

Defending the Circle: Countering the Attack on the Indian Child Welfare Act (ICWA)

By Stephen M. Sachs*

The Indian Child Welfare Act (ICWA) was enacted in 1978 to stop the harm caused to Indian children who were removed from their Indian nations to be adopted by non-Indians, without the consent of the concerned Indian Nations, and end the long-term damage caused to the tribes by the practice. ICWA, considered the "gold standard" of child welfare practice, initiated a significant improvement in child welfare policy in practice.

The attack on the act has long come largely from those both knowingly and unknowingly of the same imperialist mindset that thrust the destructive colonialism upon well working Indigenous communities that caused the serious harms that required the enactment of ICWA, as one aspect of rectifying the larger set of continuing injustices.

Indian Nations Before Contact

At the time of European first arrival in North America, Indian nations were ancient, well working societies, having developed a deep understanding of human nature and relations, and of their relationship to their environment.¹ Native communities functioned inclusively and participatively, mutually supporting each and all of their citizens. Recognizing the inherent worth and uniqueness of each person, the varied contribution of each tribal member to their community was honored, as were their voices in community affairs.

While they were not perfect, their relative virtues drew many Europeans who came to what was for them a "New World" to join North American Native societies. As Hector St. John Crèvecoeur said in 1782, in *Letters of an American Farmer*, "There must be in their [the Indians'] social bond something singularly captivating, and far superior to anything to be boasted among us; for thousands of Europeans are [have become] Indians, and we have no example of even one of those Aborigines having from choice become Europeans."²

Moreover, from the very beginning, the direct experience of European colonists in North America and the thousands of reports about Indians avidly read in Europe had a profound impact especially in the colonies, but also in Europe, on political, social and economic thought, institutions and ways of proceeding. The idea that rights were inalienable was learned from Indians, while the entire spectrum of European and European-American political philosophies has strong Indigenous American roots. This includes that that we in the United States, and in Canada, Europe and elsewhere have as much democracy as we do because of Europeans observing far more democratic and equalitarian Native examples than they previously knew. This influence has been ongoing since first contact, and has been increasing for three-quarters of a century.³ It was well appreciated in the late colonial era and in the early years of the American Republic, where it was widely and correctly recognized that an American was a mixture of the European and the Indian.⁴ With the Indian renewal policies of Andrew Jackson, recognition of Indigenous American positive influence, went underground, but the learning has continued. Of particular relevance here is that strong evidence that Native American ways of raising children were extremely

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good, and generally have remained so is shown in the fact the Erick Erickson developed his groundbreaking and still central theory of human psychological development from observing the child rearing ways of the Oglala Lakota of South Dakota and the Yurok of California, in the 1930s.⁵ This is supported by Rupert Ross findings in his work with First Nation people in Canada in showing that traditional Native cultures, their ways of bringing up children and living together, worked very well, and that contemporary psychologists are only now learning what Indigenous people have known about human nature for thousands of years.⁶

The Impact of Colonialism and Movement Toward Restoration

Especially after 1830, Native peoples in the United States and Canada, who have been contributing so much to those countries and the world, suffered a horrendous physical and cultural genocide that continues to have serious negative impacts, and to some extent is ongoing.⁷ Indigenous Americans whose lands spanned the entire continent, have been reduced to but a few relatively small reservations, often away from their traditional lands, and that, only if they were among the "tribes" or "bands" receiving official governmental recognition. Reservation land was further reduced under the Dawes Act of 1887 that provided each Indian family an allotment of usually 140 acres within the reservation and taking the rest for settlers.⁸ Wars, forced relocations with "Trails of Tears," disease - at times intentionally inflicted by colonizers - along with suffering and death resulting from government and private settler action that reduced Native populations that were in the millions at the time of first European contact, to but 345,000 in 1880, a drop of at least 90 percent.⁹

This huge population decline and accompanying suffering was furthered by the both deliberate and resulting destruction of Indigenous Americans ability to make a living, and inadequate compensation for this by the U.S. government under treaties to do that, and among other things to provide adequate education and healthcare in return for the Native nations ceding land. These treaties were often forced on tribal nations by military force, intimidation, and deceit and/or unintentional lack of the government providing adequate information to non-English speaking Indians of all that was in the treaty. Nevertheless, Indian Nations have always respected and followed the treaties, while the U.S. government continually violated them. In one instance, an Indian tribe was removed on thirteen separate occasions from lands that the government had guaranteed it. Nor has the federal government ever adequately provided the Native nations and their citizens what was and is required under the treaties and the federal trust responsibility stemming from them. The result of this by the 1920s, as published in the *Meriam Report*, in 1928,¹⁰ was that Indian people were in dire economic need to the point of starvation, with poor housing, ill health and declining population, and were extremely discontented. While that situation has improved since the 1920s, federal government spending for American Indians has continued to be considerably less than required. For example, In 1998, on all U.S. government domestic programs, federal spending per Indian was less than 65% of federal spending per American, while, Taylor and Kault, *American Indians on Reservations* reports that in the period of the 1990 to 2000 U.S. censuses, found that federal Indian funding levels lost ground against non-Indian domestic spending.¹¹ Concerning health care, Tex Hall, President of the National Congress of American Indians (NCAI) stated in the third annual State of Indian Nations Address, on February 3rd, 2005, that "per capita expenditure for American Indian and Alaska Native medical services is less than one-third of the average annual expenditure for individual Medicaid assistance, and is even less than our per capita health expenditure for federal prisoners."¹² There has been some improvement since then, especially more funding for health care, but as of 2022 there remains a huge gap to cross for Indigenous Americans to have anywhere near parity in government

services, including health care, with education, housing and other essential services continuing to lag in financing and quality, even more so.

Up until the 1920s the tremendous harms to Indian peoples and people were accomplished under a series of evolving federal Indian policies. These began to change to some degree, slowly and unevenly, following favorable public views of the outstanding participation of American Indians in World War I. There, as generally throughout U.S. history and most notably during war time, a much higher percentage of American Indians and Alaska Natives have participated in the defense of the country than have the members of any other measured group, and of the population as a whole.¹³

The Cultural Genocide

The cultural genocide has been even more devastating. Indian Nations were denied the right to have their own government, while their people were highly regulated and restricted in travel and other activity. Traditional leadership was undermined and traditional ceremonies were banned, while Christian missions and churches of various denominations were established on reservations as government policy of religious and general assimilation. Worst of all, from 1819 to 1969, a few at first, and later, most Indian children were forcibly taken to distant boarding schools where too often harsh teachers and administrators attempted to assimilate them to White society. Students were punished if they spoke their own languages and told their traditional ways were backward and evil. In a great many instances, students suffered abuses, which often were internalized as proper behavior, while high quality traditional parenting methods were partially disrupted. The experience was so severe, that hundreds of Indian Young people died at the schools. The inadequacies of the education to mainstream ways, combined with racism in the larger society, prevented most Native young people from becoming part of the larger society - though there were important notable exceptions. At the same time the loss of cultural ways caused a great many Indigenous young people to find themselves alienated when they returned home.¹⁴

The boarding school experience, combined with the other aspects of colonialism, caused a great many Native Americans to feel badly about themselves and their cultures - which lost a significant portion of their cultural knowledge and wisdom - and to experience psychological problems and behaviors that were destructive to themselves and others. A major factor has been unresolved historical grief that has been passed on intergenerationally.¹⁵

After the 1920's

Beginning in the 1920s, Indian policy began to improve somewhat. The federal government officially allowed Indians to vote in 1924, though some states were still preventing them from doing so well into the 1950s, and suppression of the Native vote and dilution of Native voting power has continued in some locations.¹⁶ The Indian New Deal of the Franklin Roosevelt administration brought some significant relief, within the limits of its design and bureaucratic resistance from the Bureau of Indian Affairs.¹⁷ But beginning in 1945 federal Indian policy shifted to "Termination," ending the federal recognition of Indian nations, which occurred in some cases. In the 1950s many Native people were relocated from reservations to cities for jobs and support that largely never materialized.¹⁸ Then in the 1950s a major program began to adopt American and Canadian Indian children and place them with non-Native parents.

From 1958 to 1967, the Child Welfare League of America (CWLA), a research and standard-setting umbrella organization for social agencies serving children, contracted with the U.S. Bureau of Indian Affairs to administer an experimental program of Native adoptions, the Indian Adoption Program (IAP), "to stimulate on a nation-wide basis the adoption of homeless American Indian children by Caucasian

families."¹⁹ By 1967, 395 Native children had been adopted under the program. Then, in 1968, CWLA made it part of the broader Adoption Resource Exchange of North America (ARENA), aimed at matching hard-to-place children (including Native American juveniles) from across the United States and Canada with willing adoptive parents. By 1977, IAP and ARENA had almost 800 Native children had been removed from their tribal homes to Caucasian families. The ARENA program, in turn, stimulated other adoption agencies to follow the same practice.²⁰ This resulted in almost 5000 Native children to be adopted out of their cultures by 1967, and thousands more such adoptions occurred afterwards. Overall, 25%-to 35% of all Native Children were removed from their families, reservations and cultures, according to surveys by the Association of Indian Affairs in 1969 and 1974.²¹ Many Indian Nations and parents objected to these adoptions from the start. Some at the very beginning, considering the difficult conditions on their reservations at the time, reluctantly made the hard choice to allow their children to be adopted out, with the promise that their offspring would live with fine families and have good opportunities open to them. These tribes and parents soon relented when the negative effects of the program, magnified by the scale of the removals, became evident.

The adoption program created many difficulties for the adopted children and their communities. In terms of the principle that is supposed to guide adoptions, for most of the Native young people removed from the reservation, it did not work "in the interest of the child."²² To begin with, many children were removed from their families and communities who should not have been. Too many social workers and officials making decisions were culturally limited, conceiving a proper family being, and functioning, according to the model of the mainstream White nuclear family. They did not understand that Indigenous families functioned in harmony with the idea that "it takes a village to raise a child." Everyone in the Native community, and especially broadly conceived extended family, were involved in raising each child, and children were allowed to roam freely in the community, contributing to their education, learning from witnessing all its activities, with mentoring by virtually all its adults. This cultural misunderstanding caused many healthy and well cared for children being considered neglected and in need of removal. As one tribal citizen observed,²³

For this whole century, right up until 1978 when we got the Indian Child Welfare Act, social workers would come in here with no understanding of how our families worked. They would see a child who'd been left with someone outside the nuclear family, and they would call that neglect. To us, that is an insane rationale. We don't distinguish between father, uncle, mother, grandmother. We don't think of ourselves as having extended families. We look at you guys and think you have contracted families. We couldn't understand why they were taking us apart. My brother Gabe, going to a man and woman in Texas when we had a whole family here. I've seen babies carried off with no more thought than you'd give a bag of brown sugar you picked up at the market.

Because of the psychological and behavioral problems that many tribal members suffered from, to some degree, as a result of the boarding school and other colonial experiences, some children did need to be separated from their birth parents. However, instead of quite properly placing them with an extended family or other tribal member, which was the proper recourse, they were placed with white families with virtually no understanding of the child's culture. In most instances, this caused serious problems for the child, alienating them from their culture and community, undermining their sense of self. Much too often, even if adoptive parents were loving and supportive, and honored a Native child's heritage, encouraging

s/he to read about it, the limited learning out of cultural context was insufficient. When, they tried returning to their community of origin, the young people did not understand how to relate and act within it, and were emotionally undermined by their alienation from it. In many instances adopted Indian children had to face racism in school and afterwards, without the support of birth peers and community members. The racism situation improved after the 1970s, but recently has worsened again. The overall impact of adopting Indian children out of their cultures has been that a great many of them have functioned badly both in the wider world and in their birth communities.

For Indigenous communities and their citizens, the huge loss of their children was traumatic, internalized as another painful act of genocide against them. Practically, it removed from the communities future quite valuable members needed for community survival, well being, and recovery from colonization.²⁴ By the 1970s, with a large number of African American children also having been adopted out, with similar negative experiences, it began to be recognized that out of culture adoptions generally did not work very well.

Relief in the Policy of Self-Determination

Finally, in 1970, the federal policy of termination, which had been put on hold during the Kennedy administration, was officially replaced by the launching of the policy of Indian Self-Determination.²⁵ The policy has developed continually since then, increasingly empowering Indian Nations to exercise the sovereignty they have always had, but were prevented from exercising. Today, federally recognized tribes are recognized as being governments within U.S. Federalism. As "domestic sovereigns" they have considerable autonomy in their own affairs in a federal system consisting of Federal, State and tribal governments. In some respects, they are equal to states, in others superior, stemming from their having joined the United States as sovereign entities. Tribes oversee any local subdivisions they may have, such as the 110 chapters of the Navajo Nation, just as states establish, empower, regulate, and can disestablish local governments within their jurisdiction. Tribal governments, just like states are often delegated regulatory authority by the federal government, such as the power to make rules within federal guidelines and to regulate matters within and in some cases impacting their jurisdictions, such as regulating air and water quality.

In the response to the quite considerable harm done to Indian children removed from their families and communities, and to their nations, in November 1978, as part of Indian self-determination, the United States Congress passed Public Law 95-608, The Indian Child Welfare Act of 1978.²⁶ The act stated in part,

(3) that 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;

(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non- Indian foster and adoptive homes and institutions; and

(5) 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.

SEC. 3. 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 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, and by providing for assistance to Indian tribes in the operation of child and family service programs.

SEC. 4. For the purposes of this Act, except as may be specifically provided otherwise, the term—

(1) "child custody proceeding" shall mean and include—

(i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;

(iii) "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption. Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(2) "extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

The standards put forth in the act set guidelines for cases involving possible removal of Native children from their families and communities for state and other agencies and courts. These standards corrected the misnomer about what a Native family is and gave preference to leaving Indigenous children, first, in their extended family, second in the community, and lastly with other Indians whose culture was similar to that of the child's community. But the act recognized that where there is no satisfactory Native placement, an outside placement is proper (Section 105, a), and for temporary removal of a child in an emergency situation where a child faces imminent serious harm with their parent or guardian (Section 112).

Recognizing that Indian tribes are governments within the U.S. system of federalism, ICWA established,

SEC. 101. (a) An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

However, exceptions to tribal jurisdiction are permitted "for good cause" in Section 101 (b). Section 109 allows for Indian tribes to make agreements on the handling of Indian child removals and adoptions, again making the act flexible to deal with the best interest of the child, and also of the Indian nation.

Overall, the act sets good, flexible, standards and procedures for ensuring the best interest of the child, so far as possible, and secondarily for maintaining the integrity of the concerned Indian nation. Indeed, "Research shows that children in kinship care [keeping children within the extended family, tribe, or tribally approved foster home or culturally appropriate institution] have profound and enduring benefits to mental health, economic, and educational well-being," while, "Anti-ICWA policymakers and groups disregard these facts in their attempts to upend the Indian Child Welfare Act."²⁷ The research makes it clear, that not only are children usually better off psychologically if they are kept in kinship care, but along with that they function better in all aspects of their lives, including achieving more educationally and professionally, and as result faring better economically.

The ICWA standards were such an improvement over much of prior child welfare practice that Congress later imposed similar standards on state foster care systems. This has included requiring "reasonable efforts... to preserve and reunify families (42 U.S.C. §671(a)(15)(B)) and imposing requirements for notice (42 U.S.C. §675(5)(G)). While no legal process can work perfectly in practice, for the most part, ICWA has vastly improved the wellbeing of both affected Native children and their communities. In so doing, coming at a time when cross cultural adoptions had generally been found not to work very well for most children and communities, ICWA improved the work of caring for children generally, by setting forth that the proper definition of "family" varies culturally, and that child removals and placements need to consider both cultural factors and the impact of any such action on the child's community.

Attacks on ICWA

The Indian Child Welfare Act has long been attacked by those innocently limited in their understanding by the colonialist thinking that necessitated ICWA in the first place, and by many who are racist more broadly or anti-Indian in particular. Those attacks have now reached the point of a Supreme Court case involving challenges to the constitutionality of ICWA as a whole, and the constitutionality or legality of sections of the act.²⁸ The primary alleged objection to ICWA is that it is it violates "equal protection of the law" as set forth in the 14th Amendment as favoring one racial group. In general terms, it should be noted that those who favored inequality, especially regarding "race", but having lost the racist elitist argument, now often argue that "equality" means that everyone must now be treated in the same way, in attempt to protect their elite advantage by preventing people who have been made unequal from regaining equality by restorative or affirmative action.

Concerning ICWA, and other legislation and government action directly concerning and beneficial to Indians, the focus of the law is not in any sense based on race. Rather it targets a specific group on the basis of citizenship, citizenship in an Indian nation, often referred to as "tribe." This becomes obvious

when one sees that ICWA only applies to children who are, or are eligible to be, citizens of a federally recognized Indian or Alaska Native nation. In terms of race, a great many who are by blood or heritage, Native Americans, are not tribal members. While there are a great many people who are by blood African American, White, and possibly Asian, who are tribal citizens. This has occurred by tribal adoption, in most instances generations in the past.²⁹ In U.S. citizenship terms this is "naturalization," and consistent with U.S. law, tribal citizenship is inherited from parents who are tribal citizens. This is similar to U.S. citizenship being conferred on the offspring of U.S. citizens, even if they are born in a foreign country.

Some argue that ICWA, and by inference most, if not virtually all, federal Indian legislation dealing with welfare issues is unconstitutional because, they argue, that ICWA is based on the federal Commerce Power in article I of the U.S. Constitution, and that Indian child adoption has nothing to do with commerce. This argument is fallacious, first for misquoting the act and secondly for misunderstanding the direct impact large scale removal of Indian children would have on commerce. ICWA. Section 2 of the act plainly says,

SEC. 2. Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds—

(1) that clause 3, section 8, article I of the United States Constitution provides that "The Congress shall have Power * * * To regulate Commerce * * * with Indian tribes" and, through this and other constitutional authority, Congress has plenary power over Indian affairs;

(2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources; '

(3) that 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;

The plenary power of the United States to regulate relations with, and affairs regarding Indian Nations has been continually recognized by the U.S. Supreme Court since 1831, when the court stated in *Cherokee Nation v. Georgia* (30 US 1; 5 Pet 1; 8 L. Ed. 25) that Indian tribes were "domestic dependent nation[s]", and in 1832, in *Worcester v. Georgia*, (31 U.S. 515; 6 Pet. 515; 8 L. Ed. 483), the U.S. Supreme Court found that the Cherokee Nation was sovereign, and that Georgia had no rights to enforce state laws in its territory, as the sole power to relate to tribes was held by the Federal Government, primarily with Congress. The plenary power of Congress over Indian Nations stems not only from the commerce power, but also from the power that the Constitution gives to Congress to make regulations governing the territory belonging to the United States (Art. IV, Sec. 3, Cl. 2), and the president's constitutional power to make treaties (Art. II, Sec. 2, Cl. 2), under which Congress may pass legislation. The plenary power of Congress has continually been upheld, as exemplified by the Supreme Court's decision in *Lone Wolf v. Hitchcock*, in 1903 (187 U.S. 553, 23 S. Ct. 216, 47 L. Ed. 299). The change that has occurred with the ongoing development of the policy of self-determination, is that Indian nations, partners in U.S. federalism, are now in fact domestic sovereigns.

The Indian Child Welfare Act also includes provisions to establish and fund programs to make ICWA function well in practice, improve physical and behavioral conditions in Indian homes to make removals

of children unnecessary or only temporary, and otherwise assure that "the permanent removal of an Indian child from the custody of his parent or Indian custodian shall be a last resort," as the removal of children from their parents almost always has negative impacts on the child, and should only be undertaken when leaving a child with its parents is more harmful to the child. These programs are undertaken under the Article I, Section 8 of the constitution spending power of congress to "provide for the common Defense and general Welfare of the United States," and are consistent with long legally well established use of that power.³⁰ The act provides,

SEC. 201. (a) The Secretary is authorized to make grants to Indian tribes and organizations in the establishment and operation of Indian child and family service programs on or near reservations and in the preparation and implementation of child welfare codes. The objective of every Indian child and family service program shall be to prevent the breakup of Indian families and, in particular, to insure that the permanent removal of an Indian child from the custody of his parent or Indian custodian shall be a last resort. Such child and family service programs may include, but are not limited to—

(1) a system for licensing or otherwise regulating Indian foster and adoptive homes;

(2) the operation and maintenance of facilities for the counseling and treatment of Indian families and for the temporary custody of Indian children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care;

(4) home improvement programs;

(5) the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters;

(6) education and training of Indians, including tribal court judges and staff, in skills relating to child and family assistance and service programs;

(7) a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate State standards of support for maintenance and medical needs; and

(8) guidance, legal representation, and advice to Indian families involved in tribal, State, or Federal child custody proceedings.

So far as the commerce power itself is concerned, the removal of Indian children from their nations, in large numbers, has direct implications for commerce, as the Congress recognized in ICWA, section 2 (3), "that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children." That this is in fact the case, can easily be seen today with Indian nations having a very substantial impact on the economies of the states in which they are located, with a number of instances in which tribes are the primary employers in the counties adjacent to their reservations.³¹ The quite significant and growing role of Indian nations in local, state and national economy in the United States would not be possible to have been achieved at anywhere near its current and increasing level if tribal

populations had been greatly reduced by continuing large scale removal of children. Further, even if one were to define the federal commerce and other powers exceedingly narrowly, on the basis of the Tenth Amendment of the Constitution, to leave more room for such powers to be exercised at lower levels of American federalism, the authority to regulate the adoption of children who were, or were eligible to be, Indian nation citizens, would rest not with state governments, but with tribal governments, who are recognized as having that authority by ICWA in Section 101, a.

A number of Native Americans have expressed dissatisfaction with ICWA on the basis of their bad experience of being relocated within their communities, rather than adopted out. That, however, is a problem of the individual decisions that were made in their cases, and not with ICWA, which is flexible, and allows for out of extended family and community placement when there is a good reason for it. Unfortunately, in legal, and human affairs generally, bad decisions, unforeseeable negative results, and sometimes lack of even moderately good options occur. That of itself is not a reason to abandon a law, bureaucratic or private process. What needs to be done to minimize such cases, is to have sufficient review leading to learning from bad outcomes, resulting in providing whatever is necessary to greatly minimize negative consequences.

There have also been some objections to parts of ICWA claiming that setting requirements for state courts in proceedings involving Native children for the foster care placement or termination of parental rights violates the Tenth Amendment's anti-commandeering doctrine in applying federal standards to state created claims. These requirements involved: setting forth that "the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding (Sec. 101, c);" the need of the court to notify the parent and tribe of an Indian child in an involuntary proceeding (Sec. 102, a); Insure the right of an indigent parent or Indian custodian to be represented by counsel, and authorize the court at its discretion to appoint counsel for the child when it is in the best interest of the child to be so represented (Sec. 102, b); insuring the right of all parties to a proceeding to have access to all relevant reports and other documents (Section 102, c); that the court not permit removal of a child unless "active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful" (Sec. 102 d), that decision to remove is "supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child" (se. 102 e a d f); and that adequate written records of the proceedings be made and maintained (Sec. 103, a And Sec. 105, e). The suggestion that these provisions violate the Tenth Amendment is fallacious, because it has been long accepted that the anti-commandeering doctrine only prevents Congress from compelling state legislative and executive officers "to enact and enforce a federal regulatory program."³² Concerning judicial matters, however, the Supremacy Clause's command in Article VI, Clause 2 that federal law "shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby," authorizes Congress to provide rules governing state courts in proceedings involving individual interests.³³ Thus the sections of ICWA in question are quite proper, insuring that Indian child welfare proceedings are fair and proper, with the rights of the parties upheld, consistent with the requirements of the Fifth and Sixth Amendments to the Constitution, and with American principles of due process of law.

The Overall Positive Success and Importance of ICWA

Everything considered, The Indian Child Welfare Act of 1978 has been extremely important for a great many Indian Children, and for Native nations, with significant benefits for neighboring communities and the United States as a whole. While there have been cases where ICWA was not properly applied, or child

placement under it did not turn out well for unforeseeable reasons, and state child welfare personnel and courts do not always act in accordance with it,³⁴ in most instances the best interest of Indian children has been far better served than previously. The act's setting good standards and procedures for action for the wellbeing of Indian Children, have brought about a broad general improvement in child welfare proceedings in the U.S. at large. No longer do already oppressed Native communities suffer huge losses of their children, denying them needed important future members, while adding to the debilitating traumas of physical and cultural genocide. While more needs to be done, including the provision of more funding for services to make temporary and permanent removal of Native children less necessary, ICWA, together with other federal legislation and policies of self-determination have greatly improved the quality of life of Indian communities and their citizens. This in turn, has allowed Native nations and their citizens to contribute increasingly to the economies and quality of life of neighboring communities and of the country as a whole, while empowering Indigenous Americans to take increasing leadership in the discussion of public issues.³⁵

¹ LaDonna Harris, Stephen N. Sachs, Barbara Morris, Benjamin Broome, Devorah Hunt, Jonodev Chaudhury, Gregory Cajete, and Phyllis M. Gagnier, *Recreating the Circle: The Renewal of American Indian Self Determination* (Albuquerque: University of New Mexico Press, 2011), Ch. 1; and Stephen M. Sachs, Bruce E. Johansen, Ain Haas, Betty Booth Donohue, Donald A. Grinde Jr., Jonathon York, *Honoring The Circle: Ongoing Learning From American Indians On Politics And Society, Volume I: The Impact of American Indians on Western Politics and Society to 1800* (Cardiff by the Sea, CA: Waterside Productions, 2020), Ch. 1. These chapters contain numerous further explaining and supporting references.

² Sharon O'Brien, *American Indian Tribal Governments* (Norman: University of Oklahoma Press, 1989), p. 37; Harris, Sachs, and Morris, *Re-Creating the Circle*, p. 4, and Sachs, et al, *Honoring The Circle*, Introduction to Part I.

³ Sachs, et al, *Honoring The Circle, Volume I*; and Stephen M. Sachs, Sally Roesch Wagner, Ain Haas, and Walter S. Robinson, *Honoring the Circle: Ongoing Learning from American Indians on Politics and Society, Volume II: The Continuing Impact of American Indian Ways in North America and the World in the Nineteenth Century and Beyond* (Cardiff by the Sea, CA: Waterside Productions, 2020), Ch. 4.

⁴ Sachs, et al, *Honoring The Circle, Volume I*, Ch. 2.

⁵ Emory Dean Keoke And Kay Marie Porterfield, *American Indian Contributions to the World: 15,000 Years of Inventions And Innovations* (New York: Checkmark Books, 2003), pp. 100-101.

⁶ Rupert Ross, *Dancing with A Ghost: Exploring Indian Reality* (Markham, ON: Reed Books Canada, 1992), especially Ch. 3; *Returning to the Teachings: Exploring Aboriginal Justice* (Penguin Books, 1996); and *Indigenous Healing: Exploring Traditional Paths* (Penguin Canada, 2014).

⁷ For a history of the physical and cultural genocide of American Indians, see, for example: Jake Page, *In the Hands of the Great Spirit: The 20,000 Year History of American Indians* (New York: Free Press, 2003), Parts Two – Four; Robert W. Venables, *American Indian History: Five Centuries of Conflict and Coexistence, Volume II: Confrontation, Adaptation & Assimilation* (Santa Fe, NM: Clear Light Publishers, 2004), Ch. I-VII; Roger L. Nichols, *American Indians in U.S. History* (Norman: University of Oklahoma Press, 2003), Ch. 2-6; Angie Debo, *A History of the Indians of the United States* (Norman: University of Oklahoma Press, 1970), Ch. 2 – 19; O'Brien, *American Indian Tribal Governments*, Part II, and the histories of several specific tribes in Part III, and Laurence Armand French, *Legislating Indian Country: Significant Milestones in Transforming Tribalism* (New York: Peter Lang Publishing, Inc, 2007), Ch. 1-5. An overview of the impacts of Colonialism on Native nations and people, with steps to ameliorate them up to 2010 is in Harris, Sachs, and Morris, *Re-Creating the Circle*, Ch. 2.

⁸ For more on the Dawes Act and allotment than in previously cited sources, see Janet A. McDonnell, *The Disposition of the American Indian: 1887-1934* (Bloomington: Indiana University Press, 1991).

⁹ The combined population of Indigenous peoples in the United States as of 1492 is widely contested, ranging from 1 million, which to this author appears way to low, to at least 18 million - some claiming significantly more. For example, see Sharon O'Brien, *American Indian Tribal Governments* (Norman: University of Oklahoma Press, 1989),

p. 77, who estimated 5 million; L.A. Stiffarm and P. Lane, Jr, "The Demography of Native North America: A Question of American Indian Survival," in M.A. James, Ed., *The State of Native America: Genocide, Colonization and Resistance* (Boston: South End Press, 1992)]. Regardless of the exact figure, the loss of population since 1492 is immense.

There are indications that after 1880, if not a shortly before that, the population of Indigenous people in the U.S. began to grow. By one estimate, not very accurate surviving census data for 1900 indicates only 45,651, but the more accurate 1910 census reported 2,879,638 reporting to be only American Indian or Alaska Native. The 1900 figure is from J. David Hacker, Michael R. Haines, *American Indian Mortality in the Late Nineteenth Century: the Impact of Federal Assimilation Policies on a Vulnerable Population*, <https://www.cairn.info/revue-Annales-de-demographie-historique-2005-2-page-17.htm>, which cites, in *Annales de démographie historique* 2005 Vol. 2 (No. 110), pages 17 to 29. Census Data for 1880 and 1910 is from "Native Americans in the United States" in *Wikipedia*, the free encyclopedia. May 6, 2022, https://en.wikipedia.org/wiki/Native_Americans_in_the_United_States,

¹⁰ Lewis Meriam, et al., *The Problem of Indian Administration* (Baltimore: Johns Hopkins University Press, 1928), discussed in Angie Debo, *A History of the Indians of the United States* (Norman: University of Oklahoma Press, 1970), pp. 336-337 and James S. Olson and Raymond Wilson, *Native Americans in the Twentieth Century* (Urbana, IL: University of Illinois Press, 1984), pp. 100-112 and 193. A representative excerpt is published in Francis Paul Prucha, Ed., *Documents of United States Indian Policy*, Second Edition, Expanded (Lincoln: University of Nebraska Press, 1990), No 136, pp. 219-221.

¹¹ "Federal Indian Spending: A Sinking Trust," The Friends Committee on National Legislation, *Indian Report*, 1-55, Summer 1997, pp. 1, 3. The overall inadequacy of federal spending for Indians is discussed in, Stephen M. Sachs, "Termination By Budget: Impact of the 1996 Federal Budget on Native Americans," *Proceedings of the 1996 Meeting of American Political Science Association* (Washington, DC: American Political Science Association, 1996). Jonathan Taylor, and Joseph Kault, *American Indians on Reservations: A Data book of Socio-Economic Changes Between the 1990 and 2000 Census* (Cambridge, MA: The Harvard Project on American Indian Economic Development, Malcolm Wiener Center for Social Policy, John F. Kennedy School of Government, Harvard University, 2005) report that, in the period of the 1990 to 2000 U.S. censuses, federal Indian funding levels lost ground against non-Indian domestic spending.

¹² Tex Hall's, third annual State of Indian Nations Address is reported on in "Ongoing Activities: U.S. Activities," *Indigenous Policy*, Vol. XVI, No. 1, Spring 2005, that federal spending for Indians has been inadequate, even since the beginning of policies aimed at Indian self-development with the Indian New Deal in the Roosevelt Administration, as can be seen in former BIA head John Collier's complaints about Congress providing insufficient funding for Indian programs, including for technical assistance, while "Land acquisition for Indians authorized by Congress, is blocked through the appropriation bills; the situation is similar with regard to the expansion of the Indian Cooperative Credit System." (John Collier, *Indians of the Americas* (New York: W.W. Norton, 1947), pp. 166-177, quoted and further discussed by French, *Legislating Indian Country*, p. 100. The annual federal appropriations for Indians and the change from the preceding year, since 2004, can be found in "Federal Indian Budgets," in the issues of *Indigenous Policy* at: www.IndigenousPolicy.org.

¹³ "American Indian Veterans Have Highest Record of Military Service: American Indians and Alaska Natives serve in the Armed Forces at five times the national average and have served with distinction in every major conflict for over 200 years," National American Indian Council on Aging (NICOA), November 8, 2019, <https://www.nicoa.org/american-indian-veterans-have-highest-record-of-military-service/>, reported, "American Indians and Alaska Natives serve in the Armed Forces at five times the national average and have served with distinction in every major conflict for over 200 years. Considering the population of the U.S. is approximately 1.4 percent Native and the military is 1.7 percent Native (not including those that did not disclose their identity), Native people have the highest per-capita involvement of any population to serve in the U.S. military.

They also have a higher concentration of women servicemembers than all other groups. Nearly 20 percent of American Indians and Alaska Natives servicemembers were women, while 15.6 percent of all other servicemembers were women.

During World War I, 3,000 to 6,000 American Indians enlisted and another 6,500 were drafted. About two-thirds served in the infantry, winning widespread praise for bravery and achievement. But the cost was high: About five percent of American Indian combat soldiers were killed, compared to one percent of American forces overall."

See also, for example, "20th Century Warriors: Native American Participation in the United States Military," Naval History and Heritage Command (Prepared for the United States Department of Defense by CEHIP Incorporated, Washington, DC, in partnership with Native American advisors, Rodger Bucholz, William Fields, Ursula P. Roach, Washington: Department of Defense, 1996.), posted September 14, 2017, <https://www.history.navy.mil/research/library/online-reading-room/title-list-alphabetically/t/american-indians-us-military.html>; and "Native Americans in the Military," DENIX (Department of Defense Environment, Health and Occupational Health Network Information Exchange), visited May 8, 2022, <https://denix.osd.mil/na/military/>.

¹⁴ For a discussion of the problems of Indian Education, including in boarding schools, including prior to 1928, see Margaret Connell Szasz, *Education and the American Indian: The Road to Self-Determination Since 1928* (Albuquerque: University of New Mexico Press, Third Edition, Revised and Enlarged, 1999), particularly pp. 2-3, 10-11, 18-27 and 67. A more detailed critique of the boarding school experience is to be found in David Wallace Adams, *Education for Extinction: American Indians and the Boarding School Experience, 1875-1928* (Lawrence: University of Kansas Press, 1995). See also, "Department of the Interior Releases Investigative Report, Outlines Next Steps in Federal Indian Boarding School Initiative," U.S. Department of the Interior, May 11, 2022, <https://www.doi.gov/pressreleases/department-interior-releases-investigative-report-outlines-next-steps-federal-indian>, and the report, https://www.opb.org/pdf/EMBARGOED%20REPORT%20_%20Boarding%20School%20Initiative%20Volume%2001%20Investigative%20Report%20May%202022_1652226619302.pdf. The report indicates that it had so far found that 19 of the boarding schools accounted for over 500 Native children's death, and that number was expected to rise as the investigation continued. A similar policy was carried out in Canada of taking First Nation's children to distant boarding schools. For example, see, Ian Mosby and Erin Millions, "Canada's Residential Schools Were a Horror: Founded to carry out the genocide of Indigenous people, they created conditions that killed thousands of children," *Scientific American*, August 1, 2021, <https://www.scientificamerican.com/article/canadas-residential-schools-were-a-horror/>. Rupert Ross discusses the impacts of Canadian boarding schools and their impact along with other aspects of the impact of colonialism in Canada on First Nations and their citizens and what has been helpful in healing the continuing harms in *Dancing with A Ghost; Returning to the Teachings*; and *Indigenous Healing*.

For discussion of some of the psychological and behavioral ill effects of cultural genocide and the boarding schools in particular, see, Hillary N. Weaver and M. Yellow Horse Brave Heart, "Facets of American Indian Identity: Implications for Social Work Practice," *Journal of Human Behavior in the Social Environment*, in Press; Hillary N. Weaver, "Indigenous People in a Multicultural Society: Unique Issues for Human Services," *Social Work*, Vol. 43, No., 3, May 1998, pp. 205-206; and P.I. Morrisette, "The Holocaust of First Nation People: Residual Effects on Parenting and Treatment Implications," *Contemporary Family Therapy*, Vol. 16 (1994), pp. 381-392.

¹⁵ The impact of unresolved historical grief, and ways of healing it, including participation in traditional ceremonies or their equivalents, some of which need to be brought back, is discussed in in Eduardo Duran and Bonnie Duran, *Native American Postcolonial Psychology* (Albany, NY: State of New York University Press, 1995), pp. 42-53 and Ch. 4, and p. 180; Hilary N. Weaver and Maria Yellow Horse Brave Heart, "Examining two facets of American Indian identity: Exposure to other cultures and the influence of historical trauma" in H.N. Weaver Ed., *Voices of First Nations People: Human Service Considerations* (New York: Haworth Press, 1999), pp. 19-31; and Maria Yellow Horse Brave Heart, "Oyate Ptayela: Rebuilding the Lakota Nation Through Addressing Historical Trauma Among Lakota Parents" in *Ibid*.

¹⁶ See, Christopher K. Riggs (2020). *Rising from the Ashes: Survival, Sovereignty, and Native America*. (Lincoln: University of Nebraska Press. 2020, including pp. 169–220; and Native Americans in United States elections," Wikipedia, the free encyclopedia, December 19, 2021, https://en.wikipedia.org/wiki/Native_Americans_in_United_States_elections.

¹⁷ Graham D. Taylor, *The New Deal and American Indian Tribalism: The Administration of the Indian Reorganization Act, 1934-45* (Lincoln, University of Nebraska Press, 1980); Lawrence C. Kelly, "The Indian Reorganization Act: The Dream and the Reality," *Pacific Historical Review* (1975): pp. 291-312; A discussion of the Collier reforms is presented in Olson and Wilson, *Native Americans in the Twentieth Century*, Ch. 5, "The Indian New Deal." See also, Debo, *A History of the Indians in the United States*, Ch. 18, "The White Man Repents;" Page, *In the Hands of the Great Spirit*, pp. 358-363; and Nichols, *American Indians in U.S. History*, pp. 177-188; and Nelson and Sheley, "The Bureau of Indian Affairs Influence on Indian Self-Determination," pp. 180-194.

¹⁸ Debo, *A History of the Indians in the United States*, Ch. 19; and Venables, *American Indian History*, Volume II, Ch. VIII. On the acts of Congress and related legal matters concerning termination, see, David H. Getches, Charles

F. Wilkinson, Robert L. Williams, *Cases and Materials on Federal Indian Law*. (St. Paul, MN: Thomson/West, 2005) pp. 199–216.

¹⁹ Karen Balcom, "The Logic of Exchange: The Child Welfare League of America, The Adoption Resource Exchange Movement and the Indian Adoption Project, 1958–1967," *Adoption & Culture*, Vol. 1, No. 1, 2007, p. 5.

²⁰ Balcom, "The Logic of Exchange," p. 5.

²¹ Balcom, "The Logic of Exchange," p. 6.

²² Balcom, "The Logic of Exchange," pp. 6 and 44.

Testimony on the serious problems of the removal of Indian children from their communities is in *Indian Child Welfare Program: Hearings before the Subcomm. on Indian Affairs of the S. Comm. on Interior and Insular Affairs*, 93d Cong. 18 (1974), available at: <https://narf.org/nill/documents/icwa/federal/lh/hear040874/hear040874.pdf>. Some important quotes from the testimony concerning the serious improprieties in the child removals are in "On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit," available at: <https://www.supremecourt.gov/docket/docketfiles/html/public/21-378.html>. Among the injustices and harms inflicted were: that often those who removed Indian children had "no basis for intellectually evaluating the cultural and social premises underlying Indian home life," leading them to make unwarranted removals, while simply assuming, without an evidentiary basis, that removal and placement with non-Indian families would benefit the child; that the process of removing Native children was often without due process, often occurring without notice to the families or tribes; and the record keeping concerning removals was shoddy, often thwarting attempts to locate removed children who were shuttled among foster homes - breaking forever connections among child, parent and tribe.

Reports of the experiences, many of them negative on balance, as told by Indians who were adopted by non-Indian families, can be found in Rita J. Simon and Sarah Hernandez, *Native American Transracial Adoptees Tell their Stories* (Lanham, MD: Lexington Books, 2008).

On the issue of social workers not understanding how Indian families functioned, causing quite well brought up children to be removed from their families, see, for example Jennifer Nutt Carleton, "The Indian Child Welfare Act: A Study In The Codification Of The Ethnic Best Interests of the Child," 1 Marq. L. Rev. 21 (1997), Available at: <http://scholarship.law.marquette.edu/mlr/vol81/iss1/5>.

²³ Carleton, "The Indian Child Welfare Act," the quote originating in Barbara Kingsolver, *Pigs in Heaven* (London, Faber and Faber, 1993), p. 284.

²⁴ Balcom, "The Logic of Exchange," pp. 6 and 44. Note in Rupert Ross, *Dancing with A Ghost; Returning to the Teachings*; and *Indigenous Healing*, that Canadian First Nations had exactly the same objection to the removal from their communities of members convicted of crimes, that sending them to distant jails did the offender no good, often making them worse, while the community lost valuable members.

²⁵ An overview of the development of Indian self-determination is in Harris, Sachs, and Morris, *Re-Creating the Circle*, Ch. 3. Many of the documents, including a number of acts of Congress, are in Francis Paul Prucha, *Documents of United States Indian Policy, Third Edition* (Lincoln: University of Nebraska Press: 2000), beginning with President Nixon's "Special Message on Indian Affairs," July 8 1970 (document 162 in Prucha). Among others, the policy of self-determination is discussed in Charles Wilkinson, *Blood Struggle: The Rise of Modern Indian Nations* (Boston: W. W. Norton & Company, 2006).

²⁶ The Indian Child Welfare Act of 1978, Public Law 95-608, 25 USC 1901, <https://www.congress.gov/95/statute/STATUTE-92/STATUTE-92-Pg3069.pdf>.

²⁷ The good impacts of ICWA, including its providing "the gold standard in child welfare" are set out in, "Setting the Record Straight: The Indian Child Welfare Act: Fact Sheet," A publication of the National Indian Child Welfare Association, 2018, <https://www.nicwa.org/wp-content/uploads/2018/10/Setting-the-Record-Straight-2018.pdf>, and in National Indian Child Welfare Association, "Understanding ICWA Placements Using Kinship Care Research," December 2019, https://www.nicwa.org/wp-content/uploads/2022/04/2019-Understanding-ICWA-Placements-Using-Kinship-Care-Research_updated.pdf, from which the quotes come, on p. 1. The latter article reports,

There are key benefits to following ICWA placement preferences for long-term mental health and well-being of American Indian/ Alaska Native (AI/AN) youth. There is a large body of evidence,

recently compiled in peer reviewed publications, showing the benefits of kinship care for all children and youth (Sahota, 2019). Many arguments from ICWA opponents are based on outdated attachment and bonding literature. More recent research and literature on kinship care and youth psychological developmental milestones is supportive of ICWA placement preferences. Furthermore, recent research has shown that ICWA placement preferences should be the gold standard for all children, not just those who are Native, given the benefits of kinship care (Sahota, 2019, Winokur et al., 2014, Lovett and Xue, 2018).

For more on ICWA and on child welfare issues involving American Indians and Alaska Natives, including some comparison with removal experiences of other groups, visit the National Indian Child Welfare Association: <https://www.nicwa.org/icwa/>.

Further evidence from other countries of the harm caused by out of family, community and culture removals is exemplified by the ill effects of such removal on Inuit children in Greenland by the Danish government in 1951, reported in, "Danish prime minister says sorry to Greenlanders forcibly moved to Denmark: Prime Minister Mette Frederiksen apologized in person Wednesday to six Greenlandic Inuits removed from their families and taken to Copenhagen more than 70 years ago as part of an experiment to create a Danish-speaking elite," *The Local*, March 10, <https://www.thelocal.dk/20220310/danish-prime-minister-says-sorry-to-greenlanders-forcibly-moved-to-denmark/>.

²⁸ *Texas, et al., Petitioners, v. Deb Haaland, Secretary Of The Interior, et al*, Nos. 21-378 & 21-380, scheduled to be heard by the United States Supreme Court during its October 2022 term. All the documents in the case, encompassing "On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit," the briefs of amicus curie, including those challenging ICWA and presenting the arguments referred to below, can be accessed at: <https://www.supremecourt.gov/docket/docketfiles/html/public/21-378.html>.

Note, as the petitioners request for certiorari in *Texas et al v. Haaland*, points out, for 40 years, attempts have failed in numerous state court cases to overturn ICWA as unconstitutional, usually objectors asserting that the act violates the Fourteenth Amendment Equal Protection Clause. A list of nine of these cases is in the "Petition for a Writ of Certiorari," p. 10.

²⁹ Many of European heritage have become tribal members as far back as early colonial times, as referred to above. A large number of African Americans who were slaves held by tribes in the confederacy, the Freed Men, were made citizens ("members") of those tribes by treaty with the U.S. government after the Civil War, and their decedents continue to be recognized as tribal members today (for example see the "Treaty with the Creeks, July 14, 1866," in Prucha, *Documents of American Indian History*, pp. 98, to 101, particularly Section 2; and, "Secretary Haaland Approves New Constitution for Cherokee Nation, Guaranteeing Full Citizenship Rights for Cherokee Freedmen," U.S. Department of the Interior, May 12, 2021, Last edited May 27, 2021, <https://www.doi.gov/pressreleases/secretary-haaland-approves-new-constitution-chokeee-nation-guaranteeing-full>).

³⁰ On the constitutionality of Congress' use of the spending power, see, for example, *Nat'l Fed'n of Indep. Bus. v. Sevelius*, 567 U.S. 519 at 576 (2012), *Charles C. Steward Machine Co. v. Davis*, 301 U.S. 548 (1937), *Helvering v. Davis*, 301 U.S. 619 (1937), and *South Carolina v. Dole*, 97 L. Ed 2d 171 (1987).

³¹ For example, see Harris, Sachs, and Morris, *Recreating the Circle*, Ch. 5, Sec. 1; and Mark Trahan, "At the Crossroads: State of the Economy in Indian Country," *Indian Country Today*, April 4, 2022, <https://indiancountrytoday.com/news/at-the-crossroads-state-of-the-economy-in-indian-country>.

One recent example reporting some of the exceedingly large tribal economic positive impact is the 2019 Oklahoma Native Impact Report (<http://www.oknativeimpact.com>) produced by Dr. Kyle Dean, Director of the Center for Native American and Urban Studies, Oklahoma City University. It reported that the total economic impact of Indian nations in Oklahoma, in 2019, was \$15.6 billion. In addition to direct contributions, the state's tribes generated billions, annually, in production by companies supporting nations' business operations, in addition to direct tribal contributions. That year, the Oklahoma tribes supported 113,442 jobs in the state, providing \$5.4 billion in wages and benefits to Oklahoma workers, while direct tribal employment exceeded 54,000 jobs, and tribal investment spurred job growth in a wide variety of industries. Oklahoma Indian nations investment in community included:

Over \$1.8 billion in exclusivity fees for public education and mental health services

\$84 million in additional support to schools, municipalities and other community initiatives

\$232 million paid in Medicaid expenditures at tribal health care facilities

Saved Oklahoma \$86 Million by requiring no state matching Medicaid funds.

³² *New York v. United States*, 505 U.S. 144, at 161 and 166 (1992).

³³ “the Constitution was originally understood to permit imposition of an obligation on state judges to enforce federal prescriptions, insofar as those prescriptions related to matters appropriate for the judicial power.” *Printz*, 521 U.S. at 905-907 and 935. Applying that rule, the Supreme Court has regularly recognized that federal law may provide “substantive principles” for state courts (*Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, at 209 (1985)).

³⁴ "About ICWA," Indian Child Welfare Association, 2022, <https://www.nicwa.org/about-icwa/>, reports, "Although progress has been made as a result of ICWA, out-of-home placement still occurs more frequently for Native children than it does for the general population. In fact, recent research on systemic bias in the child welfare system yielded shocking results. Native families are four times more likely to have their children removed and placed in foster care than their White counterparts. So, in spite of the advances achieved since 1978, ICWA's protections are still needed."

³⁵ Sachs, et al, *Honoring The Circle, Volume I and II* unfold the huge continuing contribution since first Indian contact with Europeans of the Native people in the Americas to Western political-social-economic thought, institutions and ways of proceeding with *Volume II*, Ch. 4, Section 5 and the Conclusion to Part II and *Volume IV*, "Conclusion: Completing the Circle," showing the increasing leadership of Native Americans in U.S. public affairs.