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## Early California Laws and Policies Related to California Indians

*By Kimberly Johnston-Dodds*

*Prepared at the request of  
Senator John L. Burton, President Pro Tempore*

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## Executive Summary

Did the State of California enact laws that prohibited California Indians from practicing their religion, speaking their languages or practicing traditional ceremonies and customs? Senator John L. Burton requested that the California Research Bureau research this question.<sup>1</sup>

The initial investigation and research contained in this report<sup>2</sup> led to a focus on four examples of early State of California laws and policies that significantly impacted the California Indians' way of life:

- The 1850 *Act for the Government and Protection of Indians* and related amendments;
- California militia policies and "Expeditions against the Indians" during 1851 to 1859;
- The State of California's official response to federal treaties negotiated with California Indians during 1851 to 1852; and
- Early and current state fish protection laws that exempt California Indians from related prohibitions.

The 1850 *Act for the Government and Protection of Indians* facilitated removing California Indians from their traditional lands, separating at least a generation of children and adults from their families, languages, and cultures (1850 to 1865). This California law provided for "apprenticing" or indenturing Indian children and adults to Whites, and also punished "vagrant" Indians by "hiring" them out to the highest bidder at a public auction if the Indian could not provide sufficient bond or bail.

The California Legislature created the laws that controlled California Indians' land, lives and livelihoods, while enforcement and implementation occurred at the county and local township levels. Some examples include:

- County-level Courts of Sessions and local township Justices of the Peace determined which Indians and Indian children were "apprenticed" or indentured pursuant to the 1850 *Act for the Government and Protection of Indians*.
- Under the same act, Justices of the Peace, mayors or recorders of incorporated towns or cities, decided the status and punishment of "vagrant" Indians.
- Under the California Constitution and state militia laws, California governors ordered local sheriffs to organize the men to conduct the "Expeditions against the Indians."

From 1851 to 1859, the California Legislature passed twenty-seven laws that the State Comptroller relied upon in determining the total expenditures related to the Expeditions against the Indians. The total amount of claims submitted to the State of California Comptroller for these Expeditions against the Indians was \$1,293,179.20.

The California Legislature was involved in influencing the U.S. Senate's ratification process of the 18 treaties negotiated with California Indians during 1851 to 1852. These treaties were never ratified, and kept secret from 1852 until 1905. Prior to the President submitting the treaties to the Senate, the California Legislature conducted considerable debate, made reports, drafted and passed resolutions that mostly opposed ratification of the treaties.

The California Legislature also enacted laws during the first fifteen years of statehood that accommodated Indian tribes' traditional fishing practices. California laws exist today that continue to protect fish and exempt California Indians from related prohibitions.

## The First California Constitution, Suffrage and the California Indians

The creation of the first California Constitution and its governing framework set the stage for early laws related to California's justice system, and California Indians.

In late 1849, the delegates to the California Constitutional Convention met to form the first constitution of California. At the Convention, the delegates debated the issue of whether California Indians should have the right to vote. A minority advocated that the Indians should have the right to vote, as was recognized by the prior Mexican regime, especially if the Indians were going to be taxed. The minority delegates cited principles in the Declaration of Independence declaring that taxation and representation go together. However, other delegates in the majority argued that certain influential white persons who controlled Indians would "march hundreds [of wild Indians] up to the polls" to cast votes in compliance with such persons' wishes.<sup>3</sup>

In the end, the majority prevailed and the Convention agreed to the following constitutional provisions regarding suffrage and California Indians:

Every white male citizen of the United States, and every white male citizen of Mexico, who shall have elected to become a citizen of the United States, under the treaty of peace exchanged and ratified at Queretaro, on the 30<sup>th</sup> day of May, 1848, of the age of twenty-one years, who shall have been a resident of the State six months...shall be entitled to vote at all elections which are now or hereafter may be authorized by law:

Provided, that nothing herein contained shall be construed to prevent the Legislature, by a two thirds concurrent vote, from admitting to the right of suffrage, Indians or the descendants of Indians, in such special cases as such a proportion of the legislative body may deem just and proper.<sup>4</sup>

The California Legislature never passed legislation that allowed California Indians to vote.

In 1870, Congress ratified the 15<sup>th</sup> Amendment of the U.S. Constitution affirming the right of all U.S. citizens to vote:

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous conditions of servitude.

However, even after the 15<sup>th</sup> Amendment was ratified, most American Indians, including California Indians, did not have the right to vote until the federal Citizenship Act of 1924 was passed.<sup>5</sup>





## 1850: An Act for the Government and Protection of Indians

Soon after the creation of the California Constitution and before the U.S. Congress granted California statehood, the first California Legislature reviewed an important piece of Indian legislation: the first version failed to become law, the second version became law on the last day of the session.

The first California Legislature passed *An Act for the Government and Protection of Indians* on April 22, 1850. Initially introduced as Senate Bill No. 54 - *An Act relative to the protection, punishment and government of Indians* on March 16, 1850, by Senator Chamberlin, at the request of Senator Bidwell,<sup>6</sup> Senate Bill No. 54 was “laid on the table,” on March 30, and went no further in the legislative process.<sup>7</sup>

On April 13, 1850, Assemblyman Brown introduced Assembly Bill No. 129, *An Act for the government and protection of Indians*. The Legislature passed the bill on April 19, after the Senate amended Section 16 to decrease the whipping punishment for Indians from 100 to 25 lashes. The Governor signed it into law on April 22,<sup>8</sup> four months before California became the 31<sup>st</sup> state in the Union (on September 9, 1850). The *Act for the Government and Protection of Indians* was not repealed in its entirety until 1937.<sup>9</sup>

### LOSS OF LANDS AND CULTURES

The 1850 Act and subsequent amendments<sup>10</sup> facilitated removing California Indians from their traditional lands, separating at least a generation of children and adults from their families, languages, and cultures (1850 to 1865), and indenturing Indian children and adults to Whites.\*

The relevant sections provided that:

- White persons or proprietors could apply to the Justice of the Peace for the removal of Indians from lands in the white person’s possession.
- Any person could go before a Justice of the Peace to obtain Indian children for indenture.<sup>†</sup> The Justice determined whether or not compulsory means were used to obtain the child. If the Justice was satisfied that no coercion occurred, the person obtained a certificate that

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\* All of the provisions contained in the initial Act of 1850 are described in Appendix 1, which also contains footnoted comparisons of the language contained in the enacted law and amendments, and original Assembly and Senate bill language that was not incorporated into the 1850 Act.

<sup>†</sup> *Webster’s Dictionary* defines “indenture” as a contract by which a person is bound to service. It is well known that the Hispanic missions in California that governed before the United States and the State of California, used forced Indian labor to build the missions and work in the surrounding agricultural lands.

authorized him to have the care, custody, control and earnings of an Indian minor, until their age of majority (for males, eighteen years, and females, fifteen years).

- If a convicted Indian was punished by paying a fine, any white person, with the consent of the Justice, could give bond for the Indian's fine and costs. In return, the Indian was "compelled to work until his fine was discharged or cancelled." The person bailing was supposed to "treat the Indian humanely, and clothe and feed him properly." The Court decided "the allowance given for such labor."

## **ABSENCE OF LEGAL RIGHTS**

In 1850 and 1851, the California Legislature enacted laws concerning crimes and punishments that prohibited Indians, or black or mulatto persons, from giving "evidence in favor of, or against, any white person."<sup>11</sup> The 1850 statute defined an Indian as having one-half Indian blood. The 1851 statute defined an Indian as "having one fourth or more of Indian blood."

### **Inequitable Due Process**

The 1850 *Act for the Government and Protection of Indians* evidences further absence of legal rights for California Indians. The 1850 Act provided that:

- Justices of the Peace had jurisdiction in all cases of complaints related to Indians, without the ability of Indians to appeal at all, including to higher courts of record such as district courts or courts of sessions.
- While Indians or white persons could make complaints before a Justice of the Peace, "in no case [could] a white man be convicted of any offen[s]e upon the testimony of an Indian, or Indians."
- Justices of the Peace were to "instruct the Indians in their neighborhood in the laws which related to them." Any tribes or villages refusing or neglecting to obey the laws could be "reasonably chastised."<sup>\*</sup>
- If an Indian committed "an unlawful offen[s]e against a white person," the person offended was not allowed to mete out the punishment. However, the offended white person could, without process, bring the Indian before the Justice of the Peace, and on conviction the Indian was punished.

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\* The term "reasonably chastised" became a basis of a state policy empowering and paying the militia to attack Indians, as discussed in the next section.

## **Justices of the Peace**

The first California Constitution provided that the “Legislature shall determine the number of Justices of the Peace, to be elected in each county, city, town, and incorporated village of the State, and fix by law their powers, duties, and responsibilities.”<sup>12</sup>

In 1850, the first California Legislature provided that the jurisdiction of Justices of the Peace was limited to the township where they were elected.<sup>13</sup> Some of the powers and responsibilities conferred upon the first Justices of the Peace

- authorized them to hear, try and determine civil cases when the amount claimed was \$200 or less (later raised to \$500 in 1853).
- required them to take an oath and give a bond “in the penalty of five thousand dollars, conditioned for the faithful performance of [their] duties.”<sup>14</sup>
- empowered them to be a magistrate, an “officer having power to issue a warrant for the arrest of a person charged with a public offence.”<sup>15</sup>

Throughout the period from 1850 into the 1860s, Justices of the Peace also presided over Justice Courts within their township jurisdictions. These courts were not courts of record, and had both civil and criminal jurisdiction to hear actions on

- contracts for payment of money,
- injuries to a person or taking or damaging personal property,
- statutory fines, penalties and forfeitures,
- mining claims within their jurisdiction,
- petty larceny, assault and battery (if not committed on a public officer), and
- breaches of the peace, riots, and all misdemeanors punishable by fine not exceeding \$500 or imprisonment not exceeding three months, or both.<sup>16</sup>

The Justice Courts also held proceedings related to “vagrants and disorderly persons.”<sup>17</sup>

## **Justices of the Peace for Indians**

The first bill introduced related to the 1850 Act (Senate Bill No. 54) provided for Justices of the Peace for Indians, but it was not enacted. These Justices of the Peace were to be elected by the Indians directly, at the order and direction of the Court of Sessions.\* The

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\* See Appendix 3 for discussion of the Court of Sessions.

bill provided that the Inspectors of Elections appointed by the Court “procure one or more interpreters to be at the polls during the election who shall ask every Indian who is entitled to vote, whom he prefers for Justice for the Indians the ensuing year, and his vote shall be recorded for the person he prefers.”<sup>18</sup> This language that created Justices of the Peace for Indians was not contained in the companion bill proposed by the Assembly, nor the final law enacted in 1850. (As previously discussed in an earlier section, the first California Constitution excluded Indians from the right to vote.)

## **VAGRANCY AND PUNISHMENT UNDER “AN ACT FOR THE GOVERNMENT AND PROTECTION OF INDIANS”**

Section 20 of the 1850 Act defined “vagrant” Indians and prescribed their punishment:

Any Indian able to work and support himself in some honest calling, not having wherewithal to maintain himself, who shall be found loitering and strolling about, or frequenting public places where liquors are sold, begging, or leading an immoral or profligate course of life, shall be liable to be arrested on the complaint of any resident citizen of the county, and brought before any Justice of the Peace of the proper county, Mayor or Recorder of any incorporated town or city, who shall examine said accused Indian, and hear the testimony in relation thereto, and if said Justice, Mayor, or Recorder shall be satisfied that he is a vagrant. . . he shall make out a warrant under his hand and seal, authorizing and requiring the officer having him in charge or custody, to hire out such vagrant within twenty-four hours to the best bidder, by public notice given as he shall direct, for the highest price that can be had, for any term not exceeding four months.<sup>19</sup>

Monies received from hiring such Indians, after deducting housing and clothing costs, were to be deposited into an “Indian fund” administered by the County Treasury (if he did not have a family). The “vagrant” Indian, after arrest but before judgment, could post a bond with a condition that for the next 12 months he would “conduct himself with good behavior, and betake some honest employment for support.”<sup>20</sup>

## **AMENDMENTS TO “AN ACT FOR THE GOVERNMENT AND PROTECTION OF INDIANS”**

In 1855, Section 6 of the 1850 Act was amended to read “Complaints may be made before a Justice of the Peace, by white men or Indians, and in all cases arising under this Act, Indians shall be competent witnesses, their credibility being left with the jury.”<sup>21</sup> However, California legal treatises of the 1860s continued to cite the general civil procedure laws that excluded Indians from being witnesses at court as valid law.<sup>22</sup>

In 1860, the California Legislature amended Sections Three and Seven of the 1850 Act. These amendments granted broad powers to county and district judges to, when requested, execute articles of indenture of apprenticeship on behalf of Indians. The 1860

amendments to the Act also provided that male Indian children under fourteen years could be indentured until they were twenty-five, and females under fourteen until they were twenty-one years old. If they were over fourteen but under twenty, males were indentured until they were thirty, and females until they were twenty-five years. Indians over twenty years old could be indentured for an additional ten years.<sup>23</sup> Due in part to a decade of state-financed expeditions against the Indians, there were many young Indian children without parents.

In 1863, Section Three of the 1850 Act was repealed. However, historical accounts drawn from primary sources indicate that this system of Indian indentured servitude continued, even after Section Three was repealed (see page 11).

In 1865, the California Supreme Court ruled that the section of the 1850 Act related to whipping was unconstitutional because the punishment was cruel and unusual.<sup>24</sup>

## **HISTORICAL ACCOUNTS ABOUT INDENTURES, KIDNAPPING AND SELLING OF INDIANS**

### **Articles of Indenture**

I reviewed original indentures of Indians dated 1861, in the Sacramento County Archives.<sup>25</sup> The original text of one of the indentures follows:

In the Matter of the Indenture of...the Indian boy Bill (aged 15 years or thereabouts) to William Moorhead

To the Hon Robert Robinson County Judge of the City & County of Sacramento –

William Moorhead of the City & County of Sacramento in the State of California respectfully shows that he has an Indian boy called “Bill” under his control and management & that he has faithfully provided for said boy Bill for the last five years or thereabouts. That he formerly belonged to a Tribe called “Cottonwood” tribe in Shasta County in said State that the said boys [sic] parents, as petitioner is informed, and believes, have been dead for several years, and that the said boy has been living with petitioner in the City of Sacramento & working about petitioners [sic] livery stable. Petitioner further shows that he has provided said boy with all the necessaries of life & rendered him happy & contented.

Petitioner further shows that he has reason to believe & does believe that unless the said boy shall be apprenticed in accordance with the provisions of an act entitled “an act amendatory of an act entitled an act for the government and protection of Indians passed passed [sic] April 22, 1850” approved April 18, 1860 some persons will induce the said Indian boy to leave petitioner, & that he may become a vagrant, & addicted to dissolute habits[sic].

Petitioner therefore prays that Indentures may be made in accordance with said act and the said boy forthwith apprenticed to petitioner until he shall attain the age of thirty years.<sup>26</sup>

The County Judge, Robert Robinson, approved and signed the document with the notation: “Boy indentured as provided by law.”<sup>27</sup>

In 1971, Robert Heizer and Alan Almquist published the findings of their review of 114 indentures dated from 1860 to 1863, located in old county court files in Eureka, California. In addition to publishing the name, probable age, period of indenture and/or age indentured to, Heizer and Almquist summarize the data:

Ages of 110 persons indentured range from two to fifty, with a concentration of 49 persons between the ages of seven and twelve. Seven are listed as “taken in war” or prisoners of war”—this notation refers to children five, seven, nine, ten, and twelve years of age. Four children of ages eight, nine ten, and eleven are listed as “bought” or “given.” Ten married couples were indentured, some of them with children. Three individuals seem almost too young to have been so treated—Perry, indentured in September 1860 at the age of three; George, indentured in January 1861 at the age of four; and Kitty (November 1861), also four years of age.<sup>28</sup>

Some of the indentures cited by Heizer and Almquist were made after the 1863 amendment that repealed Section 3 of the 1850 Act.<sup>29</sup>

Appendix 4 of this report is a copy of an article of indenture, located in the records of Humboldt County, published in the *Sacramento Daily Union* on February 4, 1861.

### **Accounts of Kidnapping and Selling of Indians**

The following are accounts published in California newspapers as legal notices and articles from 1855 to 1864. These articles document incidents of kidnapping and selling of California Indian children.

#### *Alta California* - 1855

One of the most infamous practices known to modern times has been carried on for several months past against the aborigines of California. It has been the custom of certain disreputable persons to steal away young Indian boys and girls, and carry them off and sell them to white folks for whatever they could get. In order to do this, they are obliged in many cases to kill the parents, for low as they are on the scale of humanity, they [the Indians] have that instinctive love of their offspring which prompts them to defend them at the sacrifice of their lives.<sup>30</sup>

*San Francisco Herald* - 1856

In the Fourth District Court yesterday...for the hearing of the return to the writ of *habeas corpus* issued to produce the body of Shasta, the Indian girl claimed by Dr. Wozencraft, Charlotte Sophie Gomez appeared...and made the following return as to the cause of her inability to produce Shasta:

“That an Indian child by the name of Isabella, not about eight years of age, has lived in her family since the month of June, 1852, at her residence in the city of San Francisco. That during the last three years, or thereabouts, the said child has attended the public day school in said city. That...Isabella has resided with...Gomez until last Monday. On that day, about five o'clock in the afternoon, a person presented himself at her residence and told her that said Indian child belonged to him, and wanted to take her away. Of this fact she was told by a member of her family...Gomez says she has no knowledge of the person who took the child from her house, nor does she know where she now is, or has been, since taken away therefrom...”

...It is the belief of Dr. Wozencraft that the girl, Isabella...is the one that has been stolen from him. He is most anxious to recover Shasta and will use every legal means to recover possession of her.<sup>31</sup>

*Alta California* - 1862

The *Ukiah Herald*, published in Mendocino county, has a long article upon the practice of Indian stealing so extensively carried on in that section of the country, and says that one woodman has been caught with sixteen young Indians in his possession, being about to take them out of the county for sale. The *Herald* says:

“Here is well known there are a number of men in this county, who have for years made it their profession to capture and sell Indians, the price ranging from \$30 to \$150, according to quality. Some hard stories are told of those engaged in the trade, in regard to the manner of the capture of the children. It is even asserted that there are men engaged in it who do not hesitate, when they find a rancheria well stocked with young Indians, to murder in cold blood all the old ones, in order that they may safely possess themselves of all the offspring.”<sup>32</sup>

The *Alta California* comments at the end of the 1862 article that the *Ukiah Herald* account “affords a key to the history of border Indian troubles.”

The next account is found in the journal of William H. Brewer, one of the members of the original California Geological Survey mandated by the California Legislature in 1860.<sup>33</sup> Brewer traveled throughout California from 1860 to 1864, providing official reports under the survey.



The Indian wars now going on, and those which have been for the last three years in the counties of Klamath, Humboldt, and Mendocino, have most of their origin in this. It has for years been a regular business to steal Indian children and bring them down to the civilized parts of the state, even to San Francisco, and sell them – not as slaves, but as servants to be kept as long as possible. Mendocino County has been the scene of many of these stealings, and it is said that some of the kidnappers would often get the consent of the parents by shooting them to prevent opposition.<sup>34</sup>

## Early California Apprenticeship and Vagrancy Laws

Apprenticeship and vagrancy laws and policies related to the general population existed in California during the first two decades of statehood. However, they were enacted after the 1850 Act related to California Indians, and the penalties under these laws were less severe when applied to the non-Indian population.

An 1853 California legal treatise entitled *A Treatise on the Practice of the Courts of the State of California, Carefully Adapted to Existing Law*, first mentions apprenticeship and minors when describing exceptions to the general rule that minors could not make a contract:

[T]here are two exceptions to the general rule that minors cannot contract. The one case is contracts for apprenticeship. Minors can bind themselves as apprentices for seven years by deed, if the seven years are within their maturity. The other case is in contracts for necessities. What are necessities is frequently a question hard to resolve. What would be necessities for one, would not be for another. Necessary boarding, clothing, and lodging, and medical attendance in sickness, tuition of necessary teachers – these are necessities. The age and sex of the minor, the real station in society, property and business or vocation selected for life, all these things are necessarily involved in the question.<sup>35</sup>

### 1858 - AN ACT TO PROVIDE FOR BINDING MINORS AS APPRENTICES, CLERKS AND SERVANTS

The first apprenticeship law in California related to non-Indians, *An Act to provide for Binding Minors as Apprentices, Clerks and Servants*, was enacted in 1858, almost a decade after the 1850 Act. There were significant differences between the two laws. The 1858 Act excluded Indians (1/4 blood) from its provisions.<sup>36</sup> The 1858 Act mandated that

- the indenture state every sum of money paid or agreed for in relation to the apprenticeship.<sup>37</sup>
- the person to whom a child was bound send the child to school three months of each year of the period of the indenture to learn to read, write and the general rules of arithmetic.<sup>38</sup>

The 1858 Act also provided that an indenture of apprenticeship could be annulled and voided in the event that a county court found

- fraud in the contract of indenture.
- the contract was not made or signed pursuant to the law.
- willful nonfulfillment of the indenture provisions by the master.

- cruelty or maltreatment of the apprentice by the master, without cause or provocation.<sup>39</sup>

In 1865, Congress ratified the 13<sup>th</sup> Amendment of the U.S. Constitution. The states had to comply with the newly ratified amendment abolishing slavery and involuntary servitude:

Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

### **1855 – AN ACT TO PUNISH VAGRANTS, VAGABONDS, AND DANGEROUS AND SUSPICIOUS PERSONS**

The first vagrancy law of California that applied to others was passed April 30, 1855. The penalties under the law were less severe than the penalties imposed against Indians under the 1850 Act. The 1855 Act provided that

All persons except Digger Indians, who have no visible means of living, who in ten days do not seek employment, nor labor when employment is offered to them, all healthy beggars, who travel with written statements of their misfortunes, all persons who roam about from place to place without any lawful business, all lewd and dissolute persons who live in and about houses of Ill-Fame; all common prostitutes and common drunkards may be committed to jail and sentenced to hard labor for such time as the Court, before whom they are convicted shall think proper, not exceeding ninety days.<sup>40</sup>

The law did not define “Digger Indians.” The Justice of the Peace enforced the vagrancy laws, and the county Board of Supervisors determined the type of labor the convicted person was to perform.<sup>41</sup>

In 1863, the California Legislature amended the law to exempt California Indians from the provisions of the 1855 Act.<sup>42</sup> The vagrancy provisions contained in the 1850 Act relating to the California Indians (previously described) were not repealed until 1937.

## 1850 - 1859: California Militia and “Expeditions Against the Indians”

That a war of extermination will continue to be waged between the races, until the Indian race becomes extinct, must be expected. While we cannot anticipate this result but with painful regret, the inevitable destiny of the race is beyond the power or wisdom of man to avert.

Governor Peter H. Burnett, January 7, 1851<sup>43</sup>

### THE GOVERNORS AND THE MILITIA

Article VII of the first California Constitution gave the Governor the power “to call for the militia, to execute the laws of the State, to suppress insurrections, and repel invasions.”<sup>44</sup> In his annual address to the California Legislature on January 7, 1851, Governor Burnett highlighted significant events that transpired during 1850, including “repeated calls...upon the Executive for the aid of the militia to resist and punish the attacks of the Indians upon the frontier.”<sup>45</sup> During 1850, Governor Burnett called out the militia two times. The first order was prompted by incidents at the confluence of the Gila and Colorado rivers on April 23, 1850; in response, the Governor ordered the sheriffs of San Diego and Los Angeles to organize a total of 100 men to “pursue such energetic measures to punish the Indians, bring them to terms, and protect the emigrants on their way to California.”<sup>46</sup> The second instance occurred in October 1850, when Governor Burnett ordered the sheriff of El Dorado County to muster 200 men. The commanders were instructed to “proceed to punish the Indians engaged in the late attacks in the vicinity of Ringgold, and along the emigrant trail leading from Salt Lake to California.”<sup>47</sup>

Governor Burnett explained calling out the militia as follows:

In these cases the [Indian] attacks were far more formidable, and made at point where the two great emigrant trails enter the State...occurred at a period when the emigrants were arriving across the plains with their jaded and broken down animals, and them destitute of provisions. Under these circumstances, I deemed it due to humanity, and to our brethren arriving among us in a condition so helpless, to afford them all the protection within the power of the State...

Had it been once known to our fellow citizens east of the Rocky Mountains, that the Indians were most hostile and formidable on the latter and more difficult portion of the route...and that the State of California would render no assistance to parties so destitute, the emigration of families to the State across the plains would have been greatly interrupted and retarded.<sup>48</sup>

From 1997 to 1999, the Sacramento Genealogical Society researched and compiled an extensive index of the State Militia Muster Rolls located in the California State

Archives.<sup>49</sup> The California State Archives contain Muster Rolls or organizational documents for 303 units located in most California counties.\* Seventy-one of the militias were located in San Francisco.<sup>50</sup> After exhaustive review and crosschecking of 70,000 registered names, the researchers determined that approximately 35,000 men were listed on the Muster Rolls (attendance records).<sup>51</sup>

From the state archival record, it is impossible to determine exactly the total number of units and men engaged in attacks against the California Indians. However, during the period of 1850 to 1859, the official record does verify that the governors of California called out the militia on “Expeditions against the Indians” on a number of occasions, and at considerable expense, as Tables 1 and 2 indicate.

**Table 1**

“General Recapitulation of the Expenditures incurred by the State of California For the Subsistence and Pay of the Troops, composing of the different Military Expeditions, ordered out by the Governor, during the Years 1850, 1851 and 1852, For the Protection of the Lives and Property of her Citizens, and for the Suppression of Indian Hostilities within her Borders.”	
<b>Expeditions Against the Indians</b>	<b>Amount</b>
Mariposa and Monterey	\$259, 372.31
First El Dorado	101,861.65
Second El Dorado	199,784.59
Los Angeles and Utah	96,184.60
Trinity, Klamath and Clear Lake	34,320.08
San Diego “Fitzgerald Volunteers”	22,581.00
Siskiyou “Volunteer Rangers”	14, 987.00
Gila “Colorado Volunteers”	113,482.25
Amount paid in War Bonds by Paymasters	1,000.00
<b>Total Amount</b>	<b>\$843,573.48</b>
Source: Comptroller of the State of California, <i>Expenditures for Military Expeditions Against Indians, 1851-1859</i> , (Sacramento: The Comptroller), Secretary of State, California State Archives, Located at “Roster” Comptroller No. 574, Vault, Bin 393.	

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\* Muster Rolls may exist in other county or local archival repositories. The California State Archives does not have Muster Rolls for Colusa, Fresno, Glenn, Imperial, Inyo, Kern, Kings, Lake, Madera, Mendocino, Merced, Modoc, Riverside, San Benito, and Ventura counties for the period 1851 to 1866.

## THE CALIFORNIA LEGISLATURE AND THE MILITIA

In April 1850, the California Legislature enacted two laws: *An Act concerning Volunteer or Independent Companies*,<sup>52</sup> and *An Act concerning the organization of the Militia*.<sup>53</sup> The Volunteer Act provided that citizens of any one county could:

- organize into a volunteer or independent company;
- arm and equip themselves in the same manner as the army of the United States;
- prepare muster rolls (attendance records) twice a year; and
- render prompt assistance and full obedience when summoned or commanded under the law.<sup>54</sup>

The lengthy Militia Act established in great detail the organization, ranks, rules, duties and commutation fees (fees in lieu of service) that governed state military service. All “free, white, able-bodied male citizens, between the ages of eighteen and forty-five years, residing in [the] State” were subject to state-mandated military duty.<sup>55</sup> Important provisions relating to the delegation of authority to command and call out troops provided that:

- the Governor was the commander in chief of all the forces in the state;
- the Legislature elected four Major Generals, eight Brigadier Generals, one Adjutant General and Quarter Master General (with Brigadier General rank);
- the Governor commissioned all of the officers under the Act, who then took the oath of office prescribed by the California Constitution;
- the State Treasurer initially was the *ex officio* Pay Master; and
- upon the Governor’s orders, the Sheriffs of each county were responsible to call the enrolled militia.<sup>56</sup>

In 1851, two laws set the rates of pay for the troops.<sup>57</sup> As shown in Table 2, Federal authorities considered the rates exorbitant in comparison to compensation to federal troops.\*

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\* The 1850 Volunteer Act and Militia Act were repealed and replaced in 1855, and amended in 1856 and 1857. The National Guard replaced the California Militia in 1866. 1855 Cal. Stat. ch. 115; 1856 Cal. Stat. ch. 87; 1857 Cal. Stat. 344; 1866 Cal. Stat. ch. 541; Sacramento Genealogical Society, *California State Militia*, ii.

Table 2 details the State's expenditures for expeditions from 1854 to 1859.

**Table 2**

<b>Expeditions Named in the Act of Appropriations by Congress made March 2, 1861</b>				
Expedition	Year	Amount Allowed by California*	Amount Allowed by United States**	Amount Disallowed by United States
Shasta Expedition	1854	4,068.64	1,261.38	2,807.26
Siskiyou Expedition	1855	14, 036.36	6,146.60	7,889.76
Klamath & Humboldt Expedition	1855	99,096.65	61,537.48	37,559.17
San Bernardino Expedition	1855	817.03	419.99	397.04
Klamath Expedition	1856	6,190.07	2953.77	3,237.30
Modoc Expedition	1856	188,324.22	80,436.72	107,887.50
Tulare Expedition	1856	12,732.23	3,647.25	9,084.98
Klamath & Humboldt Expedition	1858 & 1859	52,184.45	31,823.94	20,360.51
Pitt River Expedition	1859	72,156.09	41,761.54	30,394.55
<b>Total</b>		<b>\$449,605.74</b>	<b>\$229,987.67</b>	<b>\$219,618.07</b>
Source: Comptroller of the State of California, <i>Expenditures for Military Expeditions Against Indians, 1851-1859</i> , (Sacramento: The Comptroller), Secretary of State, California State Archives, Located at "Roster" Comptroller No. 574, Vault, Bin 393.				

\*Amount submitted to the United States for reimbursement.

\*\*Amount actually paid by the United States.

Table 3 sets forth the twenty-seven California laws that the State Comptroller relied upon in determining the total expenditures recapitulated in the official report. The total amount of claims submitted to State of California Comptroller for Expeditions against the Indians was \$1,293,179.20.

**Table 3**

<b>Laws and Joint Resolutions Passed Relative to the Indian Wars in the State of California 1851-1859</b>			
<b>Legislation</b>	<b>Date</b>	<b>Page</b>	<b>Description of Act or Joint Resolution</b>
Statute	1851	489	Creating William Foster & William Rogers Pay Masters
Statute	1851	402	Creating James Burney Pay Master to pay Troops
Statute	1851	520	To negotiate a loan for the War Fund \$500,000
Joint Resolution	1851	530	To Establish Forts on our Borders
Joint Resolution	1851	532	Directing Adjutant General to enter names on Muster Roll
Joint Resolution	1851	534	Reference to the payment of claims and informal transfers in writing
Joint Resolution	1851	535	Reference to the payment of certain claims in the Gila Expedition
Joint Resolution	1851	538	Authorizing the Pay Master of the Gila Expedition to pay claims
Joint Resolution	1851	539	For the Benefit of the Citizens of Los Angeles County
Statute	1852	59	Authorizing the Treasurer to issue Bonds for \$600,000
Statute	1852	61	Authorizing and requiring Board of Examiners to settle with William Rogers
Statute	1852	250	For the relief of James S. Bolen
Statute	1852	261	For the relief of Jacob C. Kore
Statute	1852	262	For the relief of John G. Warrin
Statute	1853	79	For the relief of Thomas A. Wilton, M.D.
Statute	1853	95	To pay troops under Captain Wright S. McDermott \$23,000
Statute	1853	97	For the relief of Beverly C. Sanders
Statute	1853	130	For the relief of John C. Johnson
Statute	1853	134	Additional War Fund \$23,000
Statute	1853	154	For the relief of A.D. Blanchard and Samuel Stephens
Statute	1853	177	Secretary of State constituted one of the Board of Examiners
Statute	1853	177	Providing for the pay and compensation of Major James Burney
Statute	1853	200	For the relief of John Brown \$1,150
Statute	1853	225	Payment of the Fitzgerald Volunteers
Statute	1853	268	For the relief of John W. Jackson
Joint Resolution	1853	310	General Statement of War Debt to be made out
Statute	1854	171	For the relief of Powell Weaver

Source: Comptroller of the State of California, *Expenditures for Military Expeditions Against Indians, 1851-1859*, (Sacramento: The Comptroller), Secretary of State, California State Archives, Located at "Roster" Comptroller No. 574, Vault, Bin 393.



## **1860: THE LEGISLATURE'S MAJORITY AND MINORITY REPORTS ON THE MENDOCINO WAR**

In 1860, the California Legislature created a Joint Special Committee on the Mendocino Indian War to investigate incidents of Indian stealing and killing of settlers' stock, and alleged atrocities committed by whites against the Indians.\*

The Joint Special Committee traveled throughout Mendocino County and adjacent locations taking depositions and testimony of prominent settlers in the region. This testimony is part of the official public record, along with the committee's majority and minority reports about the events.

### **The Majority Report of the Joint Special Committee**

O'Farrell, Dickinson, Maxon and Phelps were authors of the Majority Report. The following are excerpts of the majority's findings, conclusions, and recommendations.

In Mendocino County...the Indians have committed extensive depredations on the stock of the settlers...The result has been that the citizens, for the purpose of protection to their property, have pursued the tribes supposed to be guilty to their mountain retreats, and in most cases have punished them severely. Repeated stealing and killing of stock, and an occasional murder of a white man, has caused a repetition of the attacks upon the offenders with the same results. The conflict still exists; Indians continue to kill cattle as a means of subsistence, and the settlers in retaliation punish with death. Many of the most respectable citizens of Mendocino County have testified before your committee that they kill Indians, found in what they consider the hostile districts, whenever they lose cattle or horses; nor do they attempt to conceal or deny this fact. Those citizens do not admit, nor does it appear by the evidence, that it is or has been their practice or intention to kill women or children, although some have fallen in the indiscriminate attacks of the Indian rancherias. The testimony shows that in the recent authorized expedition against the Indians in said county, the women and children were taken to the reservations, and also establishes the fact that in the private expeditions this rule was not observed, but that in one instance, an expedition was marked by the most horrid atrocity; but in justice to the citizens of Mendocino County, your committee say that the mass of the settlers look upon such act with the utmost abhorrence...

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\* The Joint Special Committee was comprised of Jasper O'Farrell (Sonoma, Marin, Mendocino), and W.B. Dickinson (El Dorado), as the Senate Committee. Joseph B. Lamar (Mendocino, Sonoma), William B. Maxon (San Mateo) and Abner Phelps (San Francisco) comprised the House Committee. Don A. Allen, *Legislative Sourcebook: The California Legislature and Reapportionment, 1849-1965*, (Sacramento: Assembly of the State of California, 1965), 364, 374, 450, 456.

Accounts are daily coming in from the counties on the Coast Range, of sickening atrocities and wholesale slaughters of great numbers of defenseless Indians in that region of country. Within the last four months, more Indians have been killed by our people than during the century of Spanish and Mexican domination. For an evil of this magnitude, some one is responsible. Either our government, or our citizens, or both, are to blame...

The pre-existing laws and policy of Mexico, as to the *status* of the Indian, need not have interfered with the views to be taken by our government. Mexico protected the Indian, in her own way, much more effectually than we have done. The very land upon which the aborigines of this State have dwelt, as far back as traditions reach, has been allowed by our government to be occupied by settlers, who thus have the authority of law for a forced occupation of the Indian country. A natural, humane, and proper policy would have protected the Indian in his undeniable rights to the hunting grounds of his forefathers, and would have prevented our border men from entering into a conflict which has cost both lives and property...

Your committee do [sic] not think that the wrongs committed upon the Indians of California are chargeable alone to the Federal Government. The evidence appended to this report, disclose facts, from the contemplation of which the mind of peaceful citizens recoil with horror, and prompts the inquiry, if such outrages upon the defenseless are permitted by the proper authorities to go unpunished?

No provocation has been shown, if any could be, to justify such acts. We must admit that the wrong has been the portion of the Indian—the blame with his white brother.

The question resolves itself to this: Shall the Indians be exterminated, or shall they be protected? If the latter, that protection must come from the Federal Government, in the form of adequate appropriations of money and land; and secondly, from this State, by strictly enforcing penal statutes for any infringement upon the rights of Indians.

In relation to the recent difficulty between the whites and Indians in Mendocino County, your committee desire to say that no war, or a necessity for a war, has existed, or at the present time does exist. We are unwilling to attempt to dignify, by the term “war” as slaughter of beings, who at least possess human form, and who make no resistance, and make no attacks, either on the person or residence of the citizen.<sup>58</sup>

The authors of the Majority Report recommended that the California Legislature pass “a law for the better protection of the Indians of California.”<sup>59</sup>

## **The Minority Report of the Special Joint Committee**

Lamar authored the Minority Report and dissented fundamentally from the majority's view of the events, and their recommendations. Lamar stated, "the testimony will disclose the guilty parties, and from the just indignation of outraged humanity I have no desire to screen them; but for the mass of citizens engaged in this Indian warfare, I claim that they have acted from the strongest motives that govern human action—the defense of life and property."<sup>60</sup>

Lamar further stated that certain tribes living outside of reservations in the region were "domesticated Indians," a great number of whom were employed by settlers, receiving "liberal compensation for their labor."<sup>61</sup> Lamar proposed the following general Indian policy that the State should pursue.

The General Government should first cede to the State of California the entire jurisdiction over Indians and Indian affairs within our borders, and make such donations of land and other property and appropriations of money as would be adequate to make proper provision for the necessities of a proper management.

The State should, then, adopt a general system of peonage or apprenticeship, for the proper disposition and distribution of the Indians by families among responsible citizens. General laws should be passed regulating the relations between the master and servant, and providing for the punishment of any meddlesome interference on the part of third parties. In this manner the whites might be provided with profitable and convenient servants, and the Indians with the best protection and all the necessities of life in permanent and comfortable homes.<sup>62</sup>

## **The Mendocino War Reports and the 1860 Amendment to "An Act for the Government and Protection of Indians"**

On January 19, 1860, the first version of Assembly Bill No. 65, entitled "*An Act amendatory of an Act for the Government and Protection of Indians*" was introduced in the California Legislature.<sup>63</sup> Assembly Bill No. 65 proposed broader apprenticeship laws than those contained in the 1850 Act. Various amendments and substitute versions of the bill found in the California State Archives Original Bill File appear to reflect the degree of debate surrounding Indian prisoners of war from expeditions, Lamar's proposed Indian policies, and more expansive Indian apprenticeship laws. Transcriptions of the proposed versions of the bill, and the original enrolled version are contained in Appendix 2 of this report.

## 1851-1852: California's Response to Federal Treaties Negotiated with the Indians

Among the more immediate causes that have precipitated this state of [frontier hostilities], may be mentioned the neglect of the General Government to make treaties with [the Indians] for their lands. We have suddenly spread ourselves over the country in every direction, and appropriated whatever portion of it we pleased to ourselves, without their consent, and without compensation.

Governor Peter H. Burnett, January 7, 1851<sup>64</sup>

From 1851 through early 1852, the U.S. Indian Commissioners, acting on behalf of the United States, negotiated 18 treaties with California Indian tribes. A number of aspects surrounding the negotiations were fraught with problems and controversy, in large part due to the ambiguous scope of authority delegated to the Commissioners by the federal government, and inadequate appropriations provided to carry out their job.<sup>65</sup> The treaties negotiated by the Indian Commissioners reserved to the Indians approximately 11,700 square miles, or about 7.5 million acres of land. The total amount represented seven and a half percent of the State of California.<sup>66</sup>

At the beginning of the 1852 California legislative session, the Legislature recognized the value of the land represented in the treaties and appointed committees to prepare joint resolutions and committee reports to recommend how California's U.S. Senators should proceed regarding the ratification of the treaties.<sup>67</sup> The Special Committee on the Disposal of Public Land summed up the views opposing ratification of the treaties in its report on the public domain:

Your memorialists feel assured, from all the facts which are daily transpiring, and the state of public feeling throughout the mines, that if those treaties are ratified, without any sufficient amendments to alter their permanent disposition of the public domain, it will be utterly impossible to prevent the continued collisions between the miners and the Indians. It will not be owing to any objection of the former to the mining of the Indians in the placers; but it will be caused by the exclusive privileges attempted to be secured for Indians, to the mines always heretofore open to the labors of the white man.<sup>68</sup>

Instead of the treaty provisions, the Special Committee proposed a system of missions for the Indians that included

[A]nnuities to be paid in provisions and clothing... a parcel of land to be assigned... sufficient for them to cultivate, and with every laudable means to be used to induce them to do so. Their stock of every description should be protected by law, and have the same privileges of grazing with that of our own. To the Indians, should not be denied the right of hunting,

nor that of digging peaceably in the mines, under the same regulations which we observe.

The Indians who are now residing on private lands, with the consent of the owners, or engaged in cultivating their soil, should not be disturbed in their position.. They are already in the best school of civilization...The adoption of this plan would obviate the contemplated permanent disposal of a large portion of our mineral and arable land [to the Indians].<sup>69</sup>

In mid-March 1852, the California Assembly (35 to 6) and Senate (19 to 4) voted to submit resolutions opposing the ratification of the treaties to California's U.S. Senators.<sup>70</sup>

The President submitted the treaties to the U.S. Senate on June 1, 1852. On June 7, the Senate read the President's message, and referred the treaties to the Committee on Indian Affairs. The treaties were then considered and rejected by the U.S. Senate in secret session. The treaties did not reappear in the public record until January 18, 1905, after an injunction of secrecy was removed.<sup>71</sup>

## Early and Current Fish Protection Laws and California Indians

In 1852, the California Legislature enacted *An Act to prohibit the erection of Weirs, or other obstructions, to the run of Salmon*. The Act prohibited any weir, dam, fence, set or stop net or obstruction to the run of salmon in any river or stream in the State. The Act also provided an important exception for California Indian tribes:

This Act shall not apply to any of the Indian tribes, so as in any manner to preclude them **from fishing in accordance with the custom heretofore practiced** by them.<sup>72</sup> [emphasis added]

The original bill, Senate Bill No. 80 was introduced by Senator Hubbs on March 13, read a first and second time and referred to the Committee on Commerce and Navigation.<sup>73</sup> The first version of the original bill made no reference to Indian tribes. However, the Committee recommended the amendment related to Indian tribes that became law.<sup>74</sup>

The following Table 4 lists some examples of California laws related to fish that have accommodated Indian tribes' practices in the past and today.

**Table 4**

<b>California Laws Related to Fish and California Indians</b>		
Date	Law	Title
1852	1852 Cal. Stat. ch. 62	<i>An act to prohibit the erection of Weirs, or other obstructions, to the run of Salmon</i>
1854	1854 Cal. Stat. ch. 70	<i>Amendment to An act to prohibit the erection of Weirs, or other obstructions, to the run of Salmon</i>
1866	1866 Cal. Stat. ch. 404	<i>An Act for the preservation of trout in the Counties of San Mateo and Santa Clara</i>
1951	1951 Cal. Stat. ch. 1486	<i>An act to add Section 429.8 to the Fish and Game Code, relating to the taking of fish by members of the Yurok Indian Tribe</i>
1955	1955 Cal. Stat. ch. 389	<i>An act to add Section 1418 to the Fish and Game Code, relating to hunting and fishing rights of California Indians</i>
1961	1961 Cal. Stat. ch. 963	<i>An act to amend Section 12300 of the Fish and Game Code, relating to Indians</i>
2002	CAL FISH & GAME CODE §7155 (1994)	<i>Right of members of Yurok Indian tribe to take fish from Klamath River</i>
2002	CAL FISH & GAME CODE §123000 (1994)	<i>Application of code to California Indians</i>

*California Fish & Game Code §123000* currently provides that:

Irrespective of any other provision of law, the provisions of this code are not applicable to California Indians whose names are inscribed upon the tribal rolls, while on the reservation of such tribe and under those circumstances in this State where the code was not applicable to them immediately prior to the effective date of Public Law 280, Chapter 505, First Session, 1953, 83d of Congress of the United States. No such Indian shall be prosecuted for the violation of any provision of this code occurring in the places and under the circumstances hereinabove referred to. Nothing in this section, however, prohibits or restricts the prosecution of any Indian for the violation of any provision of this code prohibiting the sale of any bird, mammal, fish, or amphibia.

## Appendix 1 – Original Bill Material Pertaining to California Statutes, 1850 Chapter 133

This Appendix is based on a review of the enacted laws published in the *Statutes of California, First Session of the Legislature, 1849-1850*, and the Original Bill File, Chapter 133, 1850, California Secretary of State, State Archives, Location E6553, Box 1. Copies of the original documents and the transcript of the contents of Original Bill File are on file with the California Research Bureau.

The following is a combined comparison of the provisions contained in California Statutes, Chapter 133, Entitled “An Act for the Government and Protection of Indians” and the proposed bills contained in the Original Bill File. The notable differences in enacted law and proposed bill language is described in the annotated footnotes.

- Section 1. Justices of the Peace had jurisdiction in all cases of complaints “by, for, or against Indians.”\*
- Section 2. Persons or proprietors of lands where Indians resided were to permit the Indians to peaceably and unmolested live “in the pursuit of their usual avocations for the maintenance of themselves and families.” Provided:
  - White persons or proprietors could apply to the Justice of the Peace to “set off to such Indians a certain amount of land...a sufficient amount...for the necessary wants of such Indians, including the site of their village or residence, if they [the Indians] so prefer[red] it.”
  - In no case was “such selection [of land to] be made to the prejudice of such Indians,” nor were the Indians to “be forced to abandon their homes or villages where they...resided for a number of years.”†

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\* Senate Bill No. 54 introduced by Senator Chamberlin, at the request of Senator Bidwell, provided for Justices of the Peace for Indians. These Justices of the Peace were to be elected by the Indians directly, at the order and direction of the Court of Sessions. Pursuant to the language in the bill, the Court of Sessions provided Inspectors of Elections to discharge the same duties as county election inspectors. The bill also provided that the inspectors “procure one or more interpreters to be at the polls during the election who shall ask every Indian who is entitled to vote, whom he prefers for Justice for the Indians the ensuing year, and his vote shall be recorded for the person he prefers.” This language was not contained in the bill proposed by the Assembly, nor the final law enacted in 1850.

† Sections 5 through 7 of Senate Bill 54 contained similar language but gave the issues in this section more comprehensive treatment than what appears in the enacted law. Bill No. 54: 1) permitted Indians “*and their descendents*” to reside on such lands; 2) defined “usual avocations” as “*hunting, fishing, gathering seeds and acorns for the maintainance [sic] of themselves and families;*” and 3) stated that “*in no case shall [I]ndians be forced to abandon their village sites where they have lived from time immemorial.*” Emphasis added.



- Either party feeling aggrieved could appeal the Justice of the Peace’s decision to the County Court.
- Section 3. “Any person having or hereafter obtaining a minor Indian, male or female, from the parents or relations of such Indian minor, and wishing to keep it...**shall go before a Justice of the Peace** in his Township, with the parents or friends of the child, and if **the Justice of the Peace becomes satisfied** that no compulsory means have been used to obtain the child from its parents or friends, **shall enter on record, in a book kept for that purpose**, the sex and probable age of the child, **and shall give to such person a certificate, authorizing** him or her to have **the care, custody, control and earnings of such minor**, until he or she obtain the age of majority. Every male Indian shall be deemed to have attained his majority at eighteen, and the female at fifteen years.\* (Original text with emphasis added)
- Section 4. A person that neglected to “clothe or suitably feed...or inhumanly” treated a minor Indian in his care, could be fined not less than ten dollars, if convicted. The Justice of the Peace could place the minor Indian “in the care of some other person, giving him the same rights and liabilities that the former master...was entitled and subject to.”†
- Section 5. “Any person wishing to hire an Indian [had to] go before the Justice of the Peace with the Indian and make such contract as the Justice may approve.” The Justice filed the written contract in his office. The contract was binding between the parties; “but no contract between a white man and an Indian, for labor [was] otherwise...obligatory on the part of the Indian.”‡
- Section 6. Indians or white persons could make complaints before a Justice of the Peace. However, “in no case [could] a white man be convicted of any offen[s]e upon the testimony of an Indian, or Indians.”
- Section 7. Any person convicted of forcibly “conveying” an Indian from his home or compelling an Indian to work against his will, would be fined at least fifty dollars.

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\* The original Assembly Bill 129 defined the age of majority for a male Indian at twenty years, and for a female at seventeen years, but was lined out and changed to the ages contained in Section 9 of Senate Bill 54. Also, Section 8 of Senate Bill 54 mandated that the “name (if any) given by the person taking the child” was also to be included in the Justice of the Peace’s record book. This language is absent from any version of the Assembly bill or the law.

† Section 12 of Senate Bill 54 made the fine to be not less than 50 nor more than 200 hundred dollars. This section also provided that the minor Indian could “return to his or her parents or relatives,” language absent from the enacted law.

‡ This section is absent from Senate Bill 54.

- Sections 8 and 18. Justices of the Peace were required every six months to report all moneys and fines collected to the county Court of Sessions and pay them over to the Treasurer, who was to keep the monies in an “Indian fund.”
- Sections 9. Justices of the Peace were to “instruct the Indians in their neighborhood in the laws which related to them.” Any tribes or villages refusing or neglecting to obey the laws could be reasonably chastised.
- Section 10. Any person was subject to fine or punishment if they set the prairie on fire, or refused “to use proper exertions to extinguish the fire.”\*
- Sections 11 – 13. If an Indian committed “an unlawful offen[s]e against a white person,” the person offended was not allowed to mete out the punishment. However, the offended white person could, without process, bring the Indian before the Justice of the Peace, and on conviction the Indian was punished according to provisions in the Act. Justices could require “chiefs and influential men of any village to apprehend and bring before them any Indian charged or suspected of an offen[s]e.”
- Section 14. If a convicted Indian was punished by paying a fine, any white person, with the consent of the Justice, could give bond for the Indian’s fine and costs. In return, the Indian was “compelled to work until his fine was discharged or cancelled. The person bailing was supposed to “treat the Indian humanely, and clothe and feed him properly.” The Court decided “the allowance given for such labor.”
- Section 15. Anyone convicted of providing intoxicating liquors to an Indian was fined not less than 20 dollars.
- Sections 16-17. An Indian convicted of stealing horse, mules, cattle or “any valuable thing,” could receive 25 lashes with a whip or be fined up to 200 dollars. The punishment was at the discretion of the Court or a jury. The Justice could appoint a white man or an Indian to whip the Indian, but was not to permit “unnecessary cruelty” in executing the sentence.
- Section 19. If a white person made an application to a Justice of the Peace for confirmation of a “contract with or in relation to an Indian,” had to pay two dollars per each contract determination.

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\* The original language of this section was changed from “Indian” to “any person” in the final version of AB 129.

- Section 20. Any Indian able to work and support himself in some honest calling, not having wherewithal to maintain himself, who shall be found loitering and strolling about, or frequenting public places where liquors are sold, begging, or leading an immoral or profligate course of life, shall be liable to be arrested on the complaint of any resident citizen of the county, and brought before any Justice of the Peace of the proper county, Mayor or Recorder of any incorporated town or city, who shall examine said accused Indian, and hear the testimony in relation thereto, and if said Justice, Mayor, or Recorder shall be satisfied that he is a vagrant...he shall make out a warrant under his hand and seal, authorizing and requiring the officer having him in charge or custody, to hire out such vagrant within twenty-four hours to the best bidder, by public notice given as he shall direct, for the highest price that can be had, for any term not exceeding four months; and such vagrant shall be subject to and governed by the provisions of this Act, regulating guardians and minors, during the time which he has been so hired. The money received for his hire, shall, after deducting the costs, and the necessary expense for clothing for said Indian, which may have been purchased by his employer, be, if he be without a family, paid into the County Treasury, to the credit of the Indian fund. But if he have a family, the same shall be appropriated for their use and benefit: *Provided*, that any such vagrant, when arrested, and before judgment, may relieve himself by giving to such Justice, May, or Recorder, a bond, with good security, conditioned that he will, for the next twelve months, conduct himself with good behavior, and betake to some honest employment for support.

## **Appendix 2 - Original Bill Material Pertaining to California Statutes 1860, Chapter 231**

This Appendix contains a verbatim transcription of the Original Bill Materials, located in the California State Archives, that are related to the 1860 amendment of the Act for the Government and Protection of Indians passed April 22, 1850. The first document is the initial Assembly Bill No. 65 introduced for consideration on January 19, 1860. The second document is a “substitute” Assembly Bill No. 65, introduced for consideration on February 17, 1860. The third document is the engrossed bill that was enrolled on April 6, 1860.

The first page of each transcribed document in this Appendix contains the legislative history of the bill. This information is handwritten and originally signed by each legislative officer on the front page of the original documents. The language originally contained in the proposed bills, but subsequently deleted from the text during the course of the legislative process is noted in brackets.

[First Document Transcription Begins Here]

Assembly Bill No. 65

---

An act amendatory of an act entitled an act for the Government and Protection of Indians  
passed April 22, 1850

---

In Assembly January 19, 1860  
Read first & second time  
Referred to Com. on Indian Affairs

Weston  
Asst Clerk

---

February 11, 1860, Reported with amendt & passage  
Recommended as amended

Weston  
Asst Clk

---

Feb. 13, 1860  
Taken from file  
& referred to Jud[iciary] Com[mittee]

Weston  
Asst Clk

---

Feb 17, 1860, Substitute reported & recommended

Weston  
Asst Clk

---

Feb 27, 1860: Substituted adopted & ordered printed

Weston  
Ass't Clk

---

An Act amendatory of an act entitled An Act for the Government and Protection of Indians passed April 22, 1850

The People of the State of California represented in Senate and Assembly do enact as follows:

Section 1<sup>st</sup> , Section third of said Act is hereby amended so as to read as follows

Section 3d Any person having or hereafter obtaining any Indian child or children male or female from the parents or relations of such child or children [stricken from text: with their] and wishing to domesticate said child or children and any person desiring to obtain any Indian or Indians either children or grown persons that may have been taken prisoner or prisoners [stricken from text: and wishing to domesticate either children or grown persons in any expedit] of war [stricken from text: in any] and wishing to domesticate said Indians, such person shall go before a Justice of the Peace of the County in which such Indians may [stricken from text: be] reside at the time and if the Justice of the Peace becomes satisfied that no compulsory means have been used to obtain the said child or children from its parents or friends or that the said child or children or other Indian or indians of either sex have been taken and are held as a prisoner or prisoners of war, he shall enter on record, in a book kept for that purpose the sex and probable age of the child or children or other indians, and shall give to such person a certificate authorizing him or her to have the care custody control and earnings of such child or children or other Indians, for and during the following term of years, such children as are under twelve years of age, until they attain the age of twenty five years, such children as are over twelve and under eighteen years of age until they attain the age of thirty years, and such indians as may be over the age of eighteen years, for and during the term of ten years then next following the date of said certificate, any person or persons [stricken: being] having any indian or indians in his or their possession as such prisoners shall have the preference to domesticate as many of such indians as he or they may desire for their own use, every indian either male or female in the possession or under the control of any person under the provisions of this act shall be taken and deemed to be a minor Indian, [stricken from text: for such]

Sec. 2<sup>nd</sup> Section seventh of said act is hereby amended so as to read as follows,

Sec 7. If any person shall forcibly convey any Indian from any place without this State to any place within this State, or from his or her home within this State, or compel him, or her, to work or perform any services against his or her will,

Except as provided in this act, he or they may be upon conviction fined in any sum not less than fifty dollars, nor more than five hundred dollars, at the discretion of the Court

[First Document Transcription Ends Here]

[Second Document Transcription Begins Here]

Substitute for Assembly Bill No. 65

An act amendatory of an act entitled An Act for the Government & Protection of Indians  
passed April 22, 1850

---

Feb 17, 1860. Reported as substitute for Assembly Bill No. 65 & passage recommended

Weston  
Ass't Clk

---

Feb. 27, 1860, adopted & ordered printed.

Weston  
Ass't Clk

---

Mch 10, 1860, amended, \_\_\_ suspended, considered engrossed read third time and passed

Weston  
Asst Clk

Judiciary Committee

---

An Act amendatory of An Act Entitled "An Act for the Government and Protection of Indians passed April 22 1850

The People of the State of California represented in Senate and Assembly, do enact as follows:

Section 1<sup>st</sup> Section third of said Act is hereby amended so as to read as follows:

Section 3: County and District Judges in the respective counties of this State shall by virtue of this Act have full power and authority, at the instance and request of any person having or hereafter obtaining any Indian child or children male or female under the age of fifteen years from the parents or person or persons having the care or charge of such child or children with the consent of such parents or person or persons having the care or charge of any such child or children, or at the instance and request of any person desirous of obtaining any indian or Indians whether children or grown persons that may be held as prisoners of war, or at the instance and request of any person desirous of obtaining any vagrant Indian or Indians as have no settled habitation or means of livelihood and have not placed themselves under the protection of any white person, to bind and put out such Indians as apprentices to trades --- husbandry or other employments as shall to them appear proper, and for this purpose shall execute duplicate Articles of Indenture of Apprenticeship on behalf of such Indians, which Indentures shall also be executed by the person to whom such Indian or Indians are to be indentured: one copy of which shall be filed by the County Judge [stricken from text: with the] in the Recorders Office of the County and one copy retained by the person to whom such Indian or Indians may be indentured; such Indenture shall authorise [sic] such person to have the care custody control and earnings of such Indian or Indians and shall require such person to clothe and suitably provide the necessaries of life, for such Indian or Indians for and during the term for which such Indian or Indians shall be apprenticed, and shall contain the sex name and probable age of such Indian or Indians, Such Indentures may be for the following terms of years, such children as are under fourteen years of age, if males until they attain the age of twenty five years; if females until they attain the age of twenty one years; such as are over fourteen and under twenty years of age if males until they attain the age of thirty years; if females until they attain the age of twenty five years; and such Indians as may be over the age of twenty years for and during the term of ten years then next following the date of such Indenture at the discretion of such Judge. Such Indians as may be indentured under the provisions of this section shall be deemed within such provisions of this act as are applicable to minor Indians

Section 2d Section seventh of said act is hereby amended so as to read as follows,

Section 7 If any person shall forcibly convey any Indian from any place without this State to any place within this State or from his or her home within this State, or compel him or her to work or perform any service against his or her will except as provided in



this Act he or they shall upon conviction thereof be fined in any sum not less than one hundred dollars nor more than five hundred dollars before any court having jurisdiction at the discretion of the Court, and the collection of such fine shall be enforced as provided by law in other criminal cases, one half to be paid to the prosecutor and one have [sic] to the County in which such conviction is had

[Second Document Transcription Ends Here]

[Third Document Transcription Begins Here]

Substitute for Assembly Bill No. 65

An act amendatory of an act entitled an act for the government & protection of Indians  
passed April 22, 1850

---

Feb 17, 1860 reported as substitute for assembly Bill No. 65 & passage recommended

Weston  
Asst Clk

---

Feb 27, 1860, adopted and ordered printed

Weston  
Asst. Clk

---

March 10, 1860 Amended rules suspended, considered  
Engrossed read third time and passed

Weston  
Asst Clk

---

E.W. Casey Engrossing Clerk  
231 [in pencil]

Judiciary Committee

---

March 13<sup>th</sup> 1860  
Read first and second times and refd to the Committee on Federal Relations

Williamson  
Asst Secty

---

March 23<sup>rd</sup> 1860

Reported back and passage recommended & placed on file April 6<sup>th</sup>  
Taken up read a third time & passed

Enrolled April 6<sup>th</sup> 1860  
H.C. Kibbe  
Enrolling Clerk

---

Chap 231 [in pencil]

An Act amendatory of an act Entitled "An Act for the Government and Protection of Indians passed April 22d 1850.

The People of the State of California represented in Senate and Assembly do enact as follows.

Section 1. Section third of said Act, is hereby amended so as to read as follows;

Section 3d. County and District Judges in the respective Counties of the State shall by virtue of this act have full power and authority, at the instance and request of any person having or hereafter obtaining any Indian child or children male or female under the age of fifteen years, from the parents or person or persons having the care or charge of such child or children with the consent of such parents or person or persons having the care or charge of any such child or children, or at the instance and request of any person desirous of obtaining any Indian or Indians, whether children or grown persons that may be held as prisoners of war, or at the instance and request of any person desirous of obtaining any vagrant Indian or Indians as have no settled habitation or means of livelihood, and have not placed themselves under the protection of any white person, to bind and put out such Indians as apprentices to trades husbandry or other employments as shall to them appear proper, and for this purpose shall execute duplicate Articles of Indenture of Apprenticeship on behalf of such Indians, which Indentures shall also be executed by the person to whom such Indian or Indians are to be Indentured; one copy of which shall be filed by the County Judge, in the Recorders office of the County, and one copy retained by the person to whom such Indian or Indians may be Indentured, such Indentures shall authorize such person to have the care custody control and earnings of such Indian or Indians and shall require such person to clothe and suitably provide the necessaries of life for such Indian or Indians, for and during the term for which such Indian or Indians shall be apprenticed, and shall contain the sex name and probable age of such Indian or Indians, such indentures may be for the following terms of years; such children as are under fourteen years of age, if males until they attain the age of twenty five years; if females until they attain the age of twenty one years; such as are over fourteen and under twenty years of age, if males until they attain the age of thirty years; if females until they attain the age of twenty five years, and such Indians as may be over the age of twenty years for and during the term of ten years thru next following the date of such indenture at the discretion of such Judge, such Indians as may be indentured under the provisions of this Section, shall be deemed within such provisions of this Act, as are applicable to minor Indians

Section 2. Section Seventh of said act is hereby amended so as to read as follows:

Section 7. If any person shall forcibly convey any Indian from any place without this State, to any place within this State, or from his or her home within this State, or compel him or her to work or perform any service against his or her will except as provided in this act, he or they shall upon conviction thereof, be fined in any sum, not less than one hundred dollars nor more than five hundred dollars, before any Court having jurisdiction at the discretion of the Court, and the collection of such fine shall be enforced as provided by law in other criminal cases, on half to be paid to the prosecutor, and one half to the County in which such conviction is had.

[Third Document Transcription Ends Here]

California Secretary of State, California State Archives  
Original Bill File AB 65 1860  
Location: E6562 Box 1

Transcribed July 29, 2002 by Kimberly Johnston Dodds, California Research Bureau



## Appendix 3 - Court of Sessions

The Courts of Sessions were the earliest county-level courts of record\* that adjudicated criminal offenses. The first Courts of Sessions in California were authorized by the state Constitution:

There shall be elected in each of the organized counties of this State, one County Judge, who shall hold his office for four years...The County Judge, with two Justices of the Peace, to be designated according to law, shall hold Courts of Sessions with such criminal jurisdiction as the Legislature shall prescribe, and he shall perform such other duties as shall be required by law.<sup>75</sup>

The two Justices of the Peace (Associate Justices of the Courts of Sessions) were chosen by all of the Justices of the Peace from within the county.<sup>76</sup>

The Legislature conferred upon the Courts of Sessions jurisdiction over “all cases of assault, assault and battery, breach of the peace, riot, affray, and petit larceny, and over all misdemeanors punishable by fine not exceeding five hundred dollars, or imprisonment not exceeding three months, or both such fine and imprisonment.”<sup>77</sup> The jurisdiction of the Courts of Sessions also extended to grand jury investigations of public offenses committed or triable in their respective counties, except murder, manslaughter, arson and other crimes that were punished by death. These courts also heard and decided appeals from lower courts that were not courts of record -- the justices’, recorders’, and mayors’ courts. The Courts of Sessions did not have jurisdiction to try indictments against justices of the peace.<sup>78</sup>

In counties that did not have a board of supervisors, the Courts of Sessions also had the following powers to:

- Make orders and decisions respecting county property, including care and preservation;
- Examine, settle and allow all accounts legally chargeable against the county;
- Direct assessing the value of real and personal property taxes;
- Examine and audit accounts of all county officers;
- Control and manage public roads, turnpikes, ferries, canals, and bridges within the county;

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\* A court of record is a court whose proceedings are recorded in some manner of permanence at the same time that the proceedings take place. See *Cal Jur* vol. 16, part 1 3d ed. (San Francisco: Bancroft-Whitney Co. 1983, 2002 supp.) 300-301.

- Divide the county into townships, including changing township boundaries when required; and
- Establish and change election precincts.<sup>79</sup>

In 1863, the Legislature abolished the Courts of Sessions. The County Courts then maintained similar jurisdiction as the Courts of Sessions.<sup>80</sup>

## Appendix 4 – 1861 Indian Article of Indenture

Feb 4, 1861

**SACRAMENTO DAILY UNION, MONDAY,**

**C-PRINTING.**

State printing has properly to both Houses of the Legislature, we think it will be ought to be made in the law in 1857. It appears in relation to printing in the Legislature, that an idea prevails it would be better for the present system, and adopt public printing by contract. In character, we enter a pro-experience of the past. In the present law was enacted, we think the present system as better for the year under the present system it was preferable to doing it, and since that date we have gone beyond a reduction in the prices, which became a Governor Johnson. It states the system of letting by contract may answer a great even in those States where the contract plan, party securing the award of the contract a living profit, party deficiency by a legislative act the State is ready and remunerative price for require; this, at any rate, pay, and all she can ask is, that she shall not be an men conversant with pronounce just and right. It should be fixed upon the basis cannot then complain. It scale to that basis, will the rate fully twenty-five erally. For some work a thirty-three and a third a full margin for profit.

**INDIAN SERVITUDE—WORK FOR THE NEW INDIAN AGENT.**—The attention of the new Indian Agent, as well as that of the Legislature, is called to the communication in another part of this day's Union, in which the beauties of the Indian apprenticeship system established by the Legislature of 1860 are exemplified in the transactions of one of the late Sub-Agents and his partner, on the lands adjoining the Nome Lackee Reservation. From a copy of an indenture there shown, and which purports to have been filed in the County Clerk's office of Tehama county in December last, it appears that Geiger & Titus, late Government agents or employes on the Reservation, have caused the County Judge, N. Hall, to bind out to them a considerable proportion of the best Indians, male and female, belonging to the Reserve. The process by which they effected this, as near as we can gather, was to apprentice them by virtue of their right as custodians of the Indians, causing the indentures to be made out to Messrs. Geiger & Titus, as private individuals, engaged in the ranching business.

The law of last year was passed under a high-lobby pressure, no doubt for the special accommodation of the numerous parties interested in Indian war claims and Indian subjugation, who besieged the Legislature. It allows County and District Judges to apprentice Indians, both children and adults, at the "instance and request" of parties having them in charge; or of parties desirous of taking up vagrant Indians, on the sole condition that they shall promise to suitably clothe and feed them during the term of their apprenticeship. The Act authorizes as complete a system of slavery, without any of the checks and wholesome restraints of slavery, as ever was devised. And Geiger & Titus appear to have availed themselves to the utmost extent of its provisions. They have a large ranch adjoining the Reservation, and they have selected, we are told, the likeliest workmen on the Government property for their servants, leaving the Federal authorities to take care of the

**NEWSPAPERS IN THE LEGISLATURE.**—It is worth a passing moment to glance over the order-book of the Sergeant-at-Arms in either branch of the Legislature, and observe how the newspaper preferences of the members incline or at least how they distribute their patronage among the "five daily newspapers or the equivalent in weeklies," which the law allows them. Taking the list prepared by the Assembly official, and enumerating the journals in the order of their circulation, we have the following newspapers, of which over five are taken by the members: Sacramento DAILY UNION (independent), 89; Sacramento WEEKLY UNION, 95; San Francisco Spirit of the Times (sporting weekly), 51; San Francisco Bulletin (independent), 40; San Francisco Monitor (Catholic weekly), 35; Marysville Daily Express (secession), 27; Yreka Union (Douglas last year weekly), 26; San Francisco Herald (secession), 21; Shasta Courier (Douglas, weekly), 20; San Joaquin Republican (secession), 19; Marysville Democrat (Douglas), 18; Sierra Democrat (weekly, Douglas) 16; Mariposa Gazette (weekly, secession), 15; San Francisco Daily Alta California (independent), 15; San Francisco Daily Times (Republican), 14; Sonoma Union Democrat (weekly, secession), 13; Marysville Daily Appeal (Republican), 13; Coloma Times (weekly, Douglas), 12; Mountain Democrat (weekly, secession), 12; Sacramento News (independent), 11; Pacific Methodist (weekly, Methodist Episcopal South), 10; Golden Era (weekly, literary), 10; California Farmer, 10; Nevada Journal (weekly, Republican), 10; Petaluma Argus (weekly, Republican), 8; Butte Record (weekly, Douglas), 8; Sacramento Daily Bee (independent), 7; Alameda Herald, weekly, (Republican), 7; San Andreas Independent, weekly (independent), 7; San José Mercury, weekly (Republican), 6; Napa Reporter, weekly (independent), 5; Placer Herald, weekly (secession), 5; San Francisco Call (independent), 5.



with the times. In 1837 a law was passed, which became a law of Governor Johnson.

The system of letting contracts may answer a purpose, but even in those States where the contract plan, party securing the award of the contract, follows a living profit, party deficiency by a legislative

at the State is ready and remunerative price for require; this, at any rate, pay, and all she can ask is, that she shall not be an men conversant with pronounce just and right. ld be fixed upon the basis te cannot then complain. ent scale to that basis, will the rate fully twenty-five ically. For some work n thirty-three and a third o a full margin for profit. so as to the power of the rices during the term, for r was elected. He is not and hence the price to work may be changed at aid that, as he was elected d a certain rate to be easonable ground to ex- not be changed, during it to change these prices ure, and when the State ras with a consciousness body to repeal or amend d law of 1837, which rices as fixed in that of g the second year of the then State Printer, and st day of May, 1837.

and by the law of 1854

per 1,000 ems.	82 50
per 1,000 ems.	8 00
per 1,000 ems.	8 50
per 1,000 ems.	4 00
240 sheets.	2 75
Act of 1857 the prices	
per 1,000 ems.	81 50
per 1,000 ems.	2 00
per 1,000 ems.	2 00
per 1,000 ems.	2 00

as we can gather, was to apprentice them by virtue of their right as custodians of the Indians, causing the indentures to be made out to Messrs. Geiger & Titus, as private individuals, engaged in the ranching business.

The law of last year was passed under a high-lobby pressure, no doubt for the special accommodation of the numerous parties interested in Indian war claims and Indian subjugation, who besieged the Legislature. It allows County and District Judges to apprentice Indians, both children and adults, at the "instance and request" of parties having them in charge; or of parties desirous of taking up vagrant Indians, on the sole condition that they shall promise to suitably clothe and feed them during the term of their apprenticeship. The Act authorizes as complete a system of slavery, without any of the checks and wholesome restraints of slavery, as ever was devised. And Geiger & Titus appear to have availed themselves to the utmost extent of its provisions. They have a large ranch adjoining the Reservation, and they have selected, we are told, the likeliest workmen on the Government property for their servants, leaving the Federal authorities to take care of the infirm and crippled. The names of seventy-two males and females are given in the indentures, and Geiger & Co. do not appear to have been over careful in complying with the terms of the law, generous as its provisions have proved to them. The Indian women under the age of twenty are apprenticed for the full term of the men, which is contrary to the regulations contained within the Act of April, 1860.

The times are propitious for a change in this misnamed law "for the government and protection of Indians"—a change which shall deprive the parties in the above transaction, and others who have sought to obtain control of the persons of Indians under similar circumstances, of the unlimited power they hold under the Act of last year. The new Agent is now in his place, and the Legislature of 1861 differs materially in its composition from the one of the year preceding. At all events, let us have an investigation of the matter brought to notice in another column, and a little light, if light can be obtained, on the general operation of the law under which parties are seeking to establish a system of domestic servitude in our midst.

weekly), 26; San Francisco Herald (secession), 21; Shasta Courier (Douglas, weekly), 20; San Joaquin Republican (secession), 19; Marysville Democrat (Douglas), 18; Sierra Democrat (weekly, Douglas) 16; Mariposa Gazette (weekly, secession), 15; San Francisco Daily Alta California (Independent), 15; San Francisco Daily Times (Republican), 14; Sonoma Union Democrat (weekly, secession), 13; Marysville Daily Appeal (Republican), 13; Coloma Times (weekly, Douglas), 12; Mountain Democrat (weekly, secession), 12; Sacramento News (Independent), 11; Pacific Methodist (weekly, Methodist Episcopal South), 10; Golden Era (weekly, literary), 10; California Farmer, 10; Nevada Journal (weekly, Republican), 10; Petaluma Argus (weekly, Republican), 8; Butte Record (weekly, Douglas), 8; Sacramento Daily Bee (Independent), 7; Alameda Herald, weekly, (Republican), 7; San Andreas Independent, weekly (Independent), 7; San Jose Mercury, weekly (Republican), 6; Napa Reporter, weekly (Independent), 5; Placer Herald, weekly (secession), 5; San Francisco Call (Independent), 5.

There are besides these the names of thirty-seven other papers which are ordered to the address of members singly, or which have only three or four subscribers on the Sergeant's roll. We have classed as secession papers those journals which either declare the right of a State to secede or else oppose coercion on the part of the Federal power. The times do not admit of half-drawn distinctions in political newspaper nomenclature any more than in partisan professions.

In the Senate the newspapers of which over five are ordered, classified according to the above arrangement, are as follows: SACRAMENTO DAILY UNION, 36; WEEKLY UNION, 22; San Francisco Daily Herald, 22; Spirit of the Times, 22; Alta California, 16; San Francisco Bulletin, 16; Marysville Express, 14; San Francisco Monitor, 13; Pacific Methodist, 9; Butte Record, 6; Yreka Union, 6; National Democrat, 6; Democratic Signal (Douglas Democrat), 6; Mountain Democrat, 6; San Francisco Times, 6.

SPEECH OF Z. MONTGOMERY.—The Marysville Express publishes the speech of Z. Montgomery, made recently in the Assembly on the subject of the Broderick expunging resolutions, and from the notes of the Union.

INDENTURING INDIANS—A HIGH SYSTEM OF SLAVERY.

RED BLUFF, January 30, 1861.

Europeans: As the meaning and intent, as well as the constitutionality of the Act passed last Winter in regard to indenturing Indians without their consent or even apprising them of the fact, but by simply calling on the County or District Judge, with a list, and having him sign it officially—has been doubted by many, I send you a copy of an indenture, now on file in the Clerk's office in Tehama county. The Indians named therein are not prisoners of war, or vagrant Indians, but belong to the Nome Lake tribe, that have been taught to work, at a cost to Government of about three hundred thousand dollars. And the persons to whom they are indentured have been receiving as salaries from Government, four hundred and seventy-five dollars per month, for nearly four years past.

It may be true that they were in their possession at that date, as they claimed to be in possession of the Reserve. They were most of them on the Reservation, and not ten per cent. of them have ever seen their humane (?) guardian that "at the instance and request" of Titus and Geiger, made them slaves, without the semblance of a bond to clothe, feed and protect them.

I hope our representatives from this county will attend to this law, and have it either explained or repealed.

This indenture, made this 29th day of December, 1850, witnesseth that I, Newel Hall, Judge of the county of Tehama, State of California, under and by virtue of the provisions of the laws of the State of California conferring such power, have this day, on application of F. J. Titus and V. E. Geiger, partners in ranching in the county and State aforesaid, and who now have charge of and who are in possession of certain Indians hereinafter named, and at their request and instance do hereby, by virtue of the authority in me vested as said County Judge, bind and apprentice to them the following named and described Indians, to wit:

Name	Age	Time When Bound
Simon	17	30 years of age
Big Jack	20	do do
Jack	20	do do
Jack White	18	do do
Joe	15	do do
Elish	15	do do
Justas	13	do do
Ben	17	do do
Tebalsh	19	do do
Doc	15	do do
Peter	19	do do
Big Sam	13	do do
Number Two	11	do do
Big Abe	18	do do
Darry	18	do do
Tossy	18	do do
Ambrose	18	do do
Bob	15	do do
Booy	10	do do
Henry	17	do do
Jordan	15	do do
Prince	18	do do
Yolo Bailey	15	do do
Little Sam	12	do do
Job	12	do do
Billy	12	do do
Nancy—(she)	15	do do
Susan	15	do do
Mary	15	do do
Laura	14	do do
Hatsy	15	do do
Julia	17	do do

DANIEL WEBSTER'S FIRST CASE.

Webster's father, of Daniel, was a farmer. The vegetables in his garden suffered considerably from the depredations of a woodchuck, whose hole and habitation was near the premises. Daniel, some ten or twelve years old, and his brother Ezekiel, had set a dead trap, and at last succeeded in capturing the transgressor. Ezekiel proposed to kill the animal, and end all further trouble with him; but Daniel, looking with compassion upon the meek, dumb captive, and offered to let him go. The boys could not agree, and each appealed to their father to decide the case.

"Well, my boys," said the old gentleman, "I will be judge. There is the prisoner," pointing to the woodchuck; "and you shall be the counsel, and plead the case for and against his life and liberty."

Ezekiel opened the case with a strong argument, urging the mischievous nature of the animal, the great harm he had already done—said that much time and labor had been spent in his capture, and now, if he was suffered to live and go at large he would renew his depredations, and be cunning enough not to suffer himself to be caught again, and that he ought now to be put to death; that his skin was of some value, and that, make the most of him they could, it would not repay half the damage he had already done. His argument was ready, practical, and to the point, and of much greater length than our limits will allow us to occupy in relating the story.

"Now, Daniel, it's your turn; I'll hear what you've got to say."

It was his first case. Daniel saw that the plea of his brother had sensibly affected his father, the judge; and as his large, brilliant black eyes looked upon the soft, timid expression of the animal, and as he saw it tremble with fear in its narrow prison house, his heart swelled with pity, and he appealed with eloquent words that the captive might again go free. God, he said, had made the woodchuck; he made him to live, to enjoy the brilliant sunshine, the pure air, the free fields and woods. God has not made him for anything in vain; the woodchuck has as much right as any other living thing; he was not a destructive animal, as the fox or wolf was; he simply ate a few common vegetables, of which they had plenty, and could well spare a part; he destroyed nothing, except the little food he needed to sustain his humble life; and that little food was as sweet to him, and as necessary to his existence, as was to them the food on their mother's table. God furnished their own food; he gave them all they possessed; and would they not spare a little for the dumb creature, who really had as much right to his small share of God's bounty as they themselves had to their portion? Yes, more, the animal had never violated the laws of his nature or the laws of God, as man often did, but strictly followed the simple instincts he had received from the hands of the Creator of all things. Created by God's hands, he had a right from God to life, to food, to liberty; and they had no right to deprive him of either. He alluded to the mistle but earnest pleadings of the animal for that life, as sweet, as dear to him as their own.

PRAYER MEETING IN A STORM.

BY JAYNES MAYER.

See President Buchanan's last Proclamation.  
A gale came up from the sea—  
The ship had felt such a storm—  
And the planks still held together,  
No signs of dissolution.  
The passengers said, "We'll trust our ship,  
The staunch old Constitution."  
The captain stood on the quarter deck—  
"The sea," he said, "they batter us—  
I doubt if we'll weather Hatteras."  
The wind on the one side blew me off,  
The current sets me shoreward;  
I'll just lay to between them both,  
And seem to be going forward.  
"Breakers ahead," cried the watch on the bow,  
"Hard up!" was the first mate's order;  
"She feels the ground swell," the passengers said,  
"And the sea already board her!"  
The foremast split in the angry gust;  
In the hold the ballast shifted;  
And an old tar said, "If Jackson steered  
We shouldn't thus have drifted!"  
But the captain cried, "Let go your helm!"  
"And then he called to the bow-ain!"  
"Pipe all hands to the quarter deck,  
And we'll save her by Despatch!"  
The first mate hurried his trumpet down,  
The old tars cursed together,  
To see the good ship helpless roll,  
At the sport of waves and weather,  
The tattered sails all aback,  
Yards crack, and masts are started;  
And the captain weeps and says his prayers,  
"The hull be mid-ships parted;  
But God be on the steersman's side—  
The crew are in rebellion!"  
The waves that wash the captain off  
Will save the Constitution!  
New York, Dec. 18, 1860.

A WARM BATH IN A BATH ROOM.

ENDURANCE TESTED.—Smith was a man who never permitted himself to be outdone—do what he would, anybody else could. Smith was in a bath room, and Brown, knowing other's peculiar conceit, said that he (Brown) could endure a hotter bath than any living man. Thereat Smith fired up, and a bet was made. Two bathing tubs were prepared with six shovels of cold water in each. The fellows stripped and separated by a cloth partition, each got and let on the hot water at the word—the water being who should stay in the longest with the hot water running. Smith drew up his feet far as possible from the boiling stream, while Brown pulled out the plug in the bottom of his tub. After about half a minute, quoth Smith, "How is it, Brown—pretty warm?" "Yes," says the other, "it's getting almighty hot, but I guess I can hold out a minute, yet." "So can I," answered Smith. "Scis-s-s-s—squash!—lightning!—it's awful!" Fifteen seconds, equal to half an hour! Smith's imaginary watch. "I say, over there—how is it now?" "Of it's nearly up to the billin' pint—O Christopher!" answered the diabolical villain who was lying in the empty tub, while the hot water passed out of the escape pipe. By this time Smith was splurging about like a boiled lobster, and called again: "I s-s-y, over there—how's it now?" "Hot as the devil!" replied Brown; "but—phew! scis-s-s—guess I can hold out another minute!"

Friday	Little Sam	13	25	do	do
Friday	Job	13	25	do	do
Friday	Billy	13	25	do	do
Friday	Naggy (she)	13	25	do	do
Friday	Susan	13	25	do	do
Friday	Mary	13	25	do	do
Friday	Laura	13	25	do	do
Friday	Betsy	13	25	do	do
Friday	Julia	13	25	do	do
Friday	Mary Ann	13	25	do	do
Friday	Mary	13	25	do	do
Friday	Margie	13	25	do	do
Friday	Polly	13	25	do	do
Friday	Venus	13	25	do	do
Friday	Sally	13	25	do	do
Friday	Long Betsy	13	25	do	do
Friday	Dido	13	25	do	do
Friday	Big Sally	13	25	do	do
Friday	Mary Ann	13	25	do	do
Friday	Fanny	13	25	do	do
Friday	Eliza	13	25	do	do
Friday	Adelle	13	25	do	do
Friday	Annie	13	25	do	do
Friday	Rose	13	25	do	do
Friday	Bill	13	25	do	do
Friday	Yakov	13	25	do	do
Friday	Andrew	13	25	do	do
Friday	Trowbridge	13	25	do	do
Friday	Cooney	13	25	do	do
Friday	George	13	25	do	do

The conditions of this indenture are, that the said F. J. Titus and V. E. Geiger shall clothe, feed, care for and protect each of the said Indians hereinbefore mentioned, and shall do all and everything prescribed by law in regard to the Indians so apprenticed under the laws of the State. And in consideration, they shall be and are hereby entitled to the care, control, custody and earnings of said Indians for and during the term for which each is respectively so bound, under the provisions of said law. The intent and meaning of this indenture is this: The said Newell Hall, Judge of the County of Tehama, State of California, setting for and in behalf of the Indians under the authority of the laws of said State, has so apprenticed the above named Indians to said Titus and Geiger, to be used in ranching, farming and housework.

NEWELL HALL, Judge of the County of Tehama, State of California.

F. J. TITUS, V. E. GEIGER.

The following are indentured to V. E. Geiger in like manner, on the same day as the above, most of whom have been taken below by him:

Breckinridge, aged twelve, bound till twenty-five years of age.  
 Jeff Henley, aged twelve, bound till twenty-five years of age.  
 Hays Pichay, aged eighteen, bound till thirty years of age.  
 Tom Leland, aged twelve, bound till twenty-five years of age.  
 Geo. Balger, aged twelve, bound till twenty-five years of age.  
 Luke, aged twenty-five, bound till thirty-five years of age.  
 Nicholas, aged twenty-five, bound till thirty-five years of age.  
 Fanny (she), aged twelve, bound till twenty-five years of age.  
 Peggy (she), aged eight, bound till twenty-five years of age.  
 Mary Fike (she), aged seventeen, bound till thirty years of age.  
 Lucy (she), aged eighteen, bound till thirty years of age.

Also the following to J. W. Titus, on the same day as above:

Tommy, aged seventeen, bound till thirty years of age.  
 Henry, aged eighteen, bound till thirty years of age.  
 Sam Wan, aged ten, bound till twenty-five years of age.  
 Charley, aged eleven, bound till twenty-five years of age.  
 Julia (she) aged fifteen, bound till thirty years of age.  
 Isabella (she), aged ten, bound till twenty-five years of age.  
 Lily (she), aged eight, bound till twenty-five years of age.  
 Duke (he), aged four, bound till twenty-five years of age.  
 Jupiter, aged ten, bound till twenty-five years of age.

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he had received from the hands of the Creator of all things. Created by God's hands, he had a right from God to life, to food, to liberty; and they had no right to deprive him of either. He alluded to the "mists" but earnest pleadings of the animal for that life, as sweet, as dear to him as their own was to them; and the first judgment they might expect, if in selfish cruelty and cold heartedness they took that life they could not restore again.

During this appeal tears had started to the old man's eyes, and were fast running down his sunburnt cheeks. Every feeling of a father's heart was stirred within him; he saw the future greatness of his son before his eyes, and he felt that God had blessed him and his children beyond the lot of common men. His pity and sympathy were awakened by the eloquent words of compassion, and the strong appeal for mercy; and, forgetting the Judge in the man, and the father, he sprang from his chair (while Daniel was in the midst of his argument, without thinking that he had already won the case), and turning to his elder son, dashing the tears from his eyes, he exclaimed:

"Zeke, Zeke, you let that woodchuck go!"

THE ATLANTIC TELEGRAPH.—Of all the projects which have originated in the United States, France or England, for the connection of the Old and New Worlds by a submarine telegraph, that of Colonel Shaffner is just now the most promising. Under the auspices of the British Government two steamers sailed to take soundings in the Northern Ocean—her Majesty's ship Bulldog leaving the north of Scotland on the 1st of July last, under the command of Captain McClintock; and the Fox, from Cowes Road, on the 29th of the same month. Having just returned to England, the results of the expedition are fully reported in London papers, occupying several columns. Colonel Shaffner, it will be remembered, is an American, and was one of the first to propose an Atlantic telegraph; but as a rival project rose rapidly into favor, he was temporarily displaced, although earnestly contending from the outset, that the retardation of the electric current in submarine wires determined the impracticability of working them through long distances. Upon the failure of the attempt to run a cable direct between New Foundland and Ireland, Colonel Shaffner announced his purpose to survey a northern route over Greenland, Iceland, and the Faroe Isles, and on March 1st, 1859, petitioned Congress for the assistance of Government ships. But meeting with no favorable response, application was made to Lord Palmerston, who called a deputation of influential citizens in London, on the 14th day of last May, to invoke the aid of the Government of Great Britain. The results thus far are now known. A careful examination by Captain McClintock of the depth of the sea between the various stations on the proposed route, have proved, according to the report, "altogether more favorable for the laying of a cable than those on which the former American cable was successfully submerged, the water being four hundred fathoms less in its deepest parts." Of that part of the route between Iceland and Greenland, the remarkable fact was proved, that no ice exists there, according to the most eminent authority, the sea was imperviously covered with it. Another interesting circumstance, in a scientific point of view, is the discovery that animal life exists at great depths in the ocean, thus settling at rest a long disputed question. Several stat-

By this time Smith was sparging all a boiled lobster, and called again:

"I s-s-y, over there—how's it now?"

"Hot as the devil!" replied Brown; "whew! sciss-s-s!—guess I can hold out a minute!"

"The hell's fire you can!" shrieked toiling Smith, who rolled out and through the partition, expecting to other quite choked.

"You infernal rascal! why didn't you plug in?"

"Why, I didn't agree to," said the im-able joker; "why'n't the thunder de-leave your's out?"

LAST ADMONITIONS.—A late reverent man, who was as well known for his exc- as his talents, one day sent his son, w- notoriously lazy lad, of twelve years down to the meadow to catch his hor- boy mowed slowly on, scattering along a-oeep, with an ear of corn in one hand, bridle in the other, dragging the rest ground.

"Thomas!" said his father, calling a- in a solemn tone of voice, "Come here. I want to say a word to you before y- That lad returned, and the pers- pr- "You know, Thomas, I have b-ought great deal of good counsel. You have taught you, before closing your- "Now lay me down to sleep, etc. Besides a good many other things, in th- exhortation and advice. But this is a- haps, the last opportunity I shall ever speaking to you, and I couldn't let it- out giving you my parting advice—whi- a good boy, Thomas, and always reme- pretty prayer; when you are going to- less that perhaps I may never see you- "As he uttered these words with a v- and solemn aspect, the poor boy beg- frightened, and burst into tears, excla- "Never see me again, pa?"

"No—for I may be dead before you- with that horse!"

This so quickened Thomas' ideas th- and taught the horse in less time than- ever suspected of being able to do it be-

ERRONEOUS ACCOUNT.—We learn that- guess, named Antonio, was yesterday- injured while assisting to get the stea- tious landing way from Pacific street wh- left foot got caught in a hawser which- the steamer to the wharf, and was- drawn to the chock, lacerating his heel- rible manner.—S. F. Herald, Feb. 23.

THE GOLDEN AGE.—This steamer w- rived on Saturday, February 2d, bro- passengers, 245 bags of mail matter, \$- in treasure, and 1 bull, 1 cow, 2 horses, and 28 sheep.

MARRIED.

In San Francisco, Jan. 31st, EDWARD M. ARNS & MOWATT.

In San Francisco, Jan. 31st, EDWARD M. ARNS & MOWATT.

In San Francisco, Jan. 31st, B. M. ANGLIS & M. LARSEN.

In San Francisco, Jan. 31st, DANIEL HAPPE & MAGGIAN.

Near Yolo City, Jan. 30th, MONTGOMERY & BREWSTER.

In Petaluma, Jan. 27th, JOHN B. VAN DORN & BARNES.

At Alhambra Cave, Jan. 19th, G. F. GIBSON.

## Endnotes

<sup>1</sup> To my knowledge, either scholars, or the State of California, have never published an exhaustive and complete review of primary sources or thorough compilation related to this subject.

<sup>2</sup> Given the scope of the research, a review of secondary historical sources was first conducted. Based upon this research, a number of primary and original State of California legislative and executive documents were analyzed, mainly from the period of 1850 to 1865. I also examined certain primary sources of federal documents related to California Indian Affairs during the same time period and contained in the same collections. The primary documents and sources reviewed for this report are located at the California State Archives, California State Library, Sacramento Archives and Museum Collection Center, and the Bancroft Library at the University of California, Berkeley. The secondary sources are located in the California State Library and University of California library collections.

<sup>3</sup> J. Ross Browne, *Report of the Debates in the Convention of California on the Formation of the State Constitution*, (Washington: John T. Tower, 1850), 70, 64-65.

<sup>4</sup> CAL. CONST. of 1850, Art. II, § 1.

<sup>5</sup> 43 U.S.C. 253. See generally, Felix S. Cohen's, *Handbook of Federal Indian Law*, (Albuquerque: University of New Mexico Press, 1971, reprint of the 1942 edition), 153-159; Chauncey S. Goodrich, "The Legal Status of the California Indian," *California Law Review* 14, no. 2 (January 1926) 83-84; N.D. Houghton, "The Legal Status of Indian Suffrage in the United States," *California Law Review* 19, no. 5 (July 1931), 507-520.

<sup>6</sup> Original Bill File, Chapter 133, 1850, California Secretary of State, State Archives, Location E6553, Box 1, (transcript of Original Bill File contents on file with the California Research Bureau); *Journal of the Senate of the State of California, at the First Session of the Legislature, 1849-1850*, (San José: J. Winchester, State Printer, 1850) 217, 224 (*Senate Journal – 1850*).

<sup>7</sup> Original Bill File Chapter 133, 1850.

<sup>8</sup> Original Assembly Bill No. 129, Original Bill File Chapter 133, 1850; *Senate Journal – 1850*, 367, 386-387.

<sup>9</sup> 1937 Cal. Stat. ch. 269; Cal. Welf. and Inst. Code §20,000.

<sup>10</sup> 1855 Cal. Stat. ch. 144; 1860 Cal. Stat. ch. 231; 1863 Cal. Stat. ch. 475; 1863 Cal. Stat. ch. 499.

<sup>11</sup> 1850 Cal. Stat. ch.99 § 14; 1851 Cal. Stat. ch. 5 § 394 3d.

<sup>12</sup> CAL. CONST. of 1850, Art. VI, § 14.

<sup>13</sup> 1850 Cal. Stat. ch. 73 §§ 1-3.

<sup>14</sup> *Ibid.*

<sup>15</sup> 1850 Cal. Stat. ch. 119, § 103.

<sup>16</sup> Henry J. Labatt, *The California Practice Act: ...also "An Act concerning the Courts of Justice in this state, and Judicial Officers," passed May 19, 1853...*, 4<sup>th</sup> ed. (San Francisco: Kenny & Alexander, 1861), 323-326.

<sup>17</sup> 1853 Cal. Stat. ch. 1 § 89; 1863 Cal. Stat. ch. 260 § 48 (9); Labatt, *The California Practice Act*, 324.

<sup>18</sup> Original Bill File, Chapter 133, 1850.

<sup>19</sup> 1850 Cal. Stat. ch. 133 § 20.

<sup>20</sup> *Ibid.*

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- <sup>21</sup> 1855 Cal. Stat. ch. 144.
- <sup>22</sup> Henry J. Labatt, *The California Practice Act*, citing \_\_\_\_§394.
- <sup>23</sup> Original Bill File, Chapter 231, 1860, Secretary of State, California State Archives.
- <sup>24</sup> 1850 Cal. Stat. ch. 133 §§ 16-17; *People v. Juan Antonio*, 27 Cal. 404 (1865).
- <sup>25</sup> *In the Matter of The Indian Boy Frank, Petition of L. Harris for Apprenticeship*, filed January 28, 1862; *William Moorhead to Hon. Robert Robinson, Petition for Apprentice*, filed March 4, 1862, in the Sacramento Archives and Museum Collection Center, Sacramento County Archives, County Court: Indian Indentures, 80/132/20-21: 32:42. Copies of originals and related transcripts are on file with the California Research Bureau.
- <sup>26</sup> *William Moorhead to Hon. Robert Robinson, Petition for Apprentice*, filed March 4, 1862, Sacramento County Archives, County Court: Indian Indentures, 80/132/20-21: 32:42.
- <sup>27</sup> *Ibid.*
- <sup>28</sup> Robert F. Heizer and Alan F. Almquist, *The Other Californians: Prejudice and Discrimination under Spain, Mexico and the United States to 1920* (Berkeley: University of California Press, 1971), 53.
- <sup>29</sup> Heizer and Almquist, 51-57.
- <sup>30</sup> “Lo, the Poor Indian,” *Alta California*, April 7, 1855, 2-1.
- <sup>31</sup> *San Francisco Herald*, December 14, 1856, 4-1.
- <sup>32</sup> “Indian Slavery,” *Alta California*, April 14, 1862, 1.
- <sup>33</sup> 1860 Cal. Stat. ch. 254.
- <sup>34</sup> Francis P. Farquhar, ed. *Up and Down California in 1860-1864: The Journal of William H. Brewer* (Berkeley: University of California Press, 1966), 493.
- <sup>35</sup> Jesse B. Hart, *A Treatise on the Practice of the Courts of the State of California, Carefully Adapted to Existing Law*, (New York: Gould, Banks & Co., 1853), 108.
- <sup>36</sup> 1858 Cal. Stat. ch. 182 § 13.
- <sup>37</sup> 1858 Cal. Stat. ch. 182 § 8.
- <sup>38</sup> 1858 Cal. Stat. ch. 182 § 9.
- <sup>39</sup> 1858 Cal. Stat. ch. 182 § 14.
- <sup>40</sup> 1855 Cal. Stat. ch 165 § 1.
- <sup>41</sup> 1855 Cal. Stat. ch 175 §§ 3-5.
- <sup>42</sup> 1863 Cal. Stat. ch. 525 § 1.
- <sup>43</sup> Peter H. Burnett, “Governor’s Annual Message to the Legislature, January 7, 1851,” in *Journals of the Senate and Assembly of the State of California, at the Second Session of the Legislature, 1851-1852*, (San Francisco: G.K. Fitch & Co., and V.E. Geiger & Co., State Printers, 1852), 15.
- <sup>44</sup> CAL. CONST. of 1850, Art. VII, § 3.
- <sup>45</sup> Peter H. Burnett, “Governor’s Annual Message to the Legislature, January 7, 1851,” in *Journals of the Senate and Assembly of the State of California, at the Second Session of the Legislature, 1851-1852*, (San Francisco: G.K. Fitch & Co., and V.E. Geiger & Co., State Printers, 1852), 13.
- <sup>46</sup> *Ibid.*, 16-17.

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- <sup>47</sup> Ibid., 18.
- <sup>48</sup> Ibid.
- <sup>49</sup> ROOT CELLAR, Sacramento Genealogical Society, *California State Militia: Index to the Muster Rolls of 1851 to 1866* (Sacramento: The Society, 1999), ii, 1396-1465.
- <sup>50</sup> Ibid., 1432-1446.
- <sup>51</sup> Ibid., ii.
- <sup>52</sup> 1850 Cal. Stat. ch. 54.
- <sup>53</sup> 1850 Cal. Stat. ch. 76.
- <sup>54</sup> 1850 Cal. Stat. ch. 54, §§ 1, 7, 17, 20.
- <sup>55</sup> 1850 Cal. Stat. ch. 76, § 1.
- <sup>56</sup> 1850 Cal. Stat. ch. 76, §§ 6, 8, 10, 45, 56, 57.
- <sup>57</sup> 1851 Cal. Stat. ch. 91; 1851 Cal. Stat. ch. 125.
- <sup>58</sup> “Majority Report of the Special Joint Committee on the Mendocino War,” in *Appendix to Journals of the Senate, of the Eleventh Session of the Legislature of the State of California*, (Sacramento: C.T. Botts, State Printer, 1860), 4-6.
- <sup>59</sup> Ibid., 7.
- <sup>60</sup> “Minority Report of the Special Joint Committee on the Mendocino War,” in *Appendix to Journals of the Senate, of the Eleventh Session of the Legislature of the State of California*, (Sacramento: C.T. Botts, State Printer, 1860), 10.
- <sup>61</sup> Ibid.
- <sup>62</sup> Ibid.
- <sup>63</sup> *Journal of the House of Assembly of California at the Eleventh Session of the Legislature, 1860*, (Sacramento: C.T. Botts, State Printer, 1860), 196.
- <sup>64</sup> Peter H. Burnett, “Governor’s Annual Message to the Legislature, January 7, 1851,” in *Journals of the Senate and Assembly of the State of California, at the Second Session of the Legislature, 1851-1852*, (San Francisco: G.K. Fitch & Co., and V.E. Geiger & Co., State Printers, 1852), 15.
- <sup>65</sup> A comprehensive analysis of this important aspect of California history is beyond the scope of this report. For a sample of further discussion from various viewpoints, see William Henry Ellison, *The Federal Indian Policy in California, 1846-1860*, Thesis, (Berkeley: University of California, 1913); reprinted in (Saratoga: R and E Research Associates, 1974) 170- 199; James J. Rawls, *Indians of California: The Changing Image* (Norman: University of Oklahoma Press, 1984) 141-170; and H. Kelsey, “The California Indian Treaty Myth,” *Southern California Quarterly*, 15 no. 3 (1973), 225-235.
- <sup>66</sup> Ellison, 186.
- <sup>67</sup> *Journals of the Senate and Assembly of the State of California, at the Third Session of the Legislature, 1852*, (Sacramento: State Printing Office, 1852), 44-45.
- <sup>68</sup> “Report of the Special Committee on the Disposal of the Public Lands of the United States in California,” in *Journals of the Senate and Assembly of the State of California, at the Third Session of the Legislature, 1852*, (San Francisco: G.K. Fitch & Co., and V.E. Geiger & Co., State Printers, 1852), 589.
- <sup>69</sup> Ibid., 590-591.
- <sup>70</sup> *Assembly Journal – 1852*, 270; *Senate Journal – 1852*, 195-198.

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<sup>71</sup> Ellison, 193, citing *Congressional Globe*, 32 Cong., 1 Sess, Part III, 2103; and *Congressional Record*, 58 Cong., 3 Sess. Part I, 1021.

<sup>72</sup> 1852 Cal. Stat. ch. 62, § 7.

<sup>73</sup> Original Bill File, Chapter 62, 1852. California Secretary of State, State Archives, Location LP1:1502, (transcript of Original Bill File contents on file with the California Research Bureau); *Journal of the Senate of the State of California, at the Third Session of the Legislature, 1852*, (Sacramento: State Printing Office, 1852), 185-186 (*Senate Journals – 1852*).

<sup>74</sup> Original Bill File, Chapter 62, 1852.

<sup>75</sup> CAL. CONST. of 1850, Art. VI, § 8.

<sup>76</sup> 1850 Cal. Stats. ch. 86, § 2; 1851 Cal. Stat. ch. 1 § 64; 1853 Cal. Stat. ch. 180 § 50.

<sup>77</sup> 1850 Cal. Stat. ch. 86 § 5.

<sup>78</sup> Jesse B. Hart, *A Treatise on the Practice of the Courts of the State of California, Carefully Adapted to Existing Law*, (New York: Gould, Banks & Co., 1853) 7.

<sup>79</sup> *Ibid.*

<sup>80</sup> 1863 Cal. Stat. ch. 260 §§ 47-53, 89.

## Colonial Instillations in American Indian Boarding School Students

By **Rockey Robbins, Steven Colmant,  
Julie Dorton, Lahoma Schultz,  
Yvette Colmant, & Peter Ciali**

**██████████**  
Rockey Robbins is a professor of counseling psychology at the University of Oklahoma, Norman, Oklahoma; Steven Colmant and Yvette Colmant live in Winnipeg, Manitoba, Canada; and Julie Dorton, Lahoma Schultz, and Peter Ciali were students in the College of Education at Oklahoma State University, Stillwater, Oklahoma, at the time of this study.

There is a general knowledge about the United States governments' deliberate attempts to destroy American Indian cultures. Our history books tell of American Indian students being locked in week long routines to keep them out of mischief, underfed to break down resistance and being given deadening rounds of simple, repetitious chores bereft of challenges to numb their intelligence, and taught dominant western values and language (Brave Heart & De Bruyn (1998). Possibly, too few people are aware that assimilation of American Indians continues in our country today in multitudinous forms, including Indian boarding school residential environments. The assimilation of American Indians entails the replacement of tribal sets of beliefs and actions directly linked to the beliefs of distinct tribal groups with Western sets of beliefs and actions (Brayboy, 2005).

Currently there are 72 Indian boarding schools funded by the Bureau of Indian Affairs, serving over 10,000 students in the United States (Bureau of Indian



### **Colonial Instillations in American Indian Boarding School Students**

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Affairs, 2003). The few educational and psychological articles suggest that many Indian boarding schools have and do engage in assimilating students into mainstream culture at the expense of tribal values. In a national survey by Robinson-Zanfir and Majel-Dixon (1996), 234 American Indian parents representing fifty-five tribes reported that they felt that tribal schools valued Indian children more than Bureau of Indian Affairs (BIA) boarding schools and public schools in the areas of: respect, expectations of achievement, and degree to which Indian culture is valued. In narrative comments, participants stressed that boarding schools have not tried to understand Indian communities, culture or learning styles. Lacroix (1994) reported that American Indian girls attending Indian boarding schools related that they suffer from loss of cultural identity and experience their schools as “imposed” systems. Noted historian Joel Spring (2001) decries Anglo-American racism in Indian boarding schools which insidiously replaces tribal cultures with dominant culture. He sites religious intolerance as being particularly prevalent in Indian boarding schools.

There is anecdotal support suggesting that American Indian boarding school attendance may be associated with psychological dysfunction among some students. Counseling American Indian clients in British Columbia, Charles Brasfield (2001) identified a common symptomology among survivors of Indian residential schools, which he calls “residential school syndrome.” The effects include: distressing recollections, recurrent distressing dreams of residential school, a sense of reliving the residential experiences, distress at exposure to cues that resemble residential experiences, avoidance of stimuli associated with residential experience, inability to recall important aspects of residential experience, diminished interest in participating in tribal activities, restrictive range of affect, feelings of detachment, increased arousal particularly when intoxicated, sleep problems, difficulty concentrating, and exaggerated startle response. Symptoms may include deficient knowledge of tribal culture, deficient parenting skills and a tendency to abuse alcohol and drugs.

This study attempts to take into account the interplay of inner psychic conflicts of American Indian boarding school students in Indian boarding school environments; interactions between aspects of the school environment; the broader environment, such as the government and /or the media; and cultural and political beliefs complex process of assimilation that occurs in Indian boarding school residential settings (Bronfenbrenner’s ecological model, 1979). There are several elements in this study that mark it as unique. (1) It focuses on boarding school residential practices rather than academic educational practices. (2) It also accepts the risk of attempting to analyze inter-psychic conflicts in the context of cultural, political and social contexts. This is risky because the analysis’ will be tarnished by interpretive Western categories not perfectly shaped to fit American Indian epistemologies and cosmologies. On the other hand, if done in a culturally appropriate and sensitive manner, it offers the possibility of shining a light not just on the often invisible schooling consciousness of racism, meritocracy, and other internalized values but also on the inner psychic conflicts that are too often ignored in contemporary Educational Psychology with its empirical emphasis on behavioral operational con-

structs or constructionist approaches with their emphasis' on surface discourse and linguistics. As researchers who worked many years in clinical practice counseling American Indians, the writers of this article have not been convinced that American Indian psychological experiences can be encapsulated by the empirical constructs of Western Psychologies nor do we adhere to the idea that discussion of American Indians' inner psychic worlds is utterly irrelevant though we realize its speculative terminology is culturally biased. Resistance to colonization must occur at the deepest levels of psychic awareness not simply on the behavior or discursive level because the assimilation process is insidious and has reached the deepest levels of the unconscious. The problem is knowing how to use the tools of Critical theories' analytic thought to get at the deepest reaches of the psyches of American Indians to help make explicit the destructive workings of assimilation. (3) This study also takes a historically dynamic approach in its methodology. Both former Indian boarding school students' and current students are included as participants. It is hoped that the utilization of both perspectives will enhance and extend what might have been a more temporal perspective if we had used only one or the other. Hopefully the approach will enrich understandings of long term positive and negative influences of boarding school experiences upon participants' psychological functioning. The former boarding school students' longer period to reflect upon their experiences may add a profundity and objectivity to their boarding school memories and interpretations. On the other hand, former students' recall and interpretations may be affected by faulty memory functioning and interference from more recent experiences. Even with these problems the current researchers believe that the inclusion of former boarding school students offer a historically dynamic perspective to this qualitative inquiry that bursts the bounds of more rigorous spacial-temporal studies that offer less potential for holistic relevance and depth.

## **Theory**

The guiding theories to be utilized in this study are the Tribal Critical Race Theory (Brayboy, 2005) and Critical Theory. Tribal Critical Race Theory (Brayboy, 2005) utilizes ideas and emphases' derived from Critical Race Theory, such as the exposition of how the law creates and maintains hierarchical society and how the American Educational system often perpetuates racism, sexism and poverty (Delgado Bernal 2002; Solorzano, 1998) and then supplements it with unique perspectives derived from tribal people's experience of colonization. Brayboy (2005) lists nine tenets of Tribal Critical Race Theory.

- (1) Colonization is endemic to society.
- (2) U.S. policies toward Indigenous peoples are rooted in imperialism, White supremacy, and a desire for material gain.
- (3) Indigenous people are placed in state of in-betweenness, in between joint statuses as legal/political and racialized beings, where the larger society is unaware of their multiple statuses.
- (4) Indigenous peoples have a desire to obtain and forge tribal sovereignty, tribal autonomy, self-determination, and self-identification.
- (5) The concepts of culture, knowledge, and power take on new meaning when

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examined through an Indigenous lens. (6) Governmental and educational policies toward Indigenous peoples are intimately linked around the problematic goal of assimilation. (7) Tribal ways and perspectives and visions for the future are central to understanding the lived realities of Indigenous peoples, but they also illustrate the differences and adaptability among individuals and groups. 8) Stories make up theory and are real and legitimate sources of data and ways of being. 9) And theory and practice are connected in deep and explicit ways such that scholars must work towards social change.

Many of the above points will be expanded upon as they will be used to illuminate comments made by participants in this study. To sensitively address the depth psychology aspect of this study, the current researchers will supplement the Tribal Critical Race Theory with the American Indian Post-Colonial Psychology theory (Duran & Duran, 1995) which explores the “soul wound” of tribal people which they believe stems from intergenerational posttrauma incurred from critical events and periods of oppression such as wars, reservation subjugation, boarding schools, relocation, and termination. Duran and Duran (1995) also deconstruct linear temporal and utilitarian perspectives that they feel American Indians have internalized primarily through participating in American educational systems. The American Indian Post-Colonial Psychology theory integrates Western psychological concepts (primarily psycho-analytical and analytical) but re-interprets them in a tribal, political, cultural, and historical context.

Critical theory is founded on the assumption that the cultural, sociological and psychological are interdependent but irreducible which allows for a complex investigation of the influences upon psychological functioning (Morrow & Brown, 1994). Similar to the Tribal Critical Theory, Critical Theory emphasizes the importance of critiquing oppressive social institutions, interpreting the meanings of social life, the historical problems and domination, as well as envisioning the future. They also encourage the creation of theories from the data to promote the transformation of oppressive institutions. Critical Theory has also spawned a plethora of psychological theorists (referred to by Duran and Duran as brothers and sisters) who have helped oppressed people around the world to better understand their psychological experiences. In this paper, the theories of Karen Horney, Erich Fromm, Wilhelm Reich and their followers were especially helpful as the researchers attempted to understand participants’ underlying emotional conflicts. The above theorists works concern domination and competitiveness, anxiety related to needs for affection and approval, needs to restrict one’s life to narrow borders, aggression and needs to exploit others, and needs for perfection and unassailability. The use of Tribal Critical Race Theory in combination with Critical Theory facilitates attempts to make analysis relevant and appropriate with American Indians.

## **Method**

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### **Researchers-Interviewers**

Researchers-interviewers included two American Indian women, an American Indian man, two White men, and a Mexican-American woman. Four were doctoral students in counseling psychology of which three were licensed professional counselors. One was an assistant professor of counseling and one was a master in Social Work student. The average number of years counseling experience was 10.3. In addition to working as mental health professionals, including years of experience in American Indian Behavioral Health clinics, team members' backgrounds included various professional and personal experiences specifically with Indian boarding and tribal schools, including positions as teachers and school counselors. The researcher-interviewers had no previous relationship with the participants in the study.

### **Participants**

Forty-six participants of varied socio-economic status volunteered for this study in response to newspaper advertisements, fliers, and word of mouth. Thirty former Indian boarding school students of various tribal backgrounds from Oklahoma, California, and Kansas, ranging in age from 18 to 72, with a mean of 45 and sixteen Indian students from various tribal backgrounds currently residing in an Indian boarding school, ranging from 14 to 18, who attended anywhere from two months (only one student had attended less than 6 months) to 8 years.

### **Procedure**

A structured interview guideline was used to conduct the interviews. Information was collected concerning the participants' experiences before entering and during their time in Indian boarding school environments. Questions included: "What was your life like before you went to Indian boarding school?" "What was your first day in boarding school like?" "Who are the people you most remember in boarding school, and why?" "If your dormitory were to magically turn into a person, how might you describe its personality?" "What did you learn from your boarding school experience?"

Throughout the interview each participant was provided with as much time and autonomy to answer the questions as needed. The interviewer was allowed to rephrase or probe as a way to elicit clarification, additional information, detail, or elaboration. Non-directive probing techniques and neutral follow-up questions or comments were used to insure that the interviewer did not influence the response. Follow-up interviews were conducted to allow participants to clarify on points they had made in initial interviews.

### **Coding**

Analysis of the interviews followed a sequence of strategies traditionally identified with the process of data reduction and analysis using qualitative methodologies (Creswell, 1998). The analysis began by independently reviewing the transcripts through multiple readings, taking a microanalytic perspective to identify concepts and generate potential categories to represent participant responses (Strauss & Corbin, 1998). Categories and themes that existed across interviews, as well as those within the context of specific questions were identified. A series of meetings were then held where identification and discussion of potential concepts, their properties and constructions, and metaphors to realistically represent participants' responses were shared. Over the course of these meetings, initial themes and coding conventions were established, resulting in a process often referred to as "open coding" (Strauss & Corbin, 1998). Having identified the coding conventions, two raters independently returned to the transcripts and coded the responses to the questions. The process of coding and data analysis in qualitative research is one that is fluid and dynamic, and can often result in intuitive modifications regarding the labeling and naming of themes and categories (Criswell, 1998; Strauss & Corbin, 1998). Therefore even during the last phases of the coding process when independent coders were involved alternative themes and concepts were documented. Subsequent to independent analysis, the raters held a series of five meetings, and applied procedures consistent with the principle of multiple investigator corroboration (Lincoln & Guba, 1985), employing multiple perspectives during analytic interpretations (Strauss & Corbin, 1998). They reviewed and compared their analyses, held additional discussions, and checked with interviewers when further questions arose. They combined their interpretations and reached consensus regarding how each participant's responses were coded for each question. Initially open coding concepts such as "ways of coping" and "types of colonial installations" were phrases used to describe the psychological experiences the majority of students described.

As the researchers discussed themes and sub-themes, several researchers became increasingly interested in what the researchers interpreted as aspects and processes of assimilation. Identification and introjection were of particular interest because of their usefulness in explaining the deeper psychological processes involved in assimilation. Identification is the unconscious comparison of one's self to others and taking on the perspective of a dominant person or external object (Hall, 1954). McWilliams (1994) elaborates, "Under conditions of fear or abuse, people will try to master their fright and pain by taking on the qualities of their abusers." Introjection furthers the destructive process. It is the unconscious act of absorbing other personalities into one's own, assuming external events as internal (Runes, 1960). McWilliams (1994) writes, "When we lose any of the people whose image we have internalized either by death, separation or rejection...A void comes to dominate our world." During the introjection process, the emptied person accepts the standards and values of the person they identify with by incorporating them into their own thoughts and feelings.

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## Qualitative Data and Interpretation

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### Participants' Home and Indian Boarding School Environments and Experiences

Empirical research offers evidence that environmental-cultural influences interact with genetic factors to influence personality (Heine, Lehman, Markus, & Kitayama, 1999). Participants offered descriptions indicating that they came from homes that may be viewed as poverty stricken and that the majority came from broken nuclear homes. Consider first the Indian boarding school students' perceptions of their home environments and pre-boarding school experiences. The majority, both current and past students, used similar descriptive phrases that suggest they experienced the effects of poverty, abuse and neglect before entering boarding school. "They couldn't afford to keep us," "no soles on our shoes," "no running water," "not able to eat as much as we wanted," "electricity and water was turned off," and "You couldn't lock the doors and the windows were knocked out." "My uncle raped me many times before I was six." "My mother couldn't take care of me because she was always drunk." A recent graduate recalled, "At least, we had the basic things at boarding school, as bad as it was. Before being left at boarding school I moved around a lot. That wasn't bad. I lived with my uncle and aunt. I lived with both grandmothers at one time or another. One was really nice but she died. The other was mean. You couldn't say nothing because all the Indians saw her as a leader in the community. But she didn't care about me, and she wasn't a good person. Before she left me in boarding school she took a baseball bat and shattered the skull of my puppy."

Many psychologists trace the origins of dysfunctional attitudes and behavior to traumatic experiences in early childhood (Bowlby, 1973). This is important to take into account before one assumes that any of the psychological problems of participants in this study can be attributed solely to their experiences in boarding schools. Low economic status and temperamental characteristics interact complexly with variables, such as, relationships to broken homes, an absent father, parental separation, divorce, harsh parental discipline and chaotic family environments, to increase children's risk of eventually developing emotional and behavioral problems (depression and aggression) (O'Conner, Deater-Decker, Fulker, Rutter, & Plomin, 1996; Sameroff & Seifer, 1983). The examples of the pre-boarding school environments and experiences in the above paragraphs demonstrate that participants experienced, not only poverty, but a wide range of challenges, which correlate with emotional and behavioral problems. As suggested in the preceding paragraph, the pre-boarding school environments of many of the participants in this study were deficient in meeting basic nurturance needs and participants readily described themselves in terms of feeling vulnerable and scarred before ever having arrived at boarding schools.

Before proceeding further, it is crucial to contextualize the above graphic examples. One of the worst dis-services done to American Indians has been their

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recurrent portrayal as helpless, innocent, and victimized weaklings in need of a Billy Jack to rescue them. On the other hand, American Indians are also often portrayed as lazy and inebriated. While neither of these stereo-types are true, our participants' descriptions of their pre-boarding school experiences were negative. The researchers speculated about several possibilities for such negative descriptions: (1) A large percentage of students who go to boarding schools may come from dysfunctional families and environments (at least among the participants in this study). (2) Even to this day, the pain of talking about the ones they left behind at home and about their home environment was emotionally overwhelming. The fact that this was the first area talked about could have contributed to not opening up about such sentimental memories. (3) Some boarding school staffs promote the notion that students are better off with them and many highlight negative aspects of students' home life and students absorb this perspective. (4) All of the interviewers were counselors who inadvertently solicited traumatic stories of early childhood. (5) Or any combination of the above. While the researchers acknowledge that the information provided by the students may be influenced by school staffs and/or interviewers, the stories of the participants must be taken seriously. They may be an indicator of the early workings of the powerful destructive forces of colonization in participants pre-boarding school years. The researchers also regularly discussed whether there were differences between how participants opened up to Indian and Non-Indian interviewers. From our finite perspectives, we think participants opened up more slowly to non-Indian interviewers than Indian interviewers but all of the interviews were not only conducted by seasoned therapists but all interviewers also had extensive experience working with Indians so we have confidence that most participants were able to eventually open up to all our interviewers, whether Indian or not. We did note that participants often began interviews with many clichés regarding their boarding schools, using words and phrases, such as: "discipline," "made a grown-up out of me," and "not so bad" and only later in interviews did they begin to contradict these initial comments.

Nonetheless, readers should be cognizant that in spite of poverty and other limited resources, thousands of American Indians are living fulfilling lives, drawing from a wealth of traditional values such as generosity, connectedness, patience, harmony, humility, humor and the belief that everything is alive. Many American Indians feel great respect for others regardless of their social status. Also it is not uncommon for American Indians to be raised in several households. Many American Indian uncles, aunts, and grandparents find great pleasure in being responsible and caring for nephews, nieces and grandchildren. American Indian extended families are circles of great strength, providing love and guidance to their children.

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### **Indian Boarding School Environments**

Turning to the Indian boarding schools, few interviewees made comments reflecting appreciation for the physical security of their boarding school's environments, while many made negative comments about their boarding schools' physical

and social environments. Former and current students noted that boarding schools provided “regular meals and clean rooms,” electricity, “heating and water,” yet they were also described as places where they remember eating “burned oatmeal” and where the buildings were “plain,” “dismal,” “boxed,” “drab,” “falling down,” “filled with broken appliances,” “thin linens” and “veined with poisonous lead pipes and yellow water.” Several remarks suggested feelings of insecurity in their boarding school environment. One former student said, “If I was at the end of the line, I got what was left, even if it was a teaspoon of food, a half a piece of bread. You couldn’t be sure if you would get enough food even if you were hungry.” A current student said, “I am mixed. You can tell ‘cause I am light. They put books in pillow cases and beat me bad. I would dream of running down the highway to get back to grandma but I could never get there. And I finally just became a loner. I know I will never fit in. Look, I have blond hair.” Current students often expressed appreciation for weight rooms, televisions, (though a considerable number complained that they were “old” and “broken down”) and recreation rooms with pool tables and video games. A current student spoke of a spiritual entity observed by students in her school, “Lots of us have seen this ghost here. She flops around on the floor in the halls at night. Her arms and legs have been cut off at the elbows and knees. We call her “Elbows.”

Anyone who participates in Indian ceremonials such as sweats or who has walked a trail with an elder cannot help but note the differences between what s/he hears about the environment there and what participants expressed about their boarding school environments. The west, north, east and south are endowed with meaning and beauty. A living energy emanates from everything around us. Yet conditions deficient in meeting basic nurturance and security needs, as described above, may cloud the visionary experience and put students at both physical and psychological risk. In the midst of participant descriptions of their boarding school physical and social environments, some students expressed feelings of appreciation, while the majority reported feelings of insecurity, resignation and hopelessness. Maslow (1962, p. 32-40) reports that when basic needs such as safety and food are not sufficiently gratified, trends toward self-actualization of potentials are thwarted. He claims that deficit dissatisfied persons are likely to perceive more concretely. Further, a deficit dissatisfied person will likely perceive issues dichotomously and will be less likely to see how opposites interpenetrate each other. Further, a study conducted by Abramson, Metalsky and Allory (1989) reported a relationship between learned helplessness and ingrained depression.

Permeating this entire paper are the meanings associated with the image of the dismembered ghost. She is the generational accumulation of the debilitating influences of colonization. She is the colonization that has been so complete that she is invisible, even many American Indians not recognizing that she has taken up residence in their abodes (Brayboy, 2004). She is the post-colonial trauma (Duran & Duran, 1996) that does not get resolved in one lifetime but persists, weighing heavily on the minds of the living. She is the devastating policies implemented by



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the government in boarding schools, the slicing knife of assimilation, the shears and the falling black hair, and the remnants of lost native languages.

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### Identification

Traditional American Indian settings continue to emphasize the importance of elders as the keepers of sacred ways, protectors, mentors, teachers and supporters. Traditional American elders often talk about children being close to the spirit world and carrying the lives of ancestors. Their relationship with children is respectful. Elders are careful to place the emphasis on the relationship rather than domination (Garrett, 2004).

When students are deficit dissatisfied, feelings of vulnerability and unworthiness may predispose them to use identification with institution values as a means of ego protection (Riggs, 1992). Interviewees made comments that the researchers characterized as identification with their boarding schools and its authority figures. A former student commented, "I wasn't nothing until I learned how to do work and take care of matters in the boarding school." One former student stated in regard to one of her matrons, "Boy she is mean. I was scared of that woman. And she had gotten on to me and scolded me and it was for my own good." A current student said about a matron, "I always had love for her but I was scared to show her. I was afraid she would laugh at me. She taught me what was good and sometimes I did good for her." A current student said, "I was just kinda left here when things were impossible at home. I felt so alone. They showed me my room with these other guys, but I really got close to the math teacher. He challenged me." Another current student said, "I learned my tribe didn't have a good reputation. Every time there was a fight they would say it is one of my tribe. They were the ones that like to fight. I knew it was true. I wasn't really proud to be a member of my tribe. I got close to my gang instead."

Inferiority and fear were common feelings expressed in the interviews. As suggested above, interviewees often connected these feelings with having felt abandoned, neglected or disrespected by parents and boarding school staff and teachers. Feeling unwanted and having low self-esteem is a precondition for submissiveness and fear of authority (Marcuse, 1964) and may have long lasting detrimental effects such as learned helplessness (Seligman, 1975). Vulnerable persons feel a dependency on those who can give or withhold things greatly wanted. They are often beset by ego weakness and they find that narcissistic defenses can aid them to compensate for their feelings of inadequacy and inferiority (Fromm, 1965). Persons may begin to idealize a particular person or group, such as their own tribe or a gang. They may develop hostility toward "out groups" or "off tribes." A pseudo-satisfaction is gained by the idealization of a powerful person or group with which they identify. Such idealization typically lacks any profound critical considerations or autonomous thinking (Fromm, 1965), but the person may develop illusions of control and autonomy (Langer, 1983). Rhodes and Wood (1992) reported that persons with feelings of high self-esteem are more likely to utilize counterarguments in response to repeated persuasive messages

than persons with low and moderate self-esteem. In other cases, true self-awareness is sacrificed for the preservation of one's identity based on pseudo-relatedness akin to conformity. Further, being deficit dissatisfied, intimidated, neglected, abused, and often feeling inferior, many Indian boarding school students are prime targets for assimilation into the "greater" referent power (Moscovici, 1985). Rogers (1975) reported that people living in fearful conditions are more likely to change their values and attitudes to be congruent with norms (Rogers, 1975).

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## **Introjection**

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### **a. Euro-American Values and Beliefs**

Interviewees made comments that the researchers labeled as introjective remarks. Interviewees made both conscious and unconscious remarks suggesting that they had assumed values which may contradict traditional tribal values and attitudes. A majority of the students complained that there was too little tribal language, history, music, and literature. Former students said: "I knew I was Indian but I was forced to speak English and go to church. You were feeling you were living in two worlds." "My daddy was a road man (a leader in the Native American Church). But in school I learned to be a Catholic." Another student said, "My sister learned everything the boarding school taught us. She never ran away. She makes lots of money now." Current students said: "It is almost never that we do anything here like Indian ways. Maybe someone comes in and does something like a craft sometimes. I think that lots of our stuff doesn't go with school." "I came here practicing our old religion, but now I go to the chapel they have here. You shouldn't mix them now that I am a Christian." Another current student said, "I figure going to boarding school is preparation for the military. I am more independent now. I do my chores and get to places on time."

Many interviewees felt that their tribal cultural values were devalued in their boarding school experience. The de-valued tribal values that underlie the above comments are: tribal language and the tribal and cultural identity associated with being able to speak it; the security that comes with being at ease with your unique tribal ways of being; the use of the hallucinogen peyote as an integral part of your spiritual tradition; the pride of being connected to your heritage; being able to practice a religion unabashed by its seeming esoteric character; living according to natural rhythms rather than in a calculating manner; and appreciating sacred sites not made with bricks and mortar. In contrast, according to student reports some Indian boarding schools appear to teach values of usefulness, conventional beliefs, Christianity, practical knowledge, independence, hierarchy based on social position and responsibility, discipline, and punctuality. Students appear to perceive overt and underlying antagonisms toward tribal cultural ways and values in Indian boarding schools. Not only are American Indian values, ritual, myth and interrelations undermined, calculated schemes have been put in place to assimilate American Indians and to keep them in place (Szasz, 1996). Indian boarding school students

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are expected to work and operate to be on time, alter their beliefs and operate smoothly in a system, which supposedly prepares them for the workforce or life in the military.

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### b. Regimentation

Many participants commented on their boarding school's regimented conditions. Here are a few quotations from former students. "It was a good experience. It was the most stability I had in my life... because it was structured." "You get up by a bell. You came in by a bell. You did everything by a bell. That is what I remember." "I went to the army after boarding school and I think I was pretty prepared. I am like that. I like having things in order and on time and keeping things the same. I've always been that way." Current students said: "With the dorms there is always detail, mopping, vacuuming, cleaning the bathroom, the rumpus area. We rotate. I hate it. I think it is fair." Another said, "I have lots of problems and this is getting me ready for the army. I am talking to the recruiters. Here I am doing things like they do."

The majority of former and current students expressed an appreciation for the regimentation, orderliness and the practical knowledge they learn in Indian boarding schools. They felt that their home lives were chaotic and directionless and boarding school experiences gave them a needed structure, personal responsibility and knowledge. They spoke of feeling pride and having feelings of worth for doing tasks efficiently and effectively. They learn how to take care of many aspects of their lives which they could not do before attending Indian boarding school and this "know how" gives them a sense of independence. One gets the sense that students believed that they were able to release energy in a focused way when they voluntarily submitted to work that required discipline. Students' voluntary submission to discipline may build ego strength and accompanying virtues such as dependability, honesty, the power to co-operate and develop impartial attitudes.

On the other hand, interviewees made remarks suggesting that in giving up their spontaneous functioning they tended to become more inflexible and excessive in their scrupulosity. The subtle danger of a life of regimentation and an emphasis on practical knowledge is that persons become so accustomed to the recurrence of the same things that they react automatically and critical thinking goes unexercised. Bornstein and D'Agostino (1992) report that messages given repeatedly, especially if subliminal, increase the likelihood that it will be accepted regardless of the messages validity. Living continually in confines of such regimentation reinforces a frame of mind. Finally there is no need for thought. The sheer volume of repetitions produce set responses and eventually negates critical thought. The student eventually quits struggling against the system's regiment. He does not have to think or worry what is to be done. In such a regimented environment, critical thinking and autonomous thinking are eroded. While it is true that students' chaotic experience is being structured by subjecting them to highly organized regimens, and many mundane tasks require little thought, there is the possibility that free expression and spontaneity as well as traditional American Indian lifestyles are

being progressively undermined in the process. The rationality of values, ends, and possible attitudes toward life are gradually reified into objectifications. Rigid, overly structured environments may promote rigid cognitive styles (Shapiro, 1965). Wilhelm Reich (1933) wrote that a repressive and regimented environment works to crystallize reactions into defensive character formations. Repetition reinforces recognition and then acceptance of the seemingly inescapable.

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**c. Obsessive Cognitive Style**

Participants were asked, "If you were to describe the boarding school you attended as if it were a person, how would you describe it?" The majority of the interviewees, both former and current, described their schools as male, military, often as "white." A few students described it as an "apple" (looking Indian on the outside but whose inner life is white). Former boarding school students said: "Because I am older and I see the benefit of them being strict on us, because I am the same way, you know. Now I am glad I learned those things because it did me good. My matron worried over a speck of dust...I hear someone crying...". The interviewer asked, "You mean around here?" "Sometimes I just know when they are hurting. My old girlfriends in school." Another said, "I found I am a perfectionist and that is not a good thing; it is a character defect. I slack up on my son because I get down on him a little too much I guess. I don't want to be a perfectionist if that is going to cause disappointment." Two current students made the following representative comments. "I am responsible. I know when jobs are supposed to be done and how to do them." Another said, "Everything has a time. Time to eat. Time to do homework. Time to get up. Everything. I have adjusted to it, though. I hope I am answering these questions right for you."

One may think of people in the military as living regimented lives. Shapiro (1965) suggests that persons who assume the obsessive cognitive style are at risk of being intellectually dogmatic and lacking flexibility. They may also be overly concerned about technical details. The style of living that is likely to emerge from the internalization of a highly regimented environment is an over concern with cleanliness, moralistic attitudes, and an intensity of activity (Shapiro, 1965). The obsessive-compulsive cognitive style that Shapiro describes should not be viewed as synonymous with the disorders of the same name though it certainly shares affinities as suggested by the descriptions above.

Psychosocial stress clearly exacerbates the expression of the associated Obsession Compulsive Disorder (Carter et al., 1995). Interviewees described living with continuous worry and tension and some made comments to suggest that perfectionism had invaded other areas of their life, such as being over controlling with fellow students, children or employees. Environments that strongly emphasize repetition and regimentation may enhance pre-dispositions to irrational compulsive responses. Children's schemas and interpersonal strategies are created through reinforcement of family and peers and once established subsequent approaches to experience get hard wired into a "feed forward mechanism" (Mahoney, 1974). Maladaptive

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schemas, such as the obsessive-compulsive cognitive style, may be perpetuated by social structures and dynamics (Liotti, 1992). While most of the interviewees did not demonstrate symptoms that epitomize the obsessive cognitive style, some did, as is suggested in the examples above, and they also associated the style with their training and experiences at boarding school. They described themselves as pressing forward to fulfill duties and carry out insignificant details not considering how the work figured into promoting joy or meaning in their lives. For some participants, their regimented environments were presupposed. The style of living that is likely to emerge from the internalization of a highly regimented environment such as the boarding school environment is an over concern with cleanliness, moralistic attitudes, and an intensity of activity. If the style is introjected, obsessiveness results, and according to Shapiro (1965), there will be a loss of affective mobility and range and the person will find themselves unable to let go of an anticipation of what “should” be done.

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### d. Moralistic Attitudes

Interviewees made remarks that suggested moralistic perspectives, which may reflect a rigid, conservative and fundamentalist perspective. A former student said about her matron, “I liked her because she was strict because I really never liked to do anything wrong. I always got along with them because they liked me. I walked the straight and narrow. She rubbed off. I see her now with my kids.” Another said, “Now I got to have my things just so...When my daughter was there it had gone down. The cleanliness and the way the girls dressed. There used to be a dress code. I see the benefit of strictness because I am that way. They are slouchy and sexy now. I am glad I learned the right way because it did me good.” A current student said, “I told my girlfriend that we wouldn’t be having no lovey-dovey stuff going on. That is dirty. You know PDA, there is not public display of affection here. That stuff is for when you are married.” Another current student said, “I work hard and don’t have patience for those who don’t. I can’t stand dirty lazy people. They won’t be nothing.”

Few would argue that adolescents are without need of moral guidance. Fairly black and white moral perspectives may be appropriately taught to young adolescents for whom it is congruent with their moral development (Kohlberg, 1978). But in later adolescence rigid self-righteousness may represent a premature closure to moral development and may hamper interactions with others, especially when they attempt to impose narrow views on others. In contrast, Garrett (2004) describes how traditional American Indian adolescents go through challenging initiation ceremonies, learn to walk in beauty, acknowledge that every person must experience life differently, and attain wellness in harmony of body, mind, and spirit. Unwellness occurs within unnatural conditions and results in imbalance in the person and the community. Dutton (1995) and Motz, (2001) suggest that persons who have been “victimized” are often preoccupied with what is “right” and assume a “self-righteous stance.” Some of the comments of interviewees express feelings of moral superiority, sexual prudery, intellectual rigidity, and inflexibility. Shapiro (1965)

discusses children who are initially highly impressionistic, affectively expressive and open-minded who upon entering into puberty are molded by authorities into proper and close-minded adolescents and adults. Shapiro (1965) describes this cognitive style as consisting in a feeling that an “overseer sits behind and issues commands, directives, and reminders” (p. 123).

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**Protest**

Many interviewees claimed to have engaged in either individual or collective resistance to what they viewed as oppressive boarding school environments. Former students said, “The worst thing was not having enough clothes. The bigger kids would steal your clothes. I had to fight for my clothes. I would run around in the same underwear for four days. We broke down the doors to the commissary where the counselors would pull down tee shirts and underwear. We all got ten licks. Anyway we decided to breakout. One night some of us broke into the office and stole forty dollars. We got out of town and found out where a pow wow was and we went. They caught us and beat us. One of the little ones shit they beat him so hard. I was one of the ones that yelled at them and then they beat me.” Another said, “She (a matron who had recently died) kinda liked you. Come over here and put your head on my lap. I didn’t know if I should cry and I didn’t know what to do. It is kind of like love. You didn’t really know how to handle hard times. Do you let everything go? We just went ahead and cried.” Current students said: “There is this teacher who says, now this isn’t in your history books. He would say it in a humorous way, like, Indians were already here. He talked to us real good.” In regard to a 72-hour “isolation” punishment, one current student said, “They are holding you against your own will. It gets people to snap. They can’t get fresh air. They tell you you have a window. I said back, ‘How would you feel if they were telling you where to go and what to do all the time. They say isolation works. They do it in the army and people start behaving, but I’m not.”

Some resign themselves to the oppressive situations and even lose their ability to see the situation as oppressive, while others remain lucid and hold to some kind of hope and sometimes resist. In the moments of protest described above, individual transcendence and new forms of supportive relations emerged to lend dignity and fresh images of what was possible. Students acted with an awareness of the contradictions in the boarding school system. They dared to anticipate a better life not for inspection of the authorities. They dared to surge into forbidden quarters. They found a power to conceive of a different world and reacted to the dissonance in their lives that they associated with the incessant concentration on cleanliness, artificial organization of spaces, efficiency and oppression. In the acts of rebellion, students transcended the shackles of a history of personal and cultural oppression that had disempowered them and found sacred places on a loving lap or at a pow wow. In these moments they embodied their ideal individual and tribal selves, not always in a reasonable calculated way but in a muscular, even orgiastic way. Having been repressed for so long, with fists clenched or with embraces, they

## **Colonial Instillations in American Indian Boarding School Students**

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were able to stand face to face with lies and oppression, transforming repressed hate and anger into redeeming action. To many readers the seeming chaos in some of the above descriptions may arouse fear, but many oppressed people may see in the rebellions against bullying, poverty, disenfranchisement and colonization, a release in a cleansing action that restored self-respect and ancestral pride.

### **Discussion**

The majority of interviewees described repressive climates, consisting of constraint, confinement, obsessive cleanliness, feelings of fear and restraint, which contrasts with the natural rhythms emphasized historically in traditional American Indian environments. They engaged in reductive confirmative tasks and household chores that prepared them for regimented occupations. They reported carrying out “duties” which sometimes included unnecessary attention to details that may have absorbed energy, spontaneity, exuberance, and play. They described their lives filled with arbitrary routines and chores, pettiness, conventionality and banality. They may have unconsciously identified with persons and groups who they perceived as powerful and/or nurturing, and they may have introjected non-tribal values, beliefs, and assumptions as well as harsh prohibitions, which may act as hidden accusers of their lives. According to many of our interviewees, it appears that Indian boarding schools have and are still at work “civilizing” Indian children and dissolving tribal ways.

Some Indian boarding schools are places where it appears that: (1) western ideology impinges upon American Indian boarding school students’ cognitions, suppressing both traditional American Indian belief systems and critical thought; (2) specific cognitive styles, which are defensive in nature may be favored; (3) relations, as they are reflected by the larger boarding school system, may interfere with cohesive interaction among students; (4) and some of the acts of rebellion against inner and external bonds may be characterized as self, cultural and social affirmations.

### **Stages of Assimilation**

The assimilation of American Indian students may be a progressive process that entails the following stages: (1) Many students may have feelings of worthlessness and helplessness when they enter the Indian boarding school environment. (2) These students may identify with persons and associations who they deem as powerful and/or as potentially meeting nurturance needs. (3) They may unconsciously introject those persons’ or associations’ values. (4) They may also accommodate themselves to the environment or rebel against or engage in a combination of the two. (5) The oppression they may have internalized may result in on-going unresolved emotional issues and have ongoing negative ramifications in relationships with others.

Almost all participants believed that Indian boarding schools are “better” than they were 25 years ago. There is a broader recognition of diversity, more compassion for students, more of an openness to talk about problems in the Indian boarding school environments, and more intelligence and sensitivity about how to guide

rather than punish students. Because of constant and dedicated efforts by boarding school staffs, teachers, administrators, students and concerned others over decades, virtually every area of Indian boarding schools is improved. Unfortunately as this study suggests there is a lot more to be done, especially in regard to the unobtrusive ghosts of identification and introjection of foreign values and beliefs which are directly connected to colonization. Instead of focusing on overt forms of oppression, it is the covert and invisible instillations that express themselves in unresolved internal conflicts that this paper tried to illuminate. On the other hand, the positive traces that might be fore-grounded in the construction of a better boarding school experience were linked by research participants to the kindnesses and generosity of fellow students, matrons, counselors and teachers, and to organized work, which enabled students to focus their energy and intentionalize their activity.

### **Recommendations**

There is no magic wand to wave to bring about the perfect Indian boarding school. Changes must grow out of what is already established. Persons who have gone to school in these situations may be the most adept people to consult about bringing about changes in regard to what they want to attain and the circumstances that make change possible. They are already dealing with the problems. This study looked at past and current student understandings and attitudes about the boarding school situation. The next step is to gain an understanding of the perceptions of people who are working with the students. When a more profound insight and understanding are gained, new methods and strategies should be developed. But it is vital that the windows of perception are cleansed so that the invisible aspects of colonization are revealed.

The current researchers, some who have worked in Indian boarding schools, humbly offer the following recommendations. Indian boarding schools require resources and technical assistance that would reduce the level of oppression and inequality that presently exists. Indian boarding schools should not “hold to Euro-American educational standards,” but rather create living conditions, achievement standards, standards regarding teaching approaches, curriculums, and goals congruent with tribal values. The living conditions and educational foundations of Indian boarding schools must be re-built with a profound awareness of the clashing epistemologies between traditional and/or “modern” tribal ideas and non-tribal ideas to combat the instillation of non-tribal values, moralistic attitudes, mundane regimentation, and linear, obsessive cognitive styles. Periodic interviews with students might be conducted to influence decisions made by administrators about their school. Culturally relevant school counseling programs must be given priority and low student to counselor ratio is imperative. Counseling with both former and current Indian boarding school students should take into account profound needs for security and possible low self and tribal esteem. The counselor should consider defenses as protective fortresses against onslaughts of past and present distress. Individual career assessment and counseling should be a requirement for every high



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school student. Various role models such as elders should be brought in regularly to talk with small groups. Counselors should familiarize themselves with culturally relevant therapeutic techniques: cognitive strategies (Montgomery, Milville, Winterowd, Jeffries, & Bateson, 2000); Dream Catcher Meditation, Robbins, 2001) Use of American Indian stories in therapy, Robbins, 2002) American Indian Multi-family group therapy techniques (Robbins, 2002). A class should be required of all students where safe discussions about similarities among tribal beliefs, customs and struggles in order to directly address the problem of lateral oppression among students.

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### Limitations of Study and Recommendations for Future Studies

The totality of forces acting upon an individual personality complicates any clear connection. There is not a continuous flow back and forth from inner and outer worlds. The diversity found in students' reactions to similar social conditions complicates and refutes any postulate that would suggest identity formation as a pure reflection of social conditions. Still, themes in interviews appear to reflect boarding school environmental situations and dominant ideologies, but this contention remains under-researched. It is difficult to sift out the influence of psychological trait variables.

A culturally appropriate quantitative study could possibly control for confounding variables and assess the connections between feelings of worthlessness and a tendency to identify with underlying values of Indian boarding school systems. Care would be necessary in choosing instruments that are culturally sensitive. A study that looks at the relation between mental health and voluntary submission to different categories of work may also be helpful for Indian boarding school planning. But stories, which American Indians value so much and which offer variation, are not the data that quantitative studies value (Brayboy, 2005). Further, such empirical studies do not often place as much emphasis on making changes in oppressive institutions.

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## **Following The Spirit of the Indian Child Welfare Act (ICWA)**

*A guide to understanding the benefits of providing culturally appropriate services to Native American families from non-federally recognized tribes within the juvenile dependency and delinquency systems<sup>1</sup>*

In an effort to ensure proper inquiry and noticing and to reduce the number of ICWA-related appeals in child welfare cases, this handout is intended to help social workers and others respond when they encounter children and families that report American Indian or Alaska Native ancestry yet find they are not from a federally recognized tribe. What is good social work practice in these cases, and how can courts support culturally centered practice that results in positive outcomes?

### **How to Provide “Spirit of the Law” ICWA Services**

- Find out which tribes and Native American resources are in your area.
- Visit and establish connections with local tribes and Native American resources regardless of federal recognition status.
- Request ICWA training from tribal resources, California Department of Social Services training academies, or with staff from the Judicial Council of California.
- Conduct a proper inquiry of possible Native American ancestry in every case at the front end and throughout the duration of the case if family members provide additional lineage information.
- Connect a child and family with their tribe and local Native American resources regardless of tribal affiliation.
- Assist the child or family with the tribal enrollment process but understand it is up to the tribe to determine who is or is not eligible for enrollment.
- Conduct placements consistent with ICWA placement preferences even though not technically required. In the case of non-federally recognized tribes, tribal members would likely meet requirements as nonrelated extended family members because tribal communities tend to be related or close-knit communities.
- Consider the child’s tribal members as viable options for holiday visits, tutors, mentors, Court Appointed Special Advocates, etc.

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<sup>1</sup> This document was developed with the Fresno County Department of Social Services, Child Welfare Services, and Placer County System of Care as part of the American Indian Enhancement of the Casey Family Programs/Child and Family Policy Institute of the California Breakthrough Series on addressing disproportionality 2009–2010 in collaboration with the American Indian Caucus of the California ICWA Workgroup, Child and Family Policy Institute of California, Stuart Foundation, and Tribal STAR.



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### **The Benefits of Providing “Spirit of the Law” ICWA Services**

- If the child’s tribe is seeking federal recognition and is granted such recognition, formal ICWA case services, such as active efforts to prevent the breakup of the Indian family, will be required. If ICWA active efforts are attempted before the federal recognition, it is less disruptive for the child than having to change services and placement to make them in accordance with ICWA.
- Welfare and Institutions Code section 306.6 leaves the determination of services to individuals of non-recognized tribes to the discretion of the court that has jurisdiction.
- Even if individuals are not associated with a federally recognized tribe, they can still be part of an Indian community, which can serve as a strength and provide resources that enhance resilience factors for youth.
- Native American agencies that serve youth regardless of their tribe’s status can have youth groups that provide mental health and substance abuse services as well as fun trips, at no cost to the county.
- Many resources available to Native Americans do not require status in a federally recognized tribe (such as tribal Temporary Assistance for Needy Families (TANF), Native American health centers, and title VII Indian education programs).
- Some Native American health centers can access funding for residential treatment in and out of the state for children who are from non–federally recognized tribes.
- When culturally centered practice is provided as early as possible, it can result in positive outcomes for tribal youth.
- Linking a child to cultural resources that support his or her development into a healthy self-reliant adult can reduce the number of times the person may enter public systems.
- Culturally centered practice provided at the front end and throughout the lifespan of the case, regardless of the recognition status of the tribe, can reduce the public burden of cost over time.

### **Historical Background**

- In 1848, gold was discovered in Coloma, California.
- In 1851 and 1852, representatives of the United States entered into 18 treaties with tribes throughout California that would have provided for more than 7.5 million acres of reserve land for the tribes’ use. These treaties were rejected by the U.S. Senate in secret session. The affected tribes were given no notice of the rejection for more than 50 years, and the promised reserve lands were never provided.
- In 1928, a census was conducted to determine the number of American Indians in California, resulting in the establishment of the 1933 California Indian Rolls (also referred to as the California Judgment Rolls). The purpose of the census and the rolls was



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to determine the number of Indians in California who had families alive in 1851–1852, when treaties were signed by the original Californians.

- From 1953 to 1964, called the “Termination Era,” the U.S. Congress terminated the federal recognition status of more than 40 California tribes. These tribes were deemed as not federally or state recognized, though previously descendants of these tribes were federally recognized.
- Many tribes that were terminated are currently seeking federal recognition by the U.S. government.
- Tribal communities throughout California are active and thriving, whether or not they have federal recognition.
- Descendants of family members listed on the California Judgment Rolls can use this documentation of Native American ancestry to provide information as to tribal affiliation. *Note:* Finding an ancestor on the roll does not mean an individual is an enrolled member in that particular tribe. Only one tribe can be listed on this document, and it is possible to descend from more than one tribe.
- Senate Bill 678, passed in 2006 by the California Legislature, allows participation of non–federally recognized tribes, on request and at the discretion of the judge in the dependency matter. This expands the option and availability of culturally appropriate services to children from non-recognized tribes.

### **Additional Tips for Practice**

- Some tribes include descendants as members, not only those who are enrolled.
- Best practices will vary depending on the location, available resources, and tribe.
- If you are having challenges in working with the family, local Native American agencies or tribes can assist.
- If the family requests additional resource information to trace its lineage, you can provide the following resource information:
  - The tribe;
  - Mission church records;
  - Mormon genealogical records;
  - Historical societies and museums;
  - Genealogical Web sites; and
  - Historical statistical information and documents in the county of the family’s origin.

# Government Law and Policy and the Indian Child Welfare Act



By **Carrie E. Garrow**

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## Introduction

Since the formation of the United States, Indian nations and Indian people have been impacted by the numerous laws and policies focused on acquisition of Indian lands and assimilation of Indian people. These federal laws and policies led to states, such as New York, breaking up Indian families and removing Indian children from their homes in order to achieve assimilation. This article provides an overview of these laws and policies, which led to the need for the Indian Child Welfare Act (ICWA). It then discusses ICWA's requirements and New York's implementation. With awareness of these issues, attorneys will be better equipped to represent their clients in family law cases when application of ICWA is required.

## Overview of the Federal Government's Indian Laws and Policies

The federal government's laws and policies regarding Native Americans have fluctuated throughout the years; however, all eras were driven by the question of how to deal with Indian nations, people and their land.<sup>1</sup> Early in our history, European nations and a young United States dealt with Indian Nations using treaties, thus recognizing the sovereignty of Indian nations. This changed as the courts began to develop the foundation of federal Indian law, recognizing only limited sovereignty, and the Removal Era was ushered in. Beginning its foray into Indian law, the U.S. Supreme Court in *Johnson v. M'Intosh*<sup>2</sup> incorporated the Doctrine of Discovery into U.S. law.



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The doctrine, based on papal bulls,<sup>3</sup> gave recognized title to land to the United States, along with the right to extinguish the Indian Nations' title by purchase or by conquest.<sup>4</sup> The Court ruled Indian Nations were vested only with a permanent right of occupancy to their lands.<sup>5</sup> The Doctrine of Discovery continues to be cited by the Supreme Court.

Building upon *M'Intosh*, the Court in *Cherokee Nation v. Georgia* held that Indian Nations are in a "guardian/ward" relationship with the federal government and are not foreign nations but rather "domestic dependent nations."<sup>6</sup> The Court followed with *Worcester v. Georgia*, holding that although they were domestic dependent nations, state law did not apply in Indian territory.<sup>7</sup> Despite the Court's rulings, states wanted jurisdiction and pressured the federal government for access to Indian lands.

The Removal Act,<sup>8</sup> passed by Congress in 1830, provided for the relocation of numerous Indian Nations to lands west of the Mississippi. The forced march of the Cherokee, known as the Trail of Tears, was emblematic of the process by which thousands of Indian people were removed from their lands and relocated to present-day Oklahoma and beyond the Mississippi valley.

### Reservations

The Removal Era was followed by the Reservation Era. Using treaties, statutes, and executive orders, along with force, starvation and disease, the federal government moved Indian people onto smaller plots of lands, or reservations, so the government could access to gold mining and encourage the building of railroads.<sup>9</sup> Provided with schools and missionaries, reservations were "envisioned as schools for civilization, in which Indians under the control of the [Bureau of Indian Affairs (BIA)] agent would be groomed for assimilation."<sup>10</sup> Indian families could not leave the reservations, even to obtain food, practice their culture, or visit family members. The BIA established Courts of Indian Offenses on the reservations and used the law to criminalize and eliminate Indian cultural practices. The Major Crimes Act, adopted in 1885, granted federal courts concurrent criminal jurisdiction over enumerated serious crimes "committed in Indian country."<sup>11</sup>

### Allotment and Assimilation

As the 19th century came to a close, states were still demanding that the Indians give up more of their lands. The prior laws and policies had not been successful in assimilating the Nations. The Indian tenet of communal ownership of land was viewed as the stumbling block preventing the Indians from assimilating into white society. As a result, the Dawes Act,<sup>12</sup> often referred to as the General Allotment Act, was passed, and the Allotment Era began.

The Allotment Act converted tribal lands into individual allotments. Heads of households received an allotment of 160 acres and individuals received 80 acres. The Secretary of Interior was granted the power to negotiate with the Tribes to obtain the remaining land. The allotments were held in trust for 25 years, although land owners could petition the federal government to take the land out of trust, if the Indian land owner was deemed "ready." Due to allotment, 65% of tribal land was transferred to non-Indians.<sup>13</sup> Indian lands were reduced from 138 million acres in 1887 to 48 million acres in 1934.<sup>14</sup>

In the State of New York, the Seneca Nation was specifically exempted from the Dawes Act due to a cloud over the title of their land, the result of land barons purchasing the right to buy the Seneca land. Other Indian Nations within the state were not exempt from the Dawes Act, however, and New York repeatedly passed legislation in attempts to allot those lands. However, the land holdings were so small they were never the focus of federal legislation.

The federal government provided funding for Indian boarding schools beginning in 1879, which government officials hoped would hasten the assimilation of Indian people. Education was an important tool to reach that goal, and the focus changed from keeping Indians on the reservation to the removal of their children from the home to separate them from the influence of their families, who reinforced cultural teachings. Captain Richard H. Pratt, the founder of the Carlisle Indian Industrial School, summed up the philosophy: "Kill the Indian, and Save the Man."<sup>15</sup>

The Meriam Report, published in 1928, revealed that allotment and its attendant assimilationist policies had failed. The Report noted assimilation "has resulted in much loss of land and an enormous increase in the details of administration without a compensating advance in the economic ability of the Indians."<sup>16</sup> Several other studies and congressional investigations "led to important changes in federal Indian policy, changes that favored restoration of some measure of tribal self-rule. Of course, the federal strategy was to employ tribal culture and institutions as transitional devices for the gradual assimilation of Indians into American society."<sup>17</sup> The Indian Reorganization Act<sup>18</sup> (IRA) put an end to allotment and legislated a process by which Indian nations could reorganize their governments under the IRA by adopting written constitutions and, as a result, become eligible for federal funding. The IRA constitutions, often drafted by the Bureau of Indian Affairs, contained requirements for secretarial approval for any amendments, solidifying the BIA's role in Indian Affairs.

### From Termination to Self-Determination

After the end of World War II, the federal government began to abandon all attempts to protect and strengthen tribal self-government and began the Termination Era.

The federal government began relinquishing federal supervision to the states by terminating federal recognition of the government-to-government relationship with Indian nations. Historian Laurence Hauptman noted

[T]he movement encouraged assimilation of Indians as individuals into the mainstream of American society and advocated the end of the federal government's responsibility of Indian affairs. To accomplish these objectives, termination legislation fell into four general categories: (1) the end of federal treaty relationships and trust responsibilities to certain specified Indian nations; (2) the repeal of federal laws that set Indians apart from other American citizens; (3) the removal of restrictions of federal guardianship and supervision over certain individual Indians; and (4) the transfer of services provided by the BIA to other federal, state, or local governmental agencies, or to Indian nations themselves.<sup>19</sup>

During this period, federal recognition was denied or terminated for 109 Indian nations. The largest impact was the loss of protection for land, as once federal recognition was terminated tribal lands were no longer held in trust and became subject to state property taxes. The BIA also began relocation programs to move Indian people off the reservations and into urban areas to find work. Congress

ern education, and criminalization of Indian culture all sought to change the Indian family. Congressional hearings, beginning in 1974 and continuing through 1978, on the widespread removal of Indian children by state welfare agencies illustrated that state governments followed the federal government's lead and focused on assimilating Indian families. Senator James Abourezk of South Dakota opened the congressional hearings, noting,

Up to now, however, public and private welfare agencies seem to have operated on the premise that most Indian children would really be better off growing up non-Indian. The result of such policies has been unchecked: abusive child-removal practices, the lack of viable, practical rehabilitation and prevention programs for Indian families facing severe problems, and a practice of ignoring the all-important demands of Indian tribes to have a say in how their children and families are dealt with. . . . It has been called cultural genocide.<sup>24</sup>

Testimony demonstrated the high rates of removal of Indian children in numerous states. In Minnesota, Indian children were placed in foster or adoptive homes at a rate of five times greater than non-Indian children.<sup>25</sup> In South Dakota, since 1948, 40% of adoptions involved Indian children, but Indian children made up only 7% of

Provided with schools and missionaries, reservations were "envisioned as schools for civilization, in which Indians . . . would be groomed for assimilation."

also began delegating concurrent criminal jurisdiction and limited civil jurisdiction to states. The first grant was to Kansas,<sup>20</sup> followed by New York.<sup>21</sup> Then PL 280<sup>22</sup> was enacted, which delegated to California, Minnesota, Nebraska, Oregon, Wisconsin, and Alaska concurrent criminal jurisdiction and limited civil jurisdiction.

Termination came to an end when President Nixon announced that termination was "morally and legally unacceptable, because it produces bad results, and because the mere threat of termination tends to discourage greater self-sufficiency among Indian groups."<sup>23</sup> Subsequently, the Self-Determination Era began with legislation that sought to strengthen tribal sovereignty, while still continuing the federal government's control over Indian affairs. Federal recognition was restored to several Indian nations that were the subject of termination. Several bills were passed to support self-determination, including the Indian Child Welfare Act.

### **The Need for the Indian Child Welfare Act Removal of Children – Congressional Hearings, 1974–1978**

The previously discussed federal laws and policies had significant impact on Indian nations and families. The taking of land, removal of children, imposition of west-

the population.<sup>26</sup> Indian children in South Dakota were in foster care at a rate of 1,600% greater than non-Indians.<sup>27</sup> The State of Washington's Indian adoption rate was 19 times greater and the foster care rate was 1,000% greater than for non-Indians.<sup>28</sup> Indian children in Wisconsin were at risk of being separated from parents at a rate of 1,600% greater than non-Indian children.<sup>29</sup> And, in Oklahoma, 4.7 times more Indian children were in adoptive homes and 3.7 times more Indian children were placed in foster care than non-Indian children.<sup>30</sup>

In New York, 1 out of 74.8 Indian children were in foster care, while the non-Indian rate was 1 out of every 222.6.<sup>31</sup> An estimated 96.5% of those Indian children were placed in non-Indian foster homes.<sup>32</sup> And New York's Indian children were placed for adoption at a per capita rate 3.3 times the rate of non-Indian children.<sup>33</sup>

In addition to foster care and adoption, Indian children were still being placed in boarding schools run by the BIA. In 1971, 35,000 Indian children were living in boarding schools (17% of the Indian school-age population); 60% of all the Indian children enrolled in BIA schools.<sup>34</sup> One witness noted,

[O]n some reservations, the Bureau of Indian Affairs (B.I.A., part of the Department of the Interior) has made it policy to send children as young as six years

to a distant boarding school. This had formerly been widespread practice, with the overt aim of “helping” Indian children enter the mainstream of American life. Now, supposedly, the practice is confined to regions where other educational opportunities have not developed, where there are difficult home situations, or where behavior has been deviant. In the past, this educational practice has had a devastating effect on several generations of Indian children. It has affected their family life, their native culture, their sense of identity, and their parenting abilities. It is quite likely that the continuation of these practices today will have the same destructive impact. Ultimately the message is the same: It is better for Indian children to be reared by others than by their parents or their own people.<sup>35</sup>

The processes used by state social workers to remove Indian children were riddled with problems. Only 1% of children removed from a North Dakota tribe were removed for physical abuse, while all others were removed based on “such vague standards as deprivation, neglect, taken because their homes were thought to be too poverty stricken to support the children.”<sup>36</sup> Parents were infrequently informed about any legal recourse and

and anger.<sup>39</sup> Testimony during congressional hearings noted the high number of school dropouts, the increasing rate of juvenile drug and alcohol abuse,<sup>40</sup> and the high percentage of youth involved in the criminal justice system who came from foster or group homes.<sup>41</sup> The removal of children also often resulted in parents splitting up.<sup>42</sup> Removed children often returned to their Nations as young adults, but continued to face difficulties. They would not know who their relatives were or have any connection to people on the reservation.<sup>43</sup> Additionally, “they were not adept at hunting or fishing or wild rice harvesting – skills useful on the reservation – nor had they obtained the skills or education necessary for a job in town. Appended to this were the psychosocial disabilities associated with the foster child syndrome (inability to trust, insecurity, free floating anxiety, difficulty in maintaining satisfying family living).”<sup>44</sup>

### The Indian Child Welfare Act

The Indian Child Welfare Act, adopted in 1978, enacts minimum federal standards to protect Indian children from unwarranted removal.<sup>45</sup> ICWA applies to child

ICWA recognizes Indian Nations’ exclusive jurisdiction over child custody proceedings when the Indian child “resides or is domiciled within the reservation of such tribe.”

rarely even saw a judge as social workers frequently used voluntary waivers to remove children.<sup>37</sup> As noted in the congressional hearing on July 24, 1978,

[t]he decision to take Indian children from their natural homes is, in most cases, carried out without due process of law. For example, it is rare for either Indian children or their parents to be represented by counsel or to have the supporting testimony of expert witnesses. Many cases do not go through an adjudicatory process at all, since the voluntary waiver of parental rights is a device widely employed by social workers to gain custody of children. Because of the availability of the waivers and because a great number of Indian parents depend on welfare payments for survival, they are exposed to the sometimes coercive arguments of welfare departments. In a recent South Dakota entrapment case, an Indian parent in a time of trouble was persuaded to sign a waiver granting temporary custody to the State, only to find that this is now being advanced as evidence of neglect and grounds for the permanent termination of parental rights. It is an unfortunate fact of life for many Indian parents that the primary service agency to which they must turn for financial help also exercises police powers over their family life and is, most frequently, the agency that initiates custody proceedings.<sup>38</sup>

The impact on families and children was devastating. Children suffered from abandonment issues, depression

custody proceedings, which it defines as foster care placement, termination of parental rights, pre-adoptive placement, and adoptive placement.<sup>46</sup> An Indian child is defined as an unmarried person under the age of 18 who is a member of a Tribe or is eligible for membership and is the biological child of a member of an Indian Tribe.<sup>47</sup> The Tribe is the only entity that can determine membership or eligibility for membership and will do so upon receipt of notification, which is required by ICWA.<sup>48</sup>

ICWA recognizes Indian Nations’ exclusive jurisdiction over child custody proceedings when the Indian child “resides or is domiciled within the reservation of such tribe.”<sup>49</sup> The statute does not define domicile, but the U.S. Supreme Court has held that children born out-of-wedlock to enrolled members domiciled on a reservation resulted in the children being also domiciled on the reservation.<sup>50</sup> Additionally, if the Indian child does not reside or is not domiciled within the reservation, the state court must transfer the proceeding to the tribal court “absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child’s tribe.”<sup>51</sup> Last, should the parent, Indian custodian or Indian child’s tribe wish to, they may intervene at any point in the proceeding regarding the Indian child.<sup>52</sup>

In addition to jurisdictional requirements, ICWA requires notice to Indian parents, custodians, and Indian Nations, along with a raised burden of proof prior to

removal. First, the party seeking to take custody of the Indian child must notify the parent or Indian custodian and the Indian child's tribe of the pending proceedings and of their right of intervention.<sup>53</sup> If a party cannot identify or locate the Nation or Indian parent or custodian, the notice shall be given to the Secretary of Interior.<sup>54</sup> Second, in order for a foster placement to be determined, there must be clear and convincing evidence, which includes input from a qualified expert witness, "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."<sup>55</sup> Finally, when parental rights are to be terminated, evidence, this time beyond a reasonable doubt must support "the conclusion 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."<sup>56</sup>

ICWA also creates requirements for voluntary foster care placement and termination of parental rights. First, the consent of the parent must be in writing and recorded before a court with proper jurisdiction.<sup>57</sup> Additionally, the parent or legal guardian must be fully aware of the consequences of the provided consent.<sup>58</sup> When voluntary consent is given for foster care, the parent may withdraw at any time and the child shall be returned.<sup>59</sup> In a voluntary proceeding for termination of parental rights or adoptive placement, consent may be withdrawn at any time prior to entry of a final decree and the child shall be returned.<sup>60</sup>

ICWA outlines preferences for foster care placement and adoption; however, the Indian child's tribe may establish a different order of preference for placement.<sup>61</sup> The extended family of the child in question shall be given preference when adoption is necessary.<sup>62</sup> If no member of the child's extended family wishes to adopt the child, preference is then given to a member of the child's tribe and, last, other Indian families.<sup>63</sup> For foster care and pre-adoption placements, ICWA requires that the child "be placed in the least restrictive setting . . . within reasonable proximity to his or her home."<sup>64</sup>

### New York's Laws and Policies Impacting Indian Families

New York also has a long history of laws and policies focused on assimilating Indian children and families, resulting in separation of children from families, as illustrated by the statistics above. The state viewed the federal policies as supporting its work toward assimilation, for example, "[t]he granting of [U.S.] citizenship had the earmarks of an invitation to the states to work toward further assimilation of Indian populations."<sup>65</sup>

In 1888, as a reaction to the Seneca Nation of Indians' exemption from the Dawes Act, New York created the Whipple Commission, whose purpose was to investigate the social, moral, and industrial condition of the Nations, along with the status of their lands and treaties.<sup>66</sup> The

Commission examined Indian children's progress in several schools built on the Six Nations' territories.

During the hearings, William A. Duncan<sup>67</sup> testified that it was necessary to combine education and removal of Indian children, to keep them from the influence of their families.

[B]ut if you educate an Indian and leave him with his father and mother and tribe, he will always remain a savage; to my mind, these children are not being educated in the right way, even on our Onondaga reservation; that little school-house isn't worth that, so far as the education of these children is concerned, because they simply come in for two or three hours, and they go back into their homes and dwell with their pagan parents; they are brought up in the pagan religion and their pagan customs; I believe that the Indians on the Onondaga reservation ought to be saved, and they ought to be made good citizens; it can not be done in one year, and never will be done by keeping a nation within a nation; they should be made, as soon as possible, citizens.<sup>68</sup>

The Commission opined that, the pagan way of life eradicated anything taught in the schools. "The influence of the pagan Indians is keenly felt against the schools here as elsewhere, and the home life of the children tends to undo much that is accomplished for their good during the day at school."<sup>69</sup>

The Whipple Commission opined that the Thomas Asylum for Orphan and Destitute Indian Children. It was started as a collaboration between the Quakers and Presbyterian Church on Cattaraugus Seneca Indian Territory in 1855 and was run by New York State from 1875 to 1957. The Whipple Report noted, "The institution is a model one, and its present management well nigh perfection. A serious mistake, however, connected with this school is in the regulation which discharges these children from the care of the teachers when they reach sixteen years of age. At this age a large share of the expense upon the children has been incurred, while the benefits derived are not in proportion to the outlay. If these children could remain for even two or three years longer, until their character and habits should become matured and strengthened before again placing them among the often demoralizing influences of their people, it is believed that the results would be eminently more satisfactory."<sup>70</sup>

Jon Van Valkenberg, Superintendent of the Thomas Asylum, was a firm supporter of removal of Indian children from the influence of their families and believed that the Nations should be reformed for the benefit of assimilated children.

After several years experience among the Indians, I have become fully convinced that the means of education and improvement will never be productive of the highest good as long as their tribal relations are continued. With a division of the lands, a home would not only be secured to the pagans and to their families, but

would provide such for the orphans and destitute children. It must indeed be humiliating for the intelligent and educated to live under laws established for their uncivilized ancestors of sixty or seventy years ago. The severalty act seems to me to be one of the most important steps toward the elevation of this people.<sup>71</sup>

In 1942, the Second Circuit ruled New York law did not apply on Indian territories,<sup>72</sup> halting many years of the state's efforts to implement its laws on those territories. To overcome this ruling, New York formed the Joint Legislative Committee on Indian Affairs, which held numerous hearings across the state on various Indian territories. An early Committee report emphasized its focus: "An early settlement of the jurisdictional problem is believed imperative. The present system of dual responsibility is fostering disunity and internal strife among the Indians of this State and is further seriously retarding their assumption of the responsibilities and enjoyment of the privileges of citizenship."<sup>73</sup>

The Committee subsequently submitted to Congress a bill for obtaining concurrent criminal jurisdiction and limited civil adjudicatory jurisdiction. Congress granted New York concurrent criminal jurisdiction in 1948.<sup>74</sup> New York celebrated the initial grant of concurrent jurisdiction, and the Committee wrote, "[Adoption] marks the next great forward step toward absorption of Indians into the general community of citizens."<sup>75</sup> Concurrent adjudicatory civil jurisdiction, granted in 1950,<sup>76</sup> was sought because it "would end their long isolation and inevitably work toward complete assimilation with the main body of citizens."<sup>77</sup> The state hoped eventually, through assimilation, the Nations "will reach the point of desiring to hold their lands in severalty as do western tribes, and to abandon present restrictions against ownership by non-Indians, even at the cost of having all such lands bear a fair proportion of the tax burden. Not until then will Indians complete the transition from hermitism to the vigorous and responsible citizenship assured by their intelligence, independence and courage."<sup>78</sup>

### New York's Implementation of ICWA

To implement ICWA, New York amended § 39 of the Social Services Law (SSL) and issued regulations found at 18 N.Y.C.R.R. § 431.18, which provide additional protections to Indian children. Unlike federal law, New York State does not require the child to be a biological child of a member of a tribe within the state.<sup>79</sup> New York's regulations include biological children of a member of any federally recognized tribe, who live on a reservation or tribal land, regardless of enrollment, to be covered under the act as well.<sup>80</sup> Last, New York includes children ages 18 to 21 who are in foster care, are attending school, or lack the ability to live independently, to encompass a larger population of Indian children.<sup>81</sup>

Congress's grant of concurrent civil jurisdiction to New York affected the state's implementation of ICWA,

as the Nations are required to obtain approval of the Secretary of the Interior for assumption of exclusive jurisdiction.<sup>82</sup> The Office of Children and Families may enter into an agreement with the Tribe for the Tribe to assume the provision of foster care, preventive and adoptive services to Indian children.<sup>83</sup> A state-recognized Tribe may reassume exclusive jurisdiction, provided that the local commissioner has granted approval.<sup>84</sup> Once this is granted, the Tribe has exclusive jurisdiction over a child who resides with the Tribe or is domiciled there or when the child is a ward of the tribal court.<sup>85</sup>

Unlike ICWA, New York's regulations include a definition of a qualified expert who may testify as to whether continued custody is likely to result in serious physical or emotion harm to the child. A qualified expert witness may be a member of the Indian child's Tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organizations and child-rearing practices.<sup>86</sup> Likewise, an expert witness may be a layperson who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the Indian child's tribe.<sup>87</sup> An expert witness may be a professional person having substantial education and experience in the provision of services to Indian children and their families.<sup>88</sup>

Finally, an additional protection is provided at the beginning of the child welfare process. When a social services official initiates a child custody proceeding involving an Indian child, the official must demonstrate to the court that, prior to the commencement of the proceeding, reasonable efforts were made to alleviate the need to remove the child from the home.<sup>89</sup> And the efforts shall include the Tribe's available resources.<sup>90</sup>

### Conclusion

A critical component to the implementation of ICWA is the understanding of the federal and state governments' history in Indian affairs. Numerous laws and policies were implemented to assimilate Indian people, and one result was the high rate of removal of Indian children from their families and Nations. The passage of ICWA created federal standards to protect families from unwarranted removal of their children. With these protections and an understanding of the need for these protections, attorneys will be better equipped to assist their clients in what can be difficult family law cases. ■

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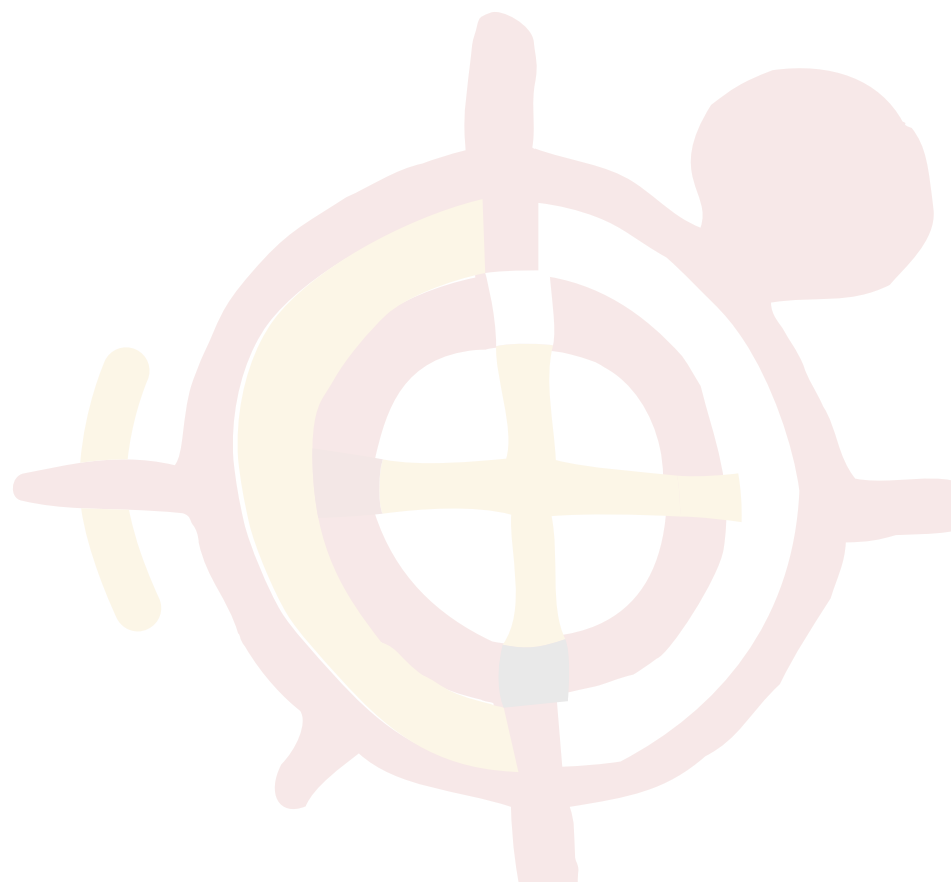
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**Indian Country**  
TODAY MEDIA NETWORK

# **Intergenerational Trauma: Understanding Natives' Inherited Pain**

**By Mary Annette Pember**



## Intro

*Trauma has been garnering more and more attention over the past few years, with the rampant climb of Post-Traumatic Stress Disorder, and the understanding of what can cause it. Intergenerational trauma among American Indians is an area of study that has just started to generate attention from communities inside Indian country, academia and the medical profession.*

*Mary Annette Pember has worked for several years to help bring this dynamic issue to the forefront of mainstream health. Her reporting for ICTMN, with the help of support from The Rosalynn Carter Fellowships for Mental Health Journalism and [Annenberg School for Communications and Journalism, University of Southern California](#); [the Dennis A. Hunt Fund for Health Journalism](#) has addressed the concept of intergenerational trauma at its core. By addressing breaking news, such as recent evidence that this type of trauma could be passed along through DNA, and by providing several ways of how American Indians are managing and coping with trauma, Pember helps put a human face on abstract theory and practice. Here she shares personal stories that are gritty, poignant and factual.*





## Trauma May Be Woven Into DNA of Native Americans

Trauma is big news these days. Mainstream media is full of stories about the dramatic improvements allowing science to see more clearly how trauma affects our bodies, minds and even our genes. Much of the coverage hails the scientific connection between trauma and illness as a breakthrough for modern medicine. The next breakthrough will be how trauma affects our offspring.

The science of epigenetics, literally “above the gene,” proposes that we pass along more than DNA in our genes; it suggests that our genes can carry memories of trauma experienced by our ancestors and can influence how we react to trauma and stress. The Academy of Pediatrics reports that the way genes work in our bodies determines neuroendocrine structure and is strongly influenced by experience. [Neuroendocrine cells help the nervous and endocrine (hormonal) system work together to produce substances such as adrenaline (the hormone associated with the fight or flight response.) Trauma experienced by earlier generations can influence the structure of our genes, making them more likely to “switch on” negative responses to stress and trauma.

In light of this emerging science and how it works with the way we react to trauma, the AAP stated in its publication, [Adverse Childhood Experiences and the Lifelong Consequences of Trauma](#), “Never before in the history of medicine have we had better insight into the factors that determine the health of an individual from infancy to adulthood, which is part of the life course perspective—a way of looking at life not as disconnected stages but as integrated across time,” according to the AAP in their recent publication examining the role of Adverse Childhood Experience (ACES) on our development and health. The now famous 1998 ACES study conducted by the Centers for Disease Control (CDC) and Kaiser Permanente showed that such adverse experiences could contribute to mental and physical illness.

Folks in Indian country wonder what took science so long to catch up with traditional Native knowledge. “Native healers, medicine people and elders have always known this and it is common knowledge in Native oral traditions,” according to LeManuel “Lee” Bitsoi, Navajo, PhD Research Associate in Genetics at Harvard University during his presentation at the Gateway to Discovery conference in 2013.

According to Bitsoi, epigenetics is beginning to uncover scientific proof that intergenerational trauma is real. Historical trauma, therefore, can be seen as a contributing cause in the development of illnesses such as PTSD, depression and type 2 diabetes.

What exactly is historical or intergenerational trauma? Michelle M. Sotero, an instructor in Health Care Administration and Policy at the University of Nevada, offers a three-fold definition. In the initial phase, the dominant culture perpetrates mass trauma on a population in the form of colonialism, slavery, war or genocide. In the second phase the affected population shows physical and psychological symptoms in response to the trauma. In the final phase, the initial population passes these responses to trauma to subsequent generations, who in turn display similar symptoms.

According to researchers, high rates of addiction, suicide, mental illness, sexual violence and other ills among Native peoples might be, at least in part, influenced by historical trauma. Bonnie Duran, associate professor in the Department of Health Services at the University of Washington School of Public Health and Director for Indigenous Health Research at the Indigenous Wellness Research Institute says, “Many present-day health disparities can be traced back through epigenetics to a “colonial health deficit,” the result of colonization and its aftermath.”

According to the American Indian and Alaska Native Genetics Research Guide created by the National Congress of American Indians (NCAI), studies have shown that various behavior and health conditions are due to inherited epigenetic changes.

Authors of the guide refer to a 2008 study by Moshe Szyf at McGill University in Montreal that examined the brains of suicide victims. Szyf and his team found that genes governing stress response in the victim’s hippocampus had been methylated or switched off. Excessive trauma causes us to produce hormones called glucocorticoids which can alter gene expression. Chronic exposure to this hormone can inhibit genes in the hippocampus ability to regulate glucocorticoids. Szyf suggested that the genes were switched off in response to a series of events, such as abuse during childhood. [All victims in the study were abused as children.](#)

## Nature or Nurture? It's Both!

Szyf, in collaboration with another scientist at McGill, Neurobiologist Michael Meaney, did research showing a significant difference in the hippocampus between adult rats raised by attentive and inattentive mothers. Adult offspring of inattentive rat mothers showed genes regulating sensitivity to stress to be highly methylated. The rats with attentive moms did not.

To test their research they switched the parents for rat babies born to bad and good mothers. The babies born to attentive moms but given to inattentive moms also developed highly methylated genes and grew to be skittish adults. The opposite proved true for babies born to bad moms but given to good moms. As adults the rat babies born to bad moms but raised by good mothers appeared calm.

This research seems to combine the historically polarizing theory of nature versus nurture in determining behavior. Nature is that which is inherited while nurture is the environmental influences.

Native researcher Teresa Brockie PhD, Research Nurse Specialist at the National Institute of Health suggests that such gene methylation is linked to health disparities among Native Americans. In her article in *Nursing and Research and Practice*, she and her research colleagues note that high ACE's (Adverse Childhood Experience) scores have been linked to methylation of genes that regulate the stress response. They further noted that endocrine and immune disorders are also linked to methylation of such genes.

The researchers found that Native peoples have high rates of ACE's and health problems such as posttraumatic stress, depression and substance abuse, diabetes all linked with methylation of genes regulating the body's response to stress. "The persistence of stress associated with discrimination and historical trauma converges to add immeasurably to these challenges," the researchers wrote.

Since there is a dearth of studies examining these findings, the researchers stated they were unable to conclude a direct cause between epigenetics and high rates of certain diseases among Native Americans.

One of the researchers, Dr. Jessica Gill, Principal Investigator, Brain Injury Unit, Division of Intramural Research, National Institute of Nursing Researcher wrote in response to questions to the NIH's public affairs office, "Epigenetic studies provide a unique

opportunity to characterize the long-term impact of stressors including historical trauma on the function of genes. The modification of gene function through epigenetic modifications can greatly impact the health of the individual and may underlie some of the health disparities that we observe in populations including Native Americans. This line of research is of great promise for nurse scientists, as it will be instrumental in the promotion of the health and well-being of patients impacted by trauma and stress."

Although epigenetics offers the hope of creating better and more specific medicines and interventions for mental health problems, it also suggests the notion that Native peoples and other ethnic groups may be genetically inferior.

Researchers such as Shannon Sullivan, professor of philosophy at UNC Charlotte, suggests in her article "Inheriting Racist Disparities in Health: Epigenetics and the Transgenerational Effects of White Racism," that the science has faint echoes of eugenics, the social movement claiming to improve genetic features of humans through selective breeding and sterilization.

## Inherited Resilience

Epigenetics is indeed a hot topic, and pharmaceutical companies are actively searching for epigenetic compounds that will help with learning and memory and help treat depression, anxiety and PTSD.

Many researchers caution, however, that the new science may be getting ahead of itself. "There is a lot of research that needs to be done before we will understand whether and how these processes work," says Joseph Gone, professor at the University of Michigan and member of the Gros Ventre tribe of Montana.

Scientific developments such as epigenetics can offer exciting new insights not only into how our bodies react not only to trauma but also how we manage to survive it.

Native peoples ability to maintain culture and sense of who they are in the face of such a traumatic history suggests an inherited resilience that bears scientific examination as well, according to Gone.

Isolating and nurturing a resilience gene may well be on the horizon.

## We Have to Know It to Heal It: Defining and Dealing With Historical Trauma

“And I rose in a rainy autumn and walked abroad in shower of all my days.”

I think of this bit of verse from Poem in October by Dylan Thomas as I walk over the grounds where my mother and grandmother lived at the Sister School on the Bad River reservation in Wisconsin. Life there was harsh and often brutal. I don't remember a time when I didn't know about the trauma my relatives endured there; although they aren't my direct experiences, their stories have always been with me. Today's rain is also filled with a bitter shower of their days.

I'm here to grieve those lost childhood days for them, something they were never permitted to do. Before I can begin I need to know the whole story.

The prospect of drilling deeper into my personal corner of historical trauma, however, is more daunting than I had anticipated. I've written several stories about my mother's life, her boarding school experience and how it spilled over onto me and my family. I thought I'd grown inured to trauma and believed my role as a journalist would protect me from its impact. But standing here on the ruins of the Sister School, I feel vulnerable and afraid.

Although this story is part of a journalism project describing the theory of historical trauma, the emerging science of its impact on our minds and bodies and describing methods to heal it, I've decided to occasionally step out of my journalist's role. I will include some of my experiences and in the process care for my well being along the way, something journalists aren't always encouraged to do.

### The Terrible Presence

Ojibwe are taught that all spirits have a dual nature. For humans, this means all that brings us happiness and success can also bring us pain and suffering. Therefore, we make a point to acknowledge this dichotomy in our spirituality. For me, the ruins of the Sister School are the breeding ground for the negative spirit that infused my family's lives like a terrible presence that we could never discuss let alone acknowledge.

I drive through a snarl of tall weeds and bushes covering the old driveway leading to the remains of

the convent and school. The brush snaps back so that my rental car can't be seen from the road; the area is an open, secluded spot surrounded by small trees and bushes. It's quiet here; the remnants of the convent and school foundations barely poke through the ground, covered by moss. The pretty little church, however still stands and I can see its steeple with its bells. My mom often spoke of fights among the children over who would have the privilege of ringing the Angelis.

She told me the bells made a beautiful sound and could be heard all over the reservation. Hearing the bells of the Angelis was one of the few experiences the children shared with their families. Although they lived on the reservation, the children dwelled light years apart from their community and their culture. The Sister School was a place where the very fact of being Indian was wrong, something to be corrected. My mother held on to the details of those cruel corrective measures until she died. Like an awful looping spirit that wouldn't let go, those experiences permeated her life, filling her with fear and anger.

The terrible presence that is my mother's trauma spirit is durable and has proved resistant to many of my intellectual efforts to heal myself from the mysterious anger and fear I took from her. The trauma spirit demands my recognition.

All I have to give it is ceremony.

So here on this cold rainy day, I offer up prayers and smoke with my demure little ladies pipe, abandoning my heart to the great mystery. I've heard elders say that everything we need to heal ourselves is already here in our old ways if only we ask the Creator for help.

When my humble ceremony is complete, I get back in my rental car and begin the rounds of visiting. I have no idea what will happen next.

### The Cycle of Abandonment

My cousin, Marylu, has graciously put me up in the spare room of her sweet little rez home here on the Bad River reservation.

A devout Catholic and alum of St. Mary's (the Sister School) Marylu seems a bit skeptical about the impact

of historical trauma. The boarding school was closed when she attended and overall her experience there was good. Her parents were strong, hardworking folks who never, in her words, “allowed me to blame who I was for what happened to me.”

She understands, however, that not everyone was so lucky and has agreed to help me find out more about my family’s history. Fiercely committed to her community, she is known throughout the reservation for her caring and hard work. She introduces me to elders who may remember something about my family.

My family’s past reveals itself to me slowly. In my haste, I want to direct the process but the information comes to me in its own time, seemingly only when I am emotionally and spiritually prepared to hear it, one difficult bit at a time. On this trip I learn more about my grandma Cecelia, called “Cele” by family. She died in 1956, before I was born. She was only 56 years old, younger than I am now.

Cele abandoned the family when my mom was five years old; my mother and her four siblings were forced to live at the Sister School beginning in 1930.

Although my grandpa Joe was a brutal drunk, he visited the children occasionally. He made several failed attempts to care for them himself but the drinking would overwhelm him again and again. The children always ended up back at the Sister School. According to my mother, Cele never visited them.

My mother worshiped her father and blamed her mother for the family’s hardship. She often spoke of one their fights in which Cele hit Joe over the head with a beer bottle, knocking him out. As she told this story she would pinch her eyes shut and close her little fists tightly, “Oh, I screamed and screamed. I thought she’d killed him!”

“He was a carpenter, just like St. Joseph,” she would tell us, smiling at her memory.

I see now that she was identifying with the family abuser; she invented a fantasy about his love and devotion that helped her survive. She described Joe as a good-hearted, happy-go-lucky drunk who couldn’t catch a break. The truth, I see now, is complicated and aching human. Joe’s untreated alcoholism dominated his life; his unpredictable rage and violence suggests he may have had “shell shock” from his experiences in World War I.

I learn that Cele had also gone to Sister School. She turned up pregnant when she was very young, maybe 15. My great grandma, Mary, welcomed the new life, as is the traditional Ojibwe way. Cele’s child was my auntie Geraldine, nicknamed “Bum” and was mostly raised by Grandma Mary, subsumed into her already enormous family of 15 children.

Although Cele’s years at the Sister School made her into a devout Catholic, she was unable to endure her marriage to the much older Joe. He was a violent, unpredictable drunk. During their final fight, he attacked her, biting off much of one of her breasts. After recuperating at Grandma Mary’s house she decided to leave him. Mary admonished her, “Even a bitch dog stays with its pups!” Only 22 or 23 years old, however, she opted for survival and left the reservation.

According to folks I interview, Cele’s children were “throw-away-kids,” part of the unfortunate crowd of parentless children on the reservation who had no relatives to care for them.

Occasionally Cele would return to the reservation to pick medicines but never to visit her children. She would shove into a bed with one of our many cousins who recall she would keep others awake as she prayed the entire rosary every night.

Cele later married a white man and brought the then-teenaged Bum to live with them. When Bum became pregnant, however, Cele ordered her out of the house declaring her actions sinful. Bum was incarcerated as “incorrigible” and her child was adopted away.

Cele’s actions were the beginning of yet another cycle of abandonment. It seems more than coincidental that she was the first generation to attend Sister School and to hear their messages of Indian racial, cultural and spiritual inferiority. Did she come to believe that she and Native people were unfit to parent their own children?

I wonder if she hoped her nightly prayers whispered into the darkness might somehow redeem her. They did not. Instead she swallowed all that regret, rage and shame and died of colon cancer at age 56.

## **Trauma, Recognized at Last**

Currently, trauma is taking center stage in public discussions about its impact on mental and physical health. Medical and social sciences research is revealing more each day about the insidious

implications of trauma for children, adult victims of violence, soldiers and even future generations who may carry its effects in their DNA.

Which brings us back to the Adverse Childhood Experiences Study. ACES, one may recall, assesses associations between childhood maltreatment and later-life health and well-being in later life. According to the Centers for Disease Control and Prevention (CDC), the ACES Study is one of the largest such investigations ever conducted. The study is a collaboration between the Centers for Disease Control and Prevention and Kaiser Permanente's Health Appraisal Clinic in San Diego.

By using a scoring method, the ACE score, the study shows the tie between a high amount of stress – Adverse Childhood Experiences – and the risk of developing health problems such as addiction, depression, intimate partner violence, suicide, diabetes, liver disease, poor fetal health among others.

Posttraumatic stress disorder (PTSD) is now included in the Diagnostic and Statistical Manual of Mental Disorders (DSM), used by mental health professionals. The latest version, DSM-V released in 2013 recategorized PTSD from an anxiety disorder to a separate chapter called, “Trauma and Stress Related Disorders.” Previously the “stressors” initiating the disorder were defined as experienced directly by the person, now the criteria has been broadened to include:

Learning that a traumatic event occurred to a close family member or close friend (with the actual event of threatened death being either violent or accidental)

Experiencing first-hand repeated or extreme exposure to aversive details of the traumatic event (not through media, pictures, television or movies unless work-related.)

According to a 2010 report from the Center on the Developing Child at Harvard University, [“The Foundations of Lifelong Health Are Built in Early Childhood,”](#) advances in neuroscience, molecular biology, and genomics offer three compelling conclusions regarding adverse childhood experiences:

—Early experiences are built into our bodies.

—Significant adversity can produce physiological disruptions or biological “memories” that undermine the development of the body’s stress response systems

and affect the developing brain, cardiovascular system, immune system, and metabolic regulatory controls.

—These physiological disruptions can persist far into adulthood and lead to lifelong impairments in both physical and mental health.

Native peoples have known about the deadly fallout from trauma for a long time. Our health care professionals and community leaders championed the importance of considering the deadly role historic and ongoing trauma and violence plays in making us the gold standard for disease in this country.

With our high rates of addiction, suicide, diabetes, violence against women and other ills, we could be viewed as ground zero for Adverse Childhood Experiences.

It seems likely that my mother witnessed that last terrible attack by Joe on Grandma Cele. Such an event would certainly earn mom a top ACES score if it happened today. Hearing the story as an adult so many years later was very unsettling for me. I am ill at ease as my psyche struggles to make sense of the event; I wish I didn’t know about it.

As I wade through these medical and behavioral studies and reports, I can’t help thinking of my family and how they hid their trauma. Those who lived through it had no choice but to push onward with their burdens of addiction, mental illness and physical ailments, accepting the Sister School lessons of innate inferiority.

I’m stunned by their courage, not only to survive, but to dare to hope for a decent life. My mother created a fantasy in order to survive all she’d experienced. She fiercely defended her invented past, lashing out angrily if anyone challenged her. She carried on, raised a family and wrestled a measure of happiness from life. Imperfect as it was, hers was a story of bravery and perseverance.

But how exactly do we move beyond stubborn survival and begin living weweni (in a good way)? Social service and mental health professionals as well as tribal leaders say Native peoples first need to heal and grieve their historical trauma. Indeed, the need to heal this trauma seems to be on the agenda of nearly every social service and community conference throughout Indian country. But how exactly do we heal? How do we develop and strengthen what the researchers call “resilience”?

There is a growing body of research that indicates resilience is something people can be taught.

## Learning Resilience

The [American Psychological Association](#) (APA) defines resilience as the process of adapting well in the face of adversity, trauma, tragedy, threats or significant sources of stress. The ACEs study has given rise to the field of resilience research. This body of work suggests that rather than focusing on risk and deficits, social and behavioral science should instead examine what has worked for people.

The APA shares a list of findings for successfully building resilience that includes;

- Making connections
- Avoid seeing crises as insurmountable problems
- Accept that change is a part of living
- Move toward your goals
- Take decisive actions
- Look for opportunities for self-discovery
- Nurture a positive view of yourself
- Keep things in perspective
- Maintain a hopeful outlook
- Take care of yourself

The APA findings also include additional ways to build resilience, such as meditation and spiritual practices.

The ongoing and historical trauma in Indian country may not yield to such scant suggestions. Historical trauma encompasses a complex series of events driven by colonial forces in their quest to dominate North America. They created waves of devastating public practices and policies that very nearly wiped us out. The boarding school era was one of the most devastating engines of these policies. The schools helped create generations of traumatized children who often grew into adults with little experience in parenting and loads of unresolved grief and trauma. Many people medicated the pain with intoxicants or obscured it with rage, denial and other destructive ways.

The APA guide's passing mention of spirituality as a means for building resilience, then holds special meaning for Native peoples as we address trauma, historical and otherwise, in our communities. In his book, *Healing the Soul Wound*, Eduardo Duran stresses the importance that spirituality plays in the world view of Native peoples. He insists that successful healing

and resilience building efforts must include strong elements of spirituality. He argues that mainstream mental health practice and spirituality are not as far apart as one might imagine. He notes that the root of the word psychology is literally “study of the soul.” He further argues that psychology and the practice of psychotherapy is enmeshed in spiritual metaphor. If clinical mental health interventions are to be successful among Native peoples, the therapy must be tied to its spiritual root.

When Maria Yellow Horse Braveheart, PhD first described the theory of historical trauma for Native peoples in the 1980s, she argued that the most effective methods of healing must emerge from within tribal communities and draw from traditional ways of knowing and spirituality.

Increasingly, mainstream mental health care professionals are beginning to consider the notion that spirituality is an important element of good health. In a study recently published in *The Permante Journal* researchers explore the role that culture and spirituality play in healing trauma among Native peoples. In the article, “Our Culture is Medicine: Perspectives of Native Healers on Post trauma Recovery Among American Indian and Alaska Native Patients, the authors interviewed several traditional Native healers.

According to the researchers, “Indigenous means of treatment through culture may include any or all of the following: language, traditional foods, ceremonies, traditional values, spiritual beliefs, history, stories, songs, traditional plants and canoe journeys.”

“Research is discovering that mindfulness and spirituality engages the brain’s medial pre-frontal cortex, the part that experiences trauma,” notes Mary Vicario, clinical counselor and researcher at Finding Hope, a Cincinnati based mental health professional training and consulting firm.

Vicario notes the work of Rochelle Dala PhD from the University of Nebraska-Lincoln. In Dala’s study of prostituted women who successfully left prostitution, she found that 100 percent credited new, found spirituality as a basis for their success.

Such interventions may not be easy to measure and study or yield themselves to the creation of evidence-based practices. Most federal health care funding supports only those interventions that are backed

by mainstream medical research and evidence based practices, considered the standard for acceptable mental health treatment.

“Although the impact of spirituality and mindfulness may be harder to study, it doesn’t mean they don’t work the best,” Vicario said.

In the coming months, I will describe the theory of historical trauma, emerging science of trauma’s impact on our minds and bodies and “evidence based practices” that health care professionals are using to help people.

Additionally, I will tell the stories of individual and community healing efforts in Indian country that, although not evidence-based, hold great promise.

My hope is that this project will provide insight into the depth of trauma in Indian country and shine a light on innovative ways that people are using to heal the soul in their communities and travel the road to weweni. This can best be done in the Native way, that of stories told by those who are living the journey. I’ll leave you with one more such report.

## **Crisis Mode**

During my trip to Bad River, I attended a gathering of residents and employees of the tribes social services department. According to the employees, the department is operating in “crisis mode” as they struggle to help the growing number of drug-affected babies born to tribal members. “In the past year, 1.3 of our babies on the reservation is born affected by drugs. Half of those infants are addicted to narcotics at birth,” noted Essie Leoso, director of Bad River Social Services.

The problem, she explained, is not confined to the Bad River Reservation. According to Leoso, in 2013 all of the babies born addicted to narcotics that were being served by the neo-natal unit at the Duluth Hospital were Native American.

Marylu, who works part-time in the social services administration office is seated with me during the gathering; she was visibly worried. “What will become of our people in the future? Who will care for all these children when they grow into adults with special needs?” she asked to no one in particular.

The gathering was part of the department’s efforts to reach out to the community for answers to this growing epidemic. I asked if learning about history such as that of my grandma’s experience at Sister School would help in such a crisis.

“Addressing historic trauma is a big piece in recovery (from addiction),” Leoso said.

“It would help give them a sense of the bigger scheme of things. Many of our young people are hopeless and think this is just the way it is supposed to be. Knowing the history would help them realize that powerlessness and low self-esteem are not part of our identity as Native people.”

Unfortunately, only one or two social services clients attended the gathering.

Later that evening I joined several ladies in a community sweat. My relatives did not have the luxury of this ceremony. If they did so, it would have had to have been done in secret. It felt good to pray for them there.

Before entering the lodge, we danced and briefly faced the darkness, acknowledging the power of the spirits that dwelt there. This recognition was not surrender, however, it was an understanding of the forces, good and bad, that govern us all. Now we could freely practice our spirituality. In the end, it will bring us strength to face the future.

## The Last Orphans of Holy Cross

The memories are coming back to her now in bits and pieces. Sometimes they emerge slowly and sometimes they engulf her bringing a terrible pain she describes as a tsunami wave of hurt.

When this happens she raises her arms up in the air. “I say, dear God in heaven, please help me, and I pray. Prayers keep you in a line of goodness,” said Kim Oseira, Alaskan Native and survivor of the Holy Cross Mission Orphanage in Holy Cross, Alaska.

The boarding school, located along the Yukon River, over 400 miles from Fairbanks, was officially called an orphanage in church records. Holy Cross Mission was founded in 1880 near the village of Holy Cross, a community of Athabascan and Yupik Eskimos, according to the Holy Cross tribal website. The early mission included a day school, boarding school and church. Today, only a church remains, the Holy Family Catholic Church served by Catholic diocese of Fairbanks.

Oseira, 73, has come forward to tell her story because, she says, “It is time.” Over several hours and multiple interviews she takes us through her childhood years at the Jesuit orphanage, sharing memories that she once thought were “completely blotted out.”

Her history, she says, is the same as so many other Native children who were taken from their families and raised in religious mission boarding schools in Canada and Alaska.

“This [story] is for those who can’t speak up, for those who’ve died or gone off the edge into mental illness or addiction,” she said.

She is sharing the account in hopes that it will help serve as a memorial for those who have been silenced and guide them towards some form of catharsis and healing. And of course she is coming forward for Della Mae, always for Della Mae.

There are few adults in Oseira’s earliest memories. She seemed to be alone even at age five in Nome, Alaska, where she was the primary care giver for her sister, Della Mae, two years younger.

“I was responsible for feeding her, changing her diapers, teaching her how to go potty, everything,” she recalls.

Later she learned that her birth parents, non-Native father and Alaska Native mother, were chronic alcoholics.

Oseira was five years old in 1945 when her mother was sent to a TB sanatorium and suddenly everything changed.

Her memories are returning in a series of vignettes such as the following; she is on a plane and holding tightly onto Della Mae. There is a man wearing a uniform in the plane with them but he ignores them, speaking only to the pilot.

“All I remember is desperately holding onto Della Mae. For some reason we were each wearing new dresses and carrying dolls. We’d never had dolls before. Della Mae wore blue and I wore pink,” she recalls.

Frightened, she looks down at the ground as the plane begins to descend toward a huge, stark white cross. The vision of the cross is a mark, an ominous symbol that fills her with dread.

That feeling of fear dominated her childhood during the next 12 years that she and Della Mae lived at Holy Cross Orphanage.

After the plane lands, the man in the uniform takes the girls to a dirt road and points. “He told us to walk until we came to a building,” she said.

The man gets back on the plane and she and Della Mae begin to walk the two miles to Holy Cross mission.

“Della Mae cried and cried. I just kept walking not thinking anything, pulling her along and holding onto the doll,” she said.

In Oseira’s memory, the doll represented a small defense against her fear and she clung to it as she approached a small door at the main orphanage building.

The first sight of the nuns, in their long black robes and starched white habits surrounding their faces, frightens them badly. Instinctively she follows the nuns’ orders, cleaning Della Mae who had soiled herself during the long walk.

In her next recollection, the fine dresses are gone replaced by mission uniforms. After searching repeatedly for the beautiful dolls she finds them later at the bottom of the outhouse.



She and Della Mae joined the huge crowd of other Native children, engulfed by the grinding routine of orphanage life. Their lives followed a pattern of following orders without question for fear of beatings and other punishment at the hands of the nuns.

“We soon learned to be quiet and do what we were told,” she said.

The nuns put her to work in the garden where she pulled weeds all day long. The remainder of her time was spent caring for Della Mae and protecting her from the other children who liked to tease the little girl until she cried.

Although there were hundreds of children at the orphanage, Oseira has few memories of individuals. She and Della Mae were outsiders and always on guard against the other children. Although they shared Native ethnicity with the other students, she and her sister they knew nothing of their culture or language.

“We were the only ones who stayed at the mission year round and the other kids thought we were pets to the nuns,” she recalls.

The reality couldn’t have been farther from the truth. She and Della Mae were forced to remain at the school because their parents were unable to care for them. The other students returned to their homes during the summer months, retaining some connection with family, Native culture and language.

When the others would secretly whisper to each other in their Native languages, she felt a terrible loneliness and longing for a heritage that she would never know.

There were signs everywhere in the mission forbidding use of indigenous language. For Oseira, the signs carried a double message of shame, shame over being Eskimo and shame over not knowing her heritage.

“I learned that being Eskimo was like being garbage in the nuns eyes,” she said.

The nuns were constantly on guard against any intrusion of Native culture among the children, preventing contact between them and the villagers of nearby Holy Cross.

“We were so isolated from the outside world,” Oseira recalls.

She and Della Mae would never learn the identity of their

mother’s tribe. According to Oseira’s birth certificate, her mother was born in the village of Egagik on the Alaskan Peninsula on the edge of Bristol Bay. She was adopted and raised by a non-Native family and was given the name, Ruth Virginia Morris. According to information from the Alaskan Native Heritage Center, there are at least two tribes living near Egagik including the Yupic and Alugtiq Nations.

Oseira has no childhood recollection of her mother with the exception of a painful memory that emerged with a whiff of seal oil later in life. During Oseira’s last visit as a young woman to her mother’s home in Seattle, she recalls her mother eating food dipped in seal oil. “She told me that when I was a baby she got mad at my father and dropped me in hot seal oil,” Oseira said.

The smell of the oil brought back the pain of the burn. Although she had always longed for family and hoped to develop a relationship with her mother, she never contacted her again.

Her non-Native father, Jack Norris, visited his daughters three times during their years at the orphanage. “We were always so excited to see him, thinking he would take us with him,” Oseira said.

But he never did. After walking him to the little airstrip, she and Della Mae would be silent during their 2-mile trek back to the orphanage.

“Adults never explained anything to us, especially the nuns; we were just shoved around,” she said.

Her days at the orphanage were an endless routine of hard work and a few hours of school during the winter months. Life was run with military precision, each task performed with factory like efficiency as the children were marched everywhere in rows of two. The nuns punished the children violently for even the smallest infraction.

“I think they enjoyed beating us. They used rulers, sticks, whatever they could get their hands on,” she recalls.

## **Work, Fear and Hunger**

“We were never served fresh milk or fruit. Sometimes the constant hunger would just bend me over,” she said.

The school and buildings were torn down when the orphanage was closed in 1956. The diocese of

Fairbank's website describes the early days of Holy Cross mission;

"Holy Cross became the earliest training center for Alaskans living in the remote regions of the Bush. It was staffed mainly by Jesuit priests and Sisters of Saint Ann. Besides religion, reading, writing and arithmetic, boys were trained in mechanics, carpentry and gardening; while girls were trained in sewing, homemaking and gardening. Gardening was particularly important. Throughout its history, till the closing of the boarding school in 1956, Holy Cross Mission was forced to be as self-reliant as possible, especially in producing food for staff and students."

The [official description](#) omits the human hardships endured by the children there as they labored in the garden, caught and dried fish, skinned beaver and sewed their own clothing and mattresses.

Her overwhelming memories of her life at the orphanage are hunger, fear, exhaustion and loneliness.

The prospect of punishment was so frightening that she froze her hands at age 6 rather than risk the wrath of the nuns. Each month, the nuns showed a film inside a large Quonset hut on the mission grounds. Usually they simply showed the same film over and over again but on one winter night there was a new film and everyone was excited, Oseira recalled. So thrilled to see a new film, she forgot to go to the restroom before the show began. Rather than risk punishment over her oversight, she snuck out of the hut and made her way back to the girls' dorm. The doors were locked, however, and she wandered the mission grounds for quite some time before finding an open restroom. When some older girls finally found her, her hands were frozen. Angrily one of the nuns placed her hands over a wood stove. Oseira screamed and fainted from the pain. When she awoke, she began screaming again because her fingers had swollen three times their size. "The nun slapped me for crying," she recalled.

Even today, her hands bear the scars of that night. "Doctors usually think I have rheumatoid arthritis when they see my twisted fingers," she said.

Like so many other Native children, she was sexually

abused by clergy during her years at Holy Cross. She received a modest settlement of less than \$5k from the Oregon Province of the Society of Jesus; the long story of abuse, victims and the church's response is described in a PBS news story, [the Silence](#), by ICTMN contributor Mark Trahant.

Oseira doesn't dwell on these memories but the experience has fed a lifelong bitterness towards organized religion.

"Fortunately, God made me ornery," she laughed.

This orneriness or strength sustained her so she could survive and tell the truth about Holy Cross according to Oseira.

She shared another vignette;

She was forced to scrub the wooden floor of a large room for a now forgotten infraction of the rules.

"The nun said I had to scrub that floor until it was white," she recalls.

On her knees, Oseira scrubbed and scrubbed. She was nearly finished when the nun announced it was time for dinner and ordered her to the dining room.

"I only had one spot left to scrub and I told that nun, "No! I'm not finished yet! I threw that scrub brush at her!"

Oseira described a childhood vision that strengthened her and helped her survive.

"The nuns made us pick berries to sell during the summer. One day I wandered off and came to an opening in the bush overlooking the tundra. I put my buckets down and saw a beautiful tree off in the distance all by itself. It stood 20-30 feet high and was perfectly symmetrical. "Oh what a beautiful tree," I thought to myself. But I felt so sad that it was all alone; my heart went out to that tree. I think now that God showed me that although the tree was alone it was beautiful and strong."

Although the boarding school closed in 1956, Oseira and Della Mae stayed on for over a year until they could be reunited with their mother. The last orphans at Holy Cross slept alone in the mission library, a lonely experience that still haunts Oseira.

Once their mother, Ruth, was located, church officials dropped the girls off on her doorstep in Seattle.

Ruth was living in a small inner city apartment with her two infant daughters and a new man. She and the man were drinking heavily and soon abandoned all four of the girls for several days. Hungry and afraid, Oseira now 16, sought help from neighbors who called the sheriff. She and Della Mae were placed in jail for several weeks until police could find homes for them.

The infants were returned to Ruth.

The sisters, however were placed in separate foster homes. Oseira's foster parents were kind but Della Mae ended up with a family who used her as an unpaid servant. Della Mae became pregnant during her stay and was pressured by the foster parents to give them custody of her baby daughter.

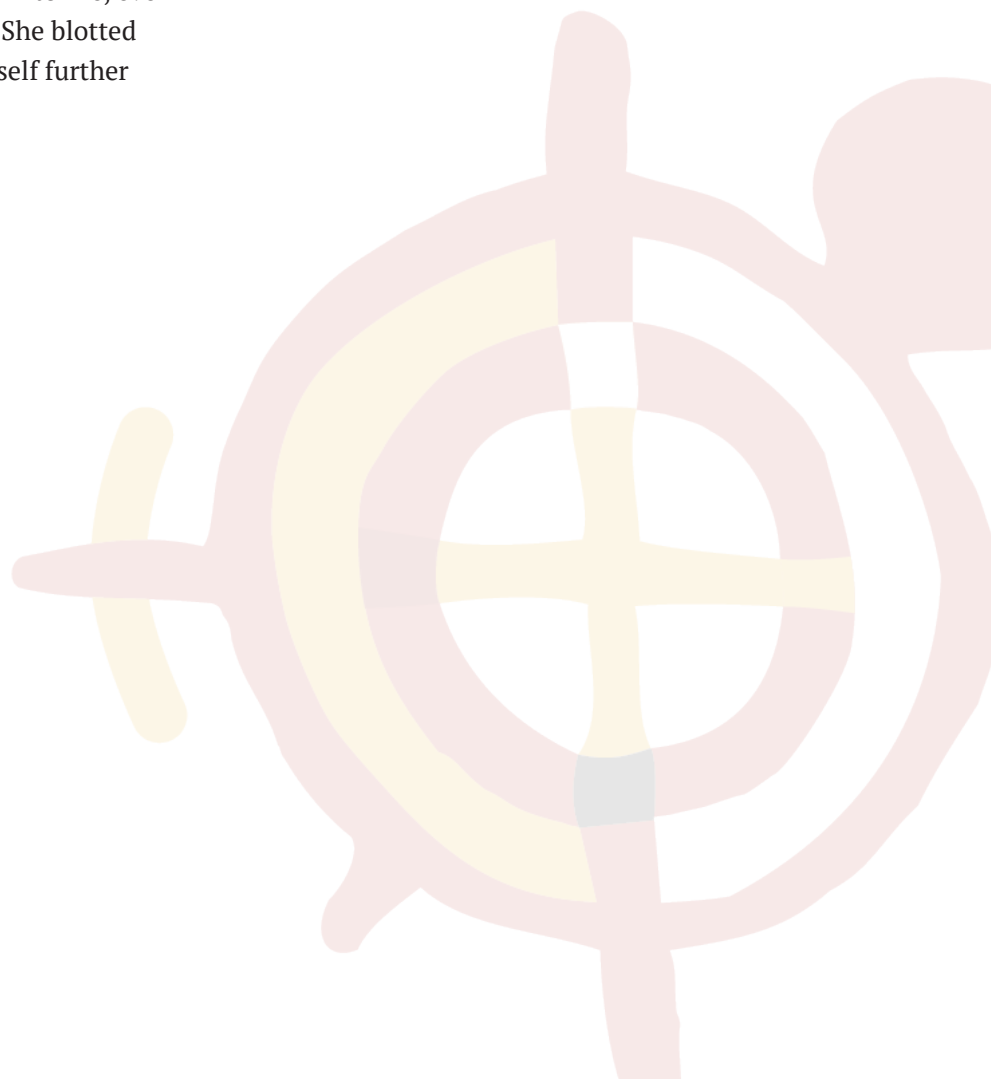
Over the following years, Oseira lost track of Della Mae. Free at last of the nuns, she threw herself into life, even changing her name from Pauline to Kim. She blotted out her life at Holy Cross. Distancing herself further

from her painful past, she moved often. Hard work and long hours kept the pain away. Married and divorced three times, she currently lives in Minneapolis near her two grown daughters.

"My daughters have complained that I was always married to my job. I didn't really have any true knowledge of parenting skills," she admits.

Recently, however, the sight of her 5 year-old grandson made the memories of Holy Cross especially poignant. As she tenderly watched him play during a family gathering, she realized she was the same age as the little boy when she was sent to Holy Cross.

"No child should ever be treated like we were treated," she said chocking back tears.



## ‘The Great Hurt’: Facing the Trauma of Indian Boarding Schools

“Aww, here we go again, talking about the dang boarding schools!”

This was the first thought Chally Topping-Thompson had when the topic came up in her social work class at St. Scholastica College in Duluth. Topping-Thompson of the Red Cliff Band of Ojibwe had heard hushed talk about the bad times at Indian boarding schools all her life. The talk, however, was for her, part of a long ago past of trouble and hurt. As a single mom trying to raise a child and finish her degree in social work, however, she had more immediate problems of her own. “I thought the history of boarding schools didn’t really have any meaning for me or my generation,” she said.

The course, however, radically changed her perception about the impact of boarding schools on contemporary Native life in general and her own family in particular. She says the class was unlike any other she had attended. Rather than the typical college lectures and assigned readings, students learned parts of a reader’s theater play, *The Great Hurt* and later performed the play for the public.

*The Great Hurt* was written by retired artist and St. Scholastica College faculty member Carl Gawboy of the Bois Forte Band of Minnesota Chippewa. It contains eyewitness accounts, both historic and contemporary, of the Indian boarding school experience. Performers read aloud the words of people such as Captain Richard Pratt, credited with founding the governing philosophy of the schools. Pratt famously championed the idea that the schools should “kill the Indian to save the man.”

Topping-Thompson said learning about the history of the schools and reading the play helped her better understand the experiences and actions of her family. Her grandmother, who attended Pipe Stone Indian school, was an alcoholic. She was unable to care for her children, so they were placed in non-Native foster homes. This angered Topping-Thompson, who blamed her Grandmother for being a poor mother.

“After the play, I was able to see and feel the pain of my grandmother’s experience. I came to understand how she never had her own needs met as a child and how this contributed to her being unable to nurture her own children,” Topping-Thompson said.

Topping-Thompson was assigned to read the words of her Uncle Jim Northrup, a well-known Ojibwe poet and author from the Fond du Lac reservation whose work is included in the play. “I read his story in which he describes how the little boys would cry at night for their

mothers in the dormitory. He said the crying would start with one boy, then move in waves through the children in their beds,” she said.

Gawboy wrote the play in 1972 while participating in a graduate internship. “No one wanted to hear about boarding schools back then so I threw the play in a drawer,” he recalls. Nearly forgotten, it languished in his desk for over 35 years.

A few years ago, his wife, Cynthia Donner, coordinator for tribal sites in the St. Scholastica Social Work Program, asked him if he had any suggestions for teaching students about historical trauma and the impact of boarding schools. He shared his long forgotten script with Donner and her colleagues, who immediately realized its value. Gawboy, Donner and Michelle Robertson, assistant professor of social work at St. Scholastica collaborated in updating the script.

“*The Great Hurt* brings history to life for students,” Donner said.

The play also helped social work students gain a greater understanding of how the impact of trauma, such as that experienced at boarding schools, can be passed down through the generations. “Researching the history of the schools and then participating in the play allows students to become directly involved in their own academic inquiry,” says Donner.

Although the initial goal was to educate students and prepare them for work in the field, Gawboy and instructors in the Social Work Department soon realized that the play had potential that reached far beyond the classroom. They began receiving requests to perform the play in various Native communities in the region.

Native people wanted a way to talk about and process the grief and trauma from the boarding school experience.

*The Great Hurt*’s reputation has spread by word of mouth in Indian country. Gawboy, Donner and Robertson do not seek out venues for the play; they wait for communities to invite them and encourage people to create planning committees in order to determine how the play can best be presented in a way that is most beneficial.

“People need to be ready to deal with historical trauma. Community members have to agree about how the play will be presented,” Donner said.

Some communities have opted to have a two-day workshop in which participants learn some information about historical trauma, how it expresses itself through

the boarding school experience and then practice performing the readings. Typically, participants perform the play for the public immediately after the workshop.

Members of the Leech Lake reservation in Minnesota hosted the workshop and play as a collaboration between St. Scholastica and the Leech Lake Tribal College.

Students from both schools earned academic credits for attending an extended version of the workshop and later presenting the play for the community.

“The reality is that the U.S. has never acknowledged the trauma caused by the boarding schools. That made it harder for tribal communities to deal with the trauma and pain,” Donner said.

Gawboy and the instructors at St. Scholastica said that the play seems to take on the quality of ceremony when presented by Native people in their own community. “There is nothing greater than the power of story,” Donner noted. Members of the audience have often cried during the performance. “It was very emotional. People stood up [during the discussion period immediately following the play] and shared how that they’d never talked about their boarding school experiences, even with their families. It had just been too painful for them,” said Heather Craig Oldsen professor of Social Work at Briar Cliff University in Sioux City, Iowa.

Students and community members performed the play twice in Sioux City. “I still get goose bumps when I think of all the people who stood up with tears in their eyes,” Craig Oldsen said.

Non-Native people are also affected by the play. “The most common reaction from non-Natives is shock. They say that they never knew anything about this history,” said Gawboy.

There is growing awareness in Native communities that the high rates of suicide, depression and addiction are tied to unresolved trauma. “The Great Hurt offers a way for people to recognize and acknowledge the impact of historical trauma on their lives. For instance, one of the characters in the play, Carolyn Attneave, a social worker for a Native community guidance center in Oklahoma, describes the negative influences that boarding schools had on Native families. “I recall vividly how each year worried sets of parents would come to the clinic begging for help in securing placement in a boarding school for their 8 or 9 year old child. This puzzled me, and it soon became clear that although it was heartbreaking for them to part with their child they knew of nothing else to do. Neither they nor their own parents had ever known life in a family from the age they first entered school. The

parents had no memories and no patterns to follow in rearing children except for the regimentation of mass sleeping and impersonal schedules they had known. How to raise children at home had become a mystery.”

Such dialogues provide an effective tool to bring people together to connect with something bigger than themselves, to see that trauma is more than their individual suffering,” Donner said.

Nitausha Williams agrees. A member of the Dakota Yankton Sioux Nation, Williams participated in the play while pursuing her degree in social work at Briar Cliff University. She described the experience as transformative. “I was raised with shame, anger, fear and isolation. The play helped me see how historical trauma was affecting my life,” said Williams who is a social worker with the Iowa Department of Social Services in Sioux City. She works as a tribal liaison ensuring that the state follows Indian Child Welfare Act (ICWA) policies.

She realized the cycle of abandonment in her family started generations ago. Williams, her mother and grandmother all attended boarding school and all abandoned their children. “We lost the bond and knowledge of family at boarding school. I see now how the behaviors such as the inability to show affection, the excessive cleaning were learned,” Williams said. “I’ve made a whole lot of changes since that play. It has started a healing process for me,” she said.

Williams has decided that the trauma will stop with her. She makes a concerted effort to be affectionate with her children.

Many Native people who went to boarding schools have to relearn a connection to family, according to Williams. “At first my mother got angry when I asked her why she never hugged us or told us she loved us. But after awhile she apologized and now we hug. It’s uncomfortable for us but we’re getting better at it,” she said.

Since the play was performed in Sioux City, community organizations such as local tribal members and leaders, the police department, schools and department of Human Services created a collaborative to discuss the health and welfare of Native families according to Craig Oldsen. “The greatest impact, however, is that people are finally starting to talk about their boarding school experiences,” she said.

“The Great Hurt has helped us move towards healing.”

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# Indian Country

TODAY MEDIA NETWORK





# The Indian Child Welfare Act: A Primer for Child Welfare Professionals

The Indian Child Welfare Act (ICWA) of 1978 is one of the key components to protecting the rights and culture of American Indian and Alaska Native (AI/AN) children and families. Unfortunately, not all child welfare caseworkers are aware of how to apply ICWA or the troubling history that prompted the law to be enacted. This factsheet provides caseworkers with an overview of current and historical issues affecting child welfare practice with AI/AN families, practice implications, and cultural considerations. As this factsheet is only an overview of the law and issues, we encourage caseworkers to review the additional resources provided and seek guidance from their agencies.

## WHAT'S INSIDE

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## BACKGROUND

Child welfare practice with AI/AN children and families has been shaped by the complicated history between the U.S. Government and Tribes, both within and outside the context of child welfare. This section briefly describes that history, other factors affecting Tribal-State relations, and relevant Federal legislation.

### BRIEF HISTORY OF CHILD WELFARE PRACTICE WITH TRIBES

The child welfare system has had a particularly poignant impact on Tribal communities over the past century. From the 1870s through the 1930s, thousands of Indian children were removed from their homes, families, and Tribes and placed in boarding schools, often at a great distance from home, where a policy of assimilation left them without access to family and unable to speak their native language or participate in their native culture. They were frequently taken from their homes without any investigation of maltreatment or well-being and without notice being provided to their families or Tribes (Capacity Building Center [CBC] for States, 2017). Native customs and practices were destroyed, families were separated, and generations of AI/AN children grew to adulthood without the benefit of parenting or support from their families or Tribes.

Compounding the trauma associated with early child welfare practices is the overall treatment of native peoples by the U.S. Government, particularly from the 1820s through the 1960s. From the 1820s to the 1880s, the U.S. Government established practices of forced migration and placement

of native peoples on reservations (CBC for States, 2017). From that point onward, U.S. Government approaches to Tribal populations included seeking to assimilate Tribal members into mainstream American life; distributing reservation land to settlers, often without compensation to Tribes; and other policies that had serious and long-lasting negative consequences for Tribes. Although the U.S. Government's approach to working with Tribes has improved in recent decades, this distressing history has contributed to a great level of distrust, historical trauma, and unresolved grief that continues to affect AI/AN families and the ways in which Federal, State, and local governments and Tribes interact.

For a more detailed overview, refer to the article "[Government Law and Policy and the Indian Child Welfare Act.](#)"

### FACTORS AFFECTING TRIBAL-STATE RELATIONS

Today, almost all Tribes operate some form of child protection services, and many have their own Tribal codes, court systems, and child welfare programs. A number of factors affect relationships between Tribes and States in the provision of child welfare services. These include, but are not limited to, the following:

- The [sovereignty](#) of Tribes (i.e., the right to govern themselves)
- The [Federal trust responsibility](#) between Tribes and the Federal Government, which refers to the Federal Government's obligation to protect Tribal self-governance, assets, resources, lands, and treaty rights (25 U.S.C. §§ 450; 450a)



- The influence of various Federal policies, including those that endorsed and allowed AI/AN lands to be taken from Tribes and AI/AN children to be removed for assimilation (ICWA Proceedings, 2016)
- The enactment of [Public Law 280](#) (P.L. 83-280) in 1953, which transferred Federal jurisdiction over Tribal affairs to six "mandatory" States and allowed other States to elect to assume full or partial State jurisdiction on Indian reservations without requiring Tribal consent<sup>1</sup>
- Availability of funding for child welfare services, with Tribes—prior to the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351)—previously being required to access their title IV-E funding through agreements with the States
- Disproportionality of AI/AN children in the child welfare system, such that AI/AN children enter foster care at a rate that is double their proportion of the U.S. child population (Child Welfare Information Gateway, 2016)
- Possible lack of awareness of how to implement ICWA, the reasons it was necessary, or culturally responsive engagement (CBC for States, 2017; Lidot et al., 2012)

### **FEDERAL LEGISLATION AFFECTING CHILD WELFARE PRACTICE WITH TRIBES**

The Federal Government has implemented various pieces of legislation to attempt to address some of the inequities of the past, with ICWA (P.L. 95-608) being the key guidance on child welfare practice with AI/

AN children and families. ICWA, which was passed in 1978, established Federal standards for the removal, placement, and termination of parental rights in order to protect the best interests of AI/AN children and keep them connected to their families and Tribes. ICWA also clarified the jurisdictions of State and Tribal governments in child welfare cases, authorized Tribal-State agreements, and provided funding for the development of Tribal programs. The Bureau of Indian Affairs (BIA) within the U.S. Department of the Interior (DOI) determined there is inconsistent implementation and interpretation of the law across States and localities (ICWA Proceedings, 2016). The following section, Practice Implications, addresses how ICWA affects your everyday practice with children who are or may be AI/AN.

The following are other Federal laws subsequent to ICWA that affect Tribal child welfare practice:

- The Indian Child Protection and Family Violence Prevention Act (P.L. 101-630), which was enacted in 1991, established Federal requirements for the reporting and investigation of child abuse and neglect on Tribal lands, required background checks on individuals who have contact with AI/AN children (including foster and adoptive families), and authorized funding for Tribal child abuse prevention and treatment programs. That act was amended in 2016 by the Native American Children's Safety Act (P.L. 114-165) to further ensure children's safety by requiring Tribes to conduct background checks before placing children in foster care.

<sup>1</sup> In 1968, Congress amended Public Law 280 to require that States obtain Tribal consent before assuming jurisdiction, but this amendment did not affect any transfers that had already occurred.

- The Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110–351) gives [federally recognized Tribes](#), Tribal organizations, and Tribal consortia the option to directly access title IV-E funds to operate foster care; adoption assistance; and, if elected, kinship guardianship assistance and prevention services programs. Previously, if a Tribe wanted to access title IV-E funds, the Tribe would enter into agreements with States to administer all or part of the State’s title IV-E program. This act also requires each State title IV-E agency to negotiate in good faith with any federally recognized Tribe that requests to develop an agreement with a State to administer all or part of the State’s title IV-E program.
- The Tribal Law and Order Act of 2010 (P.L. 111–211) addresses three Tribal justice issues: (1) lack of Federal Government accountability for investigating and prosecuting crimes in Indian country, (2) lack of Tribal government authority, and (3) longstanding lack of adequate and consistent funding for Tribal justice systems. For more information, visit the [Tribal Law & Order Act page](#) on the National Congress of American Indians website.
- The Family First Prevention Services Act, which was included in the Bipartisan Budget Act of 2018 (P.L. 115–123), allows State and Tribal title IV-E agencies to use title IV-E funding to prevent children from entering foster care.

## PRACTICE IMPLICATIONS

The National Indian Child Welfare Association (NICWA) suggests that caseworkers should assume that ICWA applies to a case until they have enough information to determine the law is not applicable (NICWA, n.d.). The following provides a brief overview of some key provisions of ICWA. Many States have their own laws or Tribal-State agreements regarding Tribal child welfare that go beyond the requirements of ICWA; therefore, local requirements may differ from the practices discussed in this factsheet. Caseworkers should become familiar with their local policies regarding cases involving AI/AN families and consult with their supervisors or other agency leadership to determine how to apply ICWA in their practice.

Unless otherwise noted, the information provided in this section was taken from [ICWA](#) and [Part 23 of the Code of Federal Regulations](#).

## DETERMINING IF ICWA APPLIES

ICWA applies when there is a "child custody proceeding" that involves an "Indian child," which is defined as an unmarried individual under the age of 18 who is either (1) a Tribal member or (2) eligible for Tribal membership and has a biological parent who is a Tribal member (25 U.S.C. § 1901 et seq.).<sup>2</sup> A child custody proceeding is any nonemergency proceeding that may result in a foster care placement, termination of parental rights, or a preadoptive or adoptive placement.

<sup>2</sup> For ICWA to apply, the Tribe must be federally recognized.

An emergency proceeding is one that is intended to prevent imminent physical harm to the child in situations in which the child is not located on the reservation in which the child's Tribe has jurisdiction. In those cases, caseworkers should still attempt to comply with ICWA when possible and cease emergency custody once the child is safe.

NICWA (n.d.) suggests that caseworkers determine if ICWA may apply to a child by asking the family at intake and other key case points if they identify as AI/AN or have AI/AN ancestry. If the parents are unavailable or are unable to provide a reliable answer, the caseworkers can review other documentation or contact extended family. If there is no reason to believe the child is AI/AN or has AI/AN ancestry, it is recommended that the caseworker document this and proceed as is normally required for a non-ICWA case.

If there is reason to know the child is AI/AN, caseworkers need to contact the appropriate Tribe or Tribes to verify that the child is a Tribal member or is eligible for membership (25 U.S.C. § 1901 et seq.). If a Tribe verifies this, the caseworker should apply all ICWA provisions to the case; if the child is not a Tribal member nor eligible for membership, the caseworker does not need to apply ICWA (NICWA, n.d.). To view Tribal contact information, view BIA's [Tribal Leaders Directory](#) or its [ICWA Designated Agents Listing](#).

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<sup>3</sup> An Indian custodian is "any Indian who has legal custody of an Indian child under applicable Tribal law or custom or under applicable State law, or to whom temporary physical care, custody, and control has been transferred by the parent of such child" (25 C.F.R. § 23.2).

## **NOTIFYING THE APPROPRIATE PARTIES**

If a child is determined to be AI/AN, the caseworker must notify the child's parents; each applicable Tribe; and, if applicable, the child's Indian custodian<sup>3</sup> by registered mail (return receipt requested) of the upcoming child custody proceeding. BIA recommends that agencies also provide notice to those parties of each individual hearing, any change in placement, any change to the child's permanency or concurrent plan, or any transfer of jurisdiction (BIA, 2016).

## **TRANSFERRING JURISDICTION TO THE TRIBE**

The child's parents, Tribe, or Indian custodian may request a transfer of the case to the child's Tribe at any time during the case. The State court must grant the transfer unless either parent objects, the Tribal court declines jurisdiction, or the State court finds good cause to deny it.

## **PROVIDING SERVICES**

ICWA requires that agencies make "active efforts" to maintain or reunite AI/AN children with their families. Active efforts are those that proactively connect families with substantive services rather than just identify the services available. Active efforts must be made before ordering an involuntary foster care placement or termination of parental rights. NICWA (n.d.) recommends that caseworkers also ensure active efforts are taken after the investigation and after removal to promote reunification. Services should be provided in a way that reflects the Tribe's social and cultural standards.

## REMOVING THE CHILD FROM THE HOME AND TERMINATING PARENTAL RIGHTS

For an AI/AN child to be removed from the home or for a termination of parental rights to be granted, the public agency must prove (1) a causal relationship between the conditions in the home and serious emotional or physical harm to the child and (2) that the agency has made active efforts to support the family. Additionally, both actions must be supported by the testimony of a "qualified expert witness."<sup>4</sup> NICWA (n.d.) notes that the evidence levels for both actions when ICWA is applicable tend to be higher than the levels of proof required in most States for non-ICWA cases.

## PLACING A CHILD

When placing an AI/AN child in out-of-home care, the child should be placed in the least restrictive setting that is like a family, allows for the child's special needs (if any) to be met, and is within a reasonable proximity of the child's family. The following are the placement preferences for the child:

1. Extended family member
2. Foster home that is licensed, approved, or specified by the child's Tribe
3. Indian foster home that is licensed or approved by an authorized non-Indian licensing authority
4. Institution for children approved by a Tribe or operated by an Indian organization that has a program suitable to meet the child's needs

The preceding order should be followed unless there is good cause to do otherwise or if the Tribe has a different order preference.

<sup>4</sup> A qualified expert witness is an individual who can testify about whether the child's continued custody by the parents is likely to cause serious emotional or physical harm and about the prevailing social and cultural standards of the child's Tribe.

NICWA advises child welfare professionals to consult with representatives from applicable Tribes to determine if this order is acceptable or which homes are licensed, approved, or specified for a particular child (NICWA, n.d.).

## CULTURAL CONSIDERATIONS

When working with AI/AN children and families, caseworkers should keep in mind the following (Substance Abuse and Mental Health Services Administration, 2009):

- AI/AN individuals and communities are affected by varying levels of trauma, both directly and through intergenerational transmission.
- AI/AN individuals can be found in all areas of the country (rural, suburban, and urban).
- AI/AN ancestry cannot be determined just by "look" or family name.
- Each Tribe has its own history and culture, and customs vary by region and Tribe.
- It is appropriate to ask questions about cultural issues, but this should be done respectfully.
- Communication styles, the role of elders, etiquette, and other cultural components of Tribes may differ from those of non-Tribal communities.

For additional information, refer to [American Indian and Native American Culture Card: A Guide to Build Cultural Awareness](#), which was developed by the Substance Abuse and Mental Health Services Administration. For general information about cultural humility, visit Information Gateway's [Cultural Responsiveness](#) page or review [Standards and Indicators for Cultural Competence in Social Work Practice](#) by the National Association of Social Workers.

Public agency caseworkers can also use this information as they partner with Tribal child welfare staff and other Tribal members. In particular, public agency caseworkers should recognize that, in addition to maintaining child safety and well-being, Tribal caseworkers may also view their practice as including cultural preservation (i.e., preventing the loss of the Tribe's children and maintaining children's connection to their culture) (Lucero & Leake, 2016). When communicating with Tribal staff, caseworkers should remember that they are dealing with representatives of a sovereign nation (Tribal STAR, 2015).

As when working with any culture different than their own, caseworkers should be self-reflective and examine their own biases to help ensure their practice is always conducted in the best interests of the child and family.

## ADDITIONAL RESOURCES

- [A Guide to Compliance With the Indian Child Welfare Act](#) (NICWA)
- [Guidelines for Implementing the Indian Child Welfare Act](#) (U.S. Department of the Interior [DOI], BIA)
- [A Practical Guide to the Indian Child Welfare Act](#) (Native American Rights Fund)
- [Working With American Indian Children and Families](#) (Child Welfare Information Gateway) [webpage]
- [CBC for Tribes](#) [webpage]
- CapLEARN (Child Welfare Capacity Building Collaborative) [free registration required]:
  - ["Indian Child Welfare Act"](#) (CBC for Courts) [online course]
  - ["State-Tribal Partnerships: Coaching to ICWA Compliance"](#) (CBC for States) [online course]

- [Indian Child Welfare Act \(ICWA\)](#) (DOI, BIA) [webpage]
- [NICWA](#) [webpage]
- [Détente and Decorum for Child Welfare Leaders: Strategic Teaming and Engagement With Tribes and Native American Communities](#) (Tribal STAR)

If you are working with judges or other court personnel who may require additional information about applying ICWA in court settings, you can refer them to the [Indian Child Welfare Act Judicial Benchbook](#), which was developed by the National Council of Juvenile and Family Court Judges.

## CONCLUSION

ICWA's enactment in 1978 was a significant moment in child welfare history, but the mere presence of a law is not enough to protect and support children and families. It is critical for child welfare professionals to know how to apply the law, recognize the events that preceded it, and appreciate the importance of culturally competent practice with AI/AN children and families. Additionally, collaboration between Tribal and State child welfare systems can promote improvements in child welfare practice as well as child, family, and community outcomes (Lidot et al., 2017). This factsheet touches briefly on these concepts, but now it is up to you to further explore and reflect on these issues in order to improve your practice and ensure the protection and continuity of AI/AN children, families, and Tribes.

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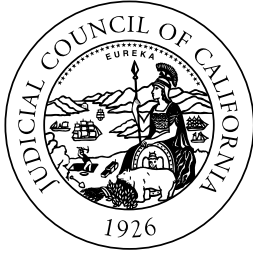
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# JUDICIAL COUNCIL OF CALIFORNIA

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OPERATIONS AND PROGRAMS DIVISION  
CENTER FOR FAMILIES, CHILDREN & THE COURTS

## **Why Is Notice Under The Indian Child Welfare Act (ICWA) So Hard To Get Right?<sup>1</sup>**

### **Introduction**

More Indian Child Welfare Act (ICWA) cases are overturned for failure to give proper notice than for any other cause. Given that ICWA has been around since 1978, why is this still such a problem?

The answer is that finding out where to send notice is much more complicated than many people realize. This is particularly true in California. California has more than 100 federally recognized Indian tribes, as well as unrecognized tribes, and more individuals with Indian ancestry than any other state in the nation. Many of these individuals trace their Indian ancestry to tribes outside of California; for an individual who does trace his or her ancestry to a historical California Indian tribe, finding out whether he or she is “a member or eligible for membership” in a federally recognized tribe, and if so which tribe, can be very difficult.

### **Historical Conditions and Policies in California**

There are many historical conditions and policies that make the application of ICWA in California very complicated and very difficult. These include:

- Comprehensive treaties with California Indians were never implemented the way they were in many other areas of the United States.
- In 1851 and 1852, representatives of the United States entered into 18 treaties with tribes throughout California that would have provided for more than 7.5 million acres of reserve land for the tribes’ use. These treaties were rejected by the U.S. Senate in secret session. The affected tribes were given no notice of the rejection for more than 50 years, and the promised reserve lands were never provided.
- Early California Indian law and policy provided that:

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<sup>1</sup> Prepared by the Tribal/State Programs Unit, Center for Families, Children & the Courts, Judicial Council of California. Updated March, 2019

- A justice of the peace had the legal authority to remove Indians from lands in a white person's possession;
  - Any Indian could be declared vagrant (upon word of a white person) and thrown into jail, and his or her labor could be sold at auction for up to four months, with no pay (called "indenture" but, in effect, slavery);
  - Indian children could be kidnapped, sold, and used as indentured labor, which was effectively slavery;
  - Any Indian could be put into indentured servitude (one report mentioned 110 servants who ranged from ages 2 to 50, 49 of whom were between 7 and 12 years old); and
  - Government-sponsored militias organized against Indian tribes were allowed.<sup>2</sup>
- As a result, of these policies as well as disease brought by settlers, between 1840 and 1870, California's Indian population plummeted from an estimated 300,000 to an estimated 12,000.
  - Those who survived scattered into small groups and hid themselves and their identity because it was too dangerous to remain as a group and be identified as Indian.
  - No land base was set aside for most Indians in California.
  - Few California tribes have substantial "reservations."
  - Instead of substantial reserve lands for California's Indian population, in the early 1900s, small plots of land were set aside for "homeless California Indians."
  - When the federal government did recognize tribes, it tended to identify tribes not by their historical identity, but in terms of the locality in which lands were set aside for them.
  - Then, during the "termination period," in the 1950s and 1960s, the federal government "terminated" more than 40 California tribes; they were no longer recognized as Indians or tribes.
  - Also, during this same timeframe (ie. the 1960's), the federal government relocated 60,000–70,000 Indians from other parts of the country to California, mainly to the Los Angeles and San Francisco Bay areas.
  - Since the 1970s, many terminated tribes have been restored through litigation and legislation.<sup>3</sup>

This history makes compliance with ICWA requirements in California very complicated and difficult. ICWA requires that when a child is a "member of or eligible for membership in and the biological child of a member of" a federally recognized tribe, notice of most involuntary child custody proceedings must be sent to that tribe. Notice must be sent to the tribal chairman unless the tribe has designated another agent for service of ICWA notice. The Department of Interior is charged with maintaining and publishing a list of "Agents for Service of ICWA Notice" in the federal register. The list

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<sup>2</sup> For more information on early California Laws and Policies relating to Indians, please see Johnston-Dodds, Kimberly, [Early California Laws and Policies Related to California Indians](#) (California Research Bureau, Sacramento, CA, 2002). See also [California Indian History Primary Sources and Information 1846-1879](#).

<sup>3</sup> For further information on Termination, Restoration and Federal Acknowledgement of Unrecognized California Tribes, please see the Final Report of the Advisory Council on California Indian Policy, 1997.



was last published on [May 9, 2019](#)<sup>4</sup>. The Bureau of Indian Affairs (BIA) Regional Office in Sacramento acknowledges that the information in the federal register list is often out of date as soon as it is published.

Further, in California, because of the historical events described above, the way people with Indian ancestry identify themselves may not be consistent with the way in which tribes are identified by the federal government.<sup>5</sup>

This is a map of historic California tribal territories:



<sup>4</sup> As of May, 2019. That list can be accessed [here](#).

<sup>5</sup> To a greater or a lesser extent, the same is also true of many tribes throughout the United States.

This is a map showing names and locations of federally recognized tribes in California:



As the reader can see when comparing these two maps, many of the names by which the federal government currently recognizes tribes bear no relationship to historical tribal identifications.

A similar situation is true, in differing degrees, for many tribes across the United States.

### **Sorting Through Tribal Lists**

At the time of writing, the most recent BIA list of federally recognized Indian tribes was published on February 1, 2019, and can be found [here](#).

This is an alphabetical list of federally recognized tribes throughout the country and contains no contact information.

At the time of writing, the most recent BIA list of Agents for Service of ICWA Notice was published in May 9, 2019 can be found [here](#).

This lists the tribes, alphabetically, by BIA region (most California tribes are in the Pacific Region).

If an individual is an enrolled member<sup>6</sup> of a federally recognized tribe, he or she will likely be able to tell you the name of the tribe as it is identified in the federal register. Many people who identify as California Indians, however, may not be able to tell you the name of their tribe as it appears in the federal register. They may instead identify their tribe by its historic tribal name, for instance Pomo or Cahuilla. If someone states they have Pomo ancestry, it will not be possible to go to the federal register list of Agents for Service of ICWA Notice and look under “P” to find Pomo tribes. There are more than 20 federally recognized tribes whose members trace their ancestry to the historic “Pomo” tribe. Not a single one of these tribes’ federally recognized tribal names begins with the word “Pomo.” Only six of these tribes even have the word “Pomo” in their federally recognized tribal name.

Similarly, if someone states that he or she has Cahuilla ancestry, it is not possible to look up Cahuilla in the federal register and be certain you have found his or her tribe. Although there is a federally recognized tribe named “Cahuilla,” it does not include all people of Cahuilla ancestry. There are nine federally recognized tribes whose members trace their ancestry to the historic Cahuilla nation. Of those, the federally recognized tribal name of only one (the Cahuilla Band of Mission Indians) begins with the word Cahuilla. Only three have the word Cahuilla in their federally recognized tribal name.

To further complicate matters, several tribes have traditional territories and reservation land bases that straddle the California border. For instance, the Colorado River Indian Tribes (“CRIT”) are recognized by the federal government as a single federally recognized tribe. CRIT is, however, composed of descendants of four distinct historic tribes—the Mohave, Chemehuevi, Hopi, and Navajo—who had land set aside in common

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<sup>6</sup> Caution: Not all tribes require “enrollment” for membership. In many cases simple descent from an individual on a base roll or early member of the tribe may be enough for membership.

for them by the federal government in 1865. The reserve straddles the California/Arizona border, with a substantial portion of the reservation lying within San Bernardino County. Nevertheless, because the primary community and tribal offices are located in Arizona, the Colorado River Indian Tribes are not even listed as a “California” tribe in the federal register of Designated Agents for Service of ICWA Notice. Instead, they are listed under the Western Region of BIA, which includes Arizona. The same is true of the Chemehuevi Indian Tribe, the Fort Mojave Indian Tribe, and the Fort Yuma Tribe and perhaps others that also have reserve lands that straddle the California/Arizona border.

The federal Bureau of Indian Affairs has created a list of tribes by tribal affiliation. That list was last updated 11/28/2015. It is available here: [Indian Child Welfare Act; Designated Tribal Agents for Service of Notice](#)

### **Why Don’t People Claiming Native American Ancestry Know Whether They Are a Member of a Federally Recognized Tribe or, If So, to Which Tribe They Belong?**

State and local agency personnel are sometimes frustrated that people with Indian ancestry may have very little information about their potential links to federally recognized tribes. Similarly, sometimes there is frustration that, when notice is sent to tribes, the tribes sometimes take a very long time to determine whether particular individuals are members or eligible for membership in their tribes.

Many of the historical factors discussed above contribute to the problem that people of Indian ancestry are sometimes disconnected from their tribal communities and do not know whether they are members of or eligible for membership in a federally recognized tribe. As discussed in the previous section, not all the historic California tribes currently have status as “federally recognized tribes.” Reservations were not set aside for all the tribes in California, even the tribes that signed the eighteen 1851–1852 unratified treaties. The idea of a comprehensive “list” of federally recognized tribes is quite recent; one was first published in 1979. The “list” was primarily based on those groups for which the federal government held lands in trust, and thus left out many individuals and families that descend from historic California tribes and identify as Indian even though they might not be eligible for membership in a federally recognized tribe. These people’s status as “Indian” has in many ways been confirmed by federal laws and policies. Federal legislation still contains a unique definition of California Indian that more people than just members of federally recognized tribes and that recognizes this broader category as eligible for health and education services from the BIA. This definition, from 25 U.S.C.A. § 1679, is given below:

#### **(b) Eligible Indians**

Until such time as any subsequent law may otherwise provide, the following California Indians shall be eligible for health services provided by the Service:

- (1) Any member of a federally recognized Indian tribe.

(2) Any descendant of an Indian who was residing in California on June 1, 1852, but only if such descendant--

(A) is living in California,

(B) is a member of the Indian community served by a local program of the Service, and

(C) is regarded as an Indian by the community in which such descendant lives.

(3) Any Indian who holds trust interests in public domain, national forest, or Indian reservation allotments in California.

(4) Any Indian in California who is listed on the plans for distribution of the assets of California rancherias and reservations under the Act of August 18, 1958 (72 Stat. 619), and any descendant of such an Indian.<sup>7</sup>

Further, there may be close historical family connections between people who are currently members of federally recognized tribes and those who are not. An individual's ancestors may primarily identify with a group that is not currently federally recognized, but they may still be eligible for membership in one or more federally recognized tribes. This is why there is an obligation to "work with all of the tribes of which there is reason to know the child may be a member" to verify the child's status.<sup>8</sup> This allows each tribe to investigate and make a determination about the child's eligibility.

It is important to know that membership criteria vary from tribe to tribe and may change over time. Membership criteria for many California tribes is based on descent from a "base roll" that in many cases was established by the BIA and does not necessarily reflect any historic practice of the tribe. Following are several examples of membership criteria for several California tribes<sup>9</sup>:

Example 1:

(a) The membership of the XXXXXXXXXXXX Band of Mission Indians shall consist of all persons whose names appear on the last official per capita payroll of June 1954, and children born to such members as issue of a legal marriage, provided such children shall possess at least 1/8 degree of Indian blood.

(b) No new members may be adopted.

Example 2:

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<sup>7</sup> 25 U.S.C.A. § 1679

<sup>8</sup> California Welf & Inst. Code § 224.2(g)

<sup>9</sup> These examples are taken from tribal constitutions found online at the National Indian Law Library's [Tribal Law Gateway](#). We have removed the names of the tribes because we do not know whether the membership criteria are still current.

SECTION 1. The membership of the xxxxxxxx Band of Pomo Indians shall consist of-

(a) All persons of Indian blood whose names appear on the official census rolls of the band as of April 1, 1935;

(b) All children born to any member of the band who is a resident of the rancheria at the time of the birth of said children.

SEC. 2. The general community council shall have the power to promulgate ordinances, subject to review by the Secretary of the Interior, covering future membership and the adoption of new members, when the resources of the band make such adoptions feasible.

An individual may know that his or her ancestors identified as Cahuilla but may not know whether any such ancestors' names appeared on a "per capita payroll of June 1954." An individual may not know whether he or she or his or her children possess 1/8 degree Indian blood without completing a family tree (as required by the ICWA-030 form). An individual may know that his or her ancestors identify as Pomo but not know whether any of their names appear on a census roll from April 1, 1935. They may not know whether a particular ancestor was a "resident of the rancheria" at the time of the birth of their children. Similarly, a tribe may not be able immediately to determine whether a particular individual is a member of or eligible for membership in a given tribe without conducting extensive family background research, going back several generations or often beyond. This is why tribes require the detailed information required in the ICWA-030 form. This is why it is critical that this information be complete and accurate. Even with this information, it may take some time for a tribe to be able to check this historical information and decide about tribal membership.