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Review Article

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Defending the Circle: Countering the Attack on the Indian Child Welfare Act (ICWA)

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1. Introduction

The Indian Child Welfare Act (ICWA) was enacted in 1978 to stop the harm caused to Indian children who were removed from their Indian nations to be adopted by non-Indians, without the consent of the concerned Indian Nations, and end the long-term damage caused to the tribes by the practice. ICWA, considered the "gold standard" of child welfare practice, initiated a significant improvement in child welfare policy in practice.

The attack on the act has long come largely from those both knowingly and unknowingly of the same imperialist mindset that thrust the destructive colonialism upon well working Indigenous communities that caused the serious harms that required the enactment of ICWA, as one aspect of rectifying the larger set of continuing injustices.

The importance of ICWA can best be understood by unfolding the story that led up to its passage and considering its impact. The telling flows from the time of precontact, well working, Native communities, through destructive colonialism, to developing self-determination. The later stages of events involve a general shift in Western culture in which Indian self-determination and ICWA are an interacting part. The dynamics of change also include counterforces, encompassing those who oppose ICWA and self-determination.

2. Indian Nations Before Contact

At the time of European first arrival in North America, Indian nations were ancient, well working societies, having developed a deep understanding of human nature and relations, and of their relationship to their environment.[1] Native communities functioned inclusively and participatively, mutually supporting each and all of their citizens. Recognizing the inherent worth and uniqueness of each person, the varied contribution of each tribal member to their community was honored, as were their voices in community affairs.

While they were not perfect, their relative virtues drew many Europeans who came to what was for them a "New World" to join North American Native societies. As Hector St. John Crevecoeur said in 1782, in *Letters of an American Farmer,* "There must be in their [the Indians'] social bond something singularly captivating, and far superior to anything to be boasted among us; for thousands of Europeans are [have become] Indians, and we have no example of even one of those Aborigines having from choice become Europeans."[2]

Moreover, from the very beginning, the direct experience of European colonists in North America and the thousands of reports about Indians avidly read in Europe had a profound impact, especially in the colonies, but also in Europe, on political, social and economic thought, institutions and ways of proceeding. [3] The idea that rights were inalienable was learned from Indians, while the entire spectrum of European and European-American political philosophies has strong Indigenous American roots. This includes that we in the United States, and in Canada, Europe and elsewhere have as much democracy as we do because of Europeans observing far more democratic and equalitarian Native examples then they previously knew. This influence has been ongoing since first contact, and has been increasing for three-quarters of a century. It was well appreciated in the late colonial era and in the early years of the American Republic, where it was widely and correctly recognized that an American was a mixture of the European and the Indian.[4] With the Indian policies of Andrew Jackson, recognition of Indigenous American positive influence, went underground, but the learning has continued. Of particular relevance here is that strong evidence that Native American ways of raising children were extremely good, and generally have remained so is shown in the fact that Erick Erickson developed his groundbreaking and still central theory of human psychological

development from observing the child rearing ways of the Oglala Lakota of South Dakota and the Yurok of California, in the 1930s.[5] This is supported by Rupert Ross findings in his work with First Nation people in Canada in showing that traditional Native cultures, their ways of bringing up children and living together, worked very well, and that contemporary psychologists are only now learning what Indigenous people have known about human nature for thousands of years.[6]

3. The Impact of Colonialism and Movement Toward Restoration

Especially after 1830, Native peoples in the United States and Canada, who have been contributing so much to those countries and the world, suffered a horrendous physical and cultural genocide that continues to have serious negative impacts, and is to some extent is ongoing.[7] Indigenous Americans whose lands spanned the entire continent, have been reduced to but a few relatively small reservations, often away from their traditional lands. Moreover, Native nations have only been permitted to have reservations if they were given official government recognition. Reservation land was further reduced under the Dawes Act of 1887 that provided each Indian family an allotment of usually 140 acres within the reservation and taking the rest for settlers.[8] Indian nations suffered tremendous population losses from wars, forced relocations, disease and other government and private settler action. Some relocations involved painful and deadly "Trails of Tears." Diseases were at times intentionally inflicted by colonizers. Overall, the suffering and death reduced Native populations that were in the millions at the time of first European contact, to but 345,000 in 1880.[9] This was a drop of at least 90 percent.

This huge population decline and accompanying suffering was furthered by the both deliberate and resulting destruction of Indigenous Americans ability to make a living, and inadequate compensation for this by the U.S. government under treaties to do that. These treaties, among other things, required the government to provide adequate education and healthcare in return for the Native nations ceding land. These treaties were often forced on tribal nations by military force, intimidation, and deceit and/ or unintentional lack of the government providing adequate information to non-English speaking Indians of all that was in the treaty. Never- the-less, Indian Nations have always respected and followed the treaties, while the U.S. government continually violated them. Repeated violations of treaties and forced removals and shrinking of Indian lands were experienced by numerous Indian nations. The Unami Delaware Nation, for example, was forces to move on seven separate occasions. The repeated relocations forced the tribe from it's original home on the Atlantic coast in 1700, to what is now Oklahoma in 1867. Nor has the federal government ever adequately provided the Native nations and their citizens what was and is required under the treaties and the federal trust responsibility stemming from them. The result of this by the 1920s, as published in the *Meriam Report,* in 1928,[10] was that Indian people were in dire economic need to the point of starvation, with poor housing, ill health and declining population, and were extremely discontented. While that situation has improved since the 1920s, federal government spending for American Indians has continued to be considerably less than required. For example, In 1998, on all U.S. government domestic programs, federal spending per Indian was less than 65% of federal spending per American, while, Taylor and Kault, *American Indians on Reservations* reports that in the period of the 1990 to 2000 U.S. censuses, federal Indian funding levels lost ground against non-Indian domestic spending.[11]

Concerning health care, Tex Hall, President of the National Congress of American Indians (NCAI) stated in the third annual State of Indian Nations Address, on February 3rd, 2005, that "per capita expenditure for American Indian and Alaska Native medical services is less than one-third of the average annual expenditure for individual Medicaid assistance, and is even less than our per capita health expenditure for federal prisoners." [12] There has been some improvement since then, especially more funding for health care, but as of 2022 there remains a huge gap to cross for Indigenous Americans to have anywhere near parity in government services, including health care, with education, housing and other essential services continuing to lag in financing and quality, even more so.

4. The Cultural Genocide

The cultural genocide has been even more devastating. Indian Nations were denied the right to have their own government, while their people were highly regulated and restricted in travel and other activity. Traditional leadership was undermined and traditional ceremonies were banned, while Christian missions and churches of various denominations were established on reservations in a government policy of religious and general assimilation. Worst of all, from 1819 to 1969, a few at first, and later, most Indian children were forcibly taken to distant boarding schools. There, too often harsh teachers and administrators attempted to assimilate them to White society. Students were punished if they spoke their own languages and told their traditional ways were backward and evil. In a great many instances, students suffered abuses, which often were internalized as proper behavior, while high quality traditional parenting methods were partially disrupted. The experience was so severe, that hundreds of young Indians died at the schools. The inadequacies of the education to mainstream ways, combined with racism in the larger society, prevented most Native young people from becoming part of the larger society - though there were important notable exceptions. At the same time the loss of cultural ways caused a great many Indigenous young people to find themselves alienated when they returned home.[13]

The boarding school experience, combined with the other aspects of colonialism, caused a great many Native Americans to feel badly about themselves and their cultures - which lost a significant portion of their cultural knowledge and wisdom - and to experience psychological problems and behaviors that were destructive to themselves and others. A major factor has been unresolved historical grief that has been passed on intergenerationally This occurs when

negative feelings, attitudes and behaviors from trauma are passed on from parents and other family members to children. Such grief is difficult to deal with, as the recipients often do not know or emotionally understand the original cause, or may internalize it as their own, not realizing that it has been transmitted to them. Unless the historical grief is sufficiently resolved in a person receiving it, it is likely to be passed on to the next generation.

Up until the 1920s the tremendous harms to Indian peoples and people were accomplished under a series of evolving federal Indian policies. These began to change to some degree, slowly and unevenly, following favorable public views of the outstanding participation of American Indians in World War I. There, as generally throughout U.S. history and most notably during war time, a much higher percentage of American Indians and Alaska Natives have participated in the defense of the country than have the members of any other measured group, and of the population as a whole.[15]

5. After the 1920's

Beginning in the 1920s, Indian policy began to improve somewhat. The federal government officially allowed Indians to vote in 1924, though some states were still preventing them from doing so well into the 1950s, and suppression of the Native vote and dilution of Native voting power has continued in some locations.[16] The Indian New Deal of the Franklin Roosevelt administration brought some significant relief, within the limits of its design and bureaucratic resistance from the Bureau of Indian Affairs.[17] But beginning in 1945 federal Indian policy shifted to "Termination," ending the federal recognition of Indian nations, which occurred in some cases. In the 1950s many Native people and families were relocated from reservations to cities for jobs and support that largely never materialized.[18] Then in the 1950s a major program began to adopt American and Canadian Indian children and place them with non-Native parents.

From 1958 to 1967, the Child Welfare League of America (CWLA), a research and standard-setting umbrella organization for social agencies serving children, contracted with the U.S. Bureau of Indian Affairs to administer an experimental program of Native adoptions. The Indian Adoption Program (IAP) was intended "to stimulate on a nation-wide basis the adoption of homeless American Indian children by Caucasian families."[19] By 1967, 395 Native children had been adopted under the program. Then, in 1968, CWLA made it part of the broader Adoption Resource Exchange of North America (ARENA), aimed at matching hard-to-place children (including Native American juveniles) from across the United States and Canada with willing adoptive parents. By 1977, IAP and ARENA had removed almost 800 Native from their tribal homes to Caucasian families. The ARENA program, in turn, stimulated other adoption agencies to follow the same practice.[20] This resulted in almost 5000 Native children being adopted out of their cultures by 1967, and thousands more such adoptions occurred afterwards. Overall, 25%-to 35% of all Native children were removed from their families, reservations and cultures, according to surveys by the Association of Indian Affairs in 1969 and 1974.[21] Many Indian Nations and parents objected to these adoptions from the start. Some at the very beginning, considering the difficult conditions on their reservations at the time, reluctantly made the hard choice to allow their children to be adopted out, with the promise that their offspring would live with fine families and have good opportunities open to them. These tribes and parents soon relented when the negative effects of the program, magnified by the scale of the removals, became evident.

The adoption program created many difficulties for the adopted children and their communities. In terms of the principle that is supposed to guide adoptions, for most of the Native young people removed from the reservation, it did not work "in the interest of the child."[22] To begin with, many children were removed from their families and communities who should not have been. Too many social workers and officials making decisions were culturally limited, conceiving a proper family being, and functioning, according to the model of the mainstream White nuclear family. They did not understand that Indigenous families functioned in harmony with the idea that "it takes a village to raise a child." Everyone in the Native community, and especially broadly conceived extended family, were involved in raising each child, and children were allowed to roam freely in the community, contributing to their education, learning from witnessing all its activities, with mentoring by virtually all its adults. This cultural misunderstanding caused many healthy and well cared for children being considered neglected and in need of removal. Many young Natives were taken without their parents' permission. As one tribal citizen observed,[23]

"For this whole century, right up until 1978 when we got the Indian Child Welfare Act, social workers would come in here with no understanding of how our families worked. They would see a child who'd been left with someone outside the nuclear family, and they would call that neglect. To us, that is an insane rationale. We don't distinguish between father, uncle, mother, grandmother. We don't think of ourselves as having extended families. We look at you guys and think you have contracted families. We couldn't understand why they were taking us apart. My brother Gabe, going to a man and woman in Texas when we had a whole family here. I've seen babies carried off with no more thought than you'd give a bag of brown sugar you picked up at the market.".

Because of the psychological and behavioral problems that many tribal members suffered from, to some degree, as a result of the boarding school and other colonial experiences, some children did need to be separated from their birth parents. However, instead of quite properly placing them with an extended family or other tribal member, which was the proper recourse, they were placed with white families with virtually no understanding of the child's culture. In most instances, this caused serious problems for the child, alienating them from their culture and community,

undermining their sense of self. Much too often, even if adoptive parents were loving and supportive, and honored a Native child's heritage, encouraging them to read about it, the limited learning out of cultural context was insufficient. When, they tried returning to their community of origin, the young people did not understand how to relate and act within it, and were emotionally undermined by their alienation from it. In many instances adopted Indian children had to face racism in school and afterwards, without the support of birth peers and community members. The racism situation improved after the 1970s, but recently has worsened again. The overall impact of adopting Indian children out of their cultures has been that a great many of them have functioned badly both in the wider world and in their birth communities.

For Indigenous communities and their citizens, the huge loss of their children was traumatic, internalized as another painful act of genocide against them. Practically, it removed from the communities future quite valuable members needed for community survival, well being, and recovery from colonization.[24] By the 1970s, with a large number of African American children also having been adopted out, with similar negative experiences, it began to be recognized that out of culture adoptions generally did not work very well.

6. Relief in the Policy of Self-Determination

Finally, in 1970, the federal policy of termination, which had been put on hold during the Kennedy admistration, was officially replaced by the launching of the policy of Indian Self-Determination.[25] The policy has developed continually since then, increasingly empowering Indian Nations to exercise the sovereignty they have always had, but were prevented from exercising. Today, federally recognized tribes are recognized as being governments within U.S. federalism. As "domestic sovereigns" they have considerable autonomy in their own affairs in a federal system consisting of federal, state and tribal governments. In some respects, they are equal to states, in others superior, stemming from their having joined the United States as sovereign entities. Tribes oversee any local subdivisions they may have, such as the 110 chapters of the Navajo Nation, just as states establish, empower, regulate, and can disestablish local governments within their jurisdiction. Tribal governments, just like states are often delegated regulatory authority by the federal government, such as the power to make rules within federal guidelines and to regulate matters within and in some cases impacting their jurisdictions, such as regulating air and water quality.

In response to the considerable harm done to Indian children removed from their families and communities, and to their nations, in November 1978, as part of Indian self-determination, the United States Congress passed Public Law 95-608, The Indian Child Welfare Act of 1978.[26] The act stated in part,

(3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

(5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

SEC. 3. The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

SEC. 4. For the purposes of this Act, except as may be specifically provided otherwise, the term—
(1) "child custody proceeding" shall mean and include—
(i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;

(iii) "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption. Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(2) "extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law

or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent."

The standards put forth in the act set guidelines for cases involving possible removal of Native children from their families and communities for state and other agencies and courts. These standards corrected the misnomer about what a Native family is and gave preference to leaving Indigenous children, first, in their extended family, second in the community, and lastly with other Indians whose culture was similar to that of the child's community. But the act recognized that where there is no satisfactory Native placement, an outside placement is proper (Section 105, a), and for temporary removal of a child in an emergency situation where a child faces imminent serious harm with their parent or guardian (Section 112).

Recognizing that Indian tribes are governments within the U.S. system of federalism, ICWA established,

SEC. 101. (a) An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

However, exceptions to tribal jurisdiction are permitted "for good cause" in Section 101 (b). Section 109 allows for Indian tribes to make agreements on the handling of Indian child removals and adoptions, again making the act flexible to deal with the best interest of the child, and also of the Indian nation.

Overall, the act sets good, flexible, standards and procedures for ensuring the best interest of the child, so far as possible, and secondarily for maintaining the integrity of the concerned Indian nation. Indeed, "Research shows that children in kinship care [keeping children within the extended family, tribe, or tribally approved foster home or culturally appropriate institution] have profound and enduring benefits to mental health, economic, and educational well-being," while, "Anti-ICWA policymakers and groups disregard these facts in their attempts to upend the Indian Child Welfare Act."[27] The research makes it clear, that not only are children usually better off psychologically if they are kept in kinship care, but along with that they function better in all aspects of their lives, including achieving more educationally and professionally, and as result faring better economically. The idea set into law in ICWA that children do best when kept with relatives if they must be removed from a parent or parents has proven to be such a fine practice for the wellbeing of children, that in October 2022, the Biden Administration proposed that the U.S. government allocate $20 billion over 10 years to reimburse states at a higher rate if they place children with family members rather than in group homes or institutions. In addition, the administration requested Congress to provide more money for programs that help families foster or adopt related children, and to expand a tax credit to include people who take legal guardianship of young family members.[28]

The ICWA standards were such an improvement over much of prior child welfare practice that Congress later imposed similar standards on state foster care systems. This has included requiring "reasonable efforts... to preserve and reunify families (42 U.S.C. §671(a)(15)(B)) and imposing requirements for notice (42 U.S.C. §675(5)(G)). While no legal process can work perfectly in practice, for the most part, ICWA has vastly improved the wellbeing of both affected Native children and their communities. In so doing, coming at a time when cross cultural adoptions had generally been found not to work very well for most children and communities, ICWA improved the work of caring for children generally. The act set forth that the proper definition of "family" varies culturally, and that child removals and placements need to consider both cultural factors and the impact of any such action on the child's community.

7. The Impact of ICWA on the Social Work Profession

Research by Thibault and Spencer[29] indicates that the passing of ICWA had a significant impact upon American social work organizations and the practice of social work. Prior to 1970, there is no indication that U.S. social work organizations explored American Indian welfare issues. The American Association of Social Workers (NASW) and the Council on Social Work Education (CSWE) had short codes of ethics in the 1950s and '60s, but neither of these contained any standard concerning child welfare or cultural competency, nor were these organizations generally active on social policy issues. The first glimmer of such a concern possibly arising was a minor 1967 addition to the NASW code of ethics on nondiscrimination. Similarly, there is no indication that those who were involved in carrying out removal of Indian children were aware of cultural differences between Indigenous people and mainstream Americans, or thought such differences were relevant to their work. Moreover, it is unknown if any of the people engaged in Indian child removal had social work degrees.

By 1970, the impact of the U.S. civil rights and counterculture movements on U.S. politics and culture,[30] as an interacting part of a general shift in U.S. culture, [31] had brought the CSWE to be significantly aware of differences in ethnic group culture and circumstances within the U.S., and to begin to be concerned about social policy. That year, the organization founded five task forces to identify major issues and problem areas for these groups. One of these, the American Indian Task Force identified the following needs: (1) recruitment of American Indian students for schools of social work, (2) coordination of financial assistance for the benefit of the American Indian student, (3) recruitment and development of American Indian faculty members, (4) development of curriculum content regarding American Indian culture and lifestyles, (5) development of training materials and courses for paraprofessionals

servicing American Indians, and (6) identification of academic and social problem areas facing American Indian students attending graduate schools of social work.
A year later, the CSWE annual meeting included 14 sessions, "to enable social work faculty, students, and practitioners to explore in depth, the issues and problems related to this important theme." This included a discussion, "Eliminating Institutional Racism in Social Work Education and Practice." The session was aimed at identifying key problems and provide a firm basis for the development and implementation of programs to assist social work educators, administrators, practitioners, and students in dealing with the concerns of minority groups about social work practice and education. The session concluded that it was essential to increase the number of minority students and faculty engaged in social work education, and develop curriculum content on minority groups.

In the spring of 1972, CSWE responded to the repeated proposals of its American Indian Task Force by launching project "Crash" to and train 10-15 American Indian social work faculty, which at that time only consisted of 6 Native assistant professors. These and subsequent CSWE actions, were likely helpful in the drafting of ICWA. The passage of ICWA and the standards it set likely were a factor in the increase in the number of Indian social workers and social work educators, along with the professionalization and policy development focus of social work. This has included most of the social work profession oriented toward taking into account the needs, culture and values of those it serves, and proceeding consistently with the ICWA standards, although these developments are not yet complete.

An indication of the change in social work that has occurred since the 1960s to which ICWA has contributed is shown in the June 25, 2021, "CSWE Statement of Accountability and Reconciliation for Harms Done to Indigenous and Tribal Peoples."[32] The statement reads in part,

"The purpose of the social work profession is to promote human and community well-being and yet there is no doubt that social workers have also functioned as agents of social control in upholding colonial and racist norms and encouraging clients to assimilate to the larger American culture.

June 25, 2021, the Council on Social Work Education (CSWE) board of directors humbly endorsed this statement which was drafted by the Indigenous and Tribal Social Work Educators (ITSWEA) as a partial account of social work education's role in harms committed against Indigenous and Tribal peoples and as an apology for those harms.
This statement was created by educators for educators to be used as a resource in social justice, racial inequities, and social work curriculums....

As social work educators, CSWE and its members are responsible for ensuring that social workers are educated to advance human rights and social, economic, and environmental justice in their practice. This statement is one mechanism for holding our profession accountable for ways social workers have harmed Indigenous and Tribal peoples. Recognizing the harms done by social workers and social work educators is a step towards disrupting racism and fulfilling several commitments to social justice. CSWE urges its member institutions to join the council and:

• Commit to active engagement across policy and practice levels to repair past harm, stop current harm, and prevent future harm to Indigenous and Tribal children, families, and communities;
• Advocate for the fulfillment of treaty and public policy obligations to Indigenous and Tribal peoples;
• Ensure research funding, research design, data collection and analysis, oral or printed interpretations, and education about Indigenous and Tribal peoples is driven by Indigenous and Tribal people and their protocols;
• Prioritize decolonization in social work education in concert with Indigenous and Tribal partners, recognizing that western paradigms continue to be privileged across practice levels and that they may result in practices that are often unhelpful and even harmful for Indigenous and Tribal peoples;
• Support self-determination of communities to build culturally congruent systems of economic, social and spiritual supports and promote Indigenous and Tribal peoples to heal and thrive; and
• Recruit and support Indigenous and Tribal people into the social work profession at every level, including social work education.

The United States exists on the colonized lands of Indigenous and Tribal peoples and its reach extends beyond national boundaries. These peoples continue to demonstrate strengths and resilience despite colonization, dispossession of land, and denial of inherent rights of self-determination and sovereignty. We recognize that Indigenous and Tribal peoples are competent, capable, and engaged in directing their own lives and futures. In no way should acknowledgement of past and current injustices contribute to dismissing Indigenous and Tribal strengths and agency. The full statement also provides an overview of Indigenous and Tribal peoples within the boundaries of the US and its territories so that readers may familiarize themselves with many of the communities who have been the subject of colonization, racism, and bigotry.

Then in October 2019, the first Native American social work program in the U.S. at the Facundo Valdez Social Work Institute, was created at the Albuquerque campus of Highlands University in New Mexico by act of the New Mexico state legislature. in October 2019. The institute incorporates Indigenous research methodology and an analysis of federal and state policy relating to the Indian Child Welfare Act (ICWA).[33] By this time, like many other social work programs, all of Highland's social work education took into account culture and history, saying on its web site, "All course content is oriented to understanding the effects of social policies

on Hispanics, Native Americans, and other historically oppressed populations."[34]

The shift in U.S. popular and social work thinking about diversity, and about Indigenous Americans in particular, have been part of a complex shift in public and professional understanding that gave rise to the ongoing movement for Indian self-determination and the enacting of ICWA. The passage of ICWA in turn furthered both the push for self-determination and the thinking and practice of the social work profession.

8. Similar International Experience and Remedial Action

The long time shifts and interactions in culture and opinion in the United States have been partially connected to, and paralleled by, cultural and opinion dynamics around the world, though more so in Canada, Western Europe, Australia and New Zealand. Experiences from other countries with similar cross cultural adoption programs for Indigenous children have also been extremely damaging for both the child and its community.

9. The Greenland Inuit Experience in Denmark

In an experiment in Denmark, for example, in the summer of 1951, 22 Inuit children ages five to eight were sent from the then colony of Greenland to Denmark on the promise to parents that their children would have a better life, learn Danish and eventually return to Greenland as the future elite. The removed young people were not permitted to have any contact with their own families. After two years, 16 of them were returned to Greenland, but placed in an orphanage. The other 6 were adopted by Danish families. Several of the children never saw their birth families again. An inquiry into the impact of the removal on the children found that it quite negatively impacted the majority of them. That led, in 2022, to the government of Demark compensating each of the surviving six removed Inuits with $250,000 kroners. On announcing the award, Danish social and elderly issues minister Astrid Kragh stated,

"The relocation of the children is a dark chapter in the history of Greenland and Denmark, and we must not close our eyes to it. What happened had large negative consequences for the children, who lost their language, their cultural identity and their connection to their families."[35]

Prime Minister Mette Frederiksen apologized in person in a ceremony to the six Greenlanders, saying,

What you were subjected to was terrible. It was inhumane. It was unfair. And it was heartless. We can take responsibility and do the only thing that is fair, in my eyes: to say sorry to you for what happened.[36]

10. The Canadian First Nation Policies from Boarding School and Removal to Restoration

The Canadian experience with Indigenous child adoption was similar to that in the U.S. Like the United States, the Canadian government undertook a policy of attempting to assimilate First Nation people that included taking Indigenous young people from their families and communities to boarding schools.[37] As in the U.S., the harshness of these institutions caused terrible harm to a great many of those who were forced to attend those schools, and to their communities. This trauma has been passed on for generations as unresolved historical trauma.[38]

In the 1950, following Canadian government policy,[39] provincial child welfare authorities began enacting child welfare policies that led to the placement of thousands of First Nations children outside of their families and communities from the 1960s to the 1980s. In a high percentage of cases, the children were removed without the consent of their families or communities. This period is now known as the "Sixties Scoop". This was in addition to the inclusion of Canadian First Nation children in the U.S. Indian Adoption Program and its successor, begun in the 1950s. The harm to both those adopted out and to their communities was similar to what occurred from adopting out in the United States.

Later, the Canadian policy shifted, but with essentially the same ill effects. In the years that followed, National child and family services underfunded services on reserves, leading children to be removed from their homes and taken off-reserve for foster care to obtain needed services.[40] This situation combined with the child services making much greater scrutiny of Native than non-Native families led to a massive overrepresentation of First Nation Children in foster care. It was found that in 2019, for example, First Nations children aged 0-15 years were 3.6 times as likely to be the subject of a child maltreatment-related investigation compared to non-Indigenous children.[41] Moreover, In 2019, disparities between rates of child welfare service dispositions for First Nations and non-Indigenous children grew with every decision across the service continuum to the point where Native young people were up to 17.2 times more likely than non-Native children to be placed in formal out-of-home care during the investigation period. As in the United States, a great many first Nations children were removed for alleged neglect, because child welfare personnel did not understand Indigenous child upbringing and the fact that Native children were quite properly raised by extended family and the whole community, rather than by parents alone.

The various investigations into the injustices of First Nation child social welfare led, in 2019, to the Canadian Parliament passing An Act respecting First Nations, Inuit and Métis children, youth and families,[42] setting essentially the same basic standards for child welfare as are set forth in ICWA. Some of the relevant provisions include:

- **"9 (1)** This Act is to be interpreted and administered in accordance with the principle of the best interests of the child.

• Marginal note: Principle — Cultural Continuity

(2) This Act is to be interpreted and administered in accordance with the principle of cultural continuity as reflected in the following concepts:

- **(a)** cultural continuity is essential to the well-being of a child, a family and an Indigenous group, community or people;
- **(b)** the transmission of the languages, cultures, practices, customs, traditions, ceremonies and knowledge of Indigenous peoples is integral to cultural continuity;
- **(c)** a child's best interests are often promoted when the child resides with members of his or her family and the culture of the Indigenous group, community or people to which he or she belongs is respected;
- **(d)** child and family services provided in relation to an Indigenous child are to be provided in a manner that does not contribute to the assimilation of the Indigenous group, community or people to which the child belongs or to the destruction of the culture of that Indigenous group, community or people; and
- **(e)** the characteristics and challenges of the region in which a child, a family or an Indigenous group, community or people is located are to be considered."

The Court of Appeals of Quebec, *in Attorney General of Quebec Applicant v. Attorney General of Canada Respondent and Assembly of First Nations Quebec-Labrador (AFNQL), First Nations of Quebec And Labrador Health And Social Services, Commission (FNQLHSSC), Makivik Corporation, Assembly of First Nations, Aseniwuche Winewak Nation of Canada and First Nations Child and Family Caring Society of Canada* upheld those portions of the act that set national standards for child welfare, which the court deemed proper.[43] In January 2022, the government of Canada announced a pair agreements awarding C$40 billion ($31.5 billion) to compensate First Nations children who were taken from their families and placed in the child welfare system and to reform the system that removed them and deprived them of needed services.[44] It may well be that the passage of ICWA, establishing "the gold standard in child welfare" was an influence in the international actions to stop and compensate for the removal of Indigenous children from their families and communities.

11. Australia's Lost Generations and Restoration

In Australia, Aboriginal people went through a similar experience of government removal of children as part of a set of assimilation policies, eventually followed by remediation efforts.

"In Australia, between 1910 and the 1970s, governments, churches and welfare bodies forcibly removed many Aboriginal and Torres Strait Islander children from their families. These children became known as the Stolen Generations. Their removal was sanctioned by various government policies (AIATSIS 2022a), which have left a legacy of trauma and loss that continues to affect First Nations communities, families and individuals today.

12. The Impact on Children Who Were Removed from their Families:

• Many children were psychologically, physically and sexually abused while living in state care and/or with their adoptive families, leading to lifelong trauma.

• Efforts to make stolen children reject their cultures often created a sense of shame about being of First Nations heritage. This resulted in children experiencing a disconnection from land, language and culture, and an inability to pass cultural knowledge on to their own children.

• Many children were wrongly told that their parents were abusive, had died or had abandoned them. Many children never knew where they'd been taken from or who their biological families were.

• Living conditions in the institutions where children were often placed were highly controlled, and children were frequently punished harshly, were cold and hungry and received minimal, if any, affection.

• Children removed from their families generally received a very low level of education, as they were expected to work as manual labourers and domestic servants and received negligible if any payment for their services (see Stolen wages). This has had lifelong social and economic implications.(HREOC 1997).

13. The Impact on Parents and Family Members of First Nations Children Removed from their Communities:

• Many parents never recovered from the grief of having their children removed.

• Some parents couldn't go on living without their children, while other parents turned to substance abuse as a coping mechanism.

• Many siblings were separated, and many First Nations people are still searching for their parents and siblings. (HREOC 1997).

14. The Impact on First Nations Descendants of Members of the Stolen Generations:

• The removal of several generations of children severely disrupted the passing on of First Nations cultures, and consequently much cultural knowledge has been lost or lay dormant.

• People who were removed as children were often deprived of living in a healthy family situation and prevented from learning parenting skills. In some instances, this has resulted in generations of children being raised in state care (Behrendt 2012). Some people and organizations call this a 'new Stolen Generation' (Family Matters 2020).

• Many people are still experiencing intergenerational trauma that results when the effects of trauma are passed down to the next generation."[45]

Numerous Aboriginal people, communities and organizations, including the Healing Foundation, and their allies have long worked nationally and in the Australian states to reconnect lost generation members with their families and to have the various governments pass reconciliation policies.[46] The first policy success occurred in New South Wales with the establishment of a Stolen Generation supported state Link-Up service to search records and facilitate members in reconnecting with their families. By 1995 all of the states had joined in this policy. Then in 1995 the Australian government initiated an investigation of the forced assimilation. The resulting Report, *Bringing them home,* was presented to Parliament on May 26, 1997. It found that 10% to 33% of all Aboriginal children had been removed from their families from 1910 to 1970, and that the policy was a breach of fundamental human rights. The report made 54 recommendations for restoration, including financial compensation. However, the new government that took office between the time of the launching of the enquiry and the presenting of the report took no action on any of them. Finally, in 2008, Prime Minister Kevin Rudd issued a national government apology.

Meanwhile, all the states except Western Australia and Queensland, which did officially acknowledge the tremendous and continuing harm inflicted by their participation in the removal policy, had provided financial compensation to Stolen Generation survivors and descendants in their jurisdiction.[47] Efforts to attain compensation in those states have been ongoing. In addition, in 2017, The Australian government set in motion the Our Booris, Our Way Implementation Oversight Committee under the Australian Capital Territory (ACT), with Aboriginal members, to address the overrepresentation of Aboriginal families in statutory out of home care.

15. The Maori Experience in Aotearoa (New Zealand)

Maori's in New Zealand were able to undertake adoptions according to tradition until the government passed the Adoption Act in 1955. The premise of the act was that there should be a complete separation between the birth and adoptive families, and the new law applied equally to Maori and Pakeha (non-Indigenous) people. Adoption information was kept secret, so that most mothers and adopted children could not know or find out who each other were. While there was no program of mass adoptions, a great many Maori were adopted and became cut off from their family and birth community, along with its traditions. This lack of connection caused psychological and professional/economic achievement problems for many who were adopted and their communities. A change in the law in 1985 ended the secrecy. Adoptees and parents could then access records to find each other. [48]

In addition to being adopted by Pakeha families, a great many Maori children were removed to faith based and government run child care instructions. A considerable amount of abuse was experienced by many of the institutionalized youth.

In 2008, a Waitangi Tribunal claim was filed on behalf of all Māori who were adopted, fostered or made wards of the state through government welfare systems. It claimed that the Crown, in breach of its Treaty of Waitangi obligations, prejudicially affected Māori by passing and enforcing the Adoption Act 1955. Shortly thereafter, considering the condition and treatment of Maori more broadly, in 2011, the Waitangi Tribunal,
"released its report into the Wai 262 claim, recommending wide-ranging reforms to lawsclaim and policies affecting Māori culture and identity and calling for the Crown-Māori relationship to move beyond grievance to a new era based on partnership."

"But, in many respects, current laws and government policies fall short of partnership, instead marginalizing Māori and allowing others to control key aspects of Māori culture. This leads a justified sense of grievance, and also limits the contribution Māori can make to national identity and to New Zealand's economy.

Ko Aotearoa Tēnei recommends reform of laws, policies or practices relating to health, education, science, intellectual property, indigenous flora and fauna, resource management, conservation, the Māori language, arts and culture, heritage, and the involvement of Māori in the development of New Zealand's positions on international instruments affecting indigenous rights. These recommendations include law changes and the establishment of new partnership bodies in several of these areas.

These reforms aim to establish genuine partnerships in which Māori interests and those of other New Zealanders are fairly and transparently balanced."[49]

Like the shift in the U.S. to the policy of Indian self-determination, the commission report raised hope of a much improved situation developing for the Maori. The carrying out of these policy would rely on future government action.

In the meantime, attempts to have claims resolved continued. One of them is the Royal Commission "Inquiry into the Lake Alice Child and Adolescent UnitTe Uiui o te Manga Tamariki me te Rangatahi ki Lake Alice," begun in 2018, [50] The commission stated in 2022 of its ongoing work,

We are looking into what happened to children, young people and vulnerable adults in State and faith-based care in Aotearoa New Zealand between the years 1950-99. We may also listen to survivor experiences before and after these dates.

16. Our Values

The Royal Commission is about people, in particular children, young people and vulnerable adults, and their experiences of historical abuse and neglect in State care and in the care of faith-based institutions. The values of the Royal Commission are:
• Fairness and balance

• Independence and determination
• Transparency
• Aroha.

17. Our Vision

Commissioners have also established a vision for the inquiry. They want to ensure that both the outcome of the inquiry and the process for engaging communities and survivors will transform the way care is provided to the most vulnerable people in our communities. The Royal Commission's vision is:

"Transforming the way we, as a nation, care for children, young people and vulnerable adults in our communities."

➢ **Why have an Inquiry?**

Many people and organizations - survivors, community leaders, iwi and Māori, the Human Rights Commission and the United Nations - have, for many years, called for an inquiry into abuse in care in New Zealand.

➢ **What guides us?**

We are guided by our Terms of Reference. These were finalised after hearing from over more than 400 groups and individuals about what the Inquiry should focus on.

➢ **What is being investigated?**

• Why people were taken into care
• What abuse happened and why
• The effects of the abuse

We are specifically focusing on Māori, Pacific People and people with disabilities because of the disproportionate amount of people from these communities in care.

➢ **What are we doing?**

Commissioners are listening to survivors share their experiences in private sessions.
We are conducting inquiries into different themes and care settings, including holding public hearings throughout the Inquiry.

We are conducting research and engaging with communities.

We will make recommendations to the Governor-General in 2023 on how New Zealand can better care for children, young people and vulnerable adults."

The Maori search for restorative justice has been a long one. With no decision yet from the Royal Commission "Inquiry into the Lake Alice Child and Adolescent Unit," Bentham Ohia, President of Advancement for Maori Opportunity (AMO), and Vice President of Te Wananga o Aotearoa (Maori University of New Zealand) and Kate Cherrington, of AMO, wrote in a December 4, 2022 E-mail to this author,

"We currently have a royal enquiry underway on abuse in care. There has been much work undertaken in the last few years and there is more to do.

There have been a significant amount of reviews by government and community – we are yet to see and feel the significant change to the system that perpetuated this trauma in our communities.

It should be noted that out of culture child removal remains an active problem today internationally, though not necessarily concerning Indigenous youth. In worst cases it is part of ethnic cleansing. An ongoing case is the fraudulent taking of Ukrainian children without permission from the Ukraine and removing them to Russia by the Russian military and government.[51] It is clear from the cross national experience that the harms of out of culture adoption that ICWA sought to prevent continuing were real and serious, while ICWA like standards of prevention and restoration are necessary.

18. Attacks on ICWA

Popular opinion is extremely complex, with numerous interacting groups and subgroups, all composed of individuals making their own decisions, and reacting in differing ways to the variety of influences and perceptions of events. There have always been numerous counterviews to the variety that are considered mainstream functioning within complex ideational dynamics. As major shifts have been occurring toward Indigenous ways of seeing, and towards increasing self-determination there have been forces of resistance. For the last several years there has been a growing backlash to what is often called "progressive change." This has included increased opposition to cultural diversity, including Indigenous self-determination.

19. The Issue of Race and the Plenary Power of Congress in Indian Affairs

The Indian Child Welfare Act has long been attacked by those innocently limited in their understanding by the colonialist thinking that necessitated ICWA in the first place, and by many who are racist more broadly or anti-Indian in particular. Those attacks have now reached the point of a Supreme Court case involving challenges to the constitutionality of ICWA as a whole, and the constitutionality or legality of sections of the act.[52] The primary alleged objection to ICWA is that it violates "equal protection of the law" as set forth in the 14th Amendment as favoring one racial group. In general terms, it should be noted that those who favored inequality, especially regarding "race," but having lost the racist elitist argument, now often argue that "equality" means that everyone must now be treated in the same way, in attempt to protect their elite advantage by preventing people who have been made unequal from regaining equality by restorative or affirmative action.

Concerning ICWA, and other legislation and government action directly concerning and beneficial to Indians, the focus of the

law is not in any sense based on race. Rather it targets a specific group on the basis of citizenship, citizenship in an Indian nation, often referred to as "tribe." This becomes obvious when one sees that ICWA only applies to children who are, or are eligible to be, citizens of a federally recognized Indian or Alaska Native nation. In terms of race, a great many who are by blood or heritage, Native Americans, are not tribal members. While there are a great many people who are by blood African American, White, and possibly Asian, who are tribal citizens. This has occurred by tribal adoption, in most instances generations in the past.[53] In U.S. citizenship terms this is "naturalization," and consistent with U.S. law, tribal citizenship is inherited from parents who are tribal citizens. This is similar to U.S. citizenship being conferred on the offspring of U.S. citizens, even if they are born in a foreign country.

Some argue that ICWA, and by inference most, if not virtually all, federal Indian legislation dealing with welfare issues is unconstitutional because, they argue, that ICWA is based on the federal Commerce Power in article I of the U.S. Constitution, and that Indian child adoption has nothing to do with commerce. This argument is fallacious, first for misquoting the act and secondly for misconstruing the meaning of "commerce" as used by the framers in writing the Constitution, and by Congress in its early sessions and since then with regard to Indian affairs. ICWA. Section 2 of the act plainly says,

> **"SEC. 2. Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds—**
> (1) that clause **3, section 8, article I of the United States Constitution provides that "The Congress shall have Power * * * To regulate Commerce * * * with Indian tribes" and, through this and other constitutional authority, Congress has plenary power over Indian affairs;**
> (2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources; '
> (3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;"

The plenary power of the United States to regulate relations with, and affairs regarding Indian Nations has been continually recognized by the U.S. Supreme Court since 1831, when the court stated in *Cherokee Nation v. Georgia* (30 US 1; 5 Pet 1; 8 L. Ed. 25) that Indian tribes were "domestic dependent nation[s]", and in 1832, in *Worcester v. Georgia,* (31 U.S. 515; 6 Pet. 515; 8 L. Ed. 483), the U.S. Supreme Court found that the Cherokee Nation was sovereign, and that Georgia had no rights to enforce state laws in its territory, as the sole power to relate to tribes was held by the Federal Government, primarily with Congress. The plenary power of Congress over Indian Nations stems not only from the commerce power, but also from the power that the Constitution gives to Congress to make regulations governing the territory belonging to the United States (Art. IV, Sec. 3, Cl. 2), and the president's constitutional power to make treaties (Art. II, Sec. 2, Cl. 2), under which Congress may pass legislation. The plenary power of Congress has continually been upheld, as exemplified by the Supreme Court's decision in *Lone Wolf v. Hitchcock,* in 1903 (187 U.S. 553, 23 S. Ct. 216, 47 L. Ed. 299). The change that has occurred with the ongoing development of the policy of self-determination, is that Indian nations, partners in U.S. federalism, are now in fact domestic sovereigns.

20. The Spending Power and ICWA

The Indian Child Welfare Act also includes provisions to establish and fund programs to make ICWA function well in practice, improve physical and behavioral conditions in Indian homes to make removals of children unnecessary or only temporary, and otherwise assure that "the permanent removal of an Indian child from the custody of her/his parent or Indian custodian shall be a last resort," as the removal of children from their parents almost always has negative impacts on the child, and should only be undertaken when leaving a child with its parents is more harmful to the child. These programs are undertaken under the Article I, Section 8 of the constitution spending power of congress to "provide for the common Defense and general Welfare of the United States," and are consistent with long legally well-established use of that power. The act provides,

"SEC. 201. (a) The Secretary is authorized to make grants to Indian tribes and organizations in the establishment and operation of Indian child and family service programs on or near reservations and in the preparation and implementation of child welfare codes. The objective of every Indian child and family service program shall be to prevent the breakup of Indian families and, in particular, to insure that the permanent removal of an Indian child from the custody of his parent or Indian custodian shall be a last resort. Such child and family service programs may include, but are not limited to—
(1) a system for licensing or otherwise regulating Indian foster and adoptive homes;
(2) the operation and maintenance of facilities for the counseling and treatment of Indian families and for the temporary custody of Indian children;
(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care;
(4) home improvement programs;
(5) the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters;
(6) education and training of Indians, including tribal court judges

and staff, in skills relating to child and family assistance and service programs;
(7) a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate State standards of support for maintenance and medical needs; and
(8) guidance, legal representation, and advice to Indian families involved in tribal, State, or Federal child custody proceedings.

The spending power has two aspects that have regularly been upheld by the Supreme Court. First, Congress has the power to appropriate money to carry out its constitutional powers, and those of the other branches of the federal government. Without this it could not carry them out. Even those who have the narrowest of constitutional interpretations would agree that this is necessary and proper, as must follow, in any case, from the final clause of Article I, Section 8, that Congress has the power, "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." Since the U.S. government has sole jurisdiction over Indian tribes, any moneys provided to tribes by the U.S. government for carrying out ICWA or any other tribal purpose, not otherwise prohibited by the constitution or federal law, are clearly legitimate. This does include some of the items in ICWA section 201.

The second aspect of the spending power is that Congress may give incentives to the states to do things by offering them money for those purposes which usually have requirements that the states must adhere to if they decide to accept the money. The Supreme court has consistently upheld such use of the spending power, as long as it does not otherwise violate constitutional limitations.[54] The one case in which the court did overturn a use of the spending power, *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012), the majority ruled that Congress exceeded its Spending Clause authority by coercing states into a transformative change in their Medicaid programs by threatening to revoke all of their considerable Medicaid funding if they did not participate in the Medicaid expansion, which would have an excessive impact on a state's budget. The court ruled that Congress may withhold from states refusing to comply with the Affordable Care Act (ACA)'s Medicaid expansion provision only the additional funding for Medicaid provided under the ACA. All of the above provisions of section 201 providing money to the states involve new spending, and thus are not coercive of the states under the court's ruling in *NFIB v. Sebelius*. Moreover, changes over time in regulations involving receiving those monies would not be considered coercive if they did not provide a major burden upon the states. As the Chief Justice stated in *Sebelius*, requirements in federal grants only become coercive, "When, for example, such conditions take the form of threats to terminate other significant independent grants, the conditions are properly viewed as a means of pressuring the States to accept policy changes."

While it is not a legal or constitutional issue with ICWA, it is important to note that a strong case can be made that the passage and continued upholding of ICWA is "in the General Welfare of the United States." As is shown below, the benefits to Native people that followed from the passage of ICWA have allowed them to contribute significantly to the communities around them, and the country as a whole, in many fields. Further, the passage of ICWA has led to improvements in welfare policies and the social work profession.

21. Constitutional Issues Relating to "Commerce" In Relations with Indian Tribes

The term "Commerce," as used by the framers of the Constitution and by Congress with regard to relations with Native nations had broad meaning, extending well beyond narrow economic interactions. It meant "intercourse," the entire scope of relations between the United States and Indian tribes. The history of the plenary power of Congress to have the sole authority to regulate Indian affairs is authoritatively, and the broad meaning of "commerce," is set forth authoritatively by Professor Gregory Ablavsky in his "Summary of the Argument" in his brief in *Brackeen v. Haaland*.[55]

"The new Constitution centralized all these powers in the new federal government. The Indian Commerce Clause was only one among these interrelated powers, but, as James Madison observed, it explicitly shed the qualifying language preserving state authority from the Articles of Confederation.

Moreover, it relied on a term, “commerce,” that Plaintiffs themselves acknowledge was universally defined as “intercourse,” a term of art of the time to describe relations between Natives and U.S. citizens.

Ratification and post-ratification history confirms this conclusion. One of the few commentaries on Indian affairs during ratification acknowledged that ratification would “totally surrender” authority from states to Congress. Similarly, federal and state officials alike concluded that, under the new Constitution, the federal government had preeminent authority to govern intercourse between the United States and Indian tribes.

From the beginning, this authority encompassed federal regulation of the status of Indian children. This centrality reflects both the widespread frontier commerce in captive Indian children and the significance of education to the federal project to “civilize” Indians. Similarly, after ratification, Congress and federal officials, including President Washington, invoked federal power over Indian affairs to mandate that state courts and officials comply with federal aims and policies.

The Plaintiffs here seek to challenge this text, precedent, and practice by advancing a revisionist argument that asserts a highly circumscribed vision of federal authority over Indian affairs. Their claim that this approach reflects original constitutional

understandings, however, rests not on concrete Founding-era evidence but on a handful of contested law review articles that rely on inaccurate evidence. Their claims are nonetheless not new: they echo purposive Removal-era efforts by state advocates to challenge federal authority. Yet such arguments have met two centuries of repeated failure in this Court beginning in the 1830s, and warrant continued rejection today."

Related to the broad constitutional meaning of "commerce" in Indian affairs is the broad meaning of "resource" in ICWA, section 2 (3), "that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children." Here, resource clearly references all the ways in which a tribe's children are vital to its future. Without them, the nation has no physical, social, or cultural existence, while their loss is psychologically debilitating, as the history of Indian child removal indicates.

Even if one were to narrowly construe the commerce power to direct economic affairs, the removal of Indian children from their nations in large numbers would be devastating That this is in fact the case, can easily be seen today with Indian nations having a very substantial impact on the economies of the states in which they are located, with a number of instances in which tribes are the primary employers in the counties adjacent to their reservations.[56] The quite significant and growing role of Indian nations in local, state and national economy in the United States would not be possible to have been achieved at anywhere near its current and increasing level if tribal populations had been greatly reduced by continuing large scale removal of children. Further, even if one were to define the federal commerce and other powers exceedingly narrowly, on the basis of the Tenth Amendment of the Constitution, to leave more room for such powers to be exercised at lower levels of American federalism, the authority to regulate the adoption of children who were, or were eligible to be, Indian nation citizens, would rest not with state governments, but with tribal governments, who are recognized as having that authority by ICWA in Section 101, a.

22. Complaints of Bad Outcomes in Applying ICWA

A number of Native Americans have expressed dissatisfaction with ICWA on the basis of their bad experience of being relocated within their communities, rather than adopted out. That, however, is a problem of the individual decisions that were made in their cases, and not with ICWA, which is flexible, and allows for out of extended family and community placement when there is a good reason for it. Unfortunately, in legal, and human affairs generally, bad decisions, unforeseeable negative results, and sometimes lack of even moderately good options occur. That of itself is not a reason to abandon a law, bureaucratic or private process. What needs to be done to minimize such cases, is to have sufficient review leading to learning from bad outcomes, resulting in providing whatever is necessary to greatly minimize negative consequences.

23. Requirements for State Courts

There have also been some objections to parts of ICWA claiming that setting requirements for state courts in proceedings involving Native children for the foster care placement or termination of parental rights violates the Tenth Amendment's anti-commandeering doctrine in applying federal standards to state created claims. These requirements involved: setting forth that "the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding (Sec. 101, c);" the need of the court to notify the parent and tribe of an Indian child in an involuntary proceeding (Sec. 102, a); Insure the right of an indigent parent or Indian custodian to be represented by counsel, and authorize the court at its discretion to appoint counsel for the child when it is in the best interest of the child to be so represented (Sec. 102, b); insuring the right of all parties to a proceeding to have access to all relevant reports and other documents (Section 102, c); that the court not permit removal of a child unless "active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful" (Sec. 102 d), that decision to remove is "supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child" (se. 102 e a d f); and that adequate written records of the proceedings be made and maintained (Sec. 103, a And Sec. 105, e). The suggestion that these provisions violate the Tenth Amendment is fallacious, because it has been long accepted that the anti-commandeering doctrine only prevents Congress from compelling state legislative and executive officers “to enact and enforce a federal regulatory program.”[57] Concerning judicial matters, however, the Supremacy Clause’s command in Article VI, Clause 2 that federal law “shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby,” authorizes Congress to provide rules governing state courts in proceedings involving individual interests.[58] Thus the sections of ICWA in question are quite proper, insuring that Indian child welfare proceedings are fair and proper, with the rights of the parties upheld, consistent with the requirements of the Fifth and Sixth Amendments to the Constitution, and with American principles of due process of law.

That what is asked of state courts in ICWA is consistent with the Constitution as shown by numerous court decisions and continual practice since the early days of U.S. government under the Constitution is well documented in the brief of the Constitutional Accountability Center in *Brackeen v Haalland*, which concludes,

"Since the Founding era, Congress has imposed obligations on state courts and judges, both by creating laws that are “to be of force and effect in all courts, state or national,” Ward, 51 Mass. [583 (1846)] at 592, and by requiring state courts and other state officials to engage in modest recordkeeping and information

sharing related to federal laws. In ICWA, in order to remedy state courts' persistent "fail[ure] to recognize the essential tribal relations of Indian people," 25 U.S.C. § 1901(5), Congress created a series of substantive and procedural requirements that protect Indian families, id. § 1901(4). These requirements are entirely consistent with the kinds of obligations that Congress has imposed on state actors since the Founding, and this Court should hold that they are constitutional.[59]

24. The Early Involvement of the States in Education and Child Welfare

An argument has been posed against ICWA claiming that ICWA is entirely an attempt by the Federal Government to fix problems resulting from its exclusive program of Indian Boarding Schools, and that, therefore, the federal government must correct the problem itself without requiring action by the states. The historical record clearly shows that this is not the case.[60]

The states were complicit in both the boarding schools and the Indian adoption and education programs that followed the beginning of the winding down of the boarding school program in the 1920s. The states were involved in the boarding school program by selling land to the federal government for some of the schools, while local and state police collaborated with the federal government by catching and returning runaway Indian students to many of the schools.[61] The intermeshing of state, local and federal government action in the boarding schools is exemplified by the Carlisle Indian School. It was built, initially, on former army land, but was expanded with the assistance of the Pennsylvania state legislature passing an act allowing the federal government to purchase more land for the school. Officials at the school regularly called on police from several jurisdictions to capture and return escaping Indian students. In Oregon, where the BIA's Chemawa Indian School was established on land purchased for that purpose from the state legislature, "State officials, such as the President of the University of Oregon, advocated for and praised the school's 'outing' system, which sent the school's students into the homes of families throughout the state and provided cheap labor that bolstered local economies."[62]

More important, is the state direct involvement in Indian child welfare, beginning in the 1920's. Following the Meriam Report finding, in 1928, that the boarding schools were "grossly inadequate," the federal government began to change policy toward educating Native children in state run public schools and on-reservation day schools.[63] That was part of a shift in the broader federal view to asserting that welfare programs intended to assist Native families were best carried out at the state and local level. By that time, virtually all the states had made school attendance mandatory, and instituted statewide public school systems. By 1940 public education had become the largest portion of state budgets. The states were reluctant to educate or take welfare responsibility for Native children, as Indians and their reservation lands were not taxed by the states, who also complained they had no jurisdiction over them. This led states to request federal funding to support Indian education and child welfare efforts. In 1935, Congress passed the Social Security Act (SSA),[64] which included greatly increasing federal funding to states to help support their child welfare programs, most particularly for establishing and supporting state child foster care programs.

However, most states continued to refuse to provide benefits to Native families and children, risking loss of federal SSA funds. This occurred despite lawsuits amid complaints of resulting Native deaths and suffering.[65] Eventually, the federal government began offering full federal funding for specific state welfare programs that served Indian people.

Meanwhile, Congress had passed the Johnson-O'Malley Act, in 1934, authorizing the federal government to contract with states for provision of education and other welfare funds for Native people who were "so intermixed with that of the general health of the community that it is difficult to separate the two."[66] Having initially undertaking such contracting only for Indian education, in 1949 the BIA began issuing Johnson-O'Malley contracts with states for welfare programs. By 1955, states began asking the BIA for larger subsidies for the care of Native children. The BIA complied engaging in a large number of such contracts with states over the next twenty years. These federal-state agreements for the first time encompassed such activities as foster care to take the place of boarding schools.

These contracts included standards for removing Indian Children which were essentially the same as those later required by ICWA. An example, is Minnesota's request of Johnson-OMalley funding for an Indian foster care program as part of a general plan to close the Pipestone Indian School.[67] In making the request, Minnesota agreed "that funds invested in the Indian foster care program will be used in the best interests of Indian children." The agreed requirements, generally included in state-federal Indian child welfare contracts, included that removal would occur only with parental consent or a full hearing, including casework support; licensing of foster home placements; a preference for a home placement setting over an institutional setting, unless a showing is made otherwise; and continuing casework support for children and parents following removal. This foreshadowed what was later written in ICWA and embraced a concern "that the potential and actual values in Indian home life shall at all times be particularly recognized, and efforts shall be directed to the improvement of the family and community life, rather than separation of children from their relatives, except where the child's welfare is threatened by failure to remove him."[68] Also required in the contracts was that the states keep records of child welfare proceedings with monthly or annual reports to the BIA, along with the states allowing BIA personnel to review all "records relating to Indian children covered by this contract" and to "have access to [state welfare] facilities at any time in order to observe and evaluate the services provided under this contract."[69]

This expansion of state welfare programs with federal-state contracts to include Indian children led directly to the huge removal of Indigenous American children that necessitated the passing of ICWA to end the wrongs inflicted by the mass removals. Moreover, the historical record shows that the states failed to meet the existing standards, very often removing children simply on the basis that they lived in poverty. The evidence indicates that this state action was driven by state government financial concerns. With the closing of the boarding schools, it was less expensive to place children in middle class foster homes than to provide direct services to Native families.[70]

Finally, a number of years before the passage of ICWA the states were required by Congress to meet virtually the same standards and recruitments in ICWA in dealing with children of foreign nationals. The Multilateral Vienna Convention on Consular Relations and Optional Protocol on Disputes, better known as the Vienna Convention, was signed by the United States on April 24, 1963.[71] Both the convention and the treaty require in child welfare hearings notification of the child's potential other nation and require state officials to keep records of that notice, as well as both mandating that state officials collaborate with the representative of the child's nation, who supplies integral linguistic and cultural translation for the state court proceedings, and that a guardian be appointed. The Vienna Convention and ICWA both work in the best interest of children of another sovereign in understanding that the continuing existence and wellbeing of the sovereign nation relies on its children, and that cultural and linguistic differences cause difficulties in legal proceedings involving them.

The key point that emerges in seeing both ICWA and the child welfare portions of the Vienna Convention together is that both involve the treatment of children of another sovereign. In the case of the Vienna convention, the topic is children of foreign sovereigns. In the case of ICWA, the subject is children of a domestic sovereign. That Indian nations are governments within the U.S. federal system with sovereignty in some ways similar to that of states and in some ways greater is something the objectors to ICWA fail to understand. Most important, the objectors, especially representing states, are ignorant of or overlook that what ICWA requires has long been agreed to by the states - often of their own initiative - and that they do not seem to have had any complaint about these child welfare requirements, except in the current instance of Indigenous Americans. That tends to give the impression that if there is any racial bias, however unwitting, in the arguments concerning ICWA, it is on the part of those attacking the Indian Child Welfare Act. The act clearly is consistent with long firmly established United States constitutional law and practice.

25. Oral Questioning in the U.S. Supreme Court

The case challenging the Indian Child Welfare Act, *Bracken v. Haaland,* was heard in oral argument in the Supreme Court on November 9, 2022, with decision to come later in the court's term, ending in late June 2023.[72] The three "liberal" justices, Kagen, Sotomayor and Jackson, and Gorsuch appeared fully in support of ICWA. The other five "conservative" justices appeared to have concerns about ICWA. Although other issues might be raised in the final court opinion in ICWA, the main objection at oral hearing concerned the three preferences for placing removed Native children set forth in ICWA. These are preference to leaving Indigenous children, first, in their extended family, second in the community, and lastly with other Indians, tribes or Indian organizations whose culture is similar to that of the child's community. The general concern was if these and other requirements established by Congress for state courts violate the anti-commandeering clause of the Tenth Amendment. That issue is discussed above. More particularly, Justice Kavanaugh was concerned that the third preference was not in the best interest of the child as it was based on race. He stated, "Congress couldn't give a preference for white families for white children, for black families for black children, for Latino families for Latino children, for Asian families for Asian children."[73] Here, as counsel supporting ICWA pointed out, Kavanaugh misunderstood that the requirement was not racial, but cultural, the advantage for a child in keeping it with in its own or very similar culture, with its own language.

To correct Kavanaugh, if one were dealing with a child who happened to be White, one would not attempt to place them with a White family as such, but rather with one of their own culture. An example, is trying to place a Ukrainian child now in the U.S., who had no relative available. One would then look for a good Ukrainian family. If one were not available, then it would be proper to look for a family of a similar culture, perhaps Belorussian. Involving Indians, if a Lakota Child from the Pine Ridge Reservation had no available relative or other family to place them with on Pine Ridge, then it would make sense to place them with a good home of another Lakota tribe, perhaps of the Rosebud or Standing Rock Reservation.

Recently the Supreme Court has overturned or paid no attention to long established precedents.[74] Thus, there is no assurance how the justices will vote in *Bracken v. Haaland*. But if they do follow precedent and the clear will of Congress, the majority should uphold all of ICWA.

26. The Overall Positive Success and Importance of ICWA

Everything considered, The Indian Child Welfare Act of 1978 has been extremely important for a great many Indian children, and for Native nations, with significant benefits for neighboring communities and the United States as a whole. While there have been cases where ICWA was not properly applied, or child placement under it did not turn out well for unforeseeable reasons, and state child welfare personnel and courts do not always act in accordance with it,[75] in most instances the best interest of Indian children has been far better served then previously. The act's setting good standards and procedures for action for the wellbeing of Indian Children, have brought about a broad general improvement in child welfare proceedings in the U.S. at large. No longer do

already oppressed Native communities suffer huge losses of their children, denying them needed important future members, while adding to the debilitating traumas of physical and cultural genocide. While more needs to be done, including the provision of more funding for services to make temporary and permanent removal of Native children less necessary, ICWA, together with other federal legislation and policies of self-determination have greatly improved the quality of life of Indian communities and their citizens. This in turn, has allowed Native nations and their citizens to contribute increasingly to the economies and quality of life of neighboring communities and of the country as a whole; to contribute in many fields: including in many aspects of American culture; to scientific knowledge and advancement; while empowering Indigenous Americans to take increasing leadership in the discussion of public issues.[76]

27.What More Needs to Be Done: Initial Thoughts and Tentative Speculations

Perhaps the most important work that needs to be done is to move much further on breaking the cycle of abuse, of self and others - including children - that is part of the unresolved historical trauma stemming from past physical and cultural genocide, with abuse behaviors learned in boarding schools. This is a topic that extends beyond the author's research and analysis for this paper. All that can be suggested here are some initial thoughts and speculations based on limited information that may contribute to ongoing discussion and consideration.

As the Me To Movement is helping make clear, domestic abuse is widespread in the United States and worldwide, in many cases being passed on intergenerationally. Because of the abuse in much of the boarding school it is a particularly serious problem among many Indigenous American people and in their communities. If the Canadian post-boarding school First Nation experience reported by Rupert Ross[77] generally reflects the situation among Indian people and communities in the United States, as anecdotal evidence available to this writer suggests, then the number of people caught up in abuse cycles, and the extent of their concentration in particular communities varies, while the exact way it plays out varies in different individuals. Ross' writings, together with personal communication from someone who works in healing abuse cycles in Canadian Aboriginal communities, along with some extremely limited information on such work in the U.S. to date, would suggest to this author that intergenerational abuse cycles are difficult to break for the individuals suffering from them, but with considerable time and effort can be healed in many instances.

A key factor in success seems to be the willingness of one caught up in the cycle to be willing to engage in the work of healing it. There are a number of factors that tend to work against people being willing to admit that they are abusers, and to participating in healing. One is that much of child and other domestic abuse is punishable by law. Others involve feelings of shame and guilt in admitting behaving abusively to oneself, as well as to others. This is especially so when abusive behavior becomes publicly known, as it may lead to loss of prestige, position, and other valued benefits. Further, it is alleged that in some Native communities, where a large percentage of the population, or at least of its leaders, are caught up in an abuse cycle, there is resistance to admitting the problem for fear of the community losing funding or other benefits. It has been claimed that in some cases this fear has prevented children from being removed from abusive situations, causing preventable harm to the young person, including continuing the abuse cycle where removal might break it. In addition, there is reluctance by many to engage in healing out of a belief that the attempt cannot succeed, while facing the related issues is painful.

As Ross' reports of the Canadian experience indicate, the way to remove the barriers and encourage participation in healing is to take a restorative justice approach. This means saying to abusers caught up in the cycle, "you did not cause becoming an abuser. That was put upon you. But now that you have internalized it, it is your responsibility to heal it." Anger at abusers and those who initiated the abuse cycle can be turned into realizing that "the best way to get back at those who abused me is to rid myself of the abuse."

Where criminal liability might be involved, as alternative to prosecution or punishment the approach should be to take on healing, with community pressure to do so when possible. Personal accounts of those who have succeeded in breaking the abuse cycle, or made good progress toward that, are quite often very helpful in demonstrating to abusers that they can change their mindset and behavior. It would appear that such healing processes are most successful at changing harmful behavior when a community decides to undertake them. It can do so according to its own traditions, teachings, and circumstances, while moving abusers to participate. Community members who have been healed are then at hand to be the best healing facilitators by example and from experience.

Unless and until healing is undertaken, children need to be removed from abusive situations. The cross-national experience has shown that removing children from their culture is damaging to them, and when it happens on a significant scale it is damaging to their community. Especially for Indigenous people, the welfare of the community and its members, including its children, are mutually interrelated. What hurts the child hurts the community, and what hurts community hurts the child. Thus, ICWA did well in establishing guidelines for child welfare with ranked preferences when removal from parents is less harmful then leaving the child in a damaging situation. If abuse in a community is sufficiently widespread, then it becomes necessary to use the third option of removal to another community or Indian organization with similar culture. Oral argument before the U.S. Supreme Court indicates that this option rarely has been used. If it is necessary, then the third option should be utilized more frequently. And if there is not

a good home available under the third option, removal can be to an appropriate non-Indian setting, as set forth by ICWA.

The question in the last case is what is appropriate. The New Zealand Maori experience discussed above, along with that of people born in New Zealand during World War II to New Zealand women and U.S. military men who left the mother and child,[78] shows the importance of people knowing their roots, with people separated from their birth parents and/or communities knowing who these are and, if possible, having or regaining contact with them. If Indigenous people must be removed to out of culture fostering or adoption, to the extent possible it should be to people who are culturally sensitive and know a fair amount about the young person's culture. Further, to the extent possible, it is best if the removed-out children not only continue learning about their culture, but have regular connections with it and their community. To make this possible may take some organizing and financing.

Where communities are not doing enough to remove children from abusive situations efforts need to be made to determine why this is so and provide appropriate remedies. If the reason is a lack of community education, sufficient trained personnel or insufficient education for welfare staff, well thought out steps need to be taken to remedy the problem. The same can be said of overcoming bureaucratic difficulties, including removing "red tape" and insuring needed inter-agency/inter-organization cooperation.[79] If increased financing is necessary, it should be provided.

Several actions have been suggested that may reduce reluctance of people, leaders and communities to admit abuse and undertake appropriate action concerning it. But what if a community or its leaders are unwilling to act, even to the point of blocking needed removals. Tribal sovereignty is an essential principle which needs strong legal and practical support. But I suggest that it has limits. Where a government seriously violates fundamental human rights, a temporary intervention may be necessary. An example is, when in response to lawsuits, federal courts have required local communities to change voting procedures or district boundaries that discriminated against Native or other minority citizens.

In the as yet unresolved problem of federally recognized tribes without independent courts disenrolling some of their citizens, some have suggested federal courts should be willing to review if these fundamental rights decisions have been made with due process, while not considering the merits of the tribal decisions. This is often what federal court do in such suits involving claims of rights violation by independent bodies. The existence of an independent tribal court, or participation by a tribe in an intertribal court system usually would provide the needed due process in such cases. Something similar might be a remedy if situations arose where tribal governments were grossly negligent in refusing to act for the combined best interest of its children and the community. If necessary, any such remedy would be best exercised by a tribal or intertribal body with the knowledge of the culture of the concerned community.

Just what needs to be done overall and in particula cases, requires having enough data to understand the problem and possible solutions. Some limited anecdotal information offered confidentially to this writer suggests that there remains an extensive problem of child abuse in at least some communities. Unless there is more information available on these issues than I am aware of, an important next step needs to be a proper enquiry to provide the necessary knowledge of the situation [1-116].

Finally, in considering what needs to be undertaken in Indian child welfare, as well as concerning the whole range of other Indian issues, it is necessary to take into account ongoing changes in Indian country. For example, how should the greater and greater number of tribal members living off reservation be taken into account? Similarly, what needs to be done in reference to the increasing number of Native people living on reservations who are not tribal members?

Afterword

Following the writing of this paper, on June 15, 2023, the U.S., consistent with the findings of this article, the Supreme Court upheld the constitutionality of ICWA by a vote of 7-2 in *Haaland v. Brackeen*, 599 U.S. 255 (2023). The opinions o the justices can be found at: https://www.oyez.org/cases/2022/21-376.

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Notes

[1]LaDonna Harris, Stephen N. Sachs, Barbara Morris, Benjamin Broome, Deborah Hunt, Jonodev Chaudhury, Gregory Cajete, and Phyllis M. Gagnier, *Recreating the Circle: The Renewal of American Indian Self Determination* (Albuquerque: University of New Mexico Press, 2011), Ch. 1; and Stephen M. Sachs, Bruce E. Johansen, Ain Haas, Betty Booth Donohue, Donald A. Grinde Jr., Jonathon York, *Honoring The Circle: Ongoing Learning From American Indians On Politics And Society, Volume I: The Impact of American Indians on Western Politics and Society to 1800* (Cardiff by the Sea, CA: Waterside Productions, 2020), Ch. 1. These chapters contain numerous further explaining and supporting references.

[2]Sharon O''Brien, *American Indian Tribal Governments* (Norman: University of Oklahoma Press, 1989), p. p. 37; and Harris, Sachs, and Morris, *Re-Creating the Circle*, p, p. 4, and Sachs, et al, *Honoring The Circle*, Introduction to Part I.

[3]The discussion that follows on the huge impact of American Indians on Western thought and practice is all from Sachs, et al, *Honoring The Circle, Volume I*; and Stephen M. Sachs , Sally Roesch Wagner, Ain Haas, and Walter S. Robinson, *Honoring the Circle: Ongoing Learning from American Indians on Politics and Society, Volume II: The Continuing Impact of American Indian Ways in North America and the World in the Nineteenth Century and Beyond* (Cardiff by the Sea, CA: Waterside Productions, 2020), Ch. 4, unless otherwise noted.

[4]Sachs, et al, *Honoring the Circle, Volume I*, Ch. 2.

[5]Emory Dean Keoke and Kay Marie Porterfield, *American Indian Contributions to the World: 15,000 Years of Inventions and Innovations* (New York: Checkmark Books, 2003), pp. 100-101.

[6]Rupert Ross, *Dancing with A Ghost: Exploring Indian Reality* (Markham, ON: Reed Books Canada, 1992), especially Ch. 3; *Returning to the Teachings: Exploring Aboriginal Justice* (Penguin Books, 1996); and Indigenous Healing: Exploring Traditional Paths (Penguin Canada, 2014).

[7]For a history of the physical and cultural genocide of American Indians, see, for example: Jake Page, *In the Hands of the Great Spirit: The 20,000 Year History of American Indians* (New York: Free Press, 2003), Parts Two – Four; Robert W. Venables, *American Indian History: Five Centuries of Conflict and Coexistence, Volume II: Confrontation, Adaptation & Assimilation* (Santa Fe, NM: Clear Light Publishers, 2004), Ch. I-VII; Roger L. Nichols, *American Indians in U.S. History* (Norman: University of Oklahoma Pres, 2003), Ch. 2-6; Angie Debo, *A History of the Indians of the United States* (Norman: University of Oklahoma Press, 1970), Ch. 2 – 19; O'Brien, *American Indian Tribal Governments*, Part II, and the histories of several specific tribes in Part III, and Laurence Armand French, *Legislating Indian Country: Significant Milestones in Transforming Tribalism* (New York: Peter Lang Publishing, Inc, 2007), Ch. 1-5. An overview of the impacts of Colonialism on Native nations and people, with steps to ameliorate them up to 2010 is in Harris, Sachs, and Morris, *Re-Creating the Circle*, Ch. 2. The example of the Unami repeated relocation is mapped in O'Brien, American Indian Tribal Governments, p. 59.

[8]For more on the Dawes Act and allotment than in previously cited sources, see Janet A. McDonnell, *The Disposition of the American Indian: 1887-1934* (Bloomington: Indiana University Press, 1991).

[9]The combined population of Indigenous peoples in the United States as of 1492 is widely contested, ranging from 1 million, which to this author appears way to low, to at least 18 million - some claiming significantly more. For example, see Sharon O'Brien, *American Indian Tribal Governments* (Norman: University of Oklahoma Press, 1989), p. 77, who estimated 5 million; L.A. Stiffarm and P. Lane, Jr, "The Demography of Native North America: A Question of American Indian Survival," in M.A. James, Ed., *The State of Native America: Genocide, Colonization and Resistance* (Boston: South End Press, 1992)]. Regardless of the exact figure, the loss of population since 1492 is immense.

There are indications that after 1880, if not a shortly before that, the population of Indigenous people in the U.S. began to grow. By one estimate, not very accurate surviving census data for 1900 indicates only 45,651, but the more accurate 1910 census reported 2,879,638 reporting to be only American Indian or Alaska Native. The 1900 figure is from J. David Hacker, Michael R. Haines, *American Indian Mortality in the Late Nineteenth Century: the Impact of Federal Assimilation Policies on a Vulnerable Population*, https://www.cairn.info/revue-annales-de-demographie-historique-2005-2-page-17.htm, *which cites, Dans Annales de démographie historique* 2005 Vol. 2 (No. 110), pages 17 to 29. Census Data for 1880 and 1910 is from "Native Americans in the United States" in *Wikipedia*, the free encyclopedia. May 6, 2022, https://en.wikipedia.org/wiki/Native_Americans_in_the_United_States.

[10]Lewis Meriam, et al., *The Problem of Indian Administration* (Baltimore: Johns Hopkins University Press, 1928), discussed in Angie Debo, *A History of the Indians of the United States* (Norman: University of Oklahoma Press, 1970), pp. 336-337 and James S. Olson and Raymond Wilson, *Native Americans in the Twentieth Century* (Urbana, IL: University of Illinois Press, 1984), pp. 100-112 and 193. A representative excerpt is published in Francis Paul Prucha, Ed., *Documents of United States Indian Policy*, Second Edition, Expanded (Lincoln: University of Nebraska Press, 1990), No 136, pp. 219-221.

[11]"Federal Indian Spending: A Sinking Trust," The Friends Committee on National Legislation, *Indian Report*, 1-55, Summer 1997, pp. 1, 3. The overall inadequacy of federal spending for Indians is discussed in, Stephen M. Sachs, "Termination By Budget: Impact of the 1996 Federal Budget on Native Americans," *Proceedings of the 1996 Meeting of American Political Science Association* (Washington, DC: American Political Science Association, 1996). Jonathan Taylor, and Joseph Kault, *American Indians on Reservations: A Data book of Socio-Economic Changes Between the 1990 and 2000 Census* (Cambridge, MA: The Harvard Project on American Indian Economic Development, Malcolm Wiener Center for Social Policy, John F. Kennedy School of Government, Harvard University, 2005) report that, in the period of the 1990 to 2000 U.S. censuses, federal Indian funding levels lost ground against non-Indian domestic spending.

[12]Tex Hall's, third annual State of Indian Nations Address is reported on in "Ongoing Activities: U.S. Activities," *Indigenous Policy*, Vol. XVI, No. 1, Spring 2005, that federal spending for Indians has been inadequate, even since the beginning of policies

aimed at Indian self-development with the Indian New Deal in the Roosevelt Administration, as can be seen in former BIA head John Collier's complaints about Congress providing insufficient funding for Indian programs, including for technical assistance, while "Land acquisition for Indians authorized by Congress, is blocked through the appropriation bills; the situation is similar with regard to the expansion of the Indian Cooperative Credit System." (John Collier, *Indians of the Americas* (New York: W.W. Norton, 1947), pp. 166-177, quoted and further discussed by French, Legislating Indian Country, p. 100. The. annual federal appropriations for Indians and the change from the preceding year, since 2004, can be found in "Federal Indian Budgets," in the issues of *Indigenous Policy* at: www.Indigenous Policy.org.

[13]For a discussion of the problems of Indian Education, including in boarding schools , including prior to 1928, see Margaret Connell Szasz, *Education and the American Indian: The Road to Self-Determination Since 1928* (Albuquerque: University of New Mexico Press, Third Edition, Revised and Enlarged, 1999), particularly pp. 2-3, 10-11, 18-27 and 67. A more detailed critique of the boarding school experience is to be found in David Wallace Adams, *Education for Extinction: American Indians and the Boarding School Experience, 1875-1928* (Lawrence: University of Kansas Press, 1995). See also, "Department of the Interior Releases Investigative Report, Outlines Next Steps in Federal Indian Boarding School Initiative," U.S. Department of the Interior, May 11, 2022, https://www.doi.gov/pressreleases/department-interior-releases-investigative-report-outlines-next-steps-federal-indian, and the report, https://www.opb.org/pdf/EMBARGOED%20REPORT%20_%20Boarding%20School%20Initiative%20Volume%201%20Investigative%20Report%20May%202022_1652226619302.pdf. The report indicates that it had so far found that 19 of the boarding schools accounted for over 500 Native children's death, and that number was expected to rise as the investigation continued. A similar policy was carried out in Canada of taking First Nation's children to distant boarding schools. For example, see, Ian Mosby and Erin Millions, "Canada's Residential Schools Were a Horror: Founded to carry out the genocide of Indigenous people, they created conditions that killed thousands of children," *Scientific American*, August 1, 2021, https://www.scientificamerican.com/article/canadas-residential-schools-were-a-horror/. Rupert Ross discusses the impacts of Canadian boarding schools and their impact along with other aspects of the impact of colonialism in Canada on Frist Nations and their citizens and what has been helpful in healing the continuing harms in *Dancing with A Ghost; Returning to the Teachings; and Indigenous Healing*.

For discussion of some of the psychological and behavioral ill effects of cultural genocide and the boarding schools in particular, see, Hillary N. Weaver and M. Yellow Horse Brave Heart, "Facets of American Indian Identity: Implications for Social Work Practice," *Journal of Human Behavior in the Social Environment*, in Press; Hillary N. Weaver, "Indigenous People in a Multicultural Society: Unique Issues for Human Services," *Social Work*, Vol. 43, No., 3, May 1998, pp. 205-206; and P.I. Morrisette, "The Holocaust of First Nation People: Residual Effects on Parenting and Treatment *Implications," Contemporary Family Therapy*, Vol. 16 (1994), pp. 381-392.

[14]The impact of unresolved historical grief, and ways of healing it, including participation in traditional ceremonies or their equivalents, some of which need to be brought back, is discussed in in Eduardo Duran and Bonnie Duran, *Native American Postcolonial Psychology* (Albany, NY: State of New York University Press, 1995), pp. 42-53 and Ch. 4, and p. 180; Hilary N. Weaver and Maria Yellow Horse Brave Heart, "Examining two facts of American Indian identity: Exposure to other cultures and the influence of historical trauma" in H.N. Weaver Ed., *Voices of First Nations People: Human Service Considerations* (New York: Haworth Press, 1999), pp. 19-31; and Maria Yellow Horse Brave Heart, "Oyate Ptayela: Rebuilding the Lakota Nation Through Addressing Historical Trauma Among Lakota Parents" in *Ibid*.

[15]"American Indian Veterans Have Highest Record of Military Service: American Indians and Alaska Natives serve in the Armed Forces at five times the national average and have served with distinction in every major conflict for over 200 years," National American Indian Council on Aging (NICOA), November 8, 2019, https://www.nicoa.org/american-indian-veterans-have-highest-record-of-military-service/, reported, "American Indians and Alaska Natives serve in the Armed Forces at five times the national average and have served with distinction in every major conflict for over 200 years. Considering the population of the U.S. is approximately 1.4 percent Native and the military is 1.7 percent Native (not including those that did not disclose their identity), Native people have the highest per-capita involvement of any population to serve in the U.S. military.

They also have a higher concentration of women servicemembers than all other groups. Nearly 20 percent of American Indians and Alaska Natives servicemembers were women, while 15.6 percent of all other servicemembers were women.

During World War I, 3,000 to 6,000 American Indians enlisted and another 6,500 were drafted. About two-thirds served in the infantry, winning widespread praise for bravery and achievement. But the cost was high: About five percent of American Indian combat soldiers were killed, compared to one percent of American forces overall."

See also, for example, "20th Century Warriors: Native American Participation in the United States Military," Naval History and Heritage Command (Prepared for the United States Department of Defense by CEHIP Incorporated, Washington, DC, in partnership with Native American advisors, Rodger Bucholz, William Fields, Ursula P. Roach, Washington: Department of Defense, 1996.), posted September 14, 2017, https://www.history.navy.mil/

research/library/online-reading-room/title-list-alphabetically/t/american-indians-us-military.html; and "Native Americans in the Military," DENIX (Department of Defense Environment, Health and Occupational Health Network Information Exchange), visited May 8, 2022, https://denix.osd.mil/na/military/.

[16]See, Christopher K. Riggs (2020). *Rising from the Ashes: Survival, Sovereignty, and Native America.* (Lincoln: University of Nebraska Press. 2020, including pp. 169–220; and "Native Americans in United States elections," *Wikipedia*, the free encyclopedia, December 19, 2021, https://en.wikipedia.org/wiki/Native_Americans_in_United_States_elections.

[17]Graham D. Taylor, *The New Deal and American Indian Tribalism: The Administration of the Indian Reorganization Act, 1934-45* (Lincoln, University of Nebraska Press, 1980); Lawrence C. Kelly, "The Indian Reorganization Act: The Dream and the Reality," *Pacific Historical Review* (1975): pp. 291-312; A discussion of the Collier reforms is presented in Olson and Wilson, *Native Americans in the Twentieth Century*, Ch. 5, "The Indian New Deal." See also, Debo, *A History of the Indians in the United States*, Ch. 18, "The White Man Repents;" Page, *In the Hands of the Great Spirit,* pp. 358-363; and Nichols, *American Indians in U.S. History*, pp, 177-188; and Nelson and Sheley, "The Bureau of Indian Affairs Influence on Indian Self-Determination," pp. 180-194.

[18]Debo, *A History of the Indians in the United States*, Ch. 19; and Venables, *American Indian History, Volume II,* Ch. VIII. On the acts of Congress and related legal matters concerning termination, see, David H. Getches, Charles F. Wilkinson, Robert L. Williams, *Cases and Materials on Federal Indian Law*. (St. Paul, MN: Thomson/West, 2005) pp. 199–216.

[19]Karen Balcom, "The Logic of Exchange: The Child Welfare League of America, The Adoption Resource Exchange Movement and the Indian Adoption Project, 1958–1967," *Adoption & Culture,* Vol. 1, No. 1, 2007, p. 5.

[20]Balcom, "The Logic of Exchange," p. 5.

[21]Balcom, "The Logic of Exchange," p. 6.

[22]Balcom, "The Logic of Exchange," pp. 6 and 44.

Testimony on the serious problems of the removal of Indian children from their communities is in *Indian Child Welfare Program: Hearings before the Subcomm. on Indian Affairs of the S. Comm. on Interior and Insular Affairs*, 93d Cong. 18 (1974), available at: https://narf.org/nill/documents/icwa/federal/lh/hear040874/hear040874.pdf. Some important quotes from the testimony concerning the serious impropriates in the child removals are in "On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit," available at: https://www.supremecourt.gov/docket/docketfiles/html/public/21-378.html. Among the injustices and harms inflicted were: that often those who removed Indian children had "no basis for intellectually evaluating the cultural and social premises underlying Indian home life," leading them to make unwarranted removals, while simply assuming, without an evidentiary basis, that removal and placement with non-Indian families would benefit the child; that the process of removing Native children was often without due process, often occurring without notice to the families or tribes; and the record keeping concerning removals was shoddy, often thwarting attempts to locate removed children who were shuttled among foster homes - breaking forever connections among child, parent and tribe.

Reports of the experiences, many of them negative on balance, as told by Indians who were adopted by non-Indian families, can be *found in Rita J. Simon and Sarah Hernandez, Native American Transracial Adoptees Tell their Stories* (Lanham, MD: Lexington Books, 2008).

On the issue of social workers not understanding how Indian families functioned, causing quite well brought up children to be removed from their families, see, for example Jennifer Nutt Carleton, "The Indian Child Welfare Act: A Study in The Codification Of The Ethnic Best Interests of the Child," 1 *Marq. L. Rev*. 21 (1997), Available at: http://scholarship.law.marquette.edu/mulr/vol81/iss1/5.

[23]Carleton, "The Indian Child Welfare Act," the quote originating in Barbara Kingsolver, *Pigs in Heaven* (London, Faber and Faber, 1993), p. 284. That Native children were often removed without the parents permission, and sometimes without the knowledge, of their parents is shown in Deborah Thibeault and Michael S. Spencer, "The Indian Adoption Project and the Profession of Social Work," *Social Science Review*, Vol. 93, No. 4, December 2019, https://www.journals.uchicago.edu/toc/ssr/2019/93/4. The article has extensive citations of sources. The authors present an all too common example of an Indian mother continually refusing to have her child removed, only to have the young one taken by fraud on the part of the social worker involved.

[24]Balcom, "The Logic of Exchange," pp. 6 and 44. Note in Rupert Ross, *Dancing with A Ghost; Returning to the Teachings; and Indigenous Healing,* that Canadian first nations had exactly the same objection to the removal from their communities of members convicted of crimes, that sending them to distant jails did the offender no good, often making them worse, while the community lost valuable members.

[25]An overview of the development of Indian self-determination is in and Harris, Sachs, and Morris, *Re-Creating* the Circle, Ch. 3. Many of the documents, including a number of acts of Congress, are in Francis Paul Prucha, *Documents of United States Indian Policy,* Third Edition (Lincoln: University of Nebraska Press:

2000), beginning with President Nixon's "Special Message on Indian Affairs," July 8 1970 (document 162 in Prucha). Among others, the policy of self-determination is discussed in Charles Wilkinson, Blood Struggle: The Rise of Modern Indian Nations (Boston: W. W. Norton & Company, 2006).

[26]The Indian Child Welfare Act of 1978, Public Law 95-608, 25 USC 1901, https://www.congress.gov/95/statute/STATUTE-92/STATUTE-92-Pg3069.pdf.

[27]The good impacts of ICWA, including its providing "the gold standard in child welfare" are set out in, "Setting the Record Straight: The Indian Child Welfare Act: Fact Sheet," A publication of the National Indian Child Welfare Association, 2018,https://www.nicwa.org/wp-content/uploads/2018/10/Setting-the-Record-Straight-2018.pdf, and in National Indian Child Welfare Association, "Understanding ICWA Placements Using Kinship Care Research," December 2019, https://www.nicwa.org/wp-content/uploads/2022/04/2019-Understanding-ICWA-Placements-Using-Kinship-Care-Reasearch_updated.pdf, from which the quotes come, on p. 1. The latter article reports,

"There are key benefits to following ICWA placement preferences for long-term mental health and well-being of American Indian/Alaska Native (AI/AN) youth. There is a large body of evidence, recently compiled in peer reviewed publications, showing the benefits of kinship care for all children and youth (Sahota, 2019). Many arguments from ICWA opponents are based on outdated attachment and bonding literature. More recent research and literature on kinship care and youth psychological developmental milestones is supportive of ICWA placement preferences. Furthermore, recent research has shown that ICWA placement preferences should be the gold standard for all children, not just those who are Native, given the benefits of kinship care (Sahota, 2019, Winokur et al., 2014, Lovett and Xue, 2018)."

For more on ICWA and on child welfare issues involving American Indians and Alaska Natives, including some comparison with removal experiences of other groups, visit the National Indian Child Welfare Association: https://www.nicwa.org/icwa/.

[28]Erica L. Green, "Can 'Kinship Care' Help the Child Welfare System? The White House Wants to Try. The Biden administration proposes spending $20 billion over a decade to help some of the most vulnerable families in the country, including relatives suddenly thrust into child rearing," *The New York Times*, October 13, 2022, https://www.nytimes.com/2022/10/13/us/politics/foster-children-biden-welfare.htm.

[29]The information on the impact of ICWA on the profession of social work in the U.S., unless otherwise noted, comes from Thibeault and Spencer, "The Indian Adoption Project and the Profession of Social Work."

[30]A brief overview of the development and impact of the civil rights, including Indian rights movements on American Indian related public opinion and policy with references for further information is Harris, Sachs, and Morris, *Recreating the Circle*, Ch. 3. A discussion of the U.S. counterculture and its effect on public opinion concerning Native Americans is in Sachs, et al, *Honoring the Circle, Volume II*, Ch. 4, Sec. 4.

[31]For a discussion of the shifts in consciousness and culture towards Indigenous ways of seeing in many subgroups in U.S., Western, and world cultures since the late Nineteenth Century, including in science, see Sachs, et al, *Honoring the Circle, Volume II,* "Introduction to Part II."

[32]"The Council on Social Work Education (CSWE) CSWE Statement of Accountability and Reconciliation for Harms Done to Indigenous and Tribal Peoples," From the CSWE website, 2022, https://www.cswe.org/education-resources/indigenous-and-tribal-content/.

[33]The first Native American social work program in the U.S., of the Facundo Valdez Social Work Institute, is at the Albuquerque campus of Highlands University in New Mexico. It's launching was reported in the section, "Education and Culture," in "Indigenous Developments," of *Indigenous Policy*, Vol. XXXI, No. 3, Winter 2020, www.indigenouspolicy.org. For information, contact Evelyn Lance Blanchard, Director: eblanchard@nmhu.edu, (505) 227-7326.

[34]"Search Results for: American Indian Oriented Social work," Highlands University, https://www.nmhu.edu/?s=American+Indian+Orented+Socialwork, visited December 2, 2022, found,

"Undergraduate-level course description-School of Social Work ...
New Mexico Highlands University › Highlands University Course Catalogs.
All course content is oriented to understanding the effects of social policies on Hispanics, Native Americans, and other historically oppressed populations.

Facundo Valdez School of Social Work Undergraduate ...
New Mexico Highlands University › Catalog › Undergraduate Majors and Minors
The School has a primary commitment to Hispanic and Native American people. ... social work values and skills and ethical principles and promotes a focused ...

Continuing Education Units School of Social Work - New Mexico ...
New Mexico Highlands University › continuing-education-units-school-of-social-work
An orientation to legal definitions, statistics of this special ... *Sponsored by NMHU School of Social Work's Native American

Social Work Studies Institute ...

Facundo Valdez School of Social Work - New Mexico Highlands... New Mexico Highlands University › landing-facundo-valdez-school-of-social-work
The School has a primary commitment to Hispanic and Native American people. Our curriculum grounds students in core professional social work values, skills and ...

[35]Further evidence from other countries of the harm caused by out of family, community and culture removals is exemplified by the ill effects of such removal on Inuit children in Greenland by the Danish government in 1951, reported in, "Denmark to pay compensation to Greenland's 'experiment children': Six people from Greenland who were forced to take part in a Danish social experiment as children in the 1950s are to be paid thousands of kroner in compensation by the Danish state," *The Local,* March 1, 2022, https://www.thelocal.dk/20220301/denmark-to-pay-compensation-to-greenlands-experiment-children/; and "Danish prime minister says sorry to Greenlanders forcibly moved to Denmark: Prime Minister Mette Frederiksen apologized in person Wednesday to six Greenlandic Inuits removed from their families and taken to Copenhagen more than 70 years ago as part of an experiment to create a Danish-speaking elite," *The Local,* March 10, 2022, https://www.thelocal.dk/20220310/danish-prime-minister-says-sorry-to-greenlanders-forcibly-moved-to-denmark/.

[36]"Danish prime minister says sorry to Greenlanders forcibly moved to Denmark,"

[37]A good short overview of Canadian Indian boarding school and their impacts on First Nation people is in, "Canadian Indian residential school system," *Wikipedia*, the free encyclopedia, August 3, 2022, https://en.wikipedia.org/wiki/Canadian_Indian_residential_school_system.

[38]For discussions of the disastrous impact of the Canadian policies of assimilation, and primarily of the residential schools, and some of the difficult work that has been done toward healing, see Ross, *Dancing with A Ghost; Returning to the Teachings*; and Exp*loring Aboriginal Justice*. Detailed reports in the impact of the residential schools can be found in, "Reports," National Center for Truth and Reconciliation, https://nctr.ca/records/reports/#nctr-reports.

[39]The addition of Section 88 to the Canadian Indian Act in 1951. For an extended discussion of Canadian removal of First Nation children see Barbara Fallon, Rachael Lefebvre, Nico Trocmé, Kenn Richard, Sonia Hélie, H. Monty Montgomery, Marlyn Bennett, Nicolette Joh-Carnella, Marie Saint-Girons, Joanne Filippelli, Bruce MacLaurin, Tara Black, Tonino Esposito, Bryn King, Delphine Collin-Vézina, Rachelle Dallaire, Richard Gray, Judy Levi, Martin Orr, Tara Petti, Shelley Thomas Prokop, & Shannon Soop, "Denouncing the Continued Overrepresentation of First Nations Children in Canadian Child Welfare: Findings from the First Nations/Canadian Incidence Study of Reported Child Abuse and Neglect-2019, Assembly of First Nations 2021, https://cwrp.ca/sites/default/files/publications/FNCIS-2019%20-%20Denouncing%20the%20Continued%20Overrepresentation%20of%20First%20Nations%20Children%20in%20Canadian%20Child%20Welfare%20-%20Final_1%20%282%29.pdf.

[40]Anna Mehler Paperny and Ismail Shakil, "Canada reaches $30b agreement to compensate indigenous children taken from families," Reuters, January 5, 2022, https://www.weforum.org/agenda/2022/01/canada-agreement-compensate-indigenous-children-families/, reporting on this point on findings of the Canadian Human Rights Tribunal. See also, "Information Sheet: Victory for First Nations Children: Canadian Human Rights Tribunal Finds Discrimination Against First Nations Children Living On-Reserve," First Nations Child and Family Caring Society of Canada, 2016, https://fncaringsociety.com/sites/default/files/Information%20Sheet%20re%20CHRT%20Decision.pdf, "Findings of Discrimination."

[41]The findings on the over great overrepresentation of First Nation Children in the Canadian child welfare system and the considerable harm that occurred to them, especially in relation to non-Indigenous children in that system are from the detailed findings in Fallon, et al, "Denouncing the Continued Overrepresentation of First Nations Children in Canadian Child Welfare." On the point about Indigenous child upbringing in Canada being misunderstood by authorities, as in the United States, see Ross, *Dancing with A Ghost.*

[42]An Act respecting First Nations, Inuit and Métis children, youth and families, S.C. 2019, c. 24, Assented to 2019-06-21, Government of Canada, Justice Laws Website, https://laws.justice.gc.ca/eng/acts/F-11.73/page-1.html#h-1150592, An Act respecting First Nations, Inuit and Métis children, youth and families.

[43]The Court of Appeals of Quebec, in *Attorney General of Quebec Applicant v. Attorney General of Canada Respondent and Assembly of First Nations Quebec-Labrador (AFNQL), First Nations of Quebec And Labrador Health And Social Services, Commission (FNQLHSSC), Makivik Corporation, Assembly of First Nations, Aseniwuche Winewak Nation of Canada and First Nations Child And Family Caring Society Of Canada* (No.: 500-09-028751-196), https://fncaringsociety.com/sites/default/files/agc_factum_en.pdf.

[44]Anna Mehler Paperny and Ismail Shakil, "Canada reaches $30b agreement to compensate indigenous children taken from families."

[45]"The Stolen Generations: The forcible removal of First Nations children from their families," *Australians Together*, September 7, 2022, https://australianstogether.org.au/discover-and-learn/our-history/stolen-generations. For a more comprehensive discussion with numerous references of the Australian Indigenous removal

policy, its harms and efforts at restorative action, see, "Stolen Generations," *Wikipedia*, the free encyclopedia, October 8, 2022, https://en.wikipedia.org/wiki/Stolen_Generations.

[46]"The Stolen Generations." Anne Else, 'Adoption', Te Ara - the *Encyclopedia of New Zealand*, http://www.TeAra.govt.nz/en/adoption, accessed 25 November 2022.

[47]Emma Ruben, "Petition for Stolen Generations redress tabled in WA parliament," *National Indigenous Times (NIT),* November 18, 2022, https://www.nit.com.au/petition-for-stolen-generations-redress-tabled-in-wa-parliament/; and Tom Zaunmayr, "Fresh petition urges WA to follow other states with Stolen Generations compo scheme," *National Indigenous Times (NIT)*, May 26, 2022, https://www.nit.com.au/fresh-petition-urges-wa-to-follow-other-states-with-stolen-generations-compo-scheme/.

On the Australian Capital Territory (ACT) government's Our Booris, Our Way Implementation Oversight Committee see, Callan Morse, "Indigenous advocate Natalie Brown appointed chair of key oversight committee," *National Indigenous Times,* December 9, 2022, https://nit.com.au/09-12-2022/4474/indigenous-advocate-natalie-brown-appointed-chair-of-our-booris-our-way-implementation-oversight-committee."

[48]Except where otherwise noted, information on out of family and culture removal of Maoris in New Zealand is from, Anne Else, 'Adoption', Te Ara - the *Encyclopedia of New Zealand,* http://www.TeAra.govt.nz/en/adoption, accessed 25 November 2022; and Maria Haenga Collins, "The Closed Stranger Adoptions of Maori Children into Pakeha Families," Social Work Masters Thesis, School of Health and Social Sciences, Massey University, Aotearoa New Zealand, https://mro.massey.ac.nz/bitstream/handle/10179/3195/02_whole.pdf?sequence=1&isAllowed=y.

[49]"Ko Aotearoa Tēnei: Report on the Wai 262 Claim Released," Waitangi Tribunal, Te Ropu Whakamana i te Triri o Watangi, July 2, 2011, https://waitangitribunal.govt.nz/news/ko-aotearoa-tenei-report-on-the-wai-262-claim-released/.

[50]"Inquiry into the Lake Alice Child and Adolescent UnitTe Uiui o te Manga Tamariki me te Rangatahi ki Lake Alice," Abuse in Care, Royal Commission Inquiry, 2022, https://www.abuseincare.org.nzm.

[51]Nicholas Kristof, "Russia Traffics in Ukrainian Children," *The New York Times*, November 23, 2022, https://www.nytimes.com/2022/11/23/opinion/russia-ukraine-children.html. Nicholas Kristof, "Russia Traffics in Ukrainian Children," *The New York Times*, November 23, 2022, https://www.nytimes.com/2022/11/23/opinion/russia-ukraine-children.html.

[52]*Texas, et al., Petitioners, v. Deb Haaland, Secretary of The Interior,* et al, Nos. 21-378 & 21-380, scheduled to be heard by the United States Supreme Court during its October 2022 term. All the documents in the case, encompassing "On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit," the briefs of amicus curie, including those challenging ICWA and presenting the arguments referred to below, can be accessed at: https://www.supremecourt.gov/docket/docketfiles/html/public/21-378.html.

Note, as the petitioners request for certiorari in *Texas et al v. Haaland*, points out, for 40 years, attempts have failed in numerous state court cases to overturn ICWA as unconstitutional, usually objectors asserting that the act violates the Fourteenth Amendment Equal Protection Clause. A list of nine of these cases is in the "Petition for a Writ of Certiorari," p. 10.

[53]Many of European heritage have become tribal members as far back as early colonial times, as referred to above. A large number of African Americans who were slaves held by tribes in the confederacy, the Freed Men, were made citizens ("members") of those tribes by treaty with the U.S. government after the Civil War, and their decedents continue to be recognized as tribal members today (for example see the "Treaty with the Creeks, July 14, 1866," in Prucha, *Documents of American Indian History*, pp. 98, to 101, particularly Section 2; and, "Secretary Haaland Approves New Constitution for Cherokee Nation, Guaranteeing Full Citizenship Rights for Cherokee Freedmen," U.S. Department of the Interior, May 12, 2021, Last edited May 27, 2021, https://www.doi.gov/pressreleases/secretary-haaland-approves-new-constitution-cherokee-nation-guaranteeing-full).

[54]On the constitutionality of Congress' use of the spending power, see, for example, *Nat'l Fed'n of Indep. Bus. v. Sevelius, 567 U.S 519 at 576 (2012), Charles C. Steward Machine Co. v. Davis, 301 U.S. 548 (1937), Helvering v. Davis, 301 U.S. 619 (1937), and South Carolina v. Dole,* 97 L. Ed 2d 171 (1987). There is a discussion of the spending power and limitations upon it in, Symone Mazzotta, "This week in Supreme Court history: New limits on the spending power," National Constitution Center, June 30, 2017, https://constitutioncenter.org/blog/this-week-in-supreme-court-history-new-limits-on-the-spending-power.

On the limitations of the spending power, see, Victoria L. Killion, "Funding Conditions: Constitutional Limits on Congress's Spending Power," Congressional Research Service, R46827, July 1, 2021, https://crsreports.congress.gov/product/pdf/R/R46827.

[55]"Brief of Professor Gregory Ablavsky as Amicus Curiae in Support of Federal Parties and Tribal Defendants," in *Bracken v. Haaland, U.S.* Supreme Court No. 21-376 (2022), https://sct.narf.org/caseindexes/haaland_v_brackeen.html, pp. 2-4. A detailed argument follows supported by extensive historical evidence and court case citations.

[56]For example, see Harris, Sachs, and Morris, *Recreating the*

Circle, Ch. 5, Sec. 1; and Mark Trahant, "At the Crossroads: State of the Economy in Indian Country," *Indian Country Today*, April 4, 2022, https://indiancountrytoday.com/news/at-the-crossroads-state-of-the-economy-in-indian-country.

One recent example reporting some of the exceedingly large tribal economic positive impact is the *2019 Oklahoma Native Impact Report* (http://www.oknativeimpact.com) produced by Dr. Kyle Dean, Director of the Center for Native American and Urban Studies, Oklahoma City University. It reported that the total economic impact of Indian nations in Oklahoma, in 2019, was $15.6 billion. In addition to direct contributions, the state's tribes generated billions, annually, in production by companies supporting nations' business operations, in addition to direct tribal contributions. That year, the Oklahoma tribes supported 113,442 jobs in the state, providing $5.4 billion in wages and benefits to Oklahoma workers, while direct tribal employment exceeded 54,000 jobs, and tribal investment spurred job growth in a wide variety of industries. Oklahoma Indian nations investment in community included:

"Over $1.8 billion in exclusivity fees for public education and mental health services
$84 million in additional support to schools, municipalities and other community initiatives
$232 million paid in Medicaid expenditures at tribal health care facilities
Saved Oklahoma $86 Million by requiring no state matching Medicaid funds."

[57]*New York v. United States,* 505 U.S. 144, at 161 and 166 (1992).

[58]"the Constitution was originally understood to permit imposition of an obligation on state judges to enforce federal prescriptions, insofar as those prescriptions related to matters appropriate for the judicial power." *Printz*, 521 U.S. at 905-907 and 935. Applying that rule, the Supreme Court has regularly recognized that federal law may provide "substantive principles" for state courts (*Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, at 209 (1985)).

[59]"Brief of Constitutional Accountability Center as Amicus Curiae Professor in Support of Federal Parties and Tribal Defendants," in *Bracken v. Haaland*, U.S. Supreme Court No. 21-376 (2022), https://sct.narf.org/caseindexes/haaland_v_brackeen.html, p. 28. See also, Matthew L.M. Fletcher and Randall F. Khalil, "Preemption, Commandeering, and The Indian Child Welfare Act," *Wisconsin Law Review*, 2022, https://wlr.law.wisc.edu/wp-content/uploads/sites/1263/2022/11/14.2-G_-Fletcher-Khalil-Camera-Ready-1199-to-1234.pdf

[60]The historical record of state involvement in the boarding schools and Indian child welfare (including education) in collaboration with the federal government is set forth at length with considerable references in "Brief of Amici Curiae American Historical Association and Organization of American Historians in Support of Federal and Tribal Parties," in *Brackeen v. Haaland*, U.S. Supreme Court Case 21-376 (2022), at https://sct.narf.org/caseindexes/haaland_v_brackeen.html. Except where otherwise noted, this is the source of the material on this topic.

[61]"Brief of Amici Curiae American Historical Association and Organization of American Historians," pp. 11-13.

[62]"Brief of Amici Curiae American Historical Association and Organization of American Historians," p. 13, quoting "Education of Indians: How Can They be Brought to Equal Citizenship?," *The Morning Oregonian,* August 16, 1900, p. 5.

[63]*Meriam Report: The Problem of Indian Administration (1928),* p. 11, available at: National Indian Law Library, https://narf.org/nill/resources/meriam.html, quoted by "Brief of Amici Curiae American Historical Association and Organization of American Historians," p. 14-23 in discussing the shift in federal Indian education and welfare policy to the states, after some time with federal funding assistance.

[64]the Social Security Act (SSA), Pub. L. No. 74-271, 49 Stat. 620 (1935). Discussion of the initial federal and state policy changes is in "Brief of Amici Curiae American Historical Association and Organization of American Historians," p. 14-16.

[65]"Brief of Amici Curiae American Historical Association and Organization of American Historians," p. 16-18. Of the lawsuits, an example is *Mapatis v. Ewing,* Civ. No. 3882-48 (D.D.C. filed Sept. 21, 1948), charging that failure to provide benefits to Native families and children by Arizona and New Mexico had led to deaths of eighty-two Native people over the preceding five years.

[66]Johnson-O'Malley Act of 1934, Pub. L. No. 73-167, 48 Stat. 596 (codified as amended at 25 U.S.C. §§ 5342-5348). Johnson-O'Malley Act of 1934, Pub. L. No. 73-167, 48 Stat. 596 (codified as amended at 25 U.S.C. §§ 5342-5348). See discussion in "Brief of Amici Curiae American Historical Association and Organization of American Historians," p. 18-19.

[67]"Brief of Amici Curiae American Historical Association and Organization of American Historians," p. 19-20.

[68]Contract No. I-i-Ind. 18692 Between U.S. Dep't of the Interior, Off. of Indian Affs. and State Dir. of Pub. Welfare, Wisc., art. II, ¶ 2 (July 1, 1945) (on file with National Archives), as reported in "Brief of Amici Curiae American Historical Association and Organization of American Historians," pp. 20-21.

[69]Negotiated Contract No. I-i-Ind. 18692 Between U.S. Dep't of the Interior, Off. of Indian Affs. and State Dir. of Pub. Welfare, Wisc., (July 1, 1945) (on file with National Archives), at 209; see Wisconsin Pub. Welfare Dep't, Relief to Indians 35 (Apr. 1937);

Between U.S. Dep't of the Interior, Off. of Indian Affs. and Minn. Div. of Soc. Welfare, in Interior Department Appropriations for 1954, Part 4: Testimony of Members of Congress, Interested Organizations, and Individuals: Hearing on H.R. 4828 Before the Subcomm. on Interior & the H. Comm. on Appropriations, 83d Cong. (1953), as reported in "Brief of Amici Curiae American Historical Association and Organization of American Historians," pp. 21-22.

[70]As reported with several representative examples in "Brief of Amici Curiae American Historical Association and Organization of American Historians," pp. 23-25.

[71]The Vienna Convention on Consular Relations. Multilateral Vienna Convention on Consular Relations and Optional Protocol on Disputes, April 24, 1963, 500 U.N.T.S. 95 (hereinafter "Vienna Convention"). See Kelly Trainer, The Vienna Convention on Consular Relations in the United States Courts, 13 *GLOB. BUS. & DEV. L.J.* 227, 235 (2000). The Vienna Convention and its relation to ICWA is discussed with citations along with relevant court cases in "Brief of Amici Curiae American Historical Association and Organization of American Historians," pp. 29-32. On the portions of the convention relevant to ICWA, see 500 U.N.T.S. 95, preamble and compare it with 25 U.S.C. § 1902; 500 U.N.T.S. 95, art. 37, and compare it with 25 U.S.C. § 1912(a); and 500 U.N.T.S. 95, art. 5, and compare it with 25 U.S.C. § 1931(a)(8).

[72]Information on the oral argument and questioning *in Bracken v. Haaland*, except on the issue of the third preference for placing removed Indian Children is from is from, Amy Howe, "Closely divided court scrutinizes various provisions of Indian Child Welfare Act," SCOTUSBlog, November 9, 2022 at 6:02 pm, https://www.scotusblog.com/2022/11/closely-divided-court-scrutinizes-various-provisions-of-indian-child-welfare-act/. On the issue of the third placement preference, the author heard that portion of the argument on NPR, "All Things Considered," November 9, 2022. Both an audio recording and a transcript of the oral argument are available at: https://www.supremecourt.gov/oral_arguments/argument_transcripts/2022/21-376_k536.pdf.

[73]Supreme Court Oral Arguments, https://www.supremecourt.gov/oral_arguments/argument_transcripts/2022/21-376_k536.pdf, p. 32.

[74]For example, see, Kelsey Reichmann, "Is overturning precedent the new precedent at the high court? The Supreme Court's watershed ruling nixing *Roe v. Wade* has court watchers and justices alike asking if the centuries-old principle of respecting precedent has fallen to the wayside," Courthouse News Service, July 8, 2022, https://www.courthousenews.com/is-overturning-precedent-the-new-precedent-at-the-high-court/. A list of overturned cases, many not involving major well established precedents, is in "Table of Supreme Court Decisions Overruled by Subsequent Decisions," Constitution Annotated, https://constitution.congress.gov/resources/decisions-overruled/, visited December 3, 2022.

[75]"About ICWA," Indian Child Welfare Association, 2022, https://www.nicwa.org/about-icwa/, reports, "Although progress has been made as a result of ICWA, out-of-home placement still occurs more frequently for Native children than it does for the general population. In fact, recent research on systemic bias in the child welfare system yielded shocking results. Native families are four times more likely to have their children removed and placed in foster care than their White counterparts. So, in spite of the advances achieved since 1978, ICWA's protections are still needed."

[76]The empowering effect of the Indian policy of self-determination in economy is discussed in Harris, Sachs and Morris, *Recreating* the Circle, Ch. 5, Sec. 1. The growing cultural contribution of Native Americans in literature and film is discussed in Stephen M. Sachs and Amy Fatzinger, "Introduction to Part II: The Growing Relevance of American Indian Tradition and Values for the World of the Twenty-First Century," in Stephen M. Sachs, Donna K. Dial, Christina A. Clamp, Amy Fatzinger, Phyllis M. Gagnier, *Honoring the Circle: Ongoing Learning from American Indians on Politics and Society: Volume III: What Would Be Good to Continue Learning from Indigenous Peoples in Politics and Economics*. Concerning ongoing contribution to the sciences, while still few, an increasing number of Indigenous Americans have been entering and contributing in the sciences and engineering, while Indigenous traditional knowledge has increasingly been relied upon in recent years in dealing with a variety of ecological issues. This can be *seen some* of the reports in the last few years issues of *Indigenous* Policy, www.indigenouspolicy.org. For examples in medicine, see, "Native Americans' many contributions to medicine," U.S. Embassies and Consulates in Italy, November 18, 2021, https://it.usembassy.gov/native-americans-many-contributions-to-medicine/. The increasing leadership of Native Americans in numerous areas of public affairs is discussed in Stephen M. Sachs, "Conclusion: Completing the Circle," in Stephen M. Sachs and Bruce Johansen, *Honoring the Circle, Volume III: What it Would Be Good to Continue Learning from Indigenous Peoples about the Environment and Education*.

[77]See Ross' three volumes mentioned above, particularly the last two, on all the references to Ross and Canadian experience concerning what more needs to be done.

[78]Bruce M. Petty, *New Zealand in the Pacific War: Personal Accounts of World War II* (Jefferson, NC and London: McFarland & Company, Inc., Publishers, 2008), Part IV, "Voices of the Next Generation."

[79]An example of building inter-agency collaboration concerning child welfare began in 1999 and 2000 when the Southern Ute Tribe became the first Indian nation to participate in such a project funded by the U.S. Children's Bureau. At the request of the tribal

chair and council, a consulting team from the Social Research Institute at the University of Utah was asked to help facilitate a Design Team. This allowed the tribe to create a community collaboration to build team-work and coordination of programs among their social service agencies. The intent was to overcome the narrow foci of individual agencies, that often failed to meet the full range of needs of those they served, and sometimes took conflicting actions. Professionals and administrators, along with community consultants who were former service recipients and elders worked to fulfill their self-defined mission:

'To provide culturally relevant, supportive and integrated services to insure that all Southern Ute children are successful in school and in life."

The Design Team has helped the community to redefine and embrace a vision of healing. Given all that has been said about post-colonial dynamics of disharmony, the commitment, courage, honesty and energy witnessed by the facilitators has been truly inspirational. According to one facilitator, "setbacks, disappointment and criticism are balanced by a passion for creating a better future for the tribe's children." (D.E. Hunt, M. Gooden, & C. Barkdull, "Walking in moccasins: Indian child welfare in the 21st century," in K. Briar Lawson, H. Lawson, & A. Sallee, Eds., *New Century Practices with Vulnerable Children and Families.* Dubuque, IA (Eddie Bauer Publishing, 2000). The three authors, two of whom are Indian, but not Ute, have been the primary facilitating team at Southern Ute. Stephen Sachs, who has a long association with Southern Ute, was a participant at several meetings in 2000. The Design Team project is briefly discussed in Harris Sachs, and Morris, Recreating the Circle, p. 432).

References

1. *the 2019 Oklahoma Native Impact Report produced by Dr. Kyle Dean, Director of the Center for Native American and Urban Studies, Oklahoma City University.*
2. "20th Century Warriors: Native American Participation in the United States Military," Naval History and Heritage Command (Prepared for the United States Department of Defense by CEHIP Incorporated, Washington, DC, in partnership with Native American advisors, Rodger Bucholz, William Fields, Ursula P. Roach, Washington: Department of Defense, 1996.), posted September 14, 2017.
3. "About ICWA," Indian Child Welfare Association, 2022.
4. Adams, D. W. (1995). *Education for extinction*. Lawrence: University Press of Kansas, 23, 164.
5. Balcom, K. (2007). "The logic of exchange: The child welfare league of America, the adoption resource exchange movement and the Indian adoption project, 1958–1967." *Adoption & Culture,* 1(1), 5-67.
6. "Brief of Amici Curiae American Historical Association and Organization of American Historians in Support of Federal and Tribal Parties," in *Brackeen v. Haaland,* U.S. Supreme Court Case 21-376 (2022).
7. Trainer, K. (2000). "The Vienna Convention on Consular Relations in the United States Courts". *Transnat'l Law*., 13, 227.
8. "Situational Accountability Center as Amicus Curiae Professor in Support of Federal Parties and Tribal Defendants," in *Bracken v. Haaland*, U.S. Supreme Court No. 21-376 (2022), https://sct.narf. org/caseindexes/haaland_v_brackeen.html
9. "Brief of Professor Gregory Ablavsky as Amicus Curiae in Support of Federal Parties and Tribal Defendants," in *Bracken v. Haaland*, U.S. Supreme Court No. 21-376 (2022).
10. "Canadian Indian residential school system," *Wikipedia*, the free encyclopedia, August 3, 2022.
11. Jennifer Nutt Carleton, "The Indian Child Welfare Act: A Study in The Codification Of The Ethnic Best Interests of the Child," 1 *Marq. L. Rev*. 21 (1997)Coe, J. L. (1950). COLLIER. Indians of the Americas (Book Review). *Social Forces,* 29(1), 462.
12. "The Council on Social Work Education (CSWE) CSWE Statement of Accountability and Reconciliation for Harms Done to Indigenous and Tribal Peoples," From the CSWE website, 2022.
13. "Danish prime minister says sorry to Greenlanders forcibly moved to Denmark: Prime Minister Mette Frederiksen apologized in person Wednesday to six Greenlandic Inuits removed from their families and taken to Copenhagen more than 70 years ago as part of an experiment to create a Danish-speaking elite," *The Local*, March 10, 2022.
14. Debo, A. (1970). *A History of the Indians of the United States* (Vol. 106). University of Oklahoma Press.
15. "Denmark to pay compensation to Greenland's 'experiment children': Six people from Greenland who were forced to take part in a Danish social experiment as children in the 1950s are to be paid thousands of kroner in compensation by the Danish state," *The Local,* March 1, 2022.
16. "Department of the Interior Releases Investigative Report, Outlines Next Steps in Federal Indian Boarding School Initiative," U.S. Department of the Interior, May 11, 2022.
17. Duran, E., & Duran, B. (1995). *Native American postcolonial psychology.* Suny Press.
18. "Education and Culture," 2020. "Indigenous Developments," of *Indigenous Policy*, Vol. XXXI, No. 3, Winter.
19. Anne, Else. (2022). 'Adoption', Te Ara - the *Encyclopedia of New Zealand.*
20. Fallon, B., Lefebvre, R., Trocmé, N., Richard, K., Hélie, S., Montgomery, H. M., ... & Soop, S. (2021). "Denouncing the Continued Overrepresentation of First Nations Children in Canadian Child Welfare: Findings from the First Nations/ Canadian Incidence Study of Reported Child Abuse and Neglect, 2019."
21. "Federal Indian Budgets," from 2018-2020 in the issues of *Indigenous Policy.*
22. "Federal Indian Spending: A Sinking Trust," The Friends Committee on National Legislation, *Indian Report*, 1-55, Summer 1997.

23. Fletcher, M. L., & Khalil, R. F. (2022). "Preemption, Commandeering, and the Indian Child Welfare Act." *Wis. L. Rev*., 1199.
24. Getches, D. H., Wilkinson, C. F., Williams Jr, R. A., & Fletcher, M. L. (2005). *Cases and materials on federal Indian law*. St. Paul, MN: Thomson/West.
25. Erica L. Green, "Can 'Kinship Care' Help the Child Welfare System? The White House Wants to Try. The Biden administration proposes spending $20 billion over a decade to help some of the most vulnerable families in the country, including relatives suddenly thrust into child rearing," *The New York Times*, October 13, 2022.
26. French, L. (2007). *Legislating Indian Country: Significant milestones in transforming tribalism*. Peter Lang.
27. Hacker, J. D., & Haines, M. R. (2005). "American Indian mortality in the late nineteenth century: The impact of federal assimilation policies on a vulnerable population." Annales de démographie historique, 110(2), 17-29.
28. Tex, Hall's. (2005). third annual State of Indian Nations Address is reported on in " Ongoing Activities: U.S. Activities," *Indigenous Policy*, Vol. XVI, No. 1, Spring.
29. Harris, L., Sachs, S. M., Morris, B., Hunt, D. E., Cajete, G. A., Broome, B., ... & Chaudhuri, J. (2011). *Re-creating the Circle: The Renewal of Ameri- can Indian Self-Determination.*
30. Amy, Howe. (2022). "Closely divided court scrutinizes various provisions of Indian Child Welfare Act," SCOTUSBlog.
31. Hunt, D. E., Gooden, M., & Barkdull, C. (2000). "Walking in moccasins: Indian child welfare in the 21st century," in K. Briar Lawson, H. Lawson, & A. Sallee, Eds., *New Century Practices with Vulnerable Children and Families.* Eddie Bauer Publishing.
32. "Information Sheet: Victory for First Nations Children: Canadian Human Rights Tribunal Finds Discrimination Against First Nations Children Living On-Reserve," First Nations Child and Family Caring Society of Canada, 2016.
33. *Indian Child Welfare Program: Hearings before the Subcomm. on Indian Affairs of the S. Comm. on Interior and Insular Affairs*, 93d Cong. 18 (1974).
34. "Inquiry into the Lake Alice Child and Adolescent UnitTe Uiui o te Manga Tamariki me te Rangatahi ki Lake Alice," Abuse in Care, Royal Commission Inquiry, 2022.
35. Kelly, L. C. (1975). The Indian Reorganization Act: The Dream and the Reality. *Pacific Historical Review*, 44(3), 291-312.
36. Keoke, Emory Dean, Porterfield, Kay Marie. (2003). *American Indian Contributions to the World: 15,000 Years of Inventions and Innovations*. New York: Checkmark Books.
37. Barbara, Kingsolver. (1993). *Pigs in Heaven*. London, Faber and Faber.
38. "Ko Aotearoa Tēnei: report on the Wai 262 claim released." (2011). Waitangi Tribunal, Te Ropu Whakamana i te Triri o Watangi.
39. Nicholas, Kristof. (2022). "Russia Traffics in Ukrainian Children," *The New York Times*, November 23.
40. Symone, Mazzotta. (2017). "This week in Supreme Court history: New limits on the spending power," National Constitution Center.
41. Bee, R. L. (1991). Janet A. McDonnell. *The Dispossession of the American Indian, 1887–1934.* Bloomington: Indiana University Press.
42. Meriam, Lewis, et al., (1928). *The Problem of Indian Administration* (Baltimore: Johns Hopkins University Press), available at: National Indian Law Library.
43. Morrissette, P. J. (1994). "The holocaust of First Nation people: Residual effects on parenting and treatment implications. Contemporary." *Family Therapy*, 16(5), 381-392.
44. Callan, Morse. (2022). "Indigenous advocate Natalie Brown appoint- ed chair of key oversight committee," *National Indigenous Times.*
45. Mosby, I., & Millions, E. (2021)."Canada's residential schools were a horror. Scientific American," August 1.
46. National American Indian Council on Aging (NICOA), November 8, 2019.
47. National American Indian Council on Aging (NICOA), "Understanding ICWA Placements Using Kinship Care Research," December 2019.
48. "Native Americans in the Military," DENIX (Department of Defense Environment, Health and Occupational Health Network Information Exchange), visited May 8, 2022.
49. "Native Americans in the United States" in *Wikipedia*, the free encyclopedia. May 6, 2022.
50. "Native Americans in United States elections," *Wikipedia*, the free encyclopedia, December 19, 2021.
51. Negotiated Contract No. I-i-Ind. 18692 Between U.S. Dep't of the Interior, Off. of Indian Affs. and State Dir. of Pub. Welfare, Wisc., (July 1, 1945) (on file with National Archives).
52. Nichols, R. L. (2023). *American Indians in US history* (Vol. 248). University of Oklahoma Press.
53. O'brien, S. (1993). *American Indian tribal governments* (Vol. 192). University of Oklahoma Press.
54. Olson, J. S., & Wilson, R. (1984). *Native Americans in the twentieth century*. University of Illinois Press.
55. "On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit,".
56. Page, J. (2004). *In the hands of the Great Spirit: The 20,000-year history of American Indians.* Simon and Schuster.
57. Paperny, Anna, Mehler, & Shakil, Ismail. (2022). "Canada reaches $30b agreement to compensate indigenous children taken from families," Reuters.
58. Petty, B. M. (2008). *New Zealand in the Pacific War: Personal accounts of World War II.* Jefferson, NC and London: McFarland & Company, Inc., Publishers.
59. Prucha, F. P. (Ed.). (2000). *Documents of United States Indian Policy*. U of Nebraska Press.
60. Reichmann, Kelsey. (2022). "Is overturning precedent the new precedent at the high court? The Supreme Court's watershed ruling nixing *Roe v. Wade* has court watchers and justices alike asking if the centuries-old principle of respecting precedent

has fallen to the wayside," Courthouse News Service.
61. Willard, W., Marshall, A. G., & Pearson, J. D. (Eds.). (2020). *Rising from the Ashes: Survival, Sovereignty, and Native America*. U of Nebraska Press.
62. Ross, R. (1992). *Dancing with a ghost: Exploring Indian reality*. Reed Books Canada.
63. Ross, R. (2014). *Indigenous healing: Exploring traditional paths.* Penguin Canada.
64. Ross, R. (1996). *Returning to the teachings: Exploring aboriginal justice.* Penguin
65. Emma, Ruben. (2022). "Petition for Stolen Generations redress tabled in WA parliament," *National Indigenous Times (NIT).*
66. Stephen M. Sachs, "Termination By Budget: Impact of the 1996 Federal Budget on Native Americans," *Proceedings of the 1996 Meeting of American Political Science Association* (Washington, DC: American Political Science Association, 1996).
67. Stephen M. Sachs, Donna K. Dial, Christina A. Clamp, Amy Fatzinger, Phyllis M. Gagnier. (2020). *Honoring the Circle: Ongoing Learning from American Indians on Politics and Society: Volume III: What Would Be Good to Continue Learning from Indigenous Peoples in Politics and Economics.* Cardiff by the Sea, CA: Waterside Productions.
68. Stephen, M. Sachs., Bruce, Johansen. (2020). *Honoring the Circle, Volume IV: What Would Be Good to Continue Learning from Indigenous Peoples about the Environment and Education*. Cardiff by the Sea, CA: Waterside Productions.
69. Stephen, M. Sachs., Bruce, E. Johansen., Ain, Haas., Betty, Booth. Donohue., Donald, A. Grinde., et al. (2020). Honoring the Circle: Ongoing Learning from American Indians On Politics and Society, Volume I: The Impact of American Indians on Western Politics and Society to 1800. Cardiff by the Sea, CA: Waterside Productions.
70. Stephen, M. Sachs., Sally, Roesch. Wagner., Ain, Haas., and Walter, S. Robinson. (2020). *Honoring the Circle: Ongoing Learning from American Indians on Politics and Society, Volume II: The Continuing Impact of American Indian Ways in North America and the World in the Nineteenth Century and Beyond*. Cardiff by the Sea, CA: Waterside Productions.
71. "Secretary Haaland Approves New Constitution for Cherokee Nation, Guaranteeing Full Citizenship Rights for Cherokee Freedmen," U.S. Department of the Interior, May 12, 2021, Last edited May 27, 2021.
72. "Setting the Record Straight: The Indian Child Welfare Act: Fact Sheet," A publication of the National Indian Child Welfare Association, 2018.
73. Simon, R. J., & Hernandez, S. (2008). *Native American transracial adoptees tell their stories.* Lexington Books.
74. Stiffarm, L. A., & Lane Jr, P. (1992). *The demography of native North America: A question of American Indian survival*. Boston: South End Press.
75. "The Stolen Generations: The forcible removal of First Nations children from their families," Australians Together, September 7, 2022, https://australianstogether.org.au/discover-and-learn/our- history/stolen-generations.
76. Supreme Court Oral Arguments.
77. Szasz, M. (1999). *Education and the American Indian: The road to self-determination since 1928.* UNM Press.
78. "Table of Supreme Court Decisions Overruled by Subsequent Decisions (2022)." Constitution Annotated.
79. Taylor, G. D. (1980). *The New Deal and American Indian Tribalism: The Administration of the Indian Reorganization Act, 1934-45*. U of Nebraska Press.
80. Taylor, J. B., & Kalt, J. P. (2005). *American Indians on reservations: A data book of socioeconomic change between the 1990 and 2000 censuses*. Harvard Project on American Indian Economic Development, Malcolm Wiener Center for Social Policy, John F. Kennedy School of Government, Harvard University.
81. Testimony of Members of Congress, Interested Organizations (1953). and Individuals: Hearing on H.R. 4828 Before the Subcomm. on Interior & the H. Comm. on Appropriations.
82. Thibeault, D., & Spencer, M. S. (2019). "The Indian adoption project and the profession of social work" *Social Service Review, 93*(4), 804-832.
83. Trahant, M. (2022). "At the Crossroads: State of the Economy in Indian Country." *Indian Country Today,* April 4.
84. Trainer, K. (2000). "The Vienna Convention on Consular Relotions in the United States Courts." *Transnat'l Law.*, 13, 227.
85. Venables, R. W. (2004). *American Indian history: Five centuries of conflict & coexistence, Volume II: Confrontation, Adaptation & Assimilation*. Santa Fe, NM: Clear Light Publishers, 2004.
86. Weaver, H. N. (1999). Examining two facets of American Indian identity: Exposure to other cultures and the influence of historical trauma. in H.N. Weaver Ed., *Voices of First Nations People: Human Service Considerations*. New York: Haworth Press.
87. Weaver, H. N. (1998). "Indigenous people in a multicultural society: Unique issues for human services." *Social work*, 43(3), 203-211.
88. Weaver, H. N., & M, Yellow Horse Brave Heart. (1999). "Facets of American Indian Identity: Implications for Social Work Practice," *Journal of Human Behavior in the Social Environment,* 2/1-2.
89. Wilkinson, C. F. (2005). Blood struggle: *The rise of modern Indian nations.* WW Norton & Company.
90. Wisconsin, Pub. (1937). Welfare Dep't, Relief to Indians.
91. "Yellow Horse Brave Heart, Maria. (1999). Oyate Ptayela: Rebuilding the Lakota Nation through addressing historical trauma among Lakota parents." *Journal of Human Behavior in the Social Environment,* 2(1-2), 109-126.
92. Tom, Zaunmayr. (2022). "Fresh petition urges WA to follow other states with Stolen Generations compo scheme," *National Indigenous Times* (NIT).

Court Cases Cited

93. Allis-Chalmers Corp. v. Lueck (1985). 471 U.S. 202, at

94. *Attorney General of Quebec Applicant v. Attorney General of Canada Respondent and Assembly of First Nations Quebec Labrador (AFNQL), First Nations of Quebec And Labrador Health And Social Services, Commission (FNQLHSSC), Makivik Corporation, Assembly of First Nations, Aseniwuche Winewak Nation of Canada and First Nations Child And Family Caring Society Of Canada* (No.: 500-09-028751-196).
95. *Bracken v. Haaland,* U.S. Supreme Court No. 21-376 (2022).
96. *Charles C. Steward Machine Co. v. Davis.* (1937). 301 U.S. 548.
97. *Helvering v. Davis,* 301 U.S. 619 (1937).
98. *Mapatis v. Ewing* (1948). Civ. No. 3882-48 (D.D.C. filed Sept. 21)
99. *Nat'l Fed'n of Indep. Bus. v. Sevelius* (2012). 567 U.S 519 at 576.
100. *New York v. United States* (1992). 505 U.S. 144, at 161 and 166.
101. *Printz v United States*, 521 U.S. 898 (1997).
102. *South Carolina v. Dole* (1987). 97 L. Ed 2d 171.
103. *Texas, et al., Petitioners, v. Deb Haaland, Secretary of The Interior, et al*, Nos. 21-378 & 21- 380.

Laws or Statutes and Treaties Cited

104. An Act respecting First Nations, Inuit and Métis children, youth and families, S.C. 2019, c. 24, Assented to 2019-06-21, Government of Canada, Justice Laws Website, An Act respecting First Nations, Inuit and Métis children, youth and families.
105. The Indian Child Welfare Act of 1978, Public Law 95-608, 25 USC 1901.
106. Johnson-O'Malley Act of 1934, Pub. L. No. 73-167, 48 Stat. 596 (codified as amended at 25 U.S.C. §§ 5342-5348). Johnson- O'Malley Act of 1934, Pub. L. No. 73-167, 48 Stat. 596 (codified as amended at 25 U.S.C. §§ 5342-5348).
107. Social Security Act (SSA) (1935). Pub. L. No. 74-271, 49 Stat. 620.
108. The Vienna Convention on Consular Relations. Multilateral Vienna Convention on Consular Relations and Optional Protocol on Disputes, April 24, 1963, 500 U.N.T.S. 95.