

Bolstering the Indian Child Welfare Act

By Olivia Daprile

Advocates' Forum

Land Acknowledgement

Illinois is the territory of Ho-Chunk, Miami, Inoka, Menominee, Sac, and Fox tribes and their descendants. It is currently home to more than 75,000 tribal members. The Chicago metropolitan area is home to one of the largest and most diverse urban Native communities in the United States.

By making this land acknowledgement, I recognize that Indigenous peoples are the traditional stewards of the land we now occupy, having lived here long before Chicago was a city. As we work, live, and play on these territories we must ask what we can do to right the historic wrongs of colonization, state violence, and support the Indigenous communities living here and those engaged in the struggle for self-determination and sovereignty.

Abstract

From 1960 through 1980, roughly 25–35 percent of Indigenous American children were removed from their families and placed in foster care, adoptive homes, or institutions, most of which were outside of their original communities and family systems. With the passage of the Indian Child Welfare Act (ICWA) of 1978, these numbers decreased, but contemporary studies conducted by the National Indian Child Welfare Association confirm there is still an alarming disproportionality of Indigenous children in foster care (NICWA, 2017). These high rates of family separation cause

irreparable harm to Indigenous American communities in every state and can be traced to increased rates of poverty and mental illness, and a decrease in upward mobility and quality of life. This level of disproportionality is unacceptable but can be remedied with strengthened relationships between the Bureau of Indian Affairs (BIA) and state-level Departments of Children and Families through the implementation of a formalized Department of Indigenous American Child Welfare.

For almost three centuries, the destruction of Indigenous American families has been normalized through the state-sanctioned removal of children from their homes. As a 1966 Bureau of Indian Affairs press release put it, “One little, two little, three little Indians—and 206 more—are brightening the homes and lives of 172 American families, mostly non-Indians, who have taken the Indian waifs as their own” (BIA, 1966). Given the cavalier attitude expressed here, it is no surprise that Indigenous children are overrepresented in foster care at 2.7 times the rate of their proportion in the general population. In some states this disproportionality increases to 4, 8, or even 17 times the rate of Indigenous children in the general population (NICWA, 2017).

Taken from their biological families and culture, these children have been far more likely than other children to suffer short- and long-term health problems and eventually grapple with homelessness and extreme poverty. “A childhood history of placement in the foster care system makes the emerging adult period more complicated and problematic in a variety of ways including meeting basic needs, such as housing and health” (Yen, 2009). Indigenous family destruction has long implicated American social workers tasked with the processes of child removal and reintegration into foster care settings, adoptive homes, and institutions.

There are myriad historical and contemporary factors that contribute to this phenomenon. However, racial bias and a lack of cultural training in the American social work profession appear as

predominant causes. The presence of bias and the absence of cultural competency manifest in two ways. First, because of the extreme poverty on reservations and in Indigenous communities, social workers mistake a lack of family resources for symptoms of abuse and neglect (Akee, 2019). Second, child welfare workers from outside these communities can interpret family and cultural customs as negative or problematic for children when they are, in fact, neither of these things.

While data on the exact levels of Indigenous poverty is not clear (National Academies, 2019), childhood poverty among U.S. Indigenous communities has often exceeded 40% (Akee, 2019), and some of the poorest counties in the nation are home to reservations (DePietro, 2021). Not surprisingly, these rates of these rates of poverty for Indigenous communities stem from a lack of proximate employment opportunities. Indigenous Americans are often forced to travel for seasonal work. During this time, it is common for parents to place their children in the care of grandparents, aunts and uncles, cousins, or close family friends. Social workers then enter communities and misidentify poverty and the demands of available work as parental inability. When a child is removed, the family then must spend what remains of their limited time, energy, and resources seeking reunification. The cycle of poverty is in this way fueled.

Re-enforcing the lack of cultural awareness—whereby children are removed from stable, loving homes because social workers do not understand the cultural norms, expectations, family systems, or systemic components—is the notion that Indigenous children adopted by White families are being saved (Asgarian, 2020).

The Indian Child Welfare Act

The Indian Child Welfare Act (ICWA) of 1978 was a response to the extremely high rates of family separation—at the time, roughly a third of Indigenous children were being removed from their communities. Through the ICWA, Congress set in place requirements for state child custody proceedings involving Indigenous children, providing

reunification services and resources to Indigenous families, identifying placements according to ICWA preference provisions, notifying the child's tribe and parents about any child custody proceedings, and working actively to involve the parents in those proceedings. Since its passage, fewer children from Indigenous families are removed from their homes, but the ICWA nonetheless struggles with compliance. The legislation stipulates that funding be available through grants for preventative and reunification services, but there are no agencies or staff tasked with ensuring these resources are provided to families. Moreover, there is no federally mandated cultural training required for social workers serving these communities. This lack of oversight and training has constrained the legislation's potential. Indeed, between 2008 and 2015, the already high percentage of Indigenous children in foster care almost doubled (NICWA, 2017).

Expanding the ICWA

One way to address these trends in Indigenous family separation is for Congress to expand the Indian Child Welfare Act. Such an expansion might include creating a Department of Indigenous American Child Welfare within the Bureau of Indian Affairs (BIA) as a means of bolstering oversight. As a resource exchange for *all* child welfare workers employed by, or contracted with, any local, state, or federal government agency, it could serve a variety of vital roles.

First, it could generate cultural competency programming for all child welfare social workers assigned to these communities. Training might include the history of social work in Indigenous populations, tribal cultures, and various family systems. These trainings would be developed using a trauma-informed framework and would be mandatory for social workers in this field.

Second, it would be positioned to provide consultations on tribal cultures, ICWA, reunification resources, and adoption/post-adoption resources for all government child welfare workers with an Indigenous child on their caseload. Experts on tribal child welfare and

other relevant topics could be chosen by tribal governments and the BIA. Experts would receive legal training on ICWA, adoption education, and would be well-versed in resources for children in foster care. It could operate a phone hotline for social workers who need immediate consultation services in order to meet the needs of children, families, and workers at all hours.

Third, such a department could develop individualized Cultural Preservation Plans (CPP) for all Indigenous children eligible for tribal membership—a status to be determined and advised by professionals chosen by tribal governments and employed by the BIA. A CPP would help promote ties between the child and their culture in the event separation is warranted, avoiding to the degree possible what is known as Split Feather Syndrome and other negative outcomes of removal (Bryan, 2013). CPPs would be approved by tribal governments and include tailored requirements, such as biological family visitation, attendance of cultural events, and tribal membership approval. These CPPs can be modeled after those employed in the child welfare cases of Los Angeles County's American Indian Unit.

Fourth, the department could fill a void in our understanding of family situations by gathering data and disseminating statistics related to child welfare in Indigenous American communities and tribes. A specific data-collection unit could function similarly to the Adoption and Foster Care Analysis Reporting System (AFCARS) managed by the Administration for Children and Families under the Department of Health and Human Services. In addition, greater cooperation between states, tribes, and territories could generate greater case-level information to better identify any Native American or Alaskan Native child who has engaged with the foster care system (collections of this case information could be annual for the first five years and bi-annual beyond that).

Finally, such a department could provide a workforce training program on reservations so residents might eventually work near their homes, since one of the many goals of this proposed legislation is to

decrease poverty in Indigenous communities. Not only would this bring members of the community into the organization to promote economic growth on reservations and in urban spaces, but the incorporation of such expertise might also help bring some degree of greater trust between social workers tasked with child welfare and the populations within which they work.

Considerations

Because this legislation would create an entirely new department under the BIA with staff, physical offices, and other resources in a community that has historically been mistreated by the U.S. government, one of the biggest obstacles will be building that trust with participating Indigenous American communities. Any initiative taken must be done so with care and consideration as well as the consent of tribal governments.

Los Angeles County currently serves one of the largest urban populations of Indigenous people in the United States and according to the website of its Department of Children and Family Services, the “American Indian Unit provides culturally appropriate, case management services to American Indian children and families Countywide under the legal mandate of the Federal Indian Child Welfare Act (ICWA – Public Law 95-608).” The American Indian Unit is therefore one of the only specialized county-based programs to enforce ICWA compliance and provides a model for the expansion of this legislation. With regulated cultural training, education, and staff to hold law enforcement and DCFS accountable, this unique model has been successful in keeping Indigenous children in their homes and communities. The program has worked closely with local tribes to build symbiotic relationships and should be referenced in any proposed model of ICWA expansion.

Author Note

As an adoptee, from a young age I have been interested in the topics of child welfare, adoption, and foster care. I have now built my career around working towards systemic reform. I was inspired to dive into the Indian Child Welfare Act after learning about the movement to dismantle ICWA, which currently threatens this successful piece of legislation and tribal sovereignty as a whole. I have been moved by the many Indigenous resources on the topic, including the Crooked Media podcast series, *This Land*. I hope that you continue to educate yourself on this topic and follow the legal battle that lies ahead. In 2022, the Supreme Court of the United States agreed to hear *Brackeen v. Haaland*, the case that threatens the foundation that ICWA has built. Thank you.

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Author Biography

Olivia Daprile is a first-year master's student at the Crown Family School of Social Work, Policy, and Practice, pursuing a degree in Social Work, Policy, and Social Administration. With a deep interest in child welfare and policy, she has been practicing in the field since 2017 and hopes to continue this work in order to help reform deeply racist and flawed systems. She will graduate in 2023.

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