

# The Effectiveness of the Indian Child Welfare Act of 1978

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Since the 1970s, federal policy has emphasized the preservation of Indian land, culture, tribes, and families through self-determination legislation to empower and enhance culturally unique tribal communities. The 1978 Indian Child Welfare Act (ICWA) extended tribal self-determination policy to include child welfare and family preservation issues as a response to the large numbers of Indian children removed from their families and placed in non-Indian settings. We analyze available data to assess the effectiveness of tribes in meeting the ICWA mandate through 1986. The results indicate tentative support for effectiveness of the act in reducing adoption and foster care placement rates for Indian children.

American Indian tribes have had a unique but often tragic relationship with the federal government.<sup>1</sup> Since the early 1970s, the federal government has granted Indian tribes increased self-determination in tribal governance and administration of programs and services that were previously directed by federal or state agencies. In enacting the Indian Child Welfare Act (ICWA) of 1978 (P.L. 95-608), one of a number of self-determination acts, Congress declared that “it is the policy of this Nation to protect the best interests of Indian children

and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture."<sup>2</sup>

Our purpose is to assess the initial effectiveness of the ICWA; that is, given the introduction of tribal self-determination in child welfare policy in 1978, did Indian foster care placement and adoption rates, which Congress found in 1977 to be "shocking," "alarming," and "destructive," decrease significantly?<sup>3</sup> To answer this question, we will analyze data from three previous national studies of Indian child welfare.<sup>4</sup>

Where possible, our analysis will also compare Indian to non-Indian rates during the same period in order to place ICWA within the broader context of dominant society. In this regard, some Indian scholars interpret the ICWA as most akin to dominant society's family conservation and family preservation policies in child welfare.<sup>5</sup> What is shared is their common concern with strengthening families in order to keep children at home and with implementing foster care and adoption policies to further this goal.<sup>6</sup> Although evidence suggests the marginal effectiveness of some current family preservation programs in dominant society, little is known about the effect of ICWA.<sup>7</sup>

Unlike dominant-society family preservation programs, which emphasize short-term, intensive intervention for families at risk as well as decision making based on "the best interests of the child," the ICWA mandates self-determination policies and decision making to ensure the collective right of tribal survival.<sup>8</sup> Several of the primary policies are that (a) each independent tribal government is to have exclusive jurisdiction over all proceedings involving Indian children residing or domiciled on a reservation, (b) tribes are to be allowed to develop family and child welfare services, (c) priority is given to tribal over state courts in decisions regarding foster care and adoption of Indian children domiciled or residing on tribal reservations, and (d) preference is given to Indian families and environments when a child is placed.

The congressional ICWA mandate emerged from and reflects the larger policy arena in which the concept of Indian self-determination developed during the twentieth century. The first federal attempt to reverse prior policies of conquest, genocide, and assimilation and to promote policies of tribal self-determination was the Wheeler-Howard Indian Reorganization Act of 1934. The intent was "to rehabilitate the Indian's economic life and to give him a chance to develop the initiative destroyed by a century of oppression and paternalism."<sup>9</sup> This tribal self-government policy was reversed in the 1950s in favor of a strong assimilation policy that was meant to terminate tribal gover-

nance, tribal reservations, and individual Indian rights. However, during the Civil Rights movement and Johnson's War on Poverty, the federal government reversed its termination policy and again began to support initiatives for tribal self-determination.<sup>10</sup> This policy shift led to another major redistribution of power among federal, state, and tribal entities.<sup>11</sup> Congress also enacted multiple pieces of legislation during the 1960s and 1970s to define this shift to tribal self-determination in education, economic development, government, health care, religion, and child welfare.<sup>12</sup>

## The Indian Child Welfare Act of 1978

It was within this renaissance of the self-determination movement that Congress held Indian child welfare hearings from 1974 through 1978. Their purpose was to investigate the extent to which current child welfare policies undermined tribal survival through unwarranted removal of Indian children to non-Indian cultural settings.<sup>13</sup> These hearings thus helped to heighten national sensitivity about Indian culture and its preservation through families and children: "American Indian control of the family is axiomatic to the survival of American Indian culture."<sup>14</sup>

The 1977 congressional testimony of William Byler, executive director of the nonprofit advocacy group Association on American Indian Affairs, concluded that "the wholesale separation of children from their families is perhaps the most tragic and destructive aspect of American Indian life today. . . . It is clear then that the Indian child-welfare crisis is of massive proportions and that Indian families face vastly greater risks of involuntary separation than are typical of our society as a whole."<sup>15</sup> Byler's testimony was especially convincing at the time because he presented data from a survey of state child welfare agencies in states with large Indian populations to support his conclusion. He reported that about 25 percent or more of all Indian children had been removed from their families and placed in foster homes, adoptive homes, or institutions. Foster care and adoption placement rates ranged from 5 to more than 19 times greater for Indian than for non-Indian children. Because the majority were removed to non-Indian homes, Byler argued that they would not be able to identify with or experience their culture. Byler also highlighted the argument that reasons for removing Indian children were often based on "such vague grounds as 'neglect' or 'social deprivation' and on allegations of the emotional damage the children were subjected to by living with their parents."<sup>16</sup>

Byler and the Association on American Indian Affairs attributed these "shocking" trends to culturally biased social workers and judges who used placement standards that discriminated against poor families

and against the child-rearing practices of extended families, avoidance of an adjudicatory process and due process for either Indian children or their parents, and to a long history of national paternalism that fostered family breakdown and enforced a cycle of poverty among Indian families and tribes.<sup>17</sup>

The congressional response was ultimately to pass the Indian Child Welfare Act in 1978 recognizing tribal rights and jurisdiction in the child welfare domain. Congress increased tribal control relative to state authority through the mandated participation and consent of tribes in foster care and adoption decisions for Indian children.<sup>18</sup> The reasons for the removal of an Indian child did "not allow a state court to consider generic poverty, alcohol abuse, or nonconforming social behavior as evidence that an Indian child should be removed from his or her home."<sup>19</sup> Congress also authorized tribes to develop family and child service programs on reservations.

Given evidence of the "shocking" facts regarding foster care and adoption placements of Indian children, Congress determined that fundamental changes in Indian child welfare policy and practices was necessary. One way to assess the effectiveness of the ICWA, therefore, is to evaluate the direction and pattern of change in those placement rates that had initially influenced Congress to enact such legislation.

## Hypotheses

The effect of the ICWA over time should be to reverse the extraordinarily negative trends regarding the removal of Indian children presented in the congressional hearings during the 1970s. Given the small amount of available published data on Indian child welfare, we could only compare data from the years 1975 and 1986. Similar data constraints limited our choice of effectiveness measures to those foster care and adoption measures, reported by Byler, that had influenced Congress to pass the ICWA.<sup>20</sup>

If ICWA were to show signs of effectiveness, we expected that (1) adoption rates of Indian children would decrease, (2) foster home placement rates of Indian children would decrease, (3) the discrepancy between Indian and non-Indian adoption rates would decrease, (4) the discrepancy between Indian and non-Indian foster care rates would decrease, and (5) the percentage of foster home placements of Indian children in Indian families would increase. We also review the available data regarding the percentage of Indian children in substitute care for reasons of neglect.

## Data and Analysis Limitations

We used five sources of data in our analysis. The Association on American Indian Affairs (AAIA) surveys through 1975 provided our baseline

data. These data included state rates and the number of Indian and non-Indian children under the age of 21 and in foster care and adoptive placements.<sup>21</sup>

The remaining four sources provided comparative information. The Bureau of Indian Affairs (BIA) report prepared by Hazel Elbert in 1988 provided the number of Indian children in adoptive placements through 1988.<sup>22</sup> Margaret Plantz, Ruth Hubbell, Barbara Barrett, and Antonia Dobrec prepared the 1988 CSR, Inc., and Three Feathers report on Indian Child Welfare.<sup>23</sup> Based on survey data they report on public, tribal, BIA, and off-reservation programs in states in 1986, we could estimate the number of Indian children under the age of 18 in foster care and the number of placements in Indian homes. The Voluntary Cooperative Information System data analyzed by Toshio Tatara in his 1988 report provided data to estimate the number of all children in public foster care and adoptive placements for children under the age of 21.<sup>24</sup> Last, the 1970 and 1980 U.S. census reported data on the number of Indian and non-Indian children under the age of 18 and 21.<sup>25</sup> We used information from these studies to calculate foster care point-estimate prevalence rates and annual adoption rates per 1,000 children under the age of 18 and 21 (see table 1).

One limitation of using multiple databases is the variations in accuracy in counting children and variations in definitions. There are many reasons that reported numbers of children vary from report to report, for example, methodological tailoring for a specific report purpose, undetected systemic error, and random error. Because our purpose was comparative rather than descriptive, the most important issue for us was constructing common measures across studies. Thus, for example, even though it might have resulted in overestimating the foster care and adoption placement rates for all children, we used the 1970 and 1980 U.S. census counts of Indian and non-Indian children in all our denominators for calculating 1975 and 1986 placement rates.

Another limitation is variation among studies regarding the inclusiveness of children counted and reported. One example is the differences in the ages of included children. The Plantz et al. study looked at children under the age of 18, while all other studies reported data for children under the age of 21. Thus it was necessary, and we hope reasonable, to assume that the 1986 foster care placement rate for children between the ages of 18 and 20 is much lower than that of younger children. This is consistent with a national trend of younger children entering care.<sup>26</sup> Even though the Plantz et al. data might overestimate the 1986 foster care rate for children under the age of 21, such overestimation would only make it more difficult for us to demonstrate a decrease in foster care placement rates between 1975 and 1986. A second example is that there were differences in the number of states included in each study. Although the 1976 AAIA

**Table 1**

**FOSTER CARE AND ADOPTION RATES PER 1,000 INDIAN CHILDREN AND PERCENTAGE OF FOSTER CARE PLACEMENTS IN INDIAN HOMES**

STATE	FOSTER CARE PLACEMENTS				ADOPTIONS			
	Rates		% Change from 1975 to 1986	% in Indian Homes		Rates		% Change from 1975 to 1986
	1975	1986		1975	1986	1975	1986	
Idaho .....	77.73	13.47	-83	..	50	3.68	.00	-100
Maine .....	75.65	29.09	-62	37	36	1.85	.00	-100
Minnesota .....	58.16	19.67	-66	..	63	8.13	.67	-92
Wisconsin .....	53.56	26.18	-51	..	88	4.72	1.4	-97
South Dakota .....	45.41	25.52	-44	..	76	3.44	.00	-100
Utah .....	37.22	6.86	-82	12	68	2.99	.00	-100
North Dakota .....	36.16	42.34	17	..	97	1.96	.00	-100
Oregon .....	36.12	16.66	-54	..	37	3.80	.25	-93
Montana .....	35.31	22.99	-35	..	84	2.18	.00	-100
Washington .....	34.92	18.24	-48	..	86	3.00	.11	-96
Wyoming .....	34.61	23.84	-31	49	65	2.12	.00	-100
Nevada .....	19.52	18.32	-6	..	97	1.87	.00	-100
Nevada .....	13.87	26.76	93	..	45	2.08	2.93	41
Alaska .....	13.36	7.12	-47	3	34	1.13	.00	-100
New York .....	11.08	8.88	-20	..	76	8.37	.00	-100
Michigan .....	10.20	5.91	-42	..	77	1.19	.03	-98
Arizona .....	8.06	7.67	-5	..	88	2.25	.01	-99
California .....	7.41	9.34	26	..	88	1.52	.17	-89
Oklahoma .....	6.95	3.57	-49	..	70	.32	.02	-94
New Mexico .....								
Averages:								
State .....	32.38	17.50	-31	25	70	2.98	.23	-93
Pooled .....	20.02	12.70	-37	26	50	2.64	.29	-89

NOTE.—Values for 1975 are based on data from the Association on American Indian Affairs report, "Appendix G: Indian Child Welfare Statistics Survey, July 1976," in U.S. Congress, "To Establish Standards for the Placement of Indian Children in Foster or Adoptive Homes, to Prevent the Breakup of Indian Families and for Other Purposes," *Indian Child Welfare Act of 1977: Hearing on S. 1214 before the Senate Select Committee on Indian Affairs*, 95th Congress, 1st Session, August 4 (Washington, D.C.: U.S. Government Printing Office, 1977), pp. 537-603. Values for foster care in 1986 are based on data from the report of M. Plantz, R. Hubbell, B. Barrett, and A. Dobek, *Indian Child Welfare: A Status Report*, U.S. Department of Health and Human Services contract no. 105-82-1602 (Washington, D.C.: CSR, Inc., 1988). Values for adoption in 1986 are based on data from the report of H. E. Elbert, "State Adoption Reports Pursuant to P.L. 95-608—Indian Child Welfare Act," printed in U.S. Senate Hearing, "To Amend the Indian Child Welfare Act," *Hearing before the Select Committee on Indian Affairs to Amend the Indian Child Welfare Act*, U.S. Senate, 100th Congress, 2d Session, May 11 (Washington, D.C.: U.S. Government Printing Office, 1988), pp. 56-57.

report provided the only available baseline data, it included information for only 19 states because those states had the largest Indian populations. Thus, it was necessary to pool information across these states to arrive at very rough estimates of national foster care and adoption placement rates for Indians and non-Indians in 1975. We could then compare the baseline AIAA data with the aggregated national data for non-Indian children in Tatara's 1988 study.

Finally, due to a lack of available data, we could not analyze exogenous factors that might have provided alternative explanations for our results. Our analysis, therefore, simply provides preliminary evaluation of each hypothesis.

## Results

Our first hypothesis was that state adoption rates of Indian children would decrease from 1975 to 1986. Based on AAIA data, as shown in table 1, the average 1975 state adoption rate was 2.98 per 1,000 Indian children with a range among states from .32 to 8.37. By 1986, as Elbert's data indicate, the average state adoption rate had decreased to .23 per 1,000 Indian children with a range among states from 0 to 2.93, or a 93 percent decrease in state adoption rates. This decrease reflected the fact that all state adoption rates had declined to zero or near zero, with the exception of Alaska, whose rate had actually increased. Similar trends exist if we evaluate pooled individual data across states rather than state averages. These data provide preliminary evidence of support for this hypothesis.

Our second hypothesis was that state foster care placement rates of Indian children would decrease from 1975 to 1986. Based on AAIA data, as shown in table 1, the average 1975 state foster care placement rate was 32.38 per 1,000 Indian children with a range among states from 6.95 to 77.73. By 1986, the Plantz et al. data indicate that the average state foster care placement rate had decreased to 17.50 per 1,000 Indian children with a range among states from 3.57 to 42.34 per 1,000 Indian children—an average percentage decrease of 31 percent. Again, similar trends exist if we evaluate pooled individual data across states rather than state averages. These data provide preliminary evidence of support for the hypothesis.

Our third hypothesis was that the discrepancy between Indian and non-Indian adoption rates would decrease between 1975 and 1986. Based on pooled data across 19 states in the 1975 AAIA survey, our rough estimate of adoption rates was 2.64 per 1,000 Indian children and .81 per 1,000 non-Indian children. The adoption rate for Indian children was thus about three times higher than it was for non-Indian children. By 1986, the pooled adoption rate of .29 for Indian children in Elbert's study was similar to the rate of .26 for non-Indian children

in Tatar's national study. These data provide preliminary evidence of support for the hypothesis.

Our fourth hypothesis was that the discrepancy between Indian and non-Indian foster care rates would decrease between 1975 and 1986. Based on pooled data across the 19 states in the 1975 AAIA survey, our rough estimate of foster care placement rates was 20.02 placements per 1,000 Indian children. This rate was about six times higher than the rate of 3.40 placements per 1,000 non-Indian children. By 1986, the pooled foster care placement rate of 6.74 for Indian children from the Plantz study was about three times higher than the placement rate of 2.09 for non-Indian children from Tatar's data. Although these data suggest that there was a smaller discrepancy in 1986 than in 1975, no definitive claim can be made here.

Our fifth hypothesis was that the percentage of Indian children placed in Indian foster homes would increase after passage of the 1978 act. As shown in table 1, the baseline AAIA survey only provided data for four states. In these four states, between 3 percent and 49 percent, or a state average of 25 percent, of Indian foster care children were in Indian homes. In 1986, based on the Plantz et al. data, between 34 percent and 68 percent, or a state average of 51 percent, of Indian foster care children were in Indian homes. The state average across our study's 19 states was 70 percent in 1986. Although it appears that placement in Indian homes may have increased, no definitive claim can be made here because there was such a small number of baseline observations.

Finally, there is some but not much information about the percentage of Indian children removed from their homes to substitute care because of neglect during this time period. Byler, in 1977, provided some anecdotal information to argue that state and federal agencies typically removed Indian children for "such vague grounds as 'neglect' or 'social deprivation.'"<sup>27</sup> Congress subsequently placed safeguards in the ICWA to prevent unwarranted removal. Data from the 1986 Plantz study indicate that about 31 percent of Indian children in our study's 19 states and about 37 percent of Indian children in all states were in substitute care for the reason of neglect.<sup>28</sup>

## Discussion

The results of our analysis suggest that, in less than a decade after the ICWA's passage, Indian tribes achieved substantial control over the foster care and adoptive placement of Indian children. Our analysis, albeit preliminary owing to limitations in the available data, suggests both foster care and adoption placement rates for Indian children decreased substantially from 1975 to 1986. By 1986, the initial and exceedingly high adoption rate for Indian children had become similar

to the rate for non-Indian children. Although the foster care placement rate for Indian children appeared to have decreased by 1986, a discrepancy did remain between Indian and non-Indian rates. The data were too limited to permit a conclusion, but the percentage of Indian foster care children placed in Indian homes appeared to increase, and the placement of Indian children in substitute care for the vague reason of neglect appeared to be less predominant.

From a methodological perspective, limitations existed in the available data on Indian and non-Indian children in foster care and adoptive placements, namely, the lack of equivalence between studies in sampling methods, in categorizing children by age and other criteria, and in overall data reliability. To cope with these limitations, we chose algorithms of estimation that were likely to underestimate comparative differences over time and between groups. We also remained quite tentative in our interpretation of analysis results. Nonetheless, we proceeded with our analysis because these studies appear to contain the only data available to assess the initial effectiveness of the ICWA.

From a perspective of the utility of research informing policy, we lament that little research has been funded or published on Indian foster care or adoption since the major national survey by Plantz et al. and since Elbert's BIA report on adoption.<sup>29</sup> If Indian history stands as witness, then the lack of evaluative studies may pave the way for Congress to forsake tribal sovereignty again. Despite the economic devastation of the Depression on the nation and all tribes, and without countervailing positive data, Congress blamed tribes for the minimal effect of the 1934 Reorganization Act on reservation poverty and on tribal economic development. Thus the Reorganization Act supporting tribal sovereignty was repealed. A similar fate could befall current self-determination policy if only because reservation poverty remains high.<sup>30</sup> Indian tribes and reservations generally are not economically self-sufficient and still must rely on unpredictable and insufficient levels of federal funding. Such funding sustains tribal sovereignty in such internal matters as tribal courts, government, and services. Yet, from its onset, the federal government has underfunded the ICWA's implementation and has failed consistently to allocate funds for ongoing evaluation studies.<sup>31</sup>

More generally, the federal government has seldom sustained benevolence in federal Indian policy when confronted with competing interests because, as Arthur Schlesinger, Jr., recently pointed out, "Indians . . . lack the numbers, the unity, the visibility, and the political weight."<sup>32</sup> Evaluative studies may only be a partial answer in sustaining and developing tribal achievements. It may also be necessary for tribes to implement a recommendation made by Edward Blanchard and Russel Barsh: "Tribal control of tribal children should have a firm foundation in tribal research."<sup>33</sup>

From a policy perspective, tribal control, in a broader sense, is the continual redefining and strengthening of Indian internal sovereignty within the contexts of Indian lands, languages, education, religions, and protection of its children. Indian culture may then surround a child in a unique communal meaning that strengthens a child's Indian identity while also protecting the child from being completely assimilated into dominant culture. This tribal focus on the rights of the collectivity places tribal child welfare decisions somewhat at odds with national policy in which an individually based definition of rights predominates in interpreting what is in a child's best interests.<sup>34</sup> As debates regarding transracial adoptions demonstrate, a child's best interests may not coincide with a minority culture's right to survival or with the sovereign right of a child to be brought up and derive identity from his or her culture of origin.<sup>35</sup>

Indeed, the Indian Child Welfare Act stands as an anomaly in child welfare policy because it is an apparently effective community-based policy surrounded by a dominant culture that most values individualism and individual autonomy. But such self-determination legislation may tap into what Amitai Etzioni calls a "responsive society" or "a noncoercive community that appeals to the 'nobler' part of the self, and one that in turn the self finds compelling . . . of voluntary moral affirmation."<sup>36</sup> In this sense, tribal child welfare policies and programs, through which Indians may shape their own culturally sensitive interventions, may well provide the context of commitment, values, and beliefs to make the ICWA work well for Indian children, their families, their tribes and thus preserve their unique cultures. As such, the vitality of tribal self-determination policy has emerged as Blanchard and Barsh and others predicted.<sup>37</sup> With few resources and against great historical odds, tribes have met the initial challenge of the ICWA with accomplishment.<sup>38</sup>

## Notes

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