act (No. 2) 1996 (Northern Territory), which came into operation in March 1997 (Schetzer 1998; Royal Commission Government Response Monitoring Unit 1997). In Western Australia, recent amendments to section 401 of the Criminal Code 1902 provide a mandatory minimum of 12 months imprisonment for a third burglary offense, referred to as the “three strikes and you’re in” legislation. It is surprising and most disappointing that criminal justice agencies in the Northern Territory and Western Australia
are not monitoring sentencing outcome by race.

Could society have a rule that custodial sentences are *always* inappropriate for Indigenous offenders? Probably not. What criteria does one use in order to sentence appropriately an Aboriginal defendant who has pleaded guilty or been found guilty of a serious crime? On the one hand, we must recognize the problems faced by Aboriginal Australians caught in a culture clash between ancient mores and latter-day laws. On the other hand, community safety (and the victim's suffering) ought to be considered, too. In the end, it is very difficult for one sentence to meet multiple expectations. Indeed, there is some evidence that applying non-custodial options makes little difference to offense rates and recidivism rates.16 Furthermore, there may be a community backlash (Indigenous as well as non-Indigenous) if there is any perception that Aboriginal offenders are on the receiving end of legally mandated leniency. Further research must investigate the dilemmas of race-based sentencing practices and explore sentencing options that meet community expectations, reduce recidivism and yet keep Indigenous imprisonment rates at an acceptable level.

Simply reforming sentencing practices without reviewing the impacts of limited access to health, education, employment, welfare and housing on Indigenous criminality may do very little to change the status quo. Criminologist John Walker asserts that high rates of imprisonment among Indigenous Australians are a product of socioeconomic influences as much as they are a product of institutionalized racism. He suggests that a multi-faceted strategy—socio-economic as well as administrative and legal—is required to change the situation.

If unemployment amongst Aboriginal and Torres Strait Islander people were reduced to that of the non-Indigenous population, and if rates of imprisonment reflected this change...the Indigenous prison population could fall from over 2,200 down to around 530.... If levels of education amongst Aboriginal and Torres Strait Islander people were improved to that of the non-Indigenous population and if rates of imprisonment reflected this change...the Indigenous prison population could fall...to 262 (Walker 1994, 15).17

**Self-Management: Indigenous Community Justice Systems**

Policymakers should acquaint themselves with the research conducted into two current initiatives and seek further evaluative study. The first initiative worth further exploration is known as “family group conferences,” or “sentencing circles” (Sarre 1999). These conferences, popular in Canada and New Zealand, allow communities themselves to determine criminal justice outcomes in relation to specific offenses and concerning specific offenders. They are gaining currency as a mechanism of sentencing that encourages community-building strategies, especially regarding juvenile offenders.

Secondly, there could be greater recognition of Indigenous or tribal law in sentencing. In 1991 the Royal Commission report included Recommendation 104:

That in the case of discrete or remote communities sentencing authorities consult with Aboriginal communities and organisations as to the general range of sentences which the community considers appropriate for offenses
committed within the communities by members of those communities and, further, that subject to preserving the civil and legal rights of offenders and victims such consultation should, in appropriate circumstances, relate to sentences in individual cases.

This was not the first time this suggestion had been made (Hennessy 1984; McCorquodale 1984b; Crawford 1992; McRae 1997; Sarre 1997), nor is it a suggestion without its vehement opponents. Raffaele (1994), for example, suggests that dividing communities into different racial classifications in order to determine which sets of laws apply creates unnecessary division and confusion, and may permit some barbaric practices (e.g., beatings or banishment) to continue. Nonetheless, the Australian Law Reform Commission in 1986 recommended that the recognition of traditional Aboriginal laws regarding punishment, "would be a contribution towards making the legal system more relevant, accessible and understandable to Aboriginal people" (ALRC 1986, 42-48). The Social Justice Commissioner supported this idea more recently:

Recognition must be given...to the existence (and survival) of customary law. As Indigenous cultures are organic (rather than static), customary law may exist (albeit in an evolved/evolving format) in contemporary communities, as well as in their more traditionally orientated counterparts. As Australian society examines socially just ways of dealing with its Indigenous peoples, and as Aboriginal and Torres Strait Islander peoples continue to demand the right of more culturally appropriate responses, the importance of customary law cannot be underestimated (Social Justice Commissioner 1995, par. 31).

Regrettably, there has been little movement in any official circles towards the recognition of customary or traditional law. Nonetheless, there have been encouraging signs in relation to self-policing and self-administration of Aboriginal communities, including the Aboriginal "Community Justice Groups" at Palm Island and Kowanyama (Chantrill 1998) and an Aboriginal-run farm for offenders at Warrakoo Station in New South Wales. Ongoing evaluation of the effectiveness of these initiatives should be conducted.

CONCLUSION
Two hundred years of colonial paternalism and ignorance have eroded much of the spiritual and cultural life of Australia's Indigenous peoples. The legacy is a massive over-representation in the criminal justice system by Indigenous Australians, and levels of criminal activity and victimization that are vastly disproportionate to those found in non-Indigenous communities. Racial disparity in punishment is not a new phenomenon. It has been described as an inevitable and predictable by-product of any society where a certain race finds itself coming to the attention of police in disproportionate numbers (Blumstein 1982). While there may be some logic in that proposition, the strong suspicion remains that discriminatory practices play an essential role in the final outcome (Myers 1993).

Whatever the reasons, the situation in Australia today remains untenable. The official and unofficial reports prepared in the last decade to address racial disparities have made a number of recommendations to correct the malaise.
However, many of them have either been ignored or lost in poor implementation practices. More worrisome is the fact that some so-called "crime control" policies, implemented in some jurisdictions, have counteracted what positive progress may have been made.

What has emerged from the current social and criminological literature is a sobering warning. Facets of the Australian criminal justice system will have to change, or Australians will face a static or growing race-based disproportionality. Policymakers need to implement strategies designed to lessen Aboriginal criminality and victimization, eradicate police racism and remove the penchant sentencers have for imposing custodial sentences on Indigenous offenders (Council for Aboriginal Reconciliation 1994b). Furthermore, customary or tribal sentencing options and self-policing may need to be explored more seriously, as part of a broader self-determination agenda.

Only if these initiatives are researched in their nascent form and in their implementation can there be any significant movement away from the grim realities of the contemporary criminal justice experience of Indigenous Australians. Only in this environment will the most appropriate responses be developed to ensure that Australia's Indigenous peoples do not continue to be caught up in justice systems that espouse sentiments that they deliver justice and equality to all Australians, while doing exactly the opposite.

Notes

1 Police jail cells used for short-term custodial holding.

The term "Aboriginal peoples" usually includes the Torres Strait Islander peoples, although the mainland Aboriginal Australians are racially quite different from Torres Strait Islanders, hence the more common (though interchangeable) reference to "Indigenous Australians." Torres Strait is the stretch of water that separates northern Australia (Queensland) from Papua New Guinea. An Indigenous person is, for the purposes of the law in Australia, one who aligns himself or herself with an Aboriginal or Torres Strait Islander community and is accepted by that community. Australian spellings have been preserved in the quotations.

3 The International Commission of Jurists has also painted a picture of Indigenous Australia in the 1980s as being unacceptable in human rights terms (Cunneen 1992). As recently as March 1999, the 18-member UN Committee on the Elimination of Racial Discrimination informed the Australian government that, in its opinion, new Native Title amendments breach international race discrimination rules and should be frozen immediately, a recommendation the government has ignored. See The Australian March 20, 1999: 3.

4 The British court that, among other things, received appeals from the colonies, including Australia.

5 In 1982 the United Nations created a Working Group on Indigenous Populations (WGIP). The WGIP is a working group of five of the members of the Sub-Commission on Prevention of Discrimination and Protection of Minorities which reports to its parent body, the Commission on Human Rights. By 1992, at the end of its tenth session, the WGIP declared that it had been slowly piecing together (since 1985) a draft Declaration on the Rights of Indigenous Peoples. By August 1993, a completed draft was presented to the UN's 45th session. It declared in one of its articles the right of the world's Indigenous peoples to have their specific characteristics respected in the legal and political systems of the countries which are party to the conventions. The last WGIP convened in July-August 1996 (its 14th session). The work of this group has not, however, been translated into a UN Declaration.
By way of anecdote, on February 7, 1788 (the date of the official pronounce-
ment of the first governor’s “commission”), thousands of Australia’s Indigenous peoples
became subjects of the British sovereign at the time, King George III, even though it
was to be many years, in some cases genera-
tions, before they realized this “fact” (Brennan 1991, 18; Sarre 1996).

This was merely to allow the federal
government to make special laws for
Aboriginal peoples, a power that had not
been included in the original Constitu-
tion, given the legal irrelevancy of
Aborigines.

It is worth noting that British constit-
tutional control of Australia remains to
this day, at least until a referendum sched-
uled for November 1999 that would allow
an Australian citizen to become the head
of state. The Queen of Great Britain re-
mains the titular head of state of Australia,
and the Australian Constitution is, in fact,
contained in British legislation.

The term self-determination is, how-
ever, given a restricted view by the Australian
government (Brennan 1991, 43; Pritchard
1993, 65; Cunneen and Libesman 1995,
234). Also, the official terminology that
describes Indigenous and non-Indigenous
relationships since 1788 is changing as well.
The “convict settlement” is now more com-
monly referred to as “European occupation”
(Australia: Commonwealth Parliament
1988). Indeed, the stronger term “invasion” is
commonly used among many Aboriginal
Australians and by many supporters ofIndig-
enous rights.

This confirmed earlier studies that
showed an average of 10.5 Aboriginal
deaths in custody annually since 1989, the
same as the average during the period
covered by the Royal Commission (Biles
and McDonald 1992; Australian Institute
of Criminology 1994). The position is far
from clear, however. Dalton (1998a,
1998b) has found in her research that while
the numbers of Indigenous deaths in all
forms of police custody—and deaths that
occur in the process of persons being taken
into custody—have remained stable since
1990, prison deaths have declined since
1995. During 1996 the relative risk of
death in prison for Indigenous prisoners
was 1.3. By 1997, the figure had dropped
to 0.52 (Dalton 1998b). In 1997, Indig-
enous prisoner deaths, however, still made
up more than 13 percent of custodial
deaths (Dalton 1998a).

Approximately 370,000 persons. See
Mukhri 1998.

June Quarter 1997 Australian Bu-
reau of Statistics figures.

In Western Australia in 1997 the
Indigenous imprisonment rate was 2,477
per 100,000 (ABS 1997).

Recommendation 92 states that “gov-
ernments which have not already done so
should legislate to enforce the principle
that imprisonment should be utilized only
as a sanction of last resort” (Royal Com-

Casenote “Three Strikes by the Bur-
glar: The Police v DCJ (a child).” Indigenous

Roeger (1994) found that there is
no difference in recidivism rates of
those imprisoned compared to those
given non-custodial community service
orders.

These issues are further explored in
Walker and McDonald (1995) and Walker
and Salloom (1993).

The Northern Territory Legislative
Assembly Committee on Constitutional
Development (CCD) (Northern Terri-
tory 1992) has undertaken a similar exercise
in order to shape the laws of the Northern
Territory as it approaches statehood. In the
final analysis, both the ALRC (1986), and
the CCD remained cautious about any
wholesale embracing of customary sys-
tems, recommending a careful and
incremental approach to any such recogni-
tion (Evatt 1988). The ALRC Report
did commend courts in the Northern Ter-
ritory for judicial notice of customary law as a substantive defense and, as happens more frequently, for acknowledging it in mitigation of penalty (McLaughlin 1996).

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The Imprisonment of Indigenous Australians

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Strait Islander Social Justice Commissioner.

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Book Reviews


In the introduction to _Culture of Intolerance_ author Mark Cohen notes that he wrote this book in response to "the publication and extraordinary popularity" of _The Bell Curve_, the 1994 tract which argued that race determines intelligence. This is a curious impetus for a curious book. Despite the initial commercial success of and predictable media attention given to _The Bell Curve_, liberal and conservative thinkers alike quickly discredited it and it faded quickly from national consciousness. It has had almost none of the lasting influence that its detractors (like Cohen) and few adherents (right-wing fanatics and the editorial page of _The Wall Street Journal_) would have us believe. But that bothers the author little: he spends much of the first half of the book establishing that there is no scientific evidence for so-called innate "differences" among races and cultures, and later spends an entire chapter dismantling the very notion that intelligence can or should be measured at all. The fact that _The Bell Curve_ was published, and that society persists in relying on testing people's intelligence in the classroom and on the job, Cohen writes, "serves to validate our social system of selection and discrimination and give it a veneer of legitimacy" (p.206).

If Cohen had limited his critique to exposing the fallacy of intelligence testing and its biases against minorities, he might have produced a useful—if narrowly focused—work of scholarship. But his enterprise here is larger: he wants to show that almost every facet of American society operates under cultural assumptions that are smug, racist, materialistic and skewed to benefit rich, powerful white men. This, of course, is an argument that academics everywhere have been making since the 1960s, and Cohen's case is not helped by his sprawling, unwieldy approach, in which virtually everything is open to attack. Blending boilerplate cultural-studies with the familiar cant of the Cold War left, Cohen takes aim at the CIA ("it has intervened repeatedly in foreign countries in the interests of American businessmen and corporations" (p.158)); free-market capitalism ("we allow economic profits to motivate us above all else" (p.168)); the Founding Fathers ("It was not 'we the people' who wrote the Constitution. It was a moneyed class" (p.190)); and Shakespeare ("[his] widespread appeal outside English culture has more to do with European political and cultural hegemony than with literary standards" (p.288)). None of these are particularly invalid claims, but neither are they particularly new. And yet Cohen writes as if he for the first time has pulled back the veil which prevents the American people from seeing just how backward and misguided we have been all this time. Now, seeing clearly, he presumes the country will come to its senses and tear down all the barriers that stand in the way of full social, cultural and economic equality for all its citizens.

But social change is messier than that. When Cohen does hunker down with a specific public policy, affirmative action, his position is predictably unwavering: affirmative action "is about recognizing that allowing women and minorities to participate will enormously increase our country's capacity to meet its human needs and responsibilities" (p.253). He fails to consider or discuss possible flaws in affirmative action which some other defenders have acknowledged. For example, should programs stress class, not race? He does address the idea of gradual phasing-out of racial preferences in admissions and hiring, but calls phasing out affirmative action in favor of color-blind policies "laughable." "When were we ever color-blind?" he asks (p.269).

Well, never. But it is no longer adequate for liberal writers on race to discount the real progress made in American attitudes over the last several decades. "Racism and hatred of other people are rampant," Cohen writes at the end of his book (p.312). And yet for the first time in our history, Southern white voters are electing black representatives to Congress and urban blacks are choosing white mayoral candidates over African-American ones. Close to 70 percent of African-Americans say they still believe in the "American dream." Polls show that a majority of African-Americans rate broad social issues like Social Security reform, expanding health care and improving education as higher priorities than affirmative action. Perhaps policymakers would be better served by taking account of those hopeful realities rather than the cynical suppositions found in this dispiriting book.

ROMESH RATNESAR

Time Magazine


The failure of most Americans to fully comprehend the nature and origin of ethnic conflict in other nations is a result of both traditional bias towards a belief in cultural assimilation as well as terminological confusion over such concepts as culture, ethnicity and nationalism. Jack David Eller, in his first book, From Culture to Ethnicity to Conflict, makes this argument and then attempts to rectify the misunderstandings with an explanation of the true essence of contemporary ethnic disputes. Using five case studies, Eller analyzes not just the historical records of ethnic development and conflict, but also the various local interpretations of these histories. He then explores how these interpretations are acted upon in the present day. In doing so, Eller seeks to "deconstruct cultural claims and concepts" with the ultimate goal of demonstrating that most contemporary ethnic conflicts are not simply the inevitable byproduct of ancient hatreds. Instead, he suggests that they are a combination of a deliberately fostered culture and interpretation of history, present social and political conditions, and competing visions for the future.

To understand any particular ethnic conflict, Eller prudently asserts, it is first necessary to frame the discussion by clearly defining the key concepts under review. Unfortunately, Eller is guilty of leading the reader astray at times by attempting to incorporate too vast an array of opinions and research into the debate. Ultimately, it becomes apparent that what determines culture is not so much an objective blood relationship among a group of people, but a "consciousness of difference" from
others resulting from a common historical struggle. To Eller, ethnicity is the product of the mobilization and manipulation of this consciousness in a specific and modern context. The forging of ethnicity in this fashion can often, but not always, lead to violent conflict with other ethnic groups. Armed with this analysis, he successfully poses a direct challenge to the commonly held notion that ethnic wars are little more than the unavoidable manifestations of ancient and ongoing "blood feuds."

The case studies focus on Sri Lanka, the Kurds, Bosnia, Rwanda and Burundi, and Quebec. In these chapters it becomes apparent the author possesses an impressive ability to interpret the fundamental nature of contemporary ethnic clashes through the utilization of rigorous historical analysis. For instance, he details crucial events which have played, and will continue to play, a pivotal role in the conflict within the former Yugoslavia. While recognizing the authenticity of certain competing cultural, ethnic and national claims within Bosnia, Eller contends that the 1992-1995 war was not simply a resurgence of inevitable ethnic strife. Instead, he argues, it was a carefully orchestrated clash organized by political and cultural elites who sought little more than self-aggrandizement. He reaches similar conclusions in his analyses of recent ethnic conflicts in both Sri Lanka and Rwanda.

While he does not dispute the existence of historical, cultural, and ethnic differences among groups of people, Eller does challenge the notion that such differences must necessarily manifest themselves through acts of horrific violence. Eller does not volunteer many concrete solutions to the myriad ethnic crises which have already erupted, but he does take a crucial first step. He provides a necessary prerequisite for the resolution of conflict by offering a framework in which to arrive at a well-defined, accurate and unbiased portrayal of the ethnic dispute in question. Eller's assessment of contemporary ethnic conflicts as products of both genuine cultural distinctions as well as elite manipulation, while pessimistic in its own right, can be utilized to offer a potentially liberating perspective to security organizations such as the United Nations and the North Atlantic Treaty Organization. By accepting Eller's contention that the theory of inevitable ethnic strife is little more than a myth, these institutions can claim the moral justification that is needed to move beyond the paralysis of inaction when attempting to craft sensible responses to contemporary ethnic crises.

KEVIN DONAHUE
Georgetown University


In Health Care Divided - Race and Healing a Nation, author David Barton Smith provides a compelling chronicle of racial segregation and discrimination in the United States health care system. The book tells the story of how race casts a pervasive shadow over the development and organization of health care in this country. Smith argues that race should be a more visible agent in reorganizing the health care delivery system, a topic that consumes much of the political, business, financial and social conversations of our nation.
Smith asserts that health care is a valuable means for examining racism in the United States. It is not about “who gets care and who pays the bill;” instead, it is an “ethical and moral matter that serves as a mechanism of social control, a public economic good, and an ethical and moral touchstone” (p. 9). Essential to this mechanism of social control is the development of health care as an organization which, like race, deals with resources and power. He suggests that a great many health care disparities and problems currently exist because of our nation’s failure to recognize the role that race plays in how people become ill, receive care and pay the bill.

Using research support from the Robert Wood Johnson Health Policy Investigation Program, Smith takes the reader on an excruciatingly detailed, albeit informative, description of health care for black Americans from the Civil War era to the present. He provides chilling and colorful descriptions of health care delivered in separate, but unequal settings in black-only institutions akin to those seen in today’s third-world countries. Although Smith’s text is at times tedious, he describes the complex movement to desegregate hospitals in a clear fashion, making it easy for the reader to understand the distrust between whites and blacks over the delivery of health care.

In the second half of the book Smith examines the legacy of a health care system which, despite the creation of Title VI of the Civil Rights Act, remains divided. Managed health care delivery has worked itself into low-cost communities segregated by geographic, socioeconomic, and racial status. For example, Smith submits that rising health costs and the advent of managed care have ushered in an era of social responsibility where Americans are focused upon paying for their personal health care as well as for the “deserving poor” (p. 276). Smith believes that Americans are not interested in paying for health care for those who have socially undesirable diseases such as substance abuse, AIDS, and mental illness. However, many of those afflicted by these diseases are often victims of poverty and neglect, of racial distrust and discrimination, of a minimal connection to a trusting doctor-patient relationship, and are also often black.

Although Smith attempts to develop sympathy for poverty as a significant reason for the unequal distribution of health resources, he does not consistently draw a connection between health care practices and services for different racial groups by socioeconomic status. For example, while he frequently refers to undesirable diseases as primary barriers to health care for blacks, he does not acknowledge the existence of societal sympathy for these diseases in communities that are predominately white, such as the entertainment community. An acknowledgement such as this would support his thesis that factors such as race and poverty, rather than disease classifications are reasons for health services discrimination.

Next, Smith strongly argues that the connection to civil rights compliance without a self-conscious connection to the delivery of services is “a hollow ritual” (p. 317). Although Smith makes veiled references to the connection between poverty, housing segregation, and poor health, he does not spend equal time defending that valuable insight. Instead he focuses an inordinate amount of text to providing the history of government regulations on health care services. In order to strengthen his argument that racial profiling and coding should be part of
managed care grading and evaluation, Smith should have acknowledged the underlying reasons for disparities and addressed them further. Throughout the text Smith also hints that racial health discrimination and disparities would be less prominent if there were a national health insurance program and a greater shared responsibility for health care costs. Again, he could have enhanced the book had he given equal weight to the discussion of developing social and financial equity between the races.

As a text for students of health policy or American political science, Smith’s book is an informative device. Although tedious at times in its descriptions of historical passages and government regulations, it provides an important perspective that is too often neglected in health care delivery discussions. It reminds the reader that there is much work to be done in American society to achieve justice for all when it comes to providing health care services for all persons. The belief in equality held by the early health civil rights pioneers so prominent in the first half of Smith’s text produces powerful, thought-provoking lessons from which all racial groups can learn. Perhaps if more people learned of them, our society’s divided perceptions of race and health would become more unified.

CHRISTA MARIE SINGLETON
Association of States and Territorial Health Officials


In The Black-White Test Score Gap, editors Christopher Jencks and Meredith Phillips ask why the average black still scores below 75 percent of whites on most standardized tests. This seminal book provides some answers in a readable but technically sophisticated manner. Jencks and Phillips provide a balanced and thought-provoking examination of the extent of racial bias in testing, the importance of test scores in determining educational and labor market success, and the role of schooling and other factors in explaining the gap. Their work showcases recent advances in data collection and statistical techniques made by social scientists (here represented largely by sociologists and economists) while also demonstrating that academics in this field still have a long way to go to fully understanding the problem and its solutions.

There is a surprising degree of coherence and technical competence to all the contributions in this edited volume. The book’s authors seem to agree on several key propositions: the black-white test score gap is something we should care about; the gap is not explainable by genetic differences between the races; and progress can be made towards closing the gap.

The authors reach these common conclusions using different research techniques. Some of the chapters are largely overviews of previous literature while others present new empirical evidence based on multivariate statistical models. For example, Richard Nisbett contributes a short but fascinating overview of the evidence on whether the IQ gap between the races is genetic, and Ron Ferguson provides a very useful examination of whether school and teacher quality affects the gap. A chapter by Phillips and her colleagues on the effects of family background and parenting practices on educational outcomes
is a nice example of new empirical evidence. They carefully try to estimate the effects of family characteristics on the test scores of a sample of five- and six-year-olds, not an easy statistical task given the interrelationships between many of the variables of interest. One of the chapter's major findings, among other things, is that racial differences in parenting practices (such as taking a child to museums, reading to a child, or disciplining a child) account for an estimated one-fifth to one-quarter of the test score gap.

Unfortunately, the chapter by Phillips, and others in the book, do not dwell on the policy implications of these important findings. The reader must be content with a few paragraphs in the introductory chapter in which Jencks and Phillips call for "using every tool at our disposal, from Head Start outreach programs and home visits by nurses to television sitcoms to anything else that might affect parents' behavior" in order to close the gap (p.46). The absence of strong and specific policy inferences drawn from the research findings is perhaps the main weakness of the book. In particular, the political problems inherent to implementing often costly strategies for a targeted population are only briefly mentioned. While some suggestions are made about what might help close the gap — reducing class size, improving teacher quality, changing parenting practices — they are never analyzed in any depth.

Despite this weakness, Jencks and Phillips provide a comprehensive introduction to the issue of the black-white test score gap, along with cutting edge scholarship and intriguing new evidence. It generates almost as many new questions and puzzles as it solves, but it should provide a stimulating read for anyone interested in the issue of racial equality and education.

DOMINIC BREWER
RAND


In Black Corona: Race and the Politics of Place in an Urban Community, Stephen Gregory uses the history of Corona, a relatively small, predominantly black community in Queens County, New York, to dismantle the stereotype of the "black ghetto." Gregory asserts this stereotype has depoliticized the problems of black poverty by characterizing their causes as moral failures of the black poor rather than the systematic discrimination of the state. He argues that the resulting ethnographic research has therefore focused on the pathology of black poverty, which not only "blames the victim" but denies the "socioeconomic, political and cultural complexity" of these communities. Black Corona testifies to the failings of this focus by recounting residents' political activism and the social construction of identity — areas typically overlooked in the current research.

Gregory begins with the history and political construction of two predominantly black neighborhoods in Corona: North Corona and East Elmhurst. Using newspaper clippings and interviews with long-time residents to supplement more general historical details, he depicts the social and political evolution of the community. Against this backdrop, Gregory recounts
how systematic discrimination by government agencies transformed North Corona and East Elmhurst from integrated middle-class areas to largely segregated and poverty-stricken neighborhoods. For instance, favorable federal mortgage programs offered to white families encouraged them to move to the suburbs while equivalent mortgages were denied to black families. The resulting reduction in median income of those left behind reduced funds for social services, and the community began to deteriorate. Gregory's observations provide an important contribution to the race debate and effectively discount the rationale that ghettos are an "organic" result of the natural aging process of black neighborhoods, as implied by other ethnographic studies cited in the book.

Finally, Gregory analyzes how Kennedy's "New Frontier" initiative and Johnson's "War on Poverty" programs further depoliticized and pathologized the problems of black poverty. Urban renewal studies conducted in North Corona-East Elmhurst in 1961-62 claimed that the community facilities were deteriorating from overuse caused by a younger population. Gregory believes this characterization inappropriately placed focus on age demographics when the underlying reference was to a younger black population. He then details how the "War on Poverty" further institutionalized the separation of problems of poverty from the problems of race. In sum, Gregory accurately asserts these programs transformed aid recipients from fellow community residents into "clients" of government service bureaucracies, fostering an atmosphere of separatism between local activists and local recipients.

Using in-depth analyses of three case studies of resident and homeowner association activism, Gregory effectively depicts individuals who are invested in their neighborhoods and share a knowledge of past political disempowerment. They are not, he asserts, the stereotypical disenfranchised residents of a black ghetto.

The book's main failing is Gregory's tendency to become entrenched in the specifics of the various committee meetings he attended and interviews he conducted. This overemphasis on minute details, such as extensive excerpts of meetings, may distract the reader from the overall import of Gregory's message. His descents into minutiae undermine the goals of expanding this case study to the larger arena of race policy.

Despite this weakness, *Black Corona* does draw attention to a major fallacy of current ethnographic research into black poverty. The book highlights the inaccuracies of the limited characterization of the black ghetto as simply a haven for crime, poverty and teen pregnancy. Research premised on this stereotype does little to further our understanding or progress. This examination of social and political activism in a New York community offers valuable insights into the larger issues of race, class and power in US society.

**Jennifer B. Thatcher**

*Georgetown University*
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