

May 2023

[2023 Honorable Mention] Coerced Removal of Indigenous Children: The Past and Present Native Child Welfare in the United States

Mad Bolander
California State University, Monterey Bay

Emily Greaves
California State University, Monterey Bay

Amada Villa Nueva Lobato
California State University, Monterey Bay

Follow this and additional works at: https://digitalcommons.csumb.edu/esa_submissions



Part of the [Child Psychology Commons](#), [Civil Rights and Discrimination Commons](#), [Constitutional Law Commons](#), [Developmental Psychology Commons](#), [Gaming Law Commons](#), [Government Contracts Commons](#), [Indigenous, Indian, and Aboriginal Law Commons](#), [Indigenous Studies Commons](#), [Law and Psychology Commons](#), [Native American Studies Commons](#), [Other American Studies Commons](#), [Social Justice Commons](#), and the [Social Work Commons](#)

Recommended Citation

Bolander, Mad; Greaves, Emily; and Villa Nueva Lobato, Amada, "[2023 Honorable Mention] Coerced Removal of Indigenous Children: The Past and Present Native Child Welfare in the United States" (2023). *Ethnic Studies Research Paper Award*. 13.
https://digitalcommons.csumb.edu/esa_submissions/13

This Book is brought to you for free and open access by the Ethnic Studies Research Paper Award at Digital Commons @ CSUMB. It has been accepted for inclusion in Ethnic Studies Research Paper Award by an authorized administrator of Digital Commons @ CSUMB. For more information, please contact digitalcommons@csumb.edu.

Coerced Removal of Indigenous Children: The Past and Present of Native Child Welfare in the US

[0:00] <<OtterPod theme music>>

[0:08] SPEAKER: This is an episode of the OTTERPOD from CSU Monterey Bay. My name is [REDACTED], my fellow Hosts are [REDACTED]. In this episode, we will discuss the experiences of Native American children within Bureau of Indian Affairs' residential schools and the process of healing from failed Welfare Institutions, as they have contributed to the erasure of indigenous communities in the United States. Finally, we will discuss the history of the Indian Child Welfare Act and its potential fate now that the Supreme Court ruled it unconstitutional.

[0:43] SPEAKER: We as students of California State University, Monterey Bay acknowledge and will continue to validate and amplify this message:

[0:51] SPEAKER: California State University, Monterey Bay (CSUMB) resides on the indigenous homeland of the Esselen people (also known as Carmeleno, Monterey Band, and Rumsen). Land acknowledgements do not exist in a past tense, or historical context: colonialism is a current and ongoing process that contributes to the erasure and displacement of Natives from their land as well as the emotional, spiritual, and physical malice inflicted by way of forced removal, ethnic cleansing and assimilation.

[1:20] SPEAKER: Indigenous community members in Arizona are living in a state of uncertainty and fear following the Supreme Court decision finding the archaically named Indian Child Welfare Act or the ICWA, unconstitutional. As the name states, this act was meant to protect the welfare of indigenous children who entered the foster care system, and in an effort to keep them with their families and tribes, it was enacted in 1978, as a response and solution to the problem of the Bureau of the Interior and Bureau of Indian Affairs removing indigenous children from their families at alarming rates. As we know, the BIA was responsible for the creation of Residential Schools. As the forceful assimilation of Native American children, we understand the BIA continued this practice well into the 1970s but instead of placing them in schools, they were placed in non-indigenous familial homes, the reason being they might be safer there.

[2:15] SPEAKER: In this episode we ask: What have the lived experiences been of native children who were forcibly removed from their families and tribes? And what does this mean for children who might now be taken away from their families again without the protection of the ICWA?

[2:30] SPEAKER: To begin to answer these questions, we'll go into the history of dispossession within practices put forth by BIA residential schools, what they did and how they failed. Then, we'll look at some indigenous efforts on how to heal from this trauma, next the reason for and history of the ICWA, particularly who it protects and why - and finally how the Supreme Court decision could threaten indigenous children and what the future may hold for tribal culture and communities in the United States.

[2:59] SPEAKER: So we'll start off with [REDACTED] discussing the brutal history that comes with the separation of indigenous children from their families, their tribes and way of life.

[3:08] SPEAKER: Listener discretion is advised. Mention of child abuse, neglect, religious trauma, sexual and physical assault.

<<Transition music to fade>>

[3:26] SPEAKER: Residential schools were established to remove native children from their families and tribes in order to assimilate them out of their culture and into white Western society – often described as “Kill the Indian and Save the Child.” Native children had a completely different way of life before BIA schools, they were encouraged to become a part of the Earth rather than trying to become something greater than Earth because that simply cannot be done. This is how they learned to go out into the world, discover for themselves and value all the Earth has to offer; to grow a strong spiritual relationship with the land. Rina Swentzell an indigenous author and scholar who was born in Santa Clara Pueblo writes, “Within the pueblo, preschool-aged children were allowed enormous freedom of activity and choice; to a great extent, they were trusted as capable of being responsible for themselves.”¹ This is what BIA schools wanted to breed out of them, to not only separate native children from that relationship with the land but also in attempts to destroy it in order to make it easier for them to swoop in and take it. In support of this, Swentzell states, “BIA authoritarianism assured the absence of any human-to-human or human-to-nature interaction.”²

[4:40] SPEAKER: One of the sources of this trauma was the concept of residential schools and the reality of what they were doing. Residential schools were intended to have a “positive

¹ Swentzell, R. (1990). *Conflicting Landscape Values: The Santa Clara Pueblo and Day School* [Vision, Culture and Landscape]. *Places*, 7(1).

² Swentzell, R. (1990). *Conflicting Landscape Values: The Santa Clara Pueblo and Day School* [Vision, Culture and Landscape]. *Places*, 7(1).

outcome...” Yet this concept was only seen as “positive” through settlers’ views. According to Murray, “...the road to the creation of the Shubenacadie Residential School and its early years of operation saw the Dominion's selective use of Indigenous children as human shields in its efforts to lay claim to Indigenous lands.”³ The residential schools in reality were only going to serve as a way for settlers to gain control of the land. The residential schools were seen as a way to “mold” native children into what the settlers wanted them to become. In doing so, native children were dehumanized and robbed of their sovereignty. They were neglected, beaten, starved, verbally and sexually abused... the list goes on. Their lives were not seen as valuable because they were savages, no one was really looking out for their health. These children were being sent to the schools to erase their indigeneity and involuntarily confronted with pain and suffering. For the survivors of these schools, they face lifelong trauma.

[5:58] **SPEAKER:** The verbal abuse was beyond what any of these children had grown up around. These children were being called names they did not even understand yet, due to the fact that they were being made fun of. Those in charge of the schools would force Christian religious ideals and practices onto them, of which they had no desire of adopting or any way to connect to their lives at the point of their internment at these schools. Although this was the case, if they didn't assimilate there would be a punishment. To better illustrate the consequences of indigeneity, residential school survivor Mabel Grey talks about what she endured while being at Saint Bernard's Mission, she was there for 15 years.

[6:42] **Mabel Grey :** <<10:00-10:15>>

*'Finally I asked the sister why, "Why are we praying so much?". And she said, "To chase the devil out of you." We didn't even know what the devil was.'*⁴

[6:55] **Mabel Grey :** <<10:42-10:52>>

*'All these years that I was in the Residential they deprived us of our food.'*⁵

[7:02] **SPEAKER:** On top of that, Native children were being neglected by those who were in charge of those schools. They were being beaten or punished for not knowing English and speaking their native language, which was Cree. This was happening in many different residential schools. Samuel Ross had to spend five years in Prince Albert All Saints School in Saskatchewan. Here are some of Samuel Ross' statements when it came to wanting to speak his native language.

[7:13] **Samuel Ross :** <<6:18-6:33>>

³ Murray, K. (2017). The Violence Within: Canadian Modern Statehood and the Pan-territorial Residential School System Ideal. *Canadian Journal of Political Science*, 50(3), 747-772. doi:10.1017/S0008423916001189

⁴ Mabel Grey –(2020). *Legacy of Hope Foundation*. Retrieved December 5,2022 from <https://legacyofhope.ca/wherearethechildren/stories/grey/>

⁵ Mabel Grey –(2020). *Legacy of Hope Foundation*. Retrieved December 5,2022 from <https://legacyofhope.ca/wherearethechildren/stories/grey/>

‘ But every time we spoke Cree they would either spank you and sometimes you didn’t go for supper just for speaking Cree.’⁶

[7:25] SPEAKER: Illnesses spread but there didn't seem to be a big rush in saving them or protecting them from those illnesses. For instance, TB (tuberculosis) was becoming very common in Native children and in those residential schools. About 20% of Native students were dying because of tuberculosis. Sproule-Jones states, “Believing firmly that the state was responsible for preserving and promoting the health and welfare of the native population, Bryce would repeatedly urge the federal government to address the high death rate in these schools.”⁷ That being said, Mabel Grey also had to face the pain of losing someone to TB...

[8:08] Mable Grey : <<24:12-24:31>>

‘ And my sister was in the hospital then. One of the priests carried her out. There were only two patients in the hospital; two girls. But she died, she died of TB in McLennan Hospital.’⁸

[8:25] SPEAKER: These residential schools just embedded trauma into all of those children who later had to heal and find peace within themselves as their lives went on. No closure, no apology, they were just expected to move on with their lives as if they did not just endure all that emotional and physical violence. I will now pass it over to Emily to talk about just how the healing process was and is vital for these individuals as well as some of their journeys.

[8:55] <<Transition music to fade>>

[9:02] SPEAKER: As you have heard, these children went through unimaginable trauma and horror at the hands of the residential schools. The systematic destruction of indigenous culture paired with violence and abuse has resulted in years of recovery, generational trauma, hurt and disillusion. Of course, there is still a fractured relationship in both the USA and Canada between the government and indigenous groups.

[9:24] SPEAKER: So the question we have to ask: where do we go from here? Is there even a way to address and begin to assist in helping these communities and families heal. And if so, how? Should it be government addressed, should it be NGO's, should it come from within the

⁶ Samuel Ross –(2020). *Legacy of Hope Foundation*. Retrieved December 5,2022 from <https://legacyofhope.ca/wherearethekidren/stories/ross/>

⁷ Sproule-Jones, M. (1996). Crusading for the forgotten: Dr. Peter bryce, public health, and prairie native residential schools. *Canadian Bulletin of Medical History*, 13(2), 199–224. <https://doi.org/10.3138/cbmh.13.2.199>

⁸ Mabel Grey –(2020). *Legacy of Hope Foundation*. Retrieved December 5,2022 from <https://legacyofhope.ca/wherearethekidren/stories/grey/>

communities themselves, as external input has done enough damage? Is it individual or collective healing that is the most impactful?

[9:44] SPEAKER: In order to project the voices that should be heard, we are going to hear from two boarding school survivors, Mabel Grey, whose experiences in a residential school in Alberta we heard from earlier, and Francis Bent, who attended St George's residential school in British Columbia. They both have their own methods of healing.

[10:01] **Mabel Grey** : <<27:39-27:51>> ' I vowed if I ever had children that all of them would talk Cree. At home we all talk Cree to each other, no English'.⁹

[10:13] SPEAKER: Mabel Grey. teaching her children their native tongues in order to reclaim their sovereignty through reclaiming the language she was punished for speaking.

[10:21] **Interviewer**: <<28:45- 28:57>> 'So all your children spoke Cree?

[10:23] **Mabel Grey** : 'All of them. Not just one of them; all of them. Even some of my grandchildren talk Cree'.¹⁰

[10:32] SPEAKER: Now, here is Francis Bent talking about his healing process.

[10:35]**Francis Bent** <<21:25-21:37>>: ' Well, I fought pain many years. I know what pain is like. I feel it even today, not just my pain, I feel other people's pain.'¹¹

[10:45] SPEAKER: Obviously, healing is not a linear process, for anyone, with any trauma. So what helped Francis with his process? What got him out of bed from day to day?

[10:55]**Francis Bent** : <<22:18- 22:30>> : 'So i became a Christian. I accepted the Lord in my life. I knew a lot about him, but I never knew who he was.'¹²

[11:03]**Francis Bent** : <<22:35-22:45>> : 'So I started learning for myself. I started attending a lot of churches down here, and all over, all the way to Alaska, asking people about God.'¹³

[11:15] SPEAKER: Although there was what can only be described as systematic indoctrination within the schools, we can recognize that Christainty, religion and faith as a whole was a source

⁹ Mabel Grey —(2020). *Legacy of Hope Foundation*. Retrieved November 9, 2022, from <https://legacyofhope.ca/wherearethechildren/stories/grey/>.

¹⁰ Mabel Grey — (2020). *Legacy of Hope Foundation*. Retrieved November 9, 2022, from <https://legacyofhope.ca/wherearethechildren/stories/grey/>.

¹¹ Francis Bent — (2020). *Legacy of Hope Foundation*. Retrieved November 9, 2022, from <https://legacyofhope.ca/wherearethechildren/stories/bent/>

¹² Francis Bent — (2020). *Legacy of Hope Foundation*. Retrieved November 9, 2022, from <https://legacyofhope.ca/wherearethechildren/stories/bent>

¹³ Francis Bent — (2020). *Legacy of Hope Foundation*. Retrieved November 9, 2022, from <https://legacyofhope.ca/wherearethechildren/stories/bent>

of comfort and healing for some indigenous groups. It was a place to find a sense of reconciliation, belonging and love for members of indigenous nations attempting to strengthen their communities and families.

[11:35] Francis Bent : <<25:15-25:26>> ‘Yeah. I learned to play the guitar and I sing gospel music in communities’

[11:41] Interviewer : ‘You’re still in the choir!’

[11:42] Francis Bent : ‘Yeah, I’m still in the choir!’

[11:44] SPEAKER: Francis’ involvement in the local community and school again reflects that healing is active, non linear and comes in many forms. It shows how important it is for these voices to be heard, especially by children, to learn and understand from a young age the real history.

[11:57] Francis Bent : <<26:39-26:50>> : ‘I’ve challenged people in authority to stand up to them and challenge what they believe.’

[12:03] SPEAKER: So, what do these oral histories demonstrate about the process of healing? Well, there are countless examples of the way Native American survivors of BIA schools and their communities heal, through engagement as a wider family, through faith and religion, through claiming back identity and encouraging language. Just like with any healing from any trauma and grief, there is not one way or one right way. It is our job to listen. As C.T Rodriguez says, oral histories themselves are a way of healing, as they ‘also combine indigenous knowledge systems and education research, where oral history serves to prioritize the voices of the participants.’¹⁴ It reinforces the idea of existence as resistance, and demonstrates that although settler colonialism and its structures continue to exist, indigenous communities are not passive victims of their suffering, and through oral histories as healing, they can ‘nation-build and decolonize for self-determination to uphold sovereignty’.¹⁵

[12:57] SPEAKER: In addition to individual healing, there are also organizations in place specializing in reclaiming indigenous sovereignty. For example, the ‘Farm to School’ initiative stems from the forced agricultural work that Native children had to undertake as a deliberate effort to drive individualism and promote colonial food agendas and dominance. Instead, this

¹⁴ Rodriguez, C. T. (2020). (Re)writing California Native American Representations: Amah Mutsun Sovereignty and Educational Experiences of Tribal Elders. *UCLA*. ProQuest ID: Rodriguez_ucla_0031N_19237. Merritt ID: ark:/13030/m5f24gmg. Retrieved from <https://escholarship.org/uc/item/8js21819>

¹⁵ Rodriguez, C. T. (2020). (Re)writing California Native American Representations: Amah Mutsun Sovereignty and Educational Experiences of Tribal Elders. *UCLA*. ProQuest ID: Rodriguez_ucla_0031N_19237. Merritt ID: ark:/13030/m5f24gmg. Retrieved from <https://escholarship.org/uc/item/8js21819>

project promotes food sovereignty and they ‘strive to be supporters in work happening to reclaim food traditions, revitalize Native foodways, and build food sovereignty.’¹⁶

[13:26] SPEAKER: Another example is the National Native American Boarding School Healing Coalition, and their mission statement is ‘to lead in pursuit of understanding and addressing the ongoing trauma created by the US Indian Boarding School Policy.’

[13:39] SPEAKER: Among multiple resources, the ‘Healing Voices’ Project elevates the stories of survival and healing from Indian Boarding Schools, and encourages allies to visit the NABS Youtube channel or even purchase merchandise from their official store in order to raise money to support boarding school healing.¹⁷ Their website is linked in our transcript and we would encourage you to check out even more of the stories and news, even the merch to support this wonderful organization.

[14:05] SPEAKER: Another form of healing is the idea of remembrance. For example, in September 2022, hundreds gathered in downtown St. Paul in Minnesota for a candlelight vigil honoring those who attended federal Indian Boarding Schools. Attendees gathered in ceremony and song and listened as boarding school survivors shared their experiences. This is the kind of remembrance that needs to happen. Remembrance without action does nothing, but the participation of those who listen and act can.

[14:29] SPEAKER: According to *Native News Online*, ‘vigil organizers also urged participants to call their representatives to advocate for the *Truth and Healing Commission on Indian Boarding School Policies Act*.’ At the time of writing the article in September 2022, both the House of Representatives and the Senate were reviewing a bill that would establish a truth and healing commission on Indian boarding schools. To the day of recording, according to the Congress Bill tracker, it is still yet to be passed in the Senate.¹⁸

[14:56] SPEAKER: On its own, without the participation of those survivors, remembrance can be dangerously used as a tool for a settler move to innocence, a way of acknowledgement in a moment and then brushed away, With continued advocacy and centring the correct voices, remembrance and real change can take place.¹⁹

¹⁶NFSN Staff. (2021, August 8). The History of Forced Native American Boarding Schools, the Link to Farm to School, and Our Commitment. Retrieved from www.farmtoschool.org website: <https://www.farmtoschool.org/news-and-articles/the-history-of-forced-native-american-boarding-schools-the-link-to-farm-to-school-and-our-commitment>

¹⁷ ‘Healing Voices Movement’, The National Native American Boarding School Healing Coalition, accessed October 26th 2022, <https://boardingschoolhealing.org/healing/healing-voices-movement/>

¹⁸ <https://www.congress.gov/bill/117th-congress/senate-bill/2907>

¹⁹ Thompson, D. (2022, September 30). Hundreds Gather in St. Paul for Boarding School Survivors Candlelight Vigil. Retrieved December 1, 2022, from Native News Online website: <https://nativenewsonline.net/currents/hundreds-gather-in-st-paul-for-boarding-school-survivors-candlelight-vigil>

[15:12] SPEAKER: What does this ‘real change’ look like then ? We have covered individual healing and the incredible efforts of some charities, projects and organizations. What about official federal investigation and legal change? Do these play a part in healing? ‘It was not until 1978 with the passing of the Indian Child Welfare Act that Native American parents gained the legal right to deny their children’s placement in off-reservation schools.’²⁰

[15:33] SPEAKER: This concludes Part 1 of our episode "Coerced Removal of Indigenous Children." Please listen to Part 2 to hear about the stakes of ICWA being ruled unconstitutional by the US supreme court, and how this decision may lead to more indigenous children being removed from their families and tribes in the future.

<<*Transition music to fade*>>

<<*Otter pod music*>>

SPEAKER: *Credits*: “Executive producers of the OtterPod are Dr. Sara Salazar Hughes and Dr. Chrissy Lau. Theme music by Eric Mabrey [May-bree].

Research and Script writing by:

Hosted by :

²⁰ http://www.nativepartnership.org/site/PageServer?pagename=airc_hist_boardingschools

PART 2

<<otter pod introduction fades>>>

[0:06] SPEAKER: "Welcome to Part 2 of our 2-part episode on the "Coerced Removal of Indigenous Children." If you haven't yet listened to Part 1, you can return to that episode to learn about the history and impacts of indigenous child removal, including residential schools, and efforts toward indigenous healing. In Part 2, we return to discuss the history of the Indian Child Welfare Act (or ICWA) and its potential fate now that the Supreme Court ruled it unconstitutional. In particular, we are concerned about what this means for indigenous children and their removal from their families and tribal communities.

[0:40] SPEAKER: Without this act, Indigenous populations, their sovereignty and child care practices are not protected and the states cannot be required to enforce the ICWA unless there are special clauses in state legislation that gives way to tribal court rulings. Here is a short clip from the beginning of our first episode on the Coerced Removal of Indigenous Children" :

[1:00] SPEAKER: "Indigenous community members in Arizona are living in a state of uncertainty and fear following the Supreme Court decision finding the archaically named Indian Child Welfare Act or the ICWA, unconstitutional. As the name states, this act was meant to protect the welfare of indigenous children who entered the foster care system, and in an effort to keep them with their families and tribes, it was enacted in 1978, as a response and solution to the problem of the Bureau of the Interior and Bureau of Indian Affairs removing indigenous children from their families at alarming rates. As we know, the BIA was responsible for the creation of Residential Schools. As the forceful assimilation of Native American children, we understand the BIA continued this practice well into the 1970s but instead of placing them in schools, they were placed in non-indigenous familial homes, the reason being they might be safer there."

<<*Transition music to fade*>>

[2:01] SPEAKER: Following the highly racialized case of Hallan v Bracken, the ICWA has been ruled unconstitutional. This Supreme Court ruling not only threatens indigenous ways of life as the ICWA was a landmark regulatory act that helped to secure native hunting, gaming and fishing practices for indigenous communities, but goes to show how, without it, institutionalized genocide against Native Americans will and has made its way to the 21st century. The plaintiffs in this case include a white Christian couple who argue reverse racism is central in ICWA regulations. As well, they argue that the Federal government is in violation of the tenth amendment. However, I would argue these people don't understand the first thing about raising an indigenous child and just don't want to.

[2:51] SPEAKER: This ruling didn't just dissolve the ICWA but it did quite a lot of damage. In striking down portions of the ICWA, an effort to contend that the act violates the

anti-commandeering doctrine of the 10th amendment, or “*The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.*” It essentially removes the statues in place that allow tribal courts to decide the placement of indigenous children. Legally speaking, just one of these sections that was struck down, 1912 (a), (d), (e) and (f) - include particular practices in adoption rulings like (1) when the court determines indigency, it gives agency to Tribal members over who represents the indigenous child or, (2) if the effort to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indigenous family have proven unsuccessful, that no foster care placement shall be ordered in the absence of a character witness or by clear and convincing evidence by the parent or indigenous custodian And, finally (3), no termination of parental rights will be ordered in the absence of a determination supported by clear and concise evidence that the continued custody of the indigenous child by their indigenous parents resulted in emotional or physical harm.

[4:21] SPEAKER: Okay, I know I just hit you with a bunch of legal jargon but if you’re still with me, please pat yourself on the back and let's take a deep breath. What this essentially means is the plaintiffs argued indigenous children and tribes should not receive “special treatment” when it comes to placement within a home aligned with the cultural values of their tribes. They were able to succeed by way of manipulating the anti-commandeering doctrines in the 10th amendment which doesn’t give the Federal government power over the states to enforce laws if the state itself does not wish to enforce it, but also because of their claims of reverse racism. I think we all know how incredibly, mind-bogglingly absurd that claim is. Mind you, the lawyers working this case are working pro bono but, have pockets lined with big oil money²¹. Essentially, Preventing the erasure of indigenous identities, which is why the ICWA was founded in the first place, and for the overall health and well-being of indigenous children is not at the forefront of this case, it is in fact the opposite.

[5:33] SPEAKER: This not only threatens indigenous ways of life as the ICWA was a landmark regulatory act. However aforementioned, it is just another way to show how institutionalized violence towards Native Americans manifests itself.

[5:50] SPEAKER: For example, in the 1970s, involuntary sterilization was rampant in BIPOC communities, but particularly those who were previously targeted by Child Welfare programs. As we discussed, Native and Indigenous populations were an especially vulnerable group.²² Sally J. Torpy, Historian and scholar writes of Norma Jean, a Navajo woman who had her two children

²¹<https://lawjournalforsocialjustice.com/2022/03/21/whos-really-behind-brackeen-v-haaland-the-conspiracy-that-a-law-firm-and-big-oil-are-dupliciously-undermining-tribal-sovereignty-through-native-children/>

²² “Medical records reveal that “several” consent forms were dated the day the woman had given birth, usually by Cesarean section, while she was under the influence of a sedative and in an unfamiliar environment.” 407 Lawrence. (2000). The Indian Health Service and the Sterilization of Native American Women. *American Indian Quarterly*, 24(3), 400–419. <https://doi.org/10.1353/aiq.2000.0008>

taken from her while she was pregnant with her third. Armstrong County Child Welfare Services claimed malnourishment, which was later ruled to be unfounded and upon delivery of her third child, her tubes were tied involuntarily and she signed the consent paperwork for this procedure the following day. These procedures require at LEAST 72 hours of observation before someone is cut, however her procedure was done in a matter of minutes following a C-section. C-sections were often encouraged to Native women as well as appendectomies that later resulted in the removal of uteruses and 15 year olds with fallopian tubes mysteriously tied that point to an overall scheme of ethnic cleansing. This effort to sterilize indigenous women was made manifest through the Indian Health Service (IHS), the Department of Health, Education, and Welfare (HEW), and the Bureau of Indian Affairs (BIA). The United States government created specialized departments that inadvertently aimed to control population size in indigenous communities and as a result, there was little to no protection from state-sanctioned child welfare programs who were racially and culturally biased.

[7:26] SPEAKER: Researchers found that social workers rarely removed children for abuse, a congressional report said, but rather because they equated Indigenous community's disproportionate poverty with neglect, and caretaking by extended family — common in Native communities — with parental abandonment²³. As stated by Choctaw tribal chief, Calvin Isaac, during the US Senate testimony prior to the passage of ICWA: "One of the most serious failings of the present system is that Indian children are removed from the custody of their natural parents by non-tribal governmental authorities who have no basis for intelligently evaluating the cultural and social premises underlying Indian home life and child rearing. Many of the individuals who decide the fate of our children are, at best, ignorant of our cultural values and, at worst, have contempt for the Indian way and convinced that removal, usually to a non-Indian household or institution, can only benefit an Indian child."

[8:28] SPEAKER: So the practice "save the child, kill the Indian" was a colonialistic ideal enforced well into the 1970s, and echoes today's SCOTUS rulings.

[8:39] SPEAKER: Everything changed in 1978. Four intervening tribes - the Cherokee Nation, Morongo Band of Mission Indians, the Oneida Nation and the Quinault Indian Nation²⁴ with the help of American Association of Indian Affairs employed New York attorney Bertram Hirsch's investigative findings of up to 25-35% children removed from their homes without proper documentation and up to 85% of children placed in white foster care homes, the Indian Child Welfare Act was enacted by Congress. In their official declaration of this policy and I quote, they say, "The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the

²³ <https://www.washingtonpost.com/nation/2022/11/07/icwa-supreme-court-arizona/>

²⁴ <https://indiancountrytoday.com/news/supreme-court-takes-up-the-indian-child-welfare-act>

establishment of minimum Federal standards for the removal of indigenous children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to tribes in the operation of child and family service programs.”²⁵

[9:44] SPEAKER: I apologize for the archaic language and will do my absolute best to remove it from here on out but, anyways...

[9:52] SPEAKER: Without this act, Indigenous populations, their sovereignty and child care practices are not protected and the states cannot be required to enforce the ICWA unless there are special clauses in state legislation that gives way to tribal court rulings.

[10:07] SPEAKER: As we mentioned at the beginning of this podcast... In Arizona, tribal members, indigenous parents are living in a state of uncertainty and fear. Washington Post journalist Karen Brulliad, reported on her visit to the PASCUA YAQUI, who with the federal funding from the BIA, saw 49% of its ICWA cases end in families reunified - this is the ultimate goal. This particular tribe is a tight-knit community of Yaqui people from around the country, with most children being adopted or fostered that came from outside of the state. Now between the years of 2016 and 2020, children have been placed with tribal members in 91% of cases. However, Brulliard reports that these numbers don't mean the Tribe has rigid placements, and if it is necessary for the child to be put in a non-indigenous home, then they'll go - the ICWA does not stand to discriminate against non-tribal members, it goes to protect the longevity of tribal bonds and indigenous ways of life.

[11:11] SPEAKER: Federal funding that once came from the BIA that paid for ICWA lawyers and paralegals now may stop - leaving the Yaqui tribe and many others without the proper resources to continue reuniting families and ensuring indigenous children from across the country grow up within their culture. Bruillard reports invalidating the ICWA could force the tribes and states to “start from scratch”. While some states, including New Mexico have adopted statutes that protect the ICWA even if it is repealed, Arizona does not have a failsafe and there is no legislation that will ensure tribal courts jurisdiction over indigenous adoption or foster cases, and tribal members fear that if the ICWA dies, their land, their autonomy as tribal nations and self-governance will be at stake.

[12:00] SPEAKER: Essentially, the SCOTUS ruling further contributes to the ethnic cleansing, forced assimilation and dispossession of indigenous communities, but remember that the shockwave of this ruling also may reverberate throughout indigenous laws on hunting, fishing and gaming, which has the potential to alienate indigenous communities from their land and way of life.

²⁵ <https://www.law.cornell.edu/uscode/text/25/1902>

[12:20] SPEAKER: While the future is uncertain, tribal members are fighting for recognition of their triumphs. Fighting for the recognition that the ICWA is a gold standard in child welfare, and they are fighting for their right to their own identity and culture. It is apparent at the Yaqui reservation, after 500 years of colonialism, they will still find a way to survive this onslaught of racist rulings and that families are able to be recognized both through blood and ceremony.

[12:47] SPEAKER: I leave you with this, settler colonial projects, like the United States, in the words of Nishnaabeg scholar, artist and writer Leanne Betasamosake Simpson, put a great deal of energy into, "...breaking the intimate connection of Nishnaabeg bodies (and minds and spirits) to each other..." (Simpson, 2017, 41). This of course is a function of erasure and what is key in understanding why the ICWA is so vital to First Nations is without children - there is no future.

<<*fade transition music*>>

[13:27] SPEAKER: Thank you for listening to our podcast. We hope this has aided your own understanding of residential schools as they pertain to the erasure of Native Americans, and the consequences of colonial projects. We hope this podcast has prompted the desire for further education and research into the topics of decolonization, indigenous and tribal sovereignty and repatriation of land.

[13:48] SPEAKER: The future of the ICWA is still unclear at the point as we're recording the podcast but we have a final plea, and its for lawmakers, its for the Supreme Court we wish that you hear the please of tribal members you hear the pleas of the children yearning for a connection to their families, and will finally recognize, aptly put by Attorney Birtram Hirsch, "Child rearing and the maintenance of tribal identity are 'essential tribal relations'. By paralyzing the ability of the tribe to perpetuate itself, the intrusion of a State in family relationships within the Navajo Nation (and abroad) interfere with a child's ethnic identity with the tribe of his birth are ultimately the most severe methods of undermining retained tribal sovereignty and autonomy." ²⁶

[14:42] <<*theme music plays, then fades*>>

[14:48] SPEAKER: *Credits:* "Executive producers of the OtterPod are Dr. Sara Salazar Hughes and Dr. Chrissy Lau. Theme music by Eric Mabrey [May-bree].

²⁶<https://imprintnews.org/child-welfare-2/nations-first-family-separation-policy-indian-child-welfare-act/32431>

Research and Script writing by: [REDACTED]

Hosted by : [REDACTED]

References:

- 25 u. S. Code § 1902—Congressional declaration of policy.* (n.d.). LII / Legal Information Institute. Retrieved December 8, 2022, from <https://www.law.cornell.edu/uscode/text/25/1902>
- Amdt10.4.2 Anti-Commandeering Doctrine.* (n.d.). [Government]. Constitution Annotated. https://constitution.congress.gov/browse/essay/amdt10-4-2/ALDE_00013627/
- Bent, F. (n.d.). [Interview]. <https://legacyofhope.ca/wherearethechildren/stories/bent/>
- Brackeen v. Bernhardt (5th Circuit and lower courts); tribal supreme court project, native american rights fund.* (n.d.). Retrieved December 8, 2022, from https://sct.narf.org/caseindexes/brackeen_v_bernhardt_lower_courts.html
- Grey, M. (n.d.). [Interview]. <https://legacyofhope.ca/wherearethechildren/stories/grey/>
- Healing voices movement. (n.d.). *The National Native American Boarding School Healing Coalition.* Retrieved December 8, 2022, from <https://boardingschoolhealing.org/healing/healing-voices-movement/>
- Icwa history.* (n.d.). Retrieved December 8, 2022, from <https://dphhs.mt.gov/cfsd/icwa/icwahistory>
- In Arizona, small tribe watches warily as Supreme Court takes up Native adoption law.* (2022, November 7). Washington Post. <https://www.washingtonpost.com/nation/2022/11/07/icwa-supreme-court-arizona/>
- Indian child welfare act(Haaland v. Brackeen). (n.d.). *Native American Rights Fund.* Retrieved December 8, 2022, from <https://narf.org/cases/brackeen-v-bernhardt/>
- Law Journal for Social Justice at Arizona State University, B. H. (2022, March 18). *Who's really behind Brackeen v. Haaland?: The conspiracy that a law firm and Big Oil are duplicitously undermining tribal sovereignty through native children.* Law Journal for Social Justice.

Retrieved December 9, 2022, from

<https://lawjournalforsocialjustice.com/2022/03/21/whos-really-behind-brackeen-v-haaland-the-conspiracy-that-a-law-firm-and-big-oil-are-dupliciously-undermining-tribal-sovereignty-through-native-children/>

Lawrence, J. (2000). The indian health service and the sterilization of native american women. *The American Indian Quarterly*, 24(3), 400–419. <https://doi.org/10.1353/aiq.2000.0008>

{{meta. Pagetitle}}. (n.d.). {{meta.SiteName}}. Retrieved December 8, 2022, from <https://www.oyez.org/cases/2022/21-376>

Murray, K. B. (2017). The violence within: Canadian modern statehood and the pan-territorial residential school system ideal. *Canadian Journal of Political Science*, 50(3), 747–772. <https://doi.org/10.1017/S0008423916001189>

Native american history and culture: Boarding schools—American indian relief council is now northern plains reservation aid. (n.d.). Retrieved December 8, 2022, from http://www.nativepartnership.org/site/PageServer?pagename=airc_hist_boardingschools

Pember, M. A. (n.d.). *Supreme court takes up the indian child welfare act.* ICT. Retrieved December 8, 2022, from <https://indiancountrytoday.com/news/supreme-court-takes-up-the-indian-child-welfare-act>

RENICK, C. (2018). *The Nation's First Family Separation Policy.* <https://imprintnews.org/child-welfare-2/nations-first-family-separation-policy-indian-child-welfare-act/32431>

Rodriguez, C. T. (2020). *(Re)Writing california native american representations: Amah mutsun sovereignty and educational experiences of tribal elders* [UCLA]. <https://escholarship.org/uc/item/8js21819>

Ross, S. (n.d.). [Interview]. <https://legacyofhope.ca/wherearethechildren/stories/ross/>

Truth and Healing Commission on Indian Boarding School Policies Act, no. S.2907. <https://www.congress.gov/bill/117th-congress/senate-bill/2907>

Sproule-Jones, M. (1996). Crusading for the forgotten: Dr. Peter bryce, public health, and prairie native residential schools. *Canadian Bulletin of Medical History*, 13(2), 199–224.

<https://doi.org/10.3138/cbmh.13.2.199>

Stackpath. (n.d.). Retrieved December 8, 2022, from

<https://fedsoc.org/commentary/fedsoc-blog/oral-arguments-on-the-indian-child-welfare-act>

Swentzell, R. (1990). Conflicting Landscape Values: The Santa Clara Pueblo and Day School [Vision, Culture and Landscape]. *Places*, 7(1).

<https://escholarship.org/content/qt16g3b3gx/qt16g3b3gx.pdf>

The history of forced native american boarding schools, the link to farm to school, and our commitment. (n.d.). Retrieved December 8, 2022, from

<https://www.farmtoschool.org/news-and-articles/the-history-of-forced-native-american-boarding-schools-the-link-to-farm-to-school-and-our-commitment>

Thompson, D. (n.d.). *Hundreds gather in st. Paul for boarding school survivors candlelight vigil*. Native News Online. Retrieved December 8, 2022, from

<https://nativenewsonline.net/currents/hundreds-gather-in-st-paul-for-boarding-school-survivors-candlelight-vigil>

TORPY, S. J. (n.d.). *Native American Women and Coerced Sterilization: On the Trail of Tears in the 1970s* (pp. 1–22).

https://www.law.berkeley.edu/php-programs/centers/crrj/zotero/loadfile.php?entity_key=QFDB5MW3