“Better Off Being In A White Home?”
Community-Specific Implications of the Indian Child Welfare Act

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I. Introduction

Standing before the 1974 Senate Subcommittee on Indian Affairs, Cheryl DeCouteau succinctly explained her presence at the hearing: "the [child welfare worker] said that I wasn't a very good mother and everything, and that my children were better off being in a white home" because they "could buy all this stuff that I couldn't give them and give them all the love that I couldn't give them."[1] She then explained she was never notified of her court appearances, was never appointed an attorney, and was coerced into signing away her custodial rights. Eventually, because the court never proved her unfit to parent, she regained custody with the help of an attorney and the support of her tribe. Her counsel, also speaking before the committee, described Ms. DeCouteau's case as "one of the grossest violations of due process that [he had] ever encountered."[2] The tribe itself, once made aware of Ms. DeCouteau's case, fought on her behalf because of the case's implications for their very "survival" and existence.[3] The systemic removal of children simply because of their tribal status was the continuation of a history of American policies contributing to the erasure of Native communities and identities. The lack of support available to Native children once they entered a predominantly white child welfare system further compounded this particular crisis.

Numerous other Indigenous women testifying before the committee described the feelings of discrimination and fear brought on by the child welfare system. Margaret Townsend, for example, shared that her "children were taken out of [her] home because of the harassment of the police department."[4] Despite evidence that the foster home was mistreating her children, she was unable to properly communicate her circumstances to the case workers. A member of a tribe

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[1] U.S. Congress, Senate, Subcommittee on Indian Affairs of the Committee on Interior and Insular Affairs, *Indian Child Welfare Program*, 93rd Congress, 1974, 66.
[2] U.S Congress, Senate, Committee, *Indian Child Welfare Program,* 67.
[3] U.S Congress, Senate, Committee, *Indian Child Welfare Program,* 70.
[4] U.S Congress, Senate, Committee, *Indian Child Welfare Program,* 41.

in Nevada, she attributed the mistreatment of her children and herself to their Native identity. She explained to the committee that "it's very hard for the Indian women to communicate with these people because they do look down on Indians."[5] She wanted the committee to know that women like her were completely "overwhelmed by people who think their children should be taken away from them...and they don't have anybody to tell."[6] Although she eventually reunited with her children with the help of a tribal lawyer, her powerlessness to protect her children clearly haunted her.

The testimony of DeCouteau and Townsend illustrated the centrality of their Native American identity in their interactions with the United States child welfare system. They both depicted the devastating and painful consequences of state involvement in the most central aspects of their lives: their family and their community. Amid the complex policy considerations of this particular hearing and the many other testimonies and reports to come, their stories are an essential reminder of the incredibly high stakes of state intervention.

The accounts of these women, along with the testimony of numerous attorneys, policy experts, Native American advocates, and doctors, eventually led to the 1978 Indian Child Welfare Act (ICWA). Repeated throughout every report and discussion was the staggering statistic that between 25% and 35% of all Indigenous children in the United States were removed from their homes in the decade preceding 1978.[7] Supporters of the bill successfully framed the overrepresentation of Native Americans in child welfare as the responsibility of Congress, due to the federal government's historic discrimination against the entire tribal population. ICWA reflected increasing support for Native American tribal sovereignty and brought together emerging notions of citizenship, cultural understanding, and justice. Despite resistance from

[5] U.S Congress, Senate, Committee, *Indian Child Welfare Program,* 42.
[6] U.S Congress, Senate, Committee, *Indian Child Welfare Program,* 44.
[7] U.S Congress, Senate, Committee, *Indian Child Welfare Program,* 1.

private interests in the adoption of Native children and constitutional issues regarding the delicate balance of state and federal law, the crisis of Native American children and families necessitated intervention.

After another hearing in 1977, the Indian Child Welfare Act was signed into law by President Jimmy Carter. Still in effect today, it serves to "protect the best interests of Indian children and to promote the stability and security of Indian tribes and families" through minimum federal standards for the removal of children and their subsequent placement in foster care.[8] Designed to better reflect the particular values of tribal culture, it grants tribes the right to administer their own family service programs. Notably, the law also gives tribes the ability to operate their own systems of child welfare enforcement, thereby elevating tribal authority to the same level of the State. Additionally, the law institutes a higher standard for the services provided to Native families by requiring "active efforts" rather than the standard "reasonable efforts" of family reunification in state court.[9] Furthermore, it mandates that all services be "culturally appropriate" for the tribal community.[10] Lastly, the most public aspect of the law provides clearer guidelines for the placement of Native children into tribal or familiar homes for foster care and adoption. Together, these elements form the underlying notions of tribal sovereignty and cultural identity often attributed to the Indian Child Welfare Act.

Despite its many interventions, the effects of ICWA are far from conclusive. Native American children continue to be heavily overrepresented in cases of child abuse and neglect, placement in foster care, and involuntary adoptions. According to research by the Casey

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[8] Indian Child Welfare Act, 25 U.S.C. § 1901-1963 (1978)

[9] Indian Child Welfare Act, 25 U.S.C. § 1901-1963 (1978) Before terminating parental rights, child protective services must demonstrate they have satisfied their requirement to reunify parents and children. Though inconsistent from state to state, "active efforts" is most often interpreted to be a higher standard and involves assisting the parent through the steps of a case plan and should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe.

[10] Indian Child Welfare Act, 25 U.S.C. § 1901-1963 (1978)

Foundation, even thirty years after ICWA Native children remain twice as likely to be investigated, twice as likely to have allegations of abuse substantiated, and four times more likely to be placed in foster care than white children.[11] Advocates continue to fight for proper tribal funding, recognition by state governments, enforcement of regulations, and access to adequate services guaranteed by ICWA.[12] Nationally, the system of child welfare, or child protection, has only become more powerful in its influence and scope since 1978. White children are underrepresented, making up 44% of those in foster care but 60% of the U.S. population, while Black, Hispanic, and Native children are all overrepresented.[13]

The Indian Child Welfare Act raises questions regarding the intersection of identity, citizenship, and the child welfare system: How have American policies of child welfare contributed to the current overrepresentation of Native children in government care? How did the framers of ICWA seek to protect this vulnerable population? And how might these protections be extended to other vulnerable groups? This paper addresses these questions through a close examination of the history of child welfare and Native American family separation, as well as the legislative origins of ICWA and its implementation since 1978. The history of American intervention, assimilation, and discrimination clearly justifies ICWA's strong protections against unwarranted removal of Native children. While ICWA was designed to provide these safeguards, the inconsistency of its implementation falls short of its authors' original ideals. Despite massive failures of implementation, the Indian Child Welfare Act's bold framework for

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[11] Hill, R. B. Casey-Center for the Study of Social Policy Alliance for Racial Equity in Child Welfare, Race Matters Consortium Westat. (2007). An analysis of racial/ethnic disproportionality and disparity at the national, state, and county levels. Seattle, WA: Casey Family Programs.

[12] Terry Cross, Founding Director National Indian Child Welfare Association, Interview by Author, Zoom, November 13, 2020.

[13] *Children in foster care by race and Hispanic origin in the United States* (Annie E. Casey Foundation Kids Count Data Center: 2010-2018)

community-specific child welfare intervention suggests an approach to the child disparities of other overrepresented groups.

II. Scholarly Intervention

Given the Indian Child Welfare Act's significance, scholars have thoroughly explored its inception, effectiveness, and implications for tribal sovereignty. Scholars currently study ICWA through three major questions: How has the social history of child welfare contributed to the overrepresentation of Native and other nonwhite children in state care? How has the legal history of the relationship between tribes and Congress shaped Indian child welfare policy? And does the legislation even achieve its aims?

In answering the first question, historians of child welfare and child protection in the United States recognize the Indian Child Welfare Act within the context of the broad imposition of white middle-class standards. Linda Gordon, a leading scholar on the topic of single motherhood and the welfare state, describes how our current notions of child welfare stem from the attempts to help poor, single mothers launched at the turn of the nineteenth century.[14] She frames these efforts as manifestations of white middle-class values implemented by programs designed by white middle-class women and places emphasis on notions of moral superiority based entirely on race, class, and religion. Many historians have also emphasized the growing importance of government intervention over the course of the twentieth century.[15] Discussions of the emergence of the foster care system and reporting laws, for example, indicate the state's role in mandating federal standards for child wellbeing. Common to these histories is the centering of child safety and maltreatment as a major aim of the entire child welfare system.

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[14] Linda Gordon, *Pitied but Not Entitled*, 2nd ed. (Cambridge, Mass.: Harvard Univ. Press, 1995).
[15] John B. Myers, "A Short History of Child Protection in America," *Family Law Quarterly* 42, no. 3 (2008): 449–63.

Much of this literature also extends ICWA's implications to other overrepresented identities, notably racial and ethnic groups. While many scholars differentiate between the experience of tribal and white individuals, the core of this literature discusses the practice of cultural competence, as outlined in the "culturally appropriate" mandate of the law itself.[16] Many scholars examine the distinction between ICWA's citizenship-based community and racial groups.[17] These historians and researchers widely agree that Native families experience similar discriminatory practices to other minority groups, especially Black and Latinx Americans, in comparison to white people.[18] Some literature discusses the bias of the decision threshold, such as the moment when case workers decide whether to remove children from the home.[19] One scholar, Cynthia G. Hawkins-Leon, proposes an increase in the adoption of African American children into African American homes to protect the "cultural expression and unanimity" of Black people similar to the interests of the tribe.[20] By comparing the statistics of Black families in child welfare to those of Indian Americans in the years immediately preceding ICWA, she draws a direct connection between the two populations. However, her suggestion to increase the prevalence of Black foster and adoptive families fails to properly address the underlying lack of cultural competency which contributes to the problem. Scholars Thomas L. Crofoot and Marian S. Harris root the experiences of all children of color in the very same "desire to do good and to protect children from perceived threats" and "unwillingness to come to terms with our own fears,

[16] Thomas L. Crofoot and Marian S. Harris, "An Indian Child Welfare Perspective on Disproportionality in Child Welfare," *Children and Youth Services Review* 34, no. 9 (September 1, 2012): 1667–74.
[17] Cynthia G. Hawkins-Leon, "The Indian Child Welfare Act and the African American Tribe: Facing the Adoption Crisis Proceedings of the Third Annual Mid-Atlantic People of Color Legal Scholarship Conference February 13-15, 1997: Part 3," *Brandeis Journal of Family Law* 36, no. 2 (1998 1997): 201–18.
[18] Patricia Turner Hogan and Sau-Fong Siu, "Minority Children and the Child Welfare System: An Historical Perspective," *Social Work* 33, no. 6 (1988): 493–98.
[19] Alan J. Dettlaff et al., "Disentangling Substantiation: The Influence of Race, Income, and Risk on the Substantiation Decision in Child Welfare," *Children and Youth Services Review* 33, no. 9 (September 1, 2011): 1630–37, https://doi.org/10.1016/j.childyouth.2011.04.005.
[20] Cynthia G. Hawkins-Leon, "The Indian Child Welfare Act and the African American Tribe."

deeply ingrained prejudices, and dangerous ignorance of those who are different from us" explored by historians of the welfare state.[21] There is a clear consensus that the overrepresentation of both African American and Native American populations in the child welfare system is a symptom of the desire to impose certain values, specifically white middle-class values, onto the entirety of the American populace.

The second important lens through which scholars consider ICWA is its place in the complex legal and social history of relations between tribes and the United States government. Researchers, such as social worker Lila J. George, describe ICWA as an example of the unique relationship between Congress and Native American tribes.[22] The law marks the transition from an official policy of assimilation to one of tribal sovereignty. The Bureau of Indian Affairs' systematic removal of children to boarding schools and white homes in the interest of "killing the Indian" but "saving the man" defined the years preceding ICWA.[23] The emergence of the child welfare system on tribal land and tribal homes is considered to be a mere continuation of such destructive assimilationist policies. The express protection of the tribe's right to operate their own system of child protection, to influence the placement of tribal members, and to be recognized as having a distinct culture, all mark this transition to a system of tribal sovereignty in the final quarter of the century. This paper directly explores the link between the legal and social history of this transition and the testimony that shaped ICWA's specific intervention strategy.

Finally, the third area of literature evaluating the Indian Child Welfare Act considers its policy impact on child welfare cases involving Native Americans. Many researchers, such as

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[21] Crofoot and Harris, "An Indian Child Welfare Perspective on Disproportionality in Child Welfare."
[22] Lila J. George, "Why the Need for the Indian Child Welfare Act?," *Journal of Multicultural Social Work* 5, no. 3–4 (May 15, 1997): 165–75.
[23] Terry Cross, Interview by Author, Zoom, November 13, 2020.

Ann E. MacEachron, focus on the quantitative success of ICWA's efforts to keep tribal children in tribal homes.[24] However, their inconsistent results, as detailed below, prevent conclusive claims regarding its true effectiveness. Still, many scholars continue to evaluate the overrepresentation of Native American children, emphasizing how they remain more likely to be removed from their home, more likely to be put in punitive circumstances, and less likely to be given supportive services.[25] While this information is indicative of the continued cultural bias and systemic discrimination in these systems, analysis remains limited by uncertainty surrounding ICWA's role in these disparities. Kathleen Earle Fox, in her study of neglect charges against facing tribal parents, suggests that Native Americans become further involved in the decision-making process of the welfare system to promote their own sovereignty. This angle of analysis provides an important connection between the broader intentions of the legislation and the realities faced by those experiencing its effects.

Despite this range of literature articulating the overrepresentation and culturally incompetent systems of child welfare for Native American and other nonwhite children, there is a lack of research specifically linking the legislative intentions and historical basis of ICWA to other overrepresented groups in the United States. Rather than merely considering whether the specific provisions of ICWA might apply to Black children, this paper brings its social and legal histories into conversation. Together, the origins of child protection and the Indian Child Welfare Act, along with the effects of its implementation, offer new insight into the overrepresentation of nonwhite children in the American system of child welfare.

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[24] Ann E. MacEachron et al., "The Effectiveness of the Indian Child Welfare Act of 1978," *Social Service Review* 70, no. 3 (September 1, 1996): 451–63, https://doi.org/10.1086/604199.

[25] Kathleen Earle Fox, "Are They Really Neglected? A Look at Worker Perceptions of Neglect Through the Eyes of a National Data System," *First Peoples Child & Family Review: A Journal on Innovation and Best Practices in Aboriginal Child Welfare Administration, Research, Policy & Practice* 1, no. 1 (2004): 73–82.

III. Child Welfare in the United States

In modern conceptions of the child welfare system, the state guarantees children's wellbeing by focusing on the prevention of abuse and neglect. However, early use of the term 'welfare' evoked ideas of "prosperity" and "good health" for all citizens.[26] Between 1890 and 1935, welfare embodied all government intervention in the wellbeing of its populace, ranging from side-walks to firefighting to Social Security.[27] Very quickly, however, welfare shifted away from this pursuit of prosperity and good health to instead function as "grudging aid to the poor" at the expense of the entire community, according to historian Linda Gordon.[28] Over time, welfare programs emerged as the means to fight poverty and neglect of single mothers and their children.

Along with aid to poor mothers came the mechanism to punish recipients for not upholding middle-class values. Early twentieth century policymakers designed welfare programs to reflect the white social standards of the time, particularly that women should marry and work domestically in the home. As middle-class married women sought to help the less fortunate, especially in the 1920s, they asserted their own standards of lifestyle and morality onto those they intended to help. Their desire to protect the social order led to their attempt to shape the socialization of poor children.[29] Their very notion of neglect was rooted in their class, ethnicity, and religion.[30] White middle-class norms dictated everything from family structure to specific housekeeping methods to education techniques. Basic differences in socialization, languages, foods, and religious traditions automatically distinguished lower class and racial minorities from these norms. Furthermore, the reformers had a personal interest in defining and addressing

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[26] Gordon, *Pitied but Not Entitled*, 1.
[27] Gordon, *Pitied but Not Entitled*, 2.
[28] Gordon, *Pitied but Not Entitled*, 1.
[29] Gordon, *Pitied but Not Entitled*, 40.
[30] Gordon, *Pitied but Not Entitled*, 43-44.

neglect in ways that would "amplify their power" and "solidify the need for their work," in the words of Gordon.[31] For example, their emphasis on the newfound "cruelty" to poor children and the subsequent solution of removing children from their poor living conditions heightened the influence of the middle-class reformers.[32]

Despite their claims of benevolence, these women regulated the morality of their recipients and often administered punitive discipline to single mothers not adhering to their expectations. The punitive nature is evidenced by the administration of welfare services by juvenile courts, which placed women seeking help alongside criminal proceedings. Additionally, aid could be refused according to the discretion of the social workers and volunteers, who often interpreted "suitable home" laws to exclude alcohol, boarders, male friends, and even unorthodox housekeeping methods.[33] Participants were also required to incorporate Protestant religious practices and the English language into their homes no matter their cultural or ethnic background. As evidenced by these practices, the entire framework of welfare stemmed from a moralistic, and often condescending, definition of proper family life.[34] Not surprisingly, this definition was often at odds with the customary home keeping and child rearing methods of the populations they were attempting to help.

Ultimately, the underlying motivations and inclinations of the early child welfare system indicate an immense disconnect between those dedicated to protecting children and the single mothers and families receiving their assistance. Not just a form of charity, child welfare emerged as a form of social control against the most vulnerable populations.

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[31] Gordon, *Pitied but Not Entitled*, 44.
[32] Gordon, *Pitied but Not Entitled*, 45.
[33] Gordon, *Pitied but Not Entitled*, 46.
[34] Gordon, *Pitied but Not Entitled*, 46.

Alongside the broader child welfare movement of the early twentieth century came the development of programs specifically oriented toward legal mechanisms for child protection. Such services enabled the punitive separation of families according to the will of the state. While some jurisdictions had already begun to prosecute abusive treatment of children, or remove children from their parents due to unfit conditions, it was not until the end of the nineteenth century that the first private agency specifically dedicated to child protection emerged in New York.[35] By 1922, over 300 private child protection agencies existed throughout the United States.[36] Concurrently, early juvenile courts began monitoring both child delinquents and neglectful or abusive parents so that by 1919, every state had a legal prosecution and police enforcement system for child delinquency.[37]

Following the sharp growth of private action, Progressive Era reformers brought about greater state and federal government intervention in social services.For example, the first several decades of the twentieth century saw the first "state-administered departments of welfare, social services, health, and labor" as well as the founding of the Children's Bureau in 1912.[38] With the 1935 Social Security Act came the first direct provision requiring the extension and strengthening of child welfare services to specifically require child protection. Over the next 20 years, nongovernmental protective agencies decreased from 300 to 84.[39] By 1967, with just ten private programs remaining, communities accepted that the responsibility to ensure the safety and health of the nation's children rested with the government rather than private charities.[40] Just

[35] Myers, "A Short History of Child Protection in America," 450.
[36] Myers, "A Short History of Child Protection in America," 451.
[37] Myers, "A Short History of Child Protection in America," 452.
[38] Myers, "A Short History of Child Protection in America," 452-453.
[39] Myers, "A Short History of Child Protection in America," 452.
[40] Myers, "A Short History of Child Protection in America," 454.

eight years later, in 1975, a state-mandated system of ensuring child protection was implemented throughout the nation.[41]

As government programs accepted greater responsibility, they adopted many of the practices of private organizations, including early ideas about instilling white middle-class norms. For example, they continued prioritizing a traditional nuclear family and English usage. Such approaches reflect the underlying assumption that many parents, and even entire communities, were incapable of properly caring for their children. While no longer able to explicitly apply racial, ethnic, and religious stipulations like the private services had done, government agencies continued to demonstrate bias in the availability of supportive services. Not only were Black and Indigenous children vastly overrepresented in foster care, but they spent more time in the system before reunification or adoption.[42] Additionally, state programs presented new issues of their own, such as increased police power.

In the final decades of the twentieth century, programs explicitly for child protection also expanded through the work of physicians, the media, and federal legislation. The increasing state-led child protective services led to increased reliance on foster care. In 1974, the United States implemented its first legislation specifically relating to child protection from abuse and neglect: The Child Abuse Prevention and Treatment Act. As states adopted mandatory national reporting and investigation programs there was a rapid increase in child welfare cases: national reports of abuse and neglect increased from 60,000 in 1974 to over 3 million by 2000.[43] By 1974, Congress allocated federal funds to improve state response to abuse and neglect with an emphasis on improved investigation and reporting.[44] Other federal initiatives, such as the

[41] Myers, "A Short History of Child Protection in America," 449.
[42] Myers, "A Short History of Child Protection in America," 458.
[43] Myers, "A Short History of Child Protection in America," 456.
[44] Myers, "A Short History of Child Protection in America," 457.

National Center on Child Abuse and Neglect, supplemented state interventions for even more widespread use.[45] Together, federal and state agencies harnessed the legal power of the government to forcibly remove children from their homes at a greatly increased rate. When combined with the continued pursuit of white middle-class norms across all populations, the emerging child welfare system obtained a greater capacity for discriminatory and punitive child removal.

In addition to national initiatives in child abuse, 1974 also brought the first exploratory hearing regarding the crisis of Indian child welfare. Thus, congressional interest in Native American child welfare discrimination emerged at a crucial turning point in the larger history of child welfare. Ultimately, the reliance on external care, such as foster placements, served as the foundation of the crisis of Native child welfare.

IV. Historic Origins of ICWA

Indian Child Welfare Crisis

In 1974, the United States federal government sought to establish the extent of the child welfare crisis facing Native American tribes through a committee-led exploratory hearing. Policies across the nation, described in the previous section, had already resulted in a highly disproportionate number of Native children being removed from their homes. The official estimate presented to the exploratory hearing stated that somewhere between 25 to 35 percent of Native children were systematically removed from their parents, their homes, and their tribes.[46] In an attempt to mitigate this vast overrepresentation, advocates intended to protect the integrity of these families and communities by intervening in the removal of Native children by the child welfare system. The legal and social history of the relationship between the US government and

[45] Myers, "A Short History of Child Protection in America," 457.
[46] U.S Congress, Senate, Committee, *Indian Child Welfare Program,* 15.

tribal child welfare was the primary motivation behind these inquiries and the eventual creation of ICWA.

The systematic separation of Native families was not unique to the child welfare system which emerged during the middle of the twentieth century. Instead, according to social workers, family separation was "deeply ingrained in social values and policies" of the United States and contemporary practices merely continued the history of such action.[47] Terry Cross, the founding Executive Director of the National Indian Child Welfare Association (NICWA), roots his analysis of ICWA's promotion of tribal sovereignty in the history of the American government's policy of assimilation directed at tribal communities. This included removing children, first to boarding schools, then to city work programs and to white families. The reasoning was straightforward: Native children would simply fare better in white homes, where they would be taught white values.[48] Following the eighteenth and nineteenth centuries' violent military efforts to destroy the Native way of life, US policy shifted away from armed conflict and toward termination of tribes and assimilation of Native people.[49] The 1886 Commissioner of Indian Affairs wished for Native children "to abandon the pathway of barbarism" and "walk...along the pleasant highway of Christian civilization," a statement which reflects the federal government's desires to "save" Native children from their own way of life.[50] In pursuit of this goal, boarding schools specifically designated for Native children taught them how to "eat, to sleep, to dress, to play, to work, to think" like the "white man" under incredibly harsh conditions.[51] The effect, according to social worker Lila J. George, was the "erosion of native language, religion, beliefs, customs, and social norms" which amount to the very foundation of the "Indigenous worldview

[47] Crofoot and Harris, "An Indian Child Welfare Perspective on Disproportionality in Child Welfare."
[48] Terry Cross, Interview by Author, Zoom, November 13, 2020.
[49] Graham, 2008 as cited in Crofoot and Harris, "An Indian Child Welfare Perspective on Disproportionality in Child Welfare."
[50] Price, 1973 as cited in George, "Why the Need for the Indian Child Welfare Act?," 166.
[51] George, "Why the Need for the Indian Child Welfare Act?," 166.

and identity."[52] Such efforts assumed that Native children exposed to an alternate means of living would choose to abandon their tribe.[53]

The assimilation of Native children was accompanied by wide scale efforts to break up, and even officially terminate, the tribes themselves. The Dawes Act of 1887 allowed for the breakup of tribal land, favoring individual farmers over communal life and collective guardianship. Though later repudiated, this effort to "civilize" Native Americans through non-Indian practices resulted in the permanent loss of tribal land. Another component of this assimilation was the increased influence of the federal government on tribal livelihoods and social services, primarily through the Bureau of Indian Affairs. As early as the 1920s, the Snyder Act gave the BIA power to enforce laws on a reservation without due process.[54] Once granted control of healthcare, education, and employment, the BIA "assumed the role of colonial administrators" by dictating the general way of life, according to Cross.[55]

Twenty years later, the 1950s brought a more direct termination policy in which the federal government ended relations with tribal governments and ceded tribal jurisdiction to the state. A direct affront to tribal sovereignty, the termination strategy also involved relocation of Native Americans to larger cities as part of the wider assimilation movement. Fueled by the belief "that they were rescuing Indian children from unworthy families and giving them a chance for future success" white reformers continually found new ways to interrupt Native families, according to social workers Thomas Crofoot and Marrian Harris.[56] In 1958, The Child Welfare League of America and the Bureau of Indian Affairs began a wide scale effort to organize the

[52] George, "Why the Need for the Indian Child Welfare Act?," 167.
[53] Rogers, 1950 as cited in George, "Why the Need for the Indian Child Welfare Act?," 169.
[54] Terry Cross, Interview by Author, Zoom, November 13, 2020.
[55] Terry Cross, Interview by Author, Zoom, November 13, 2020.
[56] Crofoot and Harris, "An Indian Child Welfare Perspective on Disproportionality in Child Welfare."

adoption of Native American children into white families.[57] Recalling the language of early child welfare programs, the Indian Adoption Project aimed to find "suitable" homes for Native children.[58] These relocation programs disconnected "whole generations" from their families, ultimately amounting to what legal scholar Lorie M. Graham deemed "cultural genocide."[59]

After public opinion turned against the Termination Policy in the wake of wider social changes, the Kennedy, Johnson, and Nixon administrations each pursued policies of Native self-determination and sovereignty. As political shifts in civil rights, the War on Poverty, and opposition to Vietnam converged, the switch to self-determination came about in a period of great social turmoil.[60] According to attorneys Geoffrey Strommer and Stephen Osborne, Johnson pursued greater autonomy for tribes across the United States amid wider pursuit of expanded racial equality, and anti-poverty efforts.[61] Just a few years following the landmark Civil Rights Act, Johnson also implemented the Indian Civil Rights Act to expressly guarantee the application of the Bill of Rights to Native Americans and affirm tribal self-determination.[62] Richard Nixon expanded these efforts significantly when he called for the total end of tribal termination and pledged to improve the quality of programs and support available to tribal populations. In a message to Congress on July 8th, 1970, Nixon declared self-determination to be the official policy of the federal government.[63] This strategy was to involve a series of reforms to transfer

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[57] Strong, 2005 as cited in Crofoot and Harris, "An Indian Child Welfare Perspective on Disproportionality in Child Welfare."
[58] Marc Mannes,"Factors and Events Leading to the Passage of the Indian Child Welfare Act." Child Welfare 74, no. 1 (1995): 260.
[59] Graham, 2008 as cited in Crofoot and Harris, "An Indian Child Welfare Perspective on Disproportionality in Child Welfare."
[60] Terry Cross, Interview by Author, Zoom, November 13, 2020.
[61] Geoffrey D. Strommer & Stephen D. Osborne, "The History, Status, and Future of Tribal Self-Governance under the Indian Self-Determination and Education Assistance Act," American Indian Law Review 39, no. 1 (2014-2015): 16-17.
[62] Strommer & Osborne, "The History, Status, and Future of Tribal Self-Governance under the Indian Self-Determination and Education Assistance Act," 16.
[63] Strommer & Osborne, "The History, Status, and Future of Tribal Self-Governance under the Indian Self-Determination and Education Assistance Act," 17.

tribal administration back to the tribes themselves. Over the next decade, policy changes were made to not only child welfare but also health care, civil rights, education, and religion. While all of these impacted the tribe, it is child welfare that set up one of the most clear and succinct recognitions of sovereignty by giving them the same power as state courts.

Indian Child Welfare Hearings

After decades of such policies, and in the wake of this Indian self-determination movement, Congress finally set out to address the crisis of Indian child welfare. The official mandate was to investigate the "alarmingly high percentage of Indian families broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies."[64] The crisis was further compounded by the "alarmingly high percentage of such children placed in non-Indian foster and adoptive homes and institutions" thus disconnecting them from their tribal identity.[65] In 1978, experts estimated that up to 35% of Native children nationwide had been removed from their homes, with 85-95% of them placed in non-Native homes.[66] Compared to white children, Native children were also significantly more likely to be placed away from their families.[67] Alongside the wider self-determination movement, Congress began hearings to establish a new strategy to reduce such harmful child welfare systems.[68] Still, the exact nature of this intervention, and its future implications, were yet to be determined.

On April 8th and 9th of 1974, the United States Senate Subcommittee on Indian Affairs met to investigate the growing crisis of the Native American child welfare system. The chair of the committee, Senator James Abourezk of South Dakota, opened the floor with a speech regarding the significance of the hearing.[69] He framed the investigation by posing a series of

[64] Indian Child Welfare Act, 25 U.S.C. § 1901 (1978)
[65] Indian Child Welfare Act, 25 U.S.C. § 1901 (1978)
[66] Hawkins-Leon, "The Indian Child Welfare Act and the African American Tribe," 202.
[67] Mannes,"Factors and Events Leading to the Passage of the Indian Child Welfare Act."
[68] Indian Child Welfare Act, 25 U.S.C. § 1901 (1978)
[69] U.S Congress, Senate, Committee, *Indian Child Welfare Program.*

questions: What were the facts concerning child welfare practices by governmental and non-governmental agencies in Indian communities? What solutions were Indian people seeking to change the situation? And perhaps most importantly, why had the federal government not taken action already?[70] Senator Abourezk drew a direct connection between the continued discrimination against Native Americans and the child welfare system, ultimately concluding with a call to action. It was the responsibility of Congress, and the entire federal government, to protect the interests of Native American people, families, and tribes, he argued.[71]

Following his opening statement, a series of doctors, lawyers, and tribal members spoke regarding their own experience within the Native American childcare system. Their testimony depicted the complexity of the Native American overrepresentation in statistics of family separation and foster care placement.[72] After establishing the disproportionate number of Native children removed from the home, the testimony described the detrimental impact of these removals on the individual children, their families, and the entire tribal community. Ultimately, each witness contributed to the Senate's understanding of the three major consequences of the child welfare system: the foster care system devastation to parents, the children robbed of their cultural heritage, and the loss of the very essence, and future, of the tribe. Together, the testimonies articulated the desperation felt by individuals in contact with the child welfare system and the urgency of tribal leaders witnessing the degradation of their communities.

The need for special legislation particular to the Native American population, according to witnesses, stemmed from the overwhelming statistics demonstrating the overrepresentation of their children in foster care, adoptive homes, and boarding schools.[73] Of course, other significant

[70] U.S Congress, Senate, Committee, *Indian Child Welfare Program,* 2.
[71] U.S Congress, Senate, Committee, *Indian Child Welfare Program,* 3.
[72] U.S Congress, Senate, Committee, *Indian Child Welfare Program.*
[73] U.S Congress, Senate, Committee, *Indian Child Welfare Program.*

statistics were highlighted as well. For example, Senator Abourezk himself explained that the frequency of Native children removed from the home was five to twenty five times the number of non-Indian children.[74] William Byler, the executive director of the Association on American Indian Affairs, described how one in four Native children born in Minnesota in 1971 and 1972 were already in adoptive homes.[75] Over 35,000 children attended dangerous boarding schools, including 85-90% of the Navajo tribe.[76] When these children were removed, the witnesses explain, nearly 90% were placed in white homes.[77] Overwhelmingly, these accounts pointed to the acute nature of this crisis. Child welfare officials targeted and removed Native children from their homes, their tribes, and their culture in large numbers. On a policy level, as discussed by individuals like Abourezk and Byler, legislation was necessary to halt this systematic destruction of the tribe.

In typical cases, especially those involving white children, serious allegations of abuse and neglect instigate child welfare involvement. Shockingly, only 1% of cases among tribal communities were attributed to true abuse in the five years prior to 1974.[78] Instead, the deep-seeded belief that Native American homes were simply too poverty stricken to properly raise children instigated the vast majority of involvement. In line with past national policies of assimilation and termination of tribes, the state utilized the mechanisms of child welfare to remove Native children simply because they failed to adhere to white middle-class expectations.[79] Child welfare workers used their own interpretation of safe home conditions to make removal decisions, lacking training in the valid differences in culture between themselves and tribal communities. Factors such as plumbing, floor space, drinking habits, and income

[74] U.S Congress, Senate, Committee, *Indian Child Welfare Program,* 1.
[75] U.S Congress, Senate, Committee, *Indian Child Welfare Program,* 3.
[76] U.S Congress, Senate, Committee, *Indian Child Welfare Program,* 4.
[77] U.S Congress, Senate, Committee, *Indian Child Welfare Program,* 5.
[78] U.S Congress, Senate, Committee, *Indian Child Welfare Program,* 4.
[79] U.S Congress, Senate, Committee, *Indian Child Welfare Program,* 19.

levels were used to justify the removal of Native children.[80] One example cited in the hearing involved a Sioux tribe member from South Dakota whose child was removed having "no evidence the mother was unfit," but simply because the reservation was inherently unsuitable.[81] In the state's view, at least superficially, the Native American child needed to be protected from poverty and subsequent neglect. However, tribal officials and advocates believed that underlying systemic discrimination accounted for the predominance of state intervention. While not explicitly calling for assimilation, the child welfare system continued the legacy of Dawes and Snyder-era policies by dictating the Native way of life.

To protect their children from the US government, ICWA's advocates aimed to bolster tribal sovereignty by enshrining cultural preservation in the legislation. The issue of tribal sovereignty also highlights the special relationship between Congress and Native American tribes, which provided the primary justification for national legislation to address this crisis. Bertram Hirsch, a staff attorney under Byler, reiterated that the child welfare approach to Native children was "at the very heart of tribal sovereignty" and thus worthy of immediate attention.[82] As articulated by Hirsch, "Indian communities...should actually have under Federal law...the jurisdiction to decide their own domestic relations problems" but instead had been "usurped" by state courts.[83] Each tribe is a dependent sovereign nation and therefore it is the responsibility of the federal government to protect their jurisdiction from state overreach.[84] This dynamic was reflected in the hearing testimony, as advocates, policy leaders, and individuals called on Congress to intervene on behalf of the entire Native American community.

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[80] U.S Congress, Senate, Committee, *Indian Child Welfare Program,* 5.
[81] U.S Congress, Senate, Committee, *Indian Child Welfare Program,* 5.
[82] U.S Congress, Senate, Committee, *Indian Child Welfare Program, 35.*
[83] U.S Congress, Senate, Committee, *Indian Child Welfare Program,* 35.
[84] Dallas Pettigrew, MSW, Interview by Author, Zoom, October 16, 2020.

The Indian Child Welfare Act also confronted the tension between two ideas of wellbeing. The state, and its welfare system, envisioned its role as protecting children from the poverty and poor living conditions associated with reservations. Meanwhile, tribes sought to protect their children from the loss of culture and identity and to prevent their separation from their entire family and community. Abourezk discussed the "all- important demands of Indian tribes to have a say in how their children and families [were] dealt with" in all spheres, including child welfare.[85] This was necessary, he argued, to protect the very essence of the "Indian way of life."[86] Byler echoed the same sentiment, explaining that being "within your own culture" was a basic right being violated by the state.[87] Dr. Joseph Westmeyer, a psychologist working with Native children, presented testimony that children placed in white foster homes "[assumed] the majority of white identity" and therefore "[understood] very little about Indian culture" and possessed no "Indian identity."[88] However, tribe-managed health and welfare systems lessened such impact. When asked whether Native foster parents would be preferable to white families, Westmeyer instead argued that tribal services to keep families intact would be much more beneficial.[89]

Ultimately, however, the most powerful articulation of the need for legislative intervention came from the individual tribal members that spoke about their own involvement with child welfare. Margaret Townsend, for example, gave a compelling account of her children being removed from her home without her knowledge and the subsequent interactions with police officers, which she described as "hateful" because she was "Indian."[90] From a different perspective, Alex Fournier described her experience when a child she had effectively adopted

[85] U.S Congress, Senate, Committee, *Indian Child Welfare Program,* 2.
[86] U.S Congress, Senate, Committee, *Indian Child Welfare Program,* 2.
[87] U.S Congress, Senate, Committee, *Indian Child Welfare Program,* 5.
[88] U.S Congress, Senate, Committee, *Indian Child Welfare Program,* 46.
[89] U.S Congress, Senate, Committee, *Indian Child Welfare Program,* 46.
[90] U.S Congress, Senate, Committee, *Indian Child Welfare Program,* 44.

was removed from her home by welfare officials despite their deep connection. Although the judge ultimately granted her custody, she too felt she was targeted because of her tribal membership.[91] Backed by the supporting evidence of tribal leaders, their stories created a compelling motivation for intervention to address unfair treatment at the hands of judges and child welfare officials.

Legislative Goals of ICWA

In response to the overwhelming evidence of a crisis in the Indian child welfare system, the framers of ICWA pursued three policy initiatives: the protection of children from undue state harm, the recognition of a special status of Native Americans, and the elevation of tribal sovereignty.

The intentions of ICWA's sponsors and early supporters were strongly tied to the wellbeing of the individual children. Throughout the hearing, testimony from tribe members was frequently cited as strong evidence in support of federal intervention. Their personal accounts of trauma and pain served as a powerful motivating force. They aimed to halt the "tyranny of social work" that had taken so many children from their families unnecessarily, as described time and time again in the 1974 hearings.[92] Professional witnesses echoed this concern for the wellbeing of each child. For example, psychiatrists described the harmful effects of removal and separation from culture on children as individuals. There was a clear intention to end the injustice so clearly articulated by witnesses on behalf of the children and families subject to its devastating consequences.

A second intention of the bill's proponents was to explicitly tailor the legislation to the unique crises facing Native Americans, including the large number of out-of-tribe adoptions of

[91] U.S Congress, Senate, Committee, *Indian Child Welfare Program,* 44.
[92] U.S Congress, Senate, Committee, *Indian Child Act of 1977,* 184.

children to white families. Addressing this issue would not merely protect the wellbeing of individual children, but also the longevity of the tribe. According to anthropologist Pauline Turner Strong, the law itself helps preserve and strengthen tribes through its "radical challenge to an individualistic conception of best interest by recognizing the interest of tribes in their children and of children in their tribes."[93] While advocates of the Indian Child Welfare Act certainly were concerned about the lives of the individual members of the tribe, they also recognized that ensuring the continuity and coherence of the entire tribal community would benefit all involved.

Opposition to the bill, according to the Senate records, came from parties with a substantial interest in the private adoption of Indigenous children. For example, representatives from the Church of Jesus Christ of Latter-Day Saints opposed certain aspects of the bill because they facilitated the adoption of Native children in Western states such as Utah.[94] Other opposition came from the Department of Interior and the Department of Health, who agreed with the concepts of S. 1214 but suggested that S. 1D28, a national child welfare bill proposed by the administration, would obviate the need for separate legislation.[95] However, in light of the specific challenges facing Native Americans as outlined in previous hearings, the committee affirmed their support for separate legislation to adequately address the crisis. This indicates the sponsors' explicit support for legislation tailored to the specific circumstances of tribal communities.

Representatives from the Department of Health, Education, and Welfare, as well as the Bureau of Indian Affairs, advocated for a broad national child welfare reform bill in place of ICWA.[96] Acknowledging the many failures of the child welfare system, especially those targeting children of color, they argued that a more comprehensive bill would be sufficient to protect

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[93] Pauline Turner Strong, "What Is an Indian Family? The Indian Child Welfare Act and the Renascence of Tribal Sovereignty." *American Studies* 46, no. 3/4 (2005): 205-31. Accessed January 25, 2021. http://www.jstor.org/stable/40643897.
[94] U.S Congress, Senate, Committee, *Indian Child Act of 1977,* 193.
[95] U.S Congress, Senate, Committee, *Indian Child Act of 1977,* 193.
[96] U.S Congress, Senate, Committee, *Indian Child Act of 1977,* 53.

Native American children. In response, tribal representatives expressed their opposition to the very notion that a general reform would adequately address the decades, even centuries, of systemic abuse.[97] Instead, they reiterated the need for a strong intervention specifically on behalf of the Native American population.

The third essential intention of ICWA was the increased sovereignty of the tribe. Senator James Abourezk (D-SD) articulated his justification for sponsoring the Indian Child Welfare Act legislation: there was no "reason to believe that the Indian community itself [could not], within its own confines, deal with problems of child neglect when they [did] arise."[98] Recognizing the racial and cultural bias of the state child welfare officials, the advocates testifying before the House and Senate called upon their many areas of expertise to reiterate Abourezk's goal: to guarantee the tribe's right to implement their own systems of child welfare. Bertram Hirsch, staff attorney for the Association of American Indian Affairs, argued that the jurisdiction of tribes included the right "to decide their own domestic relations problems."[99] Furthermore, the vast inequality of political power between the States and the tribes necessitated federal intervention to expand tribal influence. Later in the hearing, Dr. Joseph Westmeyer, a psychiatrist at the University of Minnesota, reiterated that "Indian leadership" is the "most useful" in solving the child welfare crisis.[100] Dr. Gurwitt and Dr. Mindell offered specific recommendations on behalf of tribal sovereignty: "when it comes to standards, when it comes to funding, when it comes to channeling funding, we hope that the primary vehicle is the tribal government and the tribal court."[101] One tribal social worker asked succinctly: "Why not let Indian people run their own show for a change? They [could] do it a lot better than any other agency [could]."[102] And yet

[97] U.S Congress, Senate, Committee, *Indian Child Act of 1977.*
[98] U.S Congress, Senate, Committee, *Indian Child Welfare Program,* 1.
[99] U.S Congress, Senate, Committee, *Indian Child Welfare Program,* 35.
[100] U.S Congress, Senate, Committee, *Indian Child Welfare Program,* 47.
[101] U.S Congress, Senate, Committee, *Indian Child Welfare Program*, 58.
[102] U.S Congress, Senate, Committee, *Indian Child Act of 1977,* 78.

another witness described the act as "refreshing and energizing" merely because it permitted "the specific involvement of Indian tribes in the care of our own children."[103] Having lost faith in the state's ability to protect Indian children, tribes appealed for the federal government to affirm their own sovereignty over child welfare matters.

The direct connection between the systemic removal of children and the cultural bias of the child welfare workers choosing to remove them reaffirmed the significance of tribal sovereignty. By attributing much of these failures to the state's "premise that most Indian children would really be better off growing up non-Indian," ICWA proponents strengthened the role of the tribe.[104] Because, they argued, families should be evaluated "within the context of their cultural environment," tribes were attributed a unique ability to understand the values and customs of their people.[105] Even those in opposition to this specific legislation acknowledged that welfare workers failed to "understand what it was like for an Indian child to grow up in an Indian home" and thus unjustly removed them.[106] Rather than attempting to correct the ignorance of white child welfare officials, tribal leaders instead argued that they should assume the responsibility for such welfare interventions.

Later debate surrounding the details of the act further illustrates the intention to strengthen tribal sovereignty. Put even more simply, the law "[clarified] the allocation of jurisdiction over Indian child custody proceedings between Indian tribes and the States" in favor of the tribes.[107] On February 9th and March 9th of 1978, the House of Representatives Committee on Interior and Insular Affairs conducted their own hearings on the Native American child welfare crisis. Representative Morris Udall of Arizona led the committee's investigation.

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[103] U.S Congress, Senate, Committee, *Indian Child Act of 1977,* 122.
[104] U.S Congress, Senate, Committee, *Indian Child Act of 1977,* 1.
[105] U.S Congress, Senate, Committee, *Indian Child Act of 1977,* 50.
[106] U.S Congress, Senate, Committee, *Indian Child Act of 1977,* 73.
[107] Morris Udall, speaking on H.R. 12533, on October 14, 1978, 95th Cong., 2nd sess., Congressional Record 124.

Their report, submitted to Congress on July 24th of that year, summarized the key testimony in both support and dissent of the law.[108] After a thorough exploration of this background, the committee addressed the constitutionality of the bill. Primarily, the Department of Justice claimed that the bill infringed on the state's jurisdiction over Native American populations.[109] In response, the committee presented a variety of judicial evidence demonstrating Congress's unique influence over Indian affairs, regardless of whether the legislation only applied to reservations or active members of the tribe. Ultimately, the committee presented evidence that the legislation aligned with Congress's duty to "protect and preserve the future and integrity of Indian tribes by providing minimal safeguards with respect to State proceedings for Indian child custody."[110] After establishing its constitutionality, final versions of the bill reflected the suggestions of the Department of the Interior and the Department of Justice. The explicit support for the jurisdiction of the tribe affirms the sponsors' intention to strengthen tribal sovereignty through child welfare administration.

On November 8th, President Jimmy Carter officially passed the bill into law. In its final iteration, the Indian Child Welfare Act of 1978 established new standards for the removal of Native children from their families. The standards were intended to "reflect the unique values of Indian culture" and provided "assistance to Indian tribes in the operation of child and family service programs" across the United States.[111] Specifically, the act granted absolute jurisdiction to tribes for the custody proceedings of Native children who lived on tribal land as well as some

[108] U.S. Congress, House, Committee on Interior and Insular Affairs, Report on "Establishing Standards for the Placement of Indian Children in Foster or Adoptive Homes, To Prevent The Breakup of Indian Families, and for Other Purposes," 95th Congress, 1978, 1.
[109] U.S. Congress, House, Committee, "Establishing Standards for the Placement of Indian Children," 17.
[110] U.S. Congress, House, Committee, "Establishing Standards for the Placement of Indian Children," 17.
[111] Indian Child Welfare Act, 25 U.S.C. § 1902 (1978)

jurisdiction for children not living on tribal lands.[112] Additionally, it required the state to provide supportive or 'rehabilitative programs' necessary to prevent the breakup of Native families.[113]

Once measures to keep children in their home were deemed unsuccessful by the court, the act also provided protections for their foster care placement and adoption. Most importantly, preference was given to a placement with a member of the child's family, a foster home approved by the tribe, or another Native foster family, or at the very least an institution approved by the tribal government.[114] These standards should be rooted in "the prevailing social and cultural standards of the Indian community" of the child and their family.[115] In an attempt to decrease the number of children interacting with the child welfare system, the act also allocated funds for tribes to provide services to families outside of the reservation.[116] Finally, ICWA called for "culturally competent persons to provide qualified expert testimony in Indian child custody proceedings" in state proceedings, serving as an advocate on behalf of the greater interests of the tribal community.[117]

Rather than merely amending the state systems, the law granted complete jurisdiction to tribes of any child living on a reservation.[118] Even state-initiated cases must be transferred to the tribe when concerning a tribal child.[119] The emphasis on tribal sovereignty over an individual-family approach reflected the unique ability of tribes to understand the complex dynamics of their populations. Notions of tribal sovereignty, rooted in the distinct cultural and societal norms of tribes, guided the sponsors of the Indian Child Welfare Act.

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[112] Indian Child Welfare Act, 25 U.S.C. § 1911 (1978)
[113] Indian Child Welfare Act, 25 U.S.C. § 1912 (1978)
[114] Indian Child Welfare Act, 25 U.S.C. § 1915 B (1978)
[115] Indian Child Welfare Act, 25 U.S.C. § 1915 D (1978)
[116] Indian Child Welfare Act, 25 U.S.C. § 1931 (1978)
[117] Bureau of Indian Affairs, 1979 in Crofoot and Harris, "An Indian Child Welfare Perspective on Disproportionality in Child Welfare."
[118] Indian Child Welfare Act, 25 U.S.C. §1911a (1978)
[119] Indian Child Welfare Act, 25 U.S.C. §1911b (1978)

V. Implementation of ICWA

ICWA's success is often evaluated according to the number of Indian children in foster care and adoptive homes. The continued overrepresentation of Native children, estimated to be approximately 2.6 times greater than white children, is correspondingly used as evidence to deem the legislation a failure.[120] Meanwhile, the majority of public interest surrounds the private adoption of tribal children. The media campaigns of adoptive parents, upset with the more stringent legal process, frame ICWA as a disruptive measure which keeps Indian children out of loving, stable homes.[121] Together, these common portrayals neglect the underlying intentions, and subsequent strengths, of the Indian Child Welfare Act.

In the years immediately following the Indian Child Welfare Act's passage, empirical evidence suggested that outcomes had improved for Native children in the child welfare system. However, the specific effects of ICWA legislation were obscured by general reforms to the child welfare system. Just two years after the Indian Child Welfare Act of 1978, lawmakers and advocates became "increasingly concerned" that all children, not just Native American children, "were being removed from their homes unnecessarily" and that "inadequate efforts were made to either reunify them" with their parents.[122] Thus, they passed the Adoption Assistance and Child Welfare Act requiring that 'reasonable efforts,' rather than ICWA's 'active efforts,' be made to provide prevention and reunification services for all children.[123] Immediately following this provision, the number of total children in foster care along with the average time spent in foster care, decreased nationwide for a few years in the early 1980s.[124] Overall, the placement of Native children in Native homes appeared to have increased, while the placement of Indian children in

[120] Puzzanchera, C. and Taylor, M. (2020). Disproportionality Rates for Children of Color in Foster Care Dashboard. National Council of Juvenile and Family Court Judges.
[121] Dallas Pettigrew, MSW, Interview by Author, Zoom, October 16, 2020.
[122] Murray and Gesiriech, "A Brief Legislative History of the Child Welfare System."
[123] Reasonable efforts, those differing from
[124] Murray and Gesiriech, "A Brief Legislative History of the Child Welfare System."

substitute care for vague reasons of neglect appeared to be less predominant.[125] Census surveys, American Association on American Indian Affairs records, and the Bureau of Indian Affairs report from the 1980s demonstrate this initial success. From 1975 to 1986, the average state foster care rate of Indian children decreased from 32.38 per 1,000 to only 17.50 per 1,000.[126] Furthermore, the discrepancy between adoption rates of white and Native children narrowed during those same years. Together, the decreased foster care placement and decreased adoption rates of Native children indicate that fewer children were being removed from their homes initially, fewer children were placed with white families, and fewer parental rights were terminated. Meanwhile, the discrepancy of foster care placement rates, while originally six times higher for Native children, dropped to three times higher by 1986.[127]

Additionally, just a decade after its first implementation, researchers claimed that tribes enjoyed increased sovereignty in child welfare. The statistics suggest that Indian tribes had "achieved substantial control over the foster care and adoptive placement" of Indian children, as articulated by social worker Ann E. MacEachron.[128] Many researchers claim there has indeed been a shift in the perception of Native children and the treatment of tribal communities in court. Rather than focusing on short-term interventions for families that revolve around "the best interests of the children," ICWA allows for the necessary "self-determination" that ensures the collective wellbeing and survival of the tribe.[129] In doing so, the Native child welfare policy was seemingly at odds with the nationwide focus on the prioritization of the rights and wellbeing of the child as an individual, rather than within the context of a wider community. When implemented successfully, Native welfare programs focus on strengths such as the

[125] MacEachron et al., "The Effectiveness of the Indian Child Welfare Act of 1978," 459.
[126] MacEachron et al., "The Effectiveness of the Indian Child Welfare Act of 1978," 457.
[127] MacEachron et al., "The Effectiveness of the Indian Child Welfare Act of 1978," 458.
[128] MacEachron et al., "The Effectiveness of the Indian Child Welfare Act of 1978," 458.
[129] MacEachron et al., "The Effectiveness of the Indian Child Welfare Act of 1978," 160.

"interdependence of extended family, mutual respect and mutual help from family members, and the esteemed role of tribal elders in leadership, discipline, and spiritual guidance" rather than traditional white standards of familial relationships, according to sociologists Anthony McMahon and Ernest N. Gullerud.[130] Ultimately, these scholars believe that ICWA serves as the underlying legislative framework of the complex relationship between Native tribes and state governments in providing child welfare services to their citizens. By acknowledging the continuation of the systemic bias against Native Americans in the child welfare system, ICWA provides the legal foundation for efforts to mitigate the discriminatory separation of families and destruction of tribes.

Despite these early successes, statistics suggest that while the rate of Native placement in state foster homes had decreased following 1978, it remains disproportionally high.[131] Many of today's practitioners point to inconsistencies in the application of the law as its biggest weakness. According to George, compliance with the law by state governments and child welfare courts nationwide is incredibly varied. One potential reason for this noncompliance is the underlying "continued commitment to assimilation" leading to a "general lack of appreciation of the need for this specialized legislation."[132] As adherence has decreased, the placement of Native children in foster care has increased.[133] Furthermore, the funding for the rehabilitative services and experts necessary to thoroughly uphold the law has not been adequate.[134] The tribes' right to govern their own child welfare, and the welfare of their members, remains at odds with the national policy of individual-based best interests of children.[135] Despite some improvement,

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[130] McMahon & Gullerud, 1995 in Crofoot and Harris, "An Indian Child Welfare Perspective on Disproportionality in Child Welfare."
[131] Hines, et al., 2004 in Crofoot and Harris, "An Indian Child Welfare Perspective on Disproportionality in Child Welfare."
[132] George, "Why the Need for the Indian Child Welfare Act?," 165.
[133] Crofoot and Harris, "An Indian Child Welfare Perspective on Disproportionality in Child Welfare."
[134] Crofoot and Harris, "An Indian Child Welfare Perspective on Disproportionality in Child Welfare."
[135] MacEachron et al., "The Effectiveness of the Indian Child Welfare Act of 1978," 460.

social workers continue to be more likely to designate Native children as neglected for issues if their parents receive public assistance or use alcohol.[136] Native children are also placed in punitive circumstances, such as juvenile detention, more often than other groups.[137] Despite the law demanding 'active efforts' to protect Indian families, they are still more likely to be disrupted permanently. The neglect of Native children, when compared to white children, is more often associated with foster care placement, juvenile court petition, alcohol abuse of child or caretaker, violence in the family, and family receipt of public assistance.[138] Overall, white children are more likely to receive family preservation services. These discrepancies in the treatment of Native and white children demonstrate that ICWA has not been fully effective in mitigating child welfare discrimination.

One major issue with ICWA's implementation according to Juli Skinner, a social worker and Senior Director of Behavioral Health for the Cherokee Nation, is the application of the Indian Child Welfare Act within reservations and state courts. Recalling her own experience with the child welfare system and ICW protections, she explained that the law was incredibly formative in shaping her relationship with her parents, her family, and her tribal community. Having spent the last thirteen years working with the Cherokee Nation child welfare services, she identifies differing approaches to cases involving children in custody of the tribe and "out of district" cases in state operated counties.[139] Out of district cases not only require extensive resources from the tribe, such as travel time and case workers, but also rely upon inconsistent notification systems. Oftentimes, tribes are not made aware of child welfare cases until it is too late.[140] Ultimately, according to Skinner, ICWA is most successful in giving tribes the legal

[136] Fox, "Are They Really Neglected?," 80.
[137] Fox, "Are They Really Neglected?," 80.
[138] Fox, "Are They Really Neglected?," 80.
[139] Juli Skinner, MSW, Interview by Author, Phone, November 23, 2020.
[140] Juli Skinner, MSW, Interview by Author, Phone, November 23, 2020.

grounds to represent and intervene on behalf of their children. Regardless of the consistency or reliability of notification, or the reception to tribal input, ICWA is the strongest guarantor of the tribe's right to even be involved in child welfare proceedings.[141] The fault, however, lies in the state's failure to uphold the same standards as tribal courts. Decisions about removing children and foster care placement, for example, are often made quickly and without consideration of ICWA's guidelines. While tribes rely on ICWA as the basis for their tribal welfare court and service system, the state programs are not nearly as reliable.

A second inconsistency of ICWA's implementation is that jurisdictions apply the legislation inconsistently. Dallas Pettigrew, a social worker at the University of Oklahoma, explained that the legislation remains vulnerable to issues of enforcement and application.[142] An overturned case involving any of the 574 tribes throughout the United States might result in the law's debasement. And in most cases, according to Pettigrew, the tribe's interest is ignored in court in favor of the interest of the natural parents.[143] It is difficult for the tribe to assert their influence if the child, or parents, are not actively involved in the community's culture. The lack of an enforcement mechanism, such as financial or criminal penalties for ignoring ICWA, further limits the accountability of state child welfare systems. While ICWA might be one of the strongest guarantors of tribal sovereignty, its effectiveness will be weakened so long as courts and government agencies continue to apply the law inconsistently.[144]

One example of this inconsistency is the varied national implementation of the standard of 'active efforts.' As opposed to the usual 'reasonable efforts,' active efforts are interpreted to heighten the threshold for both removing children from the home and increase resources to return

[141] Juli Skinner, MSW, Interview by Author, Phone, November 23, 2020.
[142] Dallas Pettigrew, MSW, Interview by Author, Zoom, October 16, 2020.
[143] Dallas Pettigrew, MSW, Interview by Author, Zoom, October 16, 2020.
[144] Anita Fineday, Retired Tribal Judge, Interview by Author, Phone, November 28, 2020.

them to their families. However, courts across the country have interpreted the meaning of 'active' and 'reasonable' efforts differently. While some states, such as California and Colorado, do not distinguish the two terms, states such as Oklahoma interpret this mandate to be a higher standard of support.[145] But regardless of the distinction, testimony from tribal leaders indicated that state social workers have not actually provided 'active efforts' to Native families.[146] This is a clear failure to the law's implementation rather than its intention. ICWA's sponsors and supporters explicitly called for the heightened standard of 'active efforts' rather than simply making supportive welfare services available to tribes. In fact, an earlier version of the law was revised to include the specific phrase "active efforts" in an attempt to clarify the higher standard.[147] According to Scanlon, Congress tied the purpose of active efforts to the "varying societal and cultural norms of Indian tribes and Indian families" rather than more broad child welfare standards.[148] This language, instead of mandating equality among groups, acknowledged the key differences between a white standard of family life and tribal standard of family life. Rooted in their overarching aim to keep Indian children within the tribe, this aspect of the legislation enacts higher thresholds for the targeted tribal population.

A third significant inconsistency of the law is its application across individual social workers and child welfare officers also apply the law inconsistently. In fact, Emilee Morris, a former child welfare investigator in Tulsa County, provided a stark example of the limitations of ICWA protections. While she reiterated the significance of having tribal workers operating in court cases and voicing the concerns of the tribe, she also articulated the inconsistency of this consideration. During the most important decisions, the legislation only serves as a brief

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[145] Scanlon, Megan. "From Theory to Practice: Incorporating the Active Efforts Requirement in Indian Child Welfare Act Proceedings Comment." *Arizona State Law Journal* 43, no. 2 (2011): 629–64.
[146] Scanlon, "From Theory to Practice." 640
[147] Scanlon, "From Theory to Practice." 631.
[148] Scanlon, "From Theory to Practice."655

check.[149] In many instances, welfare workers wait until after the decision is made to remove a child from their home before asking if they are a member of a tribe.[150] Rather than protecting children from being removed in the first place, as the law intends, the legislation merely dictates the order that foster parents are pursued.

Terry Cross attributes some of this disconnect to the gap between the act's intentions and the actual training and values of the child welfare worker. He notes that "ICWA is chock full of places people have to make decisions."[151] The decision to first remove a child from their home is perhaps the most important. According to Cross, child welfare services should prioritize keeping children with their parents. When removal is deemed necessary, the agencies must then support families and seek to reunite them as soon as possible. ICWA is considered to be the gold standard of child welfare for this very reason: requiring active efforts to reunite families. Still, some state-operated systems resist ICWA's stipulations. Rather than acknowledging a higher threshold to keep children in the home, programs skip to foster and adoptive placement. Nonetheless, some improvements have been made as a result of tribal advocacy. Local laws, such as the Oklahoma Child Welfare act, outline more stringent requirements for the state and adoption agencies to notify tribes.[152]

A fourth implementation failure of the Indian Child Welfare Act is the consistency of "grants for on or near reservation programs."[153] These tribal-run programs, according to the language of the act, must be aimed at preventing "the breakup of Indian families" and making permanent removal a "last resort."[154] Examples of such programs, to be funded according to

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[149] Emilee Morris, Former Tulsa County Child Protective Service Investigator, Interview by Author, Zoom, October 29, 2020.
[150] Emilee Morris, Interview by Author, Zoom, October 29, 2020.
[151] Terry Cross, Interview by Author, Zoom, November 13, 2020.
[152] Terry Cross, Interview by Author, Zoom, November 13, 2020.
[153] Indian Child Welfare Act, 25 U.S.C. §1931 (1978)
[154] Indian Child Welfare Act, 25 U.S.C. §1931 (1978)

ICWA, include "family assistance, including homemaker and home counselors, day care, after-school care, and employment, recreational activities, and respite care, education and training," all of which serve to strengthen tribal welfare programs.[155] The law also outlined research pertaining to issues directly associated with Indian child removal, such as the proximity of schools to reservations.[156]

The success of these programs, however, is limited. While some tribes have extensive programming and services, similar to that of the states, funding remains inconsistent and insufficient. According to Terry Cross, a large portion of tribal welfare work is concerned with petitioning for access to the same funding sources as nearby state offices. This lack of funding "has proven to be one of the most serious barriers to tribes' ability to protect their children."[157] Even in the years immediately following the passing of the law, the federal government granted only $8-9 million rather than the estimated $25-35 million necessary for successful implementation.[158] MacEachron echoes the unpredictability of ICWA funding, which is essential to support the "courts, government, and services" that enable tribal sovereignty.[159] The federal government's failure to implement funding programs has thus impeded the strengthening of tribal surrounding child welfare and more generally.

The financial neglect of Indian child welfare services continues today. According to the National Indian Child Welfare Association, tribal governments receive 1% of federal child welfare funds (approximately $140 million) despite representing 2% of the population.[160] Of that funding, a majority ($74.8 million) is reserved for services that support removing children from

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[155] Indian Child Welfare Act, 25 U.S.C. §1931 (1978)
[156] Indian Child Welfare Act, 25 U.S.C. §1952 (1978)
[157] Terry Cross, *Tribal Child Welfare Funding; 18 Years After ICWA*, National Indian Child Welfare Association, 4.
[158] Cross, *Tribal Child Welfare Funding; 18 Years After ICWA*, 6.
[159] MacEachron et al., "The Effectiveness of the Indian Child Welfare Act of 1978," 460.
[160] National Indian Child Welfare Association, "Funding Child Welfare Services," Retrieved from https://www.nicwa.org/wp-content/uploads/2018/11/Funding.pdf

their homes. Meanwhile, ICWA-specific services, intended to preserve families, make up about $18.9 million of this funding.[161] The inconsistency of child welfare funding does not provide stable support necessary for intervention.

These issues with ICWA's implementation, identified by contemporary practitioners, demonstrate the failure of the legislation to fulfill the intentions of its original sponsors. State courts' inconsistent implementation limits the effectiveness of the legislation and stretches tribal resources even further. Inconsistent application across states further weakens its legal and cultural influence. The failure of individual welfare workers to consistently apply the law's framework further endangers Native families. Despite providing the legal grounds for tribe-operated services, funding remains limited. Native families remain disproportionately targeted by child welfare systems and thus continue to suffer from undue family separations. Still, despite these numerous limitations, the law remains as a valuable contribution to Indian child welfare. A recognition of both the tribe's unique circumstances and the systemic discrimination by the United States government, the Indian Child Welfare Act stands as a bold declaration of legal tribal sovereignty.

VI. Wider Systems of Child Welfare

The implications of ICWA's support for tribal sovereignty ultimately extend beyond Native American child welfare. While deeply grounded in the specific history of Native Americans and the US government, ICWA affirms the value of community-specific child welfare interventions. ICWA's sponsors, in recognizing the unique circumstances of tribal families leading to overrepresentation and family separation, recognized the need to intervene on behalf of certain disproportionately targeted populations. Today, Black children experience heightened

[161] National Indian Child Welfare Association, "Funding Child Welfare Services," Retrieved from https://www.nicwa.org/wp-content/uploads/2018/11/Funding.pdf

child welfare involvement, including more frequent family separations and increased time in foster care.[162] Though differing in specific mechanisms of discrimination, both tribal populations and Black communities experience the individual and collective destruction of targeted child welfare involvement.

The history of African American child welfare highlights a common need for community-specific intervention. Like Native American populations, African American children experienced heightened rates of child welfare involvement as early as the 1970s.[163] As social workers Sau-Fong Siu and Patricia Turner Hogan explain, the overrepresentation of Black families in child abuse and neglect reporting has remained consistent for decades. Even while the number of white children in foster care has declined, the number of Black children has increased.[164] Much of this discrepancy, according to Hogan and Siu, can be attributed to overt discrimination by child welfare officials paired with a more covert maldistribution of preventative and intervention resources. Other research suggests that "the observed disparities may be...explained by differences in the *decision threshold* caseworkers use when making decisions to remove a child or provide services," where the "threshold is higher for Whites than for African Americans."[165] The trend, reflected since 1970, estimates that African American children represent 30% of children in foster care, although they represent only 15% of children in the general population.[166] Echoing the analysis of tribal advocates, Black families are overrepresented because of culturally biased standards and limited protection of children's and parent's rights.

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[162] Children's Defense Fund, *The State of America's Children 2020*. Accessed March 5th, 2020.
[163] Hawkins-Leon, "The Indian Child Welfare Act and the African American Tribe," 213.
[164] Hogan and Siu, "Minority Children and the Child Welfare System."
[165] Dettlaff et al., "Disentangling Substantiation."
[166] U.S. Department of Health and Human Services, 2010a in Dettlaff et al., "Disentangling Substantiation."

While the current crisis of African American welfare does not align with ICWA's specific intervention method, the history of both populations offers insight into the need for community-specific intervention and support. According to historian and social worker Jillian Jimenez, the history of child protection within African American communities is similarly incompatible with the child welfare services of the twentieth century.[167] Much like Native parents, Black communities did not adhere to the increasing legal obligation of parents to constantly monitor the development and wellbeing of their children.[168] Similarly to Native Americans, Black families, who were still struggling to survive economically and physically in harsh conditions throughout the country, developed alternate care methods. Instead of responsibility being held by two biological parents, the belief in shared community responsibility is central to Black child upbringing. The stability of the extended family, in which shared parenting was a common practice, extends to the "flexible kinship networks" as a means to combat the incredibly dehumanizing system of American slavery.[169] Grandparents, aunts, uncles, cousins, older siblings, and other family both directly assisted and provided input to through "a concentric circle of approval and disapproval to support or criticize the child rearing practices of a child's primary caretakers."[170] Family members offered assistance freely, whether through informal adoptions of children needing support or through more logistical economic support.[171] Parental roles, whether economic support, physical care, or instilling moral values, were not the permanent responsibility of one individual. Rather, these tasks might be split among many or regularly shift from one person to another.

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[167] Jillian Jimenez, "The History of Child Protection in the African American Community: Implications for Current Child Welfare Policies," *Children and Youth Services Review* 28, no. 8 (August 1, 2006): 888–905.
[168] Jimenez, "The History of Child Protection in the African American Community," 890.
[169] Jimenez, "The History of Child Protection in the African American Community," 892.
[170] Jimenez, "The History of Child Protection in the African American Community," 892.
[171] Jimenez, "The History of Child Protection in the African American Community," 898.

Child welfare agencies, however, disapproved of the extended family support structure. Even as government child welfare developed, African Americans were regularly excluded from their services.[172] The tradition of kinship care continues today, as 43% of all children in multi-generational households are African American.[173] While this extended family network remains essential to the wellbeing of this population, the government support for such structures is simply not adequate. State governments remain reluctant to fund programs that financially support relatives raising children because of the stigma of welfare programs as opposed to strictly child protective services. In her conclusion, Jimenez suggests a hybrid program in which kinship caregivers are supported without the permanent termination of parental rights currently required by family courts. Such a program, according to researchers, might preserve "the best parts of the informal child welfare system forged by African American communities" without contradicting the current guidelines of the federal system.[174] Instead, state politicians continue enacting punitive measures as a means of social control, a theme central to child welfare in the United States. Systems of intervention must shift to support the existing networks of community wellbeing.

The child welfare commonalities shared between African and Native American communities extend beyond kinship networks and communal child-rearing. During the period of ICWA's drafting in the 1970s, Black families experienced discrimination in the form of maldistribution of resources and unavailable services.[175] White Americans maintained control of resources to support children and families, thus inhibiting change within the system. Hogan explains that "a white controlled system could not meet the needs of the black child" effectively

[172] Jimenez, "The History of Child Protection in the African American Community," 899.
[173] Jimenez, "The History of Child Protection in the African American Community," 902.
[174] Jimenez, "The History of Child Protection in the African American Community," 902.
[175] Jimenez, "The History of Child Protection in the African American Community," 900.

and fairly.[176] Without systems explicitly designed to address the unique challenges facing African American families, white agencies and offices were able to maintain discriminatory practices covertly. Rather than supporting Black families, the early child welfare system judged them according to the standards of white communities.

The discrimination of the 1970s has persisted. Thirty years later, Robert B. Hill, a researcher and sociologist, explained that child welfare remained rooted in structural racism. According to the Children's Defense Fund 2020 report, there are 20 states in which the percentage of Black children currently in foster care is over twice the percentage of Black children in the population.[177] Despite a lack of evidence that Black families maltreat their children more than white families, Black children are removed from their home and placed in foster care more frequently. At every stage of the decision process, white social workers are more likely to make decisions that harm Black families. Black families are more likely to be reported, more likely to be placed in foster care (than comparable white families), and less likely to receive stipends or social services.[178] Also similar to Native American groups, Black families are frequently separated due to external social conditions such as incarceration, poverty, and substance abuse. Already more prevalent in Black communities, these circumstances are used as a justification for child removal without meaningful intervention. The system continues to demonstrate bias through its reporting mechanisms, inequity in services rendered, and limited funding. All of these decisions, according to researchers, contribute to the favoring of parental termination and adoption within Black communities.[179]

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[176] Hogan and Siu, "Minority Children and the Child Welfare System," 494.
[177] Children's Defense Fund. *The State of America's Children 2020.* Accessed March 5th, 2020. https://www.childrensdefense.org/policy/resources/soac-2020-child-welfare/
[178] R. B. Hill, An analysis of racial/ethnic disproportionality and disparity at the national, state, and county levels. *Casey-Center for the Study of Social Policy Alliance for Racial Equity in Child Welfare, Race Matters Consortium Westat.* (2007).
[179] Hines, Lemon, Wyatt, & Merdinger, 2004 in Jimenez, "The History of Child Protection in the African American Community," 889.

Although the overrepresentation of Indigenous children culminated in the Indian Child Welfare Act, a similar approach is not likely for Black Americans. Minority children, according to Hogan, will continue to receive state intervention more often than white children because of "racism and socioeconomic realities."[180] In 1972, the Association of Black Social Workers advocated that "Black children should be placed only with Black families in foster care or for adoption" to preserve "their sense of values, attitudes, and self-concepts within their family structure."[181] Echoing ICWA hearing testimony of the significance of growing up in tribal families, Black social workers tied Black identity to family upbringing and socialization. Despite this advocacy, the federal government has resisted race-specific intervention. One significant piece of legislation, the Multi-Ethnic Placement Act of 1994, "prohibited states from delaying or denying adoption and foster care placements on the basis of race or ethnicity."[182] With express advocacy from groups like the National Indian Child Welfare Association, the language of the act maintained the right of states to consider race and ethnicity in making placement decisions, such as for tribal children. But without the special relationship to the federal government, including the ability to negotiate treaties, there is little constitutional or precedential foundation for an ICWA-like community-specific intervention for Black Americans.

The sovereignty of tribal governments, preserved through their unique relationship with the federal government, is simply not afforded to African American communities. Still, the histories of Black and Native American child welfare share many challenges and themes. For instance, the kinship networks of Black families strongly echo the tribal community network of Native Americans. Furthermore, racial discrimintation results in heightened family separations and neglect charges in both groups. The imposition of white middle-class values, backed by a

[180] Hogan and Siu, "Minority Children and the Child Welfare System," 495.
[181] Myers, "A Short History of Child Protection in America," 458.
[182] Murray and Gesiriech, "A Brief Legislative History of the Child Welfare System."

punitive system of legal enforcement, failed to properly support these communities as well. But the foundation of ICWA, the acknowledgement that the government of the United States is failing certain populations which require tailored intervention, is not so singular.

VII. Conclusion

The Indian Child Welfare Act originated as a means of addressing the removal and separation of Native children from their parents, their tribe, and their entire community. In light of historical assimilationist policies, such as invasive boarding school programs, advocates and representatives pursued legislation to intervene in such systematic destruction of communities. The resulting act granted restrictions on the placement of Indian children, a higher standard of efforts before the removal of children from their parents, and the ability for tribes to operate their own child welfare programs. Deeply connected to the necessity of tribes to persevere through the involvement of their children, these efforts granted tribes the authority to combat external cultural and racial discrimination. Recognizing that the bias of white social workers and judges accounted for many wrongful removals, ICWA specifically increased the legal standard for removal. Perhaps most importantly, the law grants tribes the authority to administer their own child welfare programs and courts, thus completely eliminating the bias of non-tribal workers and increasing the tribe's sovereignty.

The implementation of the act, while initially successful, has widely failed to decrease the overrepresentation of Native children in the welfare system. Especially in state courts, ICWA is used as a guideline for foster care placement but fails to increase the threshold for removal or increase the support to tribal parents. Instead of empowering tribal influence and providing active efforts, state child welfare officials continue to remove Native children at an alarming rate. Despite the limitations of ICWA's inconsistent implementation, the legislation has fundamentally

shifted Native American child welfare. Returning to the intentions of the sponsors, the fundamental notion is that the tribes are best suited to maintain the welfare of their children. While concerned with the health and wellbeing of individual children, and the injustice of the widespread discrimination, it is ultimately the right of the tribe to provide input, to create community-specific programming, and to take an active role in protecting their children according to their tradition and culture. These intentions should continue to guide future reforms and consistent enforcement of Native child welfare.

Specific components of the legislation are uniquely suited to the legal rights of a tribe and its members. However, striking similarities between Native and Black families offer insight into the wider implications of the Indian Child Welfare Act's approach to child welfare reform. While Black communities lack the same formal structure and legal membership, they do reflect similar kinship networks of care and non-white parenting cultures. Despite the concrete incompatibility of the legal tribal population and the African American population, the shared history of overrepresentation and discrimination indicate an urgent need for further participation. The legislative history, academic literature, and insight of contemporary practitioners indicate the potential to both strengthen ICWA's protections for Native families and expand community-specific interventions to other overrepresented groups. For example, consistent enforcement of ICWA's active efforts standard might keep more children in their homes. A heightened standard for termination of parental rights might mitigate the pattern of racial and cultural discrimination. Stronger prioritization of kinship, tribal, and community placement when determining foster care might address the dangers of removal and help to preserve children's identities. The incorporation of expert testimony from community-specific representatives in the courtroom, even if not an officially recognized party, might improve judicial recognition of bias.

Child welfare support extended to kinship caregivers, such as aunts and grandparents and cousins helping to raise children, might prevent unnecessary removal from families. Foster care placement with extended family members without the termination of parental rights, as described by Dallas Pettigrew, might preserve the valuable relationship between children and their parents while offering tangible support. Future study, implementation, and expansion of such strategies should continue to prioritize the unique circumstances of overrepresented communities.

Ultimately, the core of the Indian Child Welfare Act, as evidenced by the intentions of its sponsors, is the notion that communities are uniquely suited to effectively implement child welfare on behalf of their members. A return to ICWA's purpose, increasing tribal sovereignty in the child welfare system, offers the most compelling framework for community-specific interventions across American child welfare.

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