



Top: Apache children on arrival at Carlisle Indian School in Pennsylvania  
 Bottom: Same children four months later (photos taken by the US Army Signal Corps)

**ICWA AND THE WELFARE OF INDIAN CHILDREN**

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**the eagle who thought he was a chicken**

James Waldram, in *The Way of the Pipe*, recounts the story of an eagle who thought he was a chicken. As the story goes, one day a farmer found a wounded eagle and placed him out in the chickens' coop to recover. This eagle began mimicking the chickens to survive in his new environment. He ate like the chickens, slept like the chickens, and adopted the behavior of the chickens. Then one day an Indian man came by the farm and saw this eagle who thought he was a chicken.

So he said, "What's that eagle doing there in the chicken coop?" The farmer said, "Well, I found it in the ditch, mended its wing and put him in there.... The eagle can fly out any time. Its wing is healed.... He just thinks he's a chicken I guess."<sup>1</sup>

The farmer agreed to let this Indian man take the eagle out of the coop, but the eagle remained docile. He just kept bobbing his head like a chicken. The eagle no longer understood who he was, no longer identified as an eagle and appreciated the gifts that came with that identity.

So the Indian took the bird to the mountain and said, "You have to know who you are and what you stand for..." The eagle started to flex his wings. His keen eyesight started to return, and the strength in him started to come back. The eagle flew and soared and everything came back to him, who he was and that he wasn't a chicken. He gained everything he'd lost because of where he was placed.<sup>2</sup>

Many American Indian children are in a situation that parallels this story. Their removal from their homes and placement outside their tribal communities has led to a loss of identity. They often risk becoming eagles that behave like chickens. Tribal nations have struggled against state, county, and local agencies' attempts to remove their children and place them in non-

Indian homes, the symbolic chicken coop. Their fight to limit the destructive results of this mass removal led to the Indian Child Welfare Act (ICWA).

### building the chicken coop: the making of policy relating to american indians

Making up less than 1 percent of the United States' population, American Indians are often classified as racial minorities. However, American Indians possess a status that none of the other racial minorities can claim; they are indigenous to North America, and Indian tribes have a government-to-government relationship with the United States, formalized through treaty-making. Lumbee scholar David Wilkins, in his study of American Indian politics, found that

the pre-existence of well over six hundred independent tribal nations, bands, pueblos, etc., well in advance of the formation of the United States, each having a number of integral attributes, including a bounded land base, an appropriate economic system, a governmental system, and socio-cultural distinctiveness, necessitated the practice of aboriginal sovereigns negotiating political compacts, treaties, and alliances with European nations and later the United States.<sup>3</sup>

When the formal treaty-making process was ended in 1871,<sup>4</sup> US policymakers invoked the commerce clause of the US Constitution to redefine the political relationship between Indian tribes and the United States, acknowledging that direct power for dealing with Indians affairs rests ultimately with Congress, instead of the individual states.<sup>5</sup> This unique legal relationship has allowed tribal nations to petition the federal government for protection from state and individual interests. This relationship, according to Wilkins,

broadly entails the unique legal and moral duty of the federal government to assist Indian tribes in the protection of their lands, resources, and cultural heritage. The federal government ... is to be held to the highest standards of good faith and honesty in its dealings with Indian peoples and their rights and resources.<sup>6</sup>

Yet Congress has often utilized this power to create and implement policy that has proved detrimental in the lives of American Indians.

### entering the chicken coop: the removal of american indian children from their homes

In the 1880s the United States first imposed a federal boarding school policy intended to force American Indians to assimilate into American society, rather than segregating them by removing them from their lands and confining them on reservations, as was previous policy. The federal government had

realized that these reservation policies were proving too costly and ineffective as a means for solving their so-called Indian problem. Policy reformers began to see compulsory residential vocational education as a means of alleviating the US federal government of its trust responsibility to tribal nations and as a vehicle for integrating American Indians into American society. Then-President Chester A. Arthur, in his first annual message to Congress in 1881, preached this new national policy, asserting that the solution was "to introduce among the Indians the customs and pursuits of civilized life and gradually to absorb them into the mass of our citizens."<sup>7</sup> Congress followed suit, passing a law in 1882 that authorized the use of vacant army posts and barracks for Indian industrial training schools.<sup>8</sup> Ojibwe historian Brenda Child, in her study of early-20th-century boarding schools, explains, "The idea was conceived ... that boarding school education, which removed young children from their tribal environment, would 'civilize' and prepare Indians for citizenship while providing them with a practical, vocational education."<sup>9</sup>

But by the mid-1920s, boarding schools were being closed, perhaps indicating that the assimilation policy had been a "miscalculation of major proportions."<sup>10</sup> This massive "miscalculation" was highlighted in 1928, when the Institute for Government Research published "The Problem of Indian Administration," commonly referred to as the Meriam Report.<sup>11</sup> This report detailed the devastating effects federal Indian policies of land allotment and assimilation had had on tribal nations, calling for a reformation in Indian policy. In addition, the Meriam Report outlined the deplorable conditions of boarding school life for American Indian children, which were further publicized by a series of articles in *Good Housekeeping*. These articles urged the "American woman to recognize the many past and present injustices against Indians, one of the worst of which was removing children from their families to live and be reared in overcrowded, disease infested boarding schools where callous government officials overworked and starved their pupils."<sup>12</sup> The Meriam Report, coupled with this public attention on the failures in Indian education, led policymakers to shift away from their goal of assimilation and reconfigure their approach to Indian education.

Furthermore, by the 1940s, institutional living was recognized by social welfare agencies as detrimental to young children's development.<sup>13</sup> Adoption was considered to be better, since it provided children a permanent placement in the more "natural" familial arrangement. Unfortunately, many adoption agencies viewed minority (as well as handicapped and older) children as "hard to place." Various programs were created in the 1940s and '50s to promote the placement of these children. By the mid-1950s, the public had a growing interest in adopting American Indian children and both the Area and Central offices of the Bureau of Indian Affairs (BIA) began receiving many more letters inquiring into the possibility of doing so.<sup>14</sup> David Fanshel, who had an extensive background in adoption research, argued that this

increased desire in adopting American Indian children could likely be attributed to recent experiences of families adopting internationally being viewed as successful, as well as to a 1957 National Council of Protestant Churches study of the American Indian (37). This study resulted in increased attention to the children's general welfare—thought to be deplorable; Indian children's adoption into Caucasian families was seen as the suitable solution.

Out of a desire to promote the external placement of American Indian children, in 1958 the BIA and the Child Welfare League of America (CWLIA) established the Indian Adoption Project.<sup>15</sup> A nationwide survey conducted in 1957 showed that "there were approximately 1,000 Indian children legally free for adoption who were forced to live in foster homes and institutions because adoptive resources had not been found for them" (Fanshel, 35). The Indian Adoption Project placed approximately 395 Native children with Caucasian families during the course of 9 short years.<sup>16</sup>

In 1960 CWLIA asked Fanshel to conduct a study of 97 of the children placed through the Indian Adoption Project to determine how they had adjusted to their adoptions and to establish the characteristics and backgrounds of families who adopted outside their racial background. Prior to their adoption, the children "had been identified by social workers as being likely to spend their childhood years in intermediate living arrangements; a succession of foster homes or boarding schools seemed to be their fate" (Fanshel, iii). To be eligible for the project, the child had to be established as one-fourth or more Indian; the child had to be considered adoptable both physically and emotionally; and either the parent(s) had to release the child for adoption after careful casework counseling or, if the child was "abandoned" or "neglected" and was seen by social welfare agencies as needing permanent removal, the court had to assure the child's "adoptability." Any child meeting these criteria was referred for adoption by the program director, who worked as a liaison between the agency responsible for the child and the adoption agency until the child was adopted (Fanshel, 40).

Fanshel's study involved a series of interviews with adoptive parents and was structured with two goals in mind.

One goal was to develop systematic knowledge about the characteristics of the couples who adopted the children. It was hoped thereby to gain increased understanding of the phenomenon of adoption across racial and ethnic lines. A second objective was to develop a picture of the experiences encountered by the families and children for a five-year period after the children were placed. (iii)

If the interviewed parents felt positively about their decision to adopt transracially, and if this practice resulted in permanent placement with minimal developmental difficulties for the children, "agencies might thereby be encouraged to become increasingly venturesome in their placement policies"

(iii). However, because the children were all under the age of two when they were placed and thus less than seven years old at the time of the study, they were not interviewed for this study. It is, therefore, limited in its ability to discern the effects of transracial adoption on the children involved. Nevertheless, the study does lend insight into the transracial placement of American Indian children prior to the passage of the Indian Child Welfare Act.

### **The farmer's perception of the eagle: adoptive parents on transracial adoption**

Fanshel's study sought information on the background and social attitudes of the families who adopted American Indian children. The parents in this study were in various stages of parenting when they sought to adopt an American Indian child. For some this would be their first child, while others had biological children already, and some parents had previously adopted either Caucasian or non-Indian minority children. The study found that the parents primarily chose to adopt American Indian children, instead of non-Indian children, at the encouragement of their adoption agencies. Parents expressed a range of emotion regarding their decisions. One father acknowledged his decision was too hasty, stating:

When they asked us if we would accept an Indian child, we were ready to discuss the possibility although we had never seen an Indian child. As I look back upon it, we did not really think through the situation sufficiently. When I saw Tina, I felt troubled and continued to feel troubled even after taking her. When I am really being honest with myself, I have to recognize that I am essentially a prejudiced person. (89)

While most of the parents involved in the study had put a great deal of thought into their decision to adopt, many admitted they had put little thought into the larger implications of adopting American Indian children. Their transracial adoptions forced many parents to recognize their own and/or others' underlying feelings about race and skin color. One mother discussed the discomfort she felt.

The agency from which we had adopted our first child could not offer us another baby other than a handicapped child or a child from a racial minority. We mulled it over, and with reservations, approached the agency... I realized I found it very painful to have people stare at me when I went out with the baby... The caseworker never appreciated the side of me that was so frightened of difference. (103)

This mother eventually sought psychiatric help in coping with the discomfort she felt regarding her child.

Although some parents were troubled by the racial make-up of their children, others were glad for the opportunity to adopt an American Indian

child. Fanshel recognized the varied and complex opinions parents maintained about American Indians. Some of the parents he interviewed claimed to embrace the chance to adopt an Indian child immediately because they perceived of Indians as the "real" Americans, while others expressed feelings of compassion for Native peoples. One father said he was comfortable with the idea of adopting a Native child because he felt "Indians in this country had a tough break," asserting further that as a child he always rooted for the Indians instead of the cowboys (85). Other parents were willing to adopt Indian children only if they had light complexions, many explicitly expressing their unwillingness to adopt African American children. One father argued:

The agency had asked us if we would consider an Indian child and we thought about it and decided it would be okay as long as the child would be light-skinned. Since I come from the South, I would have hesitated to consider a dark-skinned child because people might jump to the wrong conclusions. We did not want the child to be taken for part-Negro. The agency said we would have a better chance of being accepted [for a child] if we took an Indian. (84)

Parents were asked a series of questions to ascertain what qualities they attributed to "acceptable" children. Only 15 percent of mothers were willing to adopt a child characterized as "obviously Negro" and 22 percent were open to children characterized as "not obviously Negro in appearance, while 71 percent of the parents claimed they would easily adopt an 'Oriental' child" (119). Most parents qualified their responses, claiming that while they personally had no emotional aversion to adopting an African American child, their communities would prove hostile to the child and thus adoption was not in the child's best interest. The responses demonstrated that many parents expressed attitudes toward Indian children similar to those held about Asian children, with some stating that "they were often stopped on the street by people who inquired as to whether the Indian child was Korean" (119).

Fanshel's study provides a window into adoptive parents' complicated and differing views on the practice of transracial adoption in the late 1950s and early '60s. Yet Fanshel also acknowledged that the answer to whether the transracial adoption of Indian children was sound could not be ascertained through a series of interviews with white adoptive parents. He warned:

Whether Indian children are to be placed in any significant numbers in white homes in the future will depend on the attitudes of the Indian tribal organizations.... The climate of transracial adoption has changed in that minority groups tend to see this as the ultimate indignity that has been inflicted upon them. It seems clear that the fate of most Indians is tied to the struggle of Indian people in the United States for survival and social justice. Their ultimate salvation rests upon the success of that struggle.... Only the Indian people have the right to determine whether their children can be placed in white homes. (341)

By the time Fanshel published his study in the 1970s, many tribal leaders had long been protesting the tremendous rate of removal of Indian children from their homes, which had increased when CWLA and the BIA initiated the Indian Adoption Project.

### when eagles are made to peck: removal rates and effects

American Indian children accounted for 3.1 percent of the total population of children cared for out of their homes, even though they were less than 1 percent of the total child population in the 1950s and '60s. Therefore, American Indian children were in out-of-home placement at a rate 3.6 times greater than the rate for non-Indian children.<sup>17</sup>

Doubts about the capacity of American Indian families to raise their children continued long after the boarding school era. State agencies argued that removal was in the best interest of many American Indian children, which resulted in "as many as 25 to 35 percent of the Indian children in some states [who] were removed from their homes and placed in non-Indian homes by state-courts, welfare agencies, and private adoption agencies" before the passage of the Indian Child Welfare Act in 1978.<sup>18</sup> Congress also found that countrywide, Indian children were placed in foster care or in adoptive homes at 5 times the rate of non-Indian children, while in Montana, foster care placement for Indian children was at least 13 times greater than for non-Indian children; in South Dakota, adoptions of American Indian children accounted for 40 percent of all adoptions made by the state's Department of Public Welfare between 1967 and 1978, even though they were only 7 percent of the juvenile population; in Washington, the Indian adoption rate was 19 times greater and the foster care rate was 10 times greater; and in Wisconsin Indian children ran the risk of being separated from their parents at a rate nearly 1600 percent greater than non-Indian children.<sup>19</sup>

During the congressional hearings that led to the Indian Child Welfare Act, information was presented from the 1971 BIA school census that showed 34,538 children were living in institutional facilities instead of their homes, which translated into more than 17 percent of the Indian school age population and 60 percent of children enrolled in BIA schools. According to the census, "On the Navajo reservation, about 20,000 children, or 90 percent of the BIA school population [were living] at boarding schools."<sup>20</sup>

The removal of Native children would lead to far more serious problems than adoptive agencies and local/state agencies anticipated. Local and state agencies removed Indian children applying determinants that ignored the traumatic effects this forceful removal was having. Congress recognized the concerns raised by American Indian activists and leaders during a 1978 hearing. The Subcommittee on Indian Affairs declared that:

The separation of Indian children from their natural parents, especially their placement in institutions or homes, which do not meet their special

needs, is socially and culturally undesirable. For the child, such separation can cause a loss of identity and self-esteem, and contributes directly to the unreasonable high rates among Indian children for dropouts, alcoholism and drug abuse, suicides, and crime.<sup>21</sup>

Congress also argued that the removal of American Indian children aggravated the conditions that initially gave rise to the break-up of the family, finding that this perpetuates the continuing cycle of poverty and despair.<sup>22</sup>

These issues have been a concern of Indian child-welfare advocates working to decrease depression, suicide, and alcoholism. At a 1990 conference on the ICWA, presenters Evelyn Blanchard and Irving Berlin discussed the long-term effects of out-of-home placement, presenting findings from a study of 100,000 Indian children in foster placement. The study, conducted by Tom Halverson of the University of Utah, found alarmingly high suicide rate among those 18 to 20 years of age—"six to ten times greater than it was for the national average."<sup>23</sup> Halverson also found that "the rate of depression in both the young men and the young women who have been in foster care in Anglo homes has been in the range of about 40 percent of those who have been studied—an enormous rate of depression."<sup>24</sup> Transracial placements were proving to have detrimental effects on American Indian children.

### **the eagle flexes its wings: passage of the icwa**

The accumulation of assimilation policies, state involvement, and the soaring out-of-home placement of Indian children led to concern among many American Indians. Tribal leaders became alarmed that their children and communities were being decimated by mainstream child welfare practices, and many people became concerned these practices at the state and local level were impeding the sovereignty of the tribes. State and local agencies, while claiming to determine the best interests of American Indian children, often neglected their cultural needs. The need for remedy pushed Native activists to approach the federal government for reprieve from state and local agencies, leading eventually to the passage of the ICWA.

In 1968 members of the Devil's Lake Sioux Tribe of North Dakota, concerned with the level of cultural decimation they were facing, approached the Association of American Indian Affairs (AAIA), established in 1923 to "defend the rights of American Indians and Alaskan Natives and to promote social, economic, and civic equality for their communities."<sup>25</sup> The AAIA began work on the issue, bringing awareness and information to public and professional channels while collecting data and testimonials to present to the federal government.<sup>26</sup> Senate oversight hearings on the placement of Indian children finally began during the second session of the 93rd Congress on April 8-9, 1974. Senator James Abourezk, chairman of the Subcommittee on Indian Affairs, ran the hearings as well as presenting testimony. During further hearings on the matter in the Senate in 1977, Abourezk stated, "up

to now ... public and private welfare agencies seem to have operated on the premise that most Indian children would really be better off growing up non-Indian."<sup>27</sup>

In an examination of child welfare practices for American Indian children, the Committee on Interior and Insular Affairs in the House of Representatives found that the separation of the children from their families generally occurred when:

1. The natural parent does not understand the nature of the documents or proceedings involved;
2. Neither the child nor the natural parents are represented by counsel or otherwise advised of their rights;
3. The agency officials involved are unfamiliar with, and often disdainful of, Indian culture and society;
4. The conditions that led to the separation are not demonstrably harmful or are remediable or transitory in character; and
5. Responsible tribal authorities are not consulted about or even informed of the nontribal government actions.<sup>28</sup>

In addition to these concerns, Congress recognized that Tribes were being denied their right to govern their children and be notified of the conditions facing their own people. Thus, a Declaration of Policy was established during hearings for the ICWA stating:

The Congress hereby declares that it is the policy of this nation, in its fulfillment of its special responsibilities and legal obligations to the American Indian people, to establish standards for the placement of Indian children in foster or adoptive homes which will reflect the unique values of Indian culture, discourage unnecessary placement of Indian children in boarding schools for social rather than educational reasons, assist Indian tribes in the operation of tribal family development programs, and generally promote the stability and security of Indian families.<sup>29</sup>

The ICWA became law on November 8, 1978. In the act, Congress clearly defined "the relationship of the federal government to the tribes, determining that the Federal government has assumed the responsibility for the protection and preservation of Indian tribes and their resources," including their children. Congress found:

1. There is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe.
2. That an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by non-tribal public and private agencies and that

an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions.

3. That the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.<sup>30</sup>

The act was passed with two specific goals: It intended to protect individual Indian children and the maintenance of their families while protecting the future existence of the tribe as a sovereign entity<sup>31</sup> because "removal of Indian children from their cultural setting seriously impacts long-term tribal survival and has damaging social and psychological impact on many individual Indian children."<sup>32</sup> In large part the concerns that emerged during the congressional hearings on the ICWA were based on studies showing recurring developmental problems encountered during adolescence by Indian children raised in a Caucasian environment.<sup>33</sup> Therefore, it is clear that Congress's concern over the placement of Indian children in non-Indian homes was based in part on evidence of the direct detrimental impact of such placements outside their culture on the children themselves (as opposed to on the tribes that lost them).<sup>34</sup> More generally, placements in non-Indian homes were seen as "depriving the child of his or her tribal and cultural heritage."<sup>35</sup>

The Senate Report on the ICWA incorporated the testimony of Louis La Rose, chairman of the Winnebago tribe, before the American Indian Policy Review Commission:

I think the cruelest trick that the white man has ever done to Indian children is to take them into adoption courts, erase all of their records and send them off to some nebulous family that has a contrary value system and that child reaches 16 or 17, he is a little brown child residing in a white community and he goes back to the reservation and he has absolutely no idea who his relatives are, and they effectively make him a non-person and I think ... they destroy him.<sup>36</sup>

The underlying rationale of the act is to prevent decisions about the welfare of Indian children from being based on a "white, middle-class standard."<sup>37</sup> The ICWA congressional findings demonstrate that Congress perceived the states and their courts as employing just such a "white, middle-class standard" in their determinations for child placement.<sup>38</sup>

Congress recognized that "the survival of tribal nations is significantly jeopardized if the children, the only real means for the transmission of the tribal heritage, are raised in non-Indian homes and denied exposure to the ways of their people."<sup>39</sup> Furthermore, state removal of Indian children "seriously undercuts the tribes' ability to exercise their rights as self-governing communities" because without their children tribes are stripped of the core that composes their political future. "In no area is it more important that

tribal sovereignty be respected than in an area as socially and culturally determinative as family relationships."<sup>40</sup> With the ICWA, Congress recognized this aspect of sovereignty and established a policy that would at least attempt to place Indian children in homes that reflect the unique values of their Indian cultures.<sup>41</sup> Congress's actions were monumental because the culture of a tribe embodies the nucleus of tribal existence, so it is imperative that Indian children have an opportunity to learn their culture for tribal existence to continue.

### the eagle soars: procedural elements of the icwa

Jurisdictional provisions are the core of the Indian Child Welfare Act, because the ICWA was written with the acknowledgment that "tribal court judges are more knowledgeable than state court judges about Indian childrearing customs and traditions."<sup>42</sup> The ICWA thus gives exclusive jurisdiction to the tribal court if the child lives on the reservation or is a ward of the court. When the child resides off the reservation, then the child's tribe and the state court have concurrent jurisdiction. Exceptions to tribal jurisdiction are made when either parent objects, the tribal court declines participation in the proceeding, or the local or state court finds good cause not to transfer the proceeding.<sup>43</sup> Furthermore, the court is also required to apply the highest applicable legal standard of protection, either state or federal, to the rights of the parent or Indian custodian. Therefore, the ICWA preempts conflicting state law.<sup>44</sup>

The ICWA entails four significant procedural components: notice, the right to counsel, requirement for the testimony of an expert witness, and active efforts. First, the ICWA requires notice of the proceeding to be sent by registered mail with return receipt requested to the parents or Indian custodian and the children's tribe.<sup>45</sup> The act also stipulates that "no foster care placement or termination of parental rights proceeding shall be held until at least ten days after the notice is received by the parents" or the Indian custodian and the children's tribe.<sup>46</sup> The notice requirement of the ICWA is in place so that the state, county, or other social service agency cannot proceed with a child custody hearing without contacting the parents and the tribe, an essential component for the protection of the Indian family.

In typical child custody proceedings, if the parents' whereabouts are unknown, notice is served by publication. Usually the publication of the notice does not occur in the local newspaper or the various Indian newspapers, but is placed in the state's finance and commerce journal. Congress recognized the absurdity of the involved parents receiving notice in this manner, so required notice by registered mail. Furthermore, the state, county, or local social service agency must make diligent efforts to locate and notify the parents by actively contacting the last known address, family members, neighbors, and the tribe to find the whereabouts of the parents in order to advance the child custody proceeding.

The ICWA, additionally, gives parents the right to counsel in child custody proceedings.<sup>47</sup> This element is important because generally state courts do not appoint counsel to parents in child custody proceedings.<sup>48</sup> Furthermore, the ICWA requires the testimony of a qualified expert witness to support an out-of-home placement.<sup>49</sup> The purpose of this requirement is "to provide the court with knowledge of the social and cultural aspects of Indian life and diminish the risk of any cultural bias" from state, county, and local social service agencies.<sup>50</sup> The term "qualified expert witness" encompasses "any people who are, because of their knowledge of Indian culture and traditions, capable of opining on the question of whether an Indian child is suffering emotional or physical harm."<sup>51</sup> However, some states have enacted stricter laws defining a "qualified expert witness." In Minnesota, for example, qualified expert witnesses are tribally designated and their qualifications as experts are not subject to challenge by the state, county, or other social service agencies.<sup>52</sup>

This requirement for qualified, expert testimony provides a mechanism for an individual with knowledge of Indian culture and traditions to testify that the components of the families' child-rearing practices in question either meet the social and cultural standards of the child's tribe or are against tribal values. Therefore, expert testimony must be provided within 90 days after an emergency removal occurs and is also required before the court can order the rights of a parent to be terminated.<sup>53</sup> This testimony is required because the court must be persuaded "by clear and convincing evidence that continued custody with the parent or Indian custodian will result in serious emotional or physical damage to the child."<sup>54</sup>

An example of the necessity of this clause can be seen regarding cultural practices in child rearing. For instance, many Indian tribes perform rite-of-passage ceremonies by taking their young children out to secluded locations where they fast and pray for understanding of their lives' purpose and future. Typically if a non-Indian social worker discovered that parents placed their children in secluded locations by themselves for one or more days and nights without food and water, the social worker might argue that child abuse or neglect had occurred. What the expert testimony requirement provides is that the testimony of an individual with knowledge of Indian culture and traditions inform the court, in this case that the fasting is not any form of abuse or neglect, but rather a valid Indian child-rearing practice and ceremony. On the other hand, if a parent leaves his or her child alone in the home for a lengthy period of time to go out drinking, the qualified expert witness would be present to testify that such a practice is not an acceptable Indian child-rearing practice, allowing the court to determine that the child should be removed.

Finally, the ICWA requires county agencies to use "active efforts to provide remedial services and programs designed to prevent the breakup of the family."<sup>55</sup> Active efforts have been defined as "active, thorough, culturally

appropriate actions by the local social service agency to fulfill its obligations to prevent the out-of-home placement of an Indian child and to return an Indian child to their family at the earliest possible time once out-of-home placement has occurred."<sup>56</sup> The active effort requirement of the ICWA ensures that agencies take into account the prevailing social and cultural traditions of the pertinent Indian tribe, while involving and using the available resources of the extended family, the tribe, Indian social service agencies, and individual Indian caregivers.<sup>57</sup>

### the eagle regains his identity

Even though the federal government has a responsibility to uphold the general welfare of Indian tribes, this responsibility has not always been fulfilled. Many historical policies, including the assimilation policies of the late 19th century, had detrimental effects on American Indian communities. These effects, coupled with public perceptions that discounted the complex, kinship-based social structures in American Indian families, led to high rates of removal of American Indian children by the 1950s. These high removal rates raised concern and brought Native activists to approach the federal government for a reprieve from the state and local agencies that were removing their children, leading to the passage of the Indian Child Welfare Act of 1978.

Today, tribes are flexing their wings, reclaiming and reasserting jurisdiction over American Indian child welfare, and partnering with local, county, and state social welfare systems on behalf of their children. As this history is understood and the procedural elements of the ICWA are implemented, Indian children will begin to "fly the coop," remembering that they are "eagles," not "chickens," and recovering what has been lost for generations.

### notes

- 1 James B. Waldram, *The Way of the Pipe: Aboriginal Spirituality and Symbolic Healing in Canadian Prisons* (Orchard Park NY: Broadview Press, 1997), 2.
- 2 Waldram, *Way of the Pipe*, 3.
- 3 David E. Wilkins, *American Indian Politics and the American Politics System* (New York: Rowman and Littlefield, 2002), 42.
- 4 16 US Stat 566.
- 5 Vine Deloria, Jr., *Behind the Trail of Broken Treaties, An Indian Declaration of Independence* (Austin: University of Texas Press, 1985), 142. The commerce clause is at Art. 1, sect. 8, clause 3.
- 6 Wilkins, *American Indian Politics*, 47.
- 7 Vine Deloria, Jr., and Clifford M. Lytle, *American Indians: American Justice* (Austin: University of Texas Press, 1983), 8.
- 8 Deloria and Lytle, *American Indians: American Justice*, 11.
- 9 Brenda Child, *Boarding School Seasons: American Indian Families, 1900-1940* (Lincoln: University of Nebraska Press, 1998), 13.
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- 11 Frederick E. Hoxie, *A Final Promise: The Campaign to Assimilate the Indians, 1880-1920* (New York: Cambridge University Press, 1989), 242.
- 12 Child, *Boarding School Seasons*, 33.
- 13 David Fanshel, *Far from the Reservation: The Transracial Adoption of American Indian Children* (Metuchen, NJ: The Scarecrow Press, 1972).

- 14 Faushei, *Far from the Reservation*, 37. All subsequent citations appear in the text.
- 15 Marc Mannes, "Factors and Events Leading to the Passage of the Indian Child Welfare Act," *Child Welfare* 74, no. 1 (1995): 266-267.
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- 17 Marc Mannes, "Seeking the Balance Between Child Protection and Family Preservation in Indian Child Welfare," *Child Welfare* 72, no. 2 (1993): 144.
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- 21 House Hearings on ICWA, 4.
- 22 House Hearings on ICWA, 4.
- 23 Irving Berlin and Evelyn Blanchard, "Long-Term Effects of Out-of-Home Placement of Indian Children," (paper, "The Indian Child Welfare Act: Indian Homes for Indian Children Conference," University of California, Los Angeles, CA, August 22-24, 1990).
- 24 Berlin and Blanchard, "Long-Term Effects."
- 25 Marc Mannes, "Factors and Events," 265.
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## FROM ORPHAN TRAINS TO BABYLIFTS

### COLONIAL TRAFFICKING, EMPIRE BUILDING, AND SOCIAL ENGINEERING

Tobias Hübinette

International adoption, sometimes known as inter-country or transnational adoption, the movement of mainly nonwhite children from the postcolonial so-called Third World to predominantly white adopters in North America, Northern and Western Europe, Australia, and New Zealand, was born in the mid-1950s in the aftermath of the Korean War.<sup>1</sup> This huge child migration, today involving close to 30,000 children annually, has transferred an estimated half a million children, of whom almost one third come from Korea.

The practice was initiated in the receiving countries as a rescue mission with strong Christian undertones, while during the 1960s and '70s it came to be perceived as a progressive act of solidarity. Today, in the leading adopting regions of North America, Western Europe, and Oceania, international adoption has developed into the last resort for many suffering from infertility, while a discourse of multiculturalism celebrates international adoptees as bridges between cultures, symbols of interethnic harmony, and embodiments of global and postmodern cosmopolitanism. At the other end, in the sending countries, the governments conceive of international adoption as part family-planning method and part child welfare practice. Despite regular outbursts of criticism regarding international adoption coming from domestic oppositional circles in the countries of origin, most governments treat international adoption as a necessary evil, even though they consider it a degrading and humiliating business, well aware that the practice saves social welfare expenditure and generates huge amounts of money for a profitable adoption industry.

Academically, studies of international adoption are usually limited to the fields of medicine and psychiatry or to social work and psychology. Instead of following in the footsteps of these dominant ways of looking at international