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Taking the Children to Take the Land

Indian Child Welfare and the Enduring Epidemic of Family Separation

AMY CASSELMAN-HONTALAS

At the height of public outrage over the Trump administration's forced separation of children from their parents at the US-Mexico border, the rallying cry of "This is not who we are!" was echoed by television pundits, plastered on social media, and paraded through streets in protest. As a caseworker for a federally recognized tribe and an adjunct professor of American Indian history and law, I was baffled by such a statement.

The United States was founded on American Indian genocide and the enslavement of Africans, both of which were structured by the logic of family annihilation. In the case of Indigenous people, the survival of Native families was problematic for a country that, by definition, can only exist through the consumption of Native resources. Due to Native people's preexisting right to land, they were viewed by the United States as a "problem" to be "solved." And, because resources are passed down generationally, "solving" the "problem" that is a People resulted in centuries of physical and cultural genocide that targeted Native families. Policies designed to destroy Native communities in service of appropriating their land focused on children, under the logic that disappearing the youngest generation was the most direct route to disappearing all future generations. Historically, this included state-sponsored infanticide, the incarceration of Native children in government-run boarding schools, and the transfer of Native children to white foster and adoptive families. Placing children in non-Native settings was designed to sever the bonds between children, their parents, and their communities in order to disrupt intergenerational transfers of resources and reduce the number of

people who could assert claims over the lands and resources that the United States desired.

Further, maintaining physical custody of Native children gave the United States leverage to coerce Native parents into behavior that benefited the settler state, including relocating Native people to smaller parcels of land. Thus, the welfare of Indian children has always been enmeshed with the welfare of Indian nations, including the wealth associated with their land. From contact to present, government-sponsored family separation has contributed to the cumulative loss of approximately 98.9 percent of Native land in the United States, leaving approximately 42.1 percent of Native nations without any land base at all (Farrell et al. 2021). Because Indigenous economies were rooted in their land, catastrophic land loss meant an unfathomable loss of wealth. All Native communities were profoundly affected, and many were driven into severe poverty.

As has always been the case, Native people continue to resist and rebuild in the face of centuries of genocide. Native communities are incredibly diverse, and many individuals and nations are economically thriving. That said, when taken as a whole, Native people are the most impoverished demographic in the United States vis-à-vis their non-Native peers. While this is the case in both rural and urban settings, many reservation communities are especially impoverished, some with poverty and unemployment rates that exceed 50 percent (Bear Runner 2019; Shrider and Creamer 2023).

When we consider that poverty and unemployment did not exist before the arrival of Europeans, it is impossible to ignore the causal relationship between colonization and Indigenous poverty. Because mainstream child welfare literature does not typically focus on the state's role in creating poverty, it often overlooks the complex historical relationships between the government and the governed. Scholarly literature (see, for example, Soss, Fording, and Schram 2011) frequently uses the 1996 Personal Responsibility and Work Opportunity Reconciliation Act, often referred to as “welfare reform,” as a temporal marker to discuss the neoliberalization of welfare, which—among other things—increased state surveillance of recipients, heightened punitive measures for noncompliance, and implemented policies designed to shape the behavior of poor parents. While the 1996 reforms certainly impacted poor

Native families, a more comprehensive examination reveals that the most relevant temporal marker in Indian child welfare is the formation of the United States itself. In other words, Native children and families have endured state surveillance, punitive measures for noncompliance, and the use of Native children to shape the behavior of their parents for as long as the United States has existed as a country.

Pushing the boundaries of traditional scholarship on child welfare by placing it in a historical context is essential if we are to create a more comprehensive body of research on US poverty governance, or ways the state manages and disciplines poor populations (Soss, Fording, and Schram 2011), particularly as it relates to historically marginalized groups. For example, (re)considering the state's role in creating Native poverty can shed light on similar but distinct cases of racialized poverty governance, such as the enslavement and exploitation of Black Americans and their descendants. Viewing contemporary state exploitation of Black and Native children as logical manifestations of an uninterrupted history reveals that public programs merely recirculate wealth by returning an infinitesimal sum to the very communities whose exploitation made funding these programs possible (see Roberts 2022). This is especially true for the large number of Black Americans in the United States who also have Native ancestry and thus experience the legacy of both enslavement and colonization. Viewing poverty governance as an ongoing, historical process better equips us to develop strategies to address family poverty. Contemporary literature frequently suggests the augmentation or implementation of social programs to assist the economically marginalized. While such programs would probably benefit many families of color on a surface level, failing to address the root cause severely limits their efficacy. This is particularly true for Native people who, prior to European contact, had cared for their families on the land that would become the United States. Thus, any initiative that does not consider colonization and tribal sovereignty is incomplete. Assistive programs implemented by colonial structures that are designed to "help" Native people overlook the fact that Native communities are perfectly capable of taking care of themselves. Instead, what is needed is the reclamation of the tools necessary for self-sufficiency. While I discuss this issue at length in the conclusion, a crucial first step would be for the United States to simply fulfill its constitutional obligations to Native people.

This chapter theorizes US poverty governance as a tool of settler colonialism by illustrating how historical constructions of Native people translate into contemporary child welfare policies. First, I offer context by discussing the unique space that Native children, families, and communities occupy in the contemporary welfare state. Second, I submit a historical analysis, detailing how child separation has been used to control Native people and, by extension, their land. In doing so, I illustrate the unique ways that colonial exploitation and punitive poverty governance have been woven throughout the fabric of American Indian history by way of Indian child welfare. As my historical analysis transitions into the present day, I demonstrate how the modern Indian child welfare system parallels the function, form, and outcome of policies established in previous centuries. Using South Dakota as a case study, I show how the contemporary child welfare industrial complex is designed to profit from the bodies of Native children in ways that are remarkably similar to previous eras. As in the past, this case study demonstrates that child removal is characterized by an aversion to Native culture, a lack of cultural competency, the failure to fulfill legal obligations to Indian nations, the erroneous conflation between poverty and abuse, and the false assumption that placing Indian children in white settings is in their best interest. While these justifications are part of a remarkably consistent state attitude toward Native people, the case study indicates that the removal of Native children by the state is exacerbated by the contemporary neoliberalization of child welfare in an increasingly privatized environment. Next, I examine the landmark 2023 US Supreme Court decision in *Haaaland v. Brackeen*. My analysis exposes how a civil suit ostensibly about Indian child welfare was ultimately about the appropriation of Native land. In doing so, I illustrate how controlling Native children perpetuates the colonization of Native people, forcing us to confront the ways in which neoliberalism intersects with neocolonialism. Finally, I comment on the future of Indian child welfare by discussing Native-led strategies to end genocide-by-separation.

Indian Children in the Child Welfare Landscape

While it is vital for scholarly research to study how child welfare is structured by race, gender, and class, the integration of Native children

into existing frameworks is often problematic because it generally fails to consider settler colonialism. Like all people of color, phenotypically Native people experience racism under white supremacy. However, as the only (legally recognized) Indigenous group in the United States, Native people have a unique relationship to the land and, consequently, a radically different relationship to the federal government. As a result, there is an entire body of law that governs Native people, which includes policies that apply to Indian children only, thus differentiating them from all non-Native children (Pevar 2012).¹ Despite these differences and distinctions, child welfare literature tends to collapse Native children into analyses that theorize children of color broadly.

The unique body of law that governs Native people primarily flows from the hundreds of treaties signed between the United States and Native nations. Federal Indian policy generally only applies to “federally recognized tribes,” of which there are currently 574 (US Department of the Interior, Bureau of Indian Affairs, n.d.).² Under current law, federally recognized tribes are semiautonomous nations that may exercise all rights of self-governance other than those that have been specifically extinguished by Congress. Like all sovereign nations, one of the most important rights that all federally recognized tribes exercise is the ability to self-determine criteria for citizenship. While citizenship requirements are different for each tribe, each has some sort of descendant criteria. This typically means that a prospective tribal citizen must prove that they are a descendant of someone listed on a tribal census. Congress and the US Supreme Court have consistently held that tribal citizenship is a political designation, not a racial one (Pevar 2012).

The primacy of race as a definitional category in the United States, coupled with an inadequate understanding of American Indian history, makes the race/citizenship distinction exceedingly difficult for many Americans to grasp. Like all racial categories, “Indian” is socially constructed and reductive, homogenizing a diverse group of people on the basis of meanings assigned to phenotype and perceived group identity. Yet “Indian” is also a legal term used by the federal government whose definition is based on political membership (i.e., tribal citizenship) independent of race. Thus, any discussion of Indian child welfare is complex because it requires us to consider both children who are phenotypically Native and children who appear racially non-Native but are nevertheless

“Indian” under the law. This speaks to the racialization of child welfare, as state actors frequently operate on essentialized notions of race, making it difficult for many to understand that a child who is phenotypically white or Black can also be American Indian (Brown 2020). Understanding this distinction is crucial for state social workers because federal law significantly limits state jurisdiction over Indian child welfare cases. This has been the case since the passage of the Indian Child Welfare Act (ICWA) in 1978, a law designed to reduce the staggering number of Native children who were being taken from their parents and placed in white settings. While congressional support for the Act relied heavily on child welfare statistics from the 1960s and 1970s, the Native architects of ICWA designed the law to account for a larger colonial history (Echo-Hawk 2010). The following section offers a brief description of this history, illustrating how the US settler state has created and governed poverty among Native families since its inception.

Taking the Children to Take the Land: A Brief History of Indian Child Welfare

In May 2021, ground-penetrating radar revealed the mass grave of 215 Native children who perished in one of Canada’s 139 residential schools (BBC News 2021). For those who followed the story, it was a point of entry for many Americans who were previously unaware that beginning in 1819, the United States developed a vast network of more than four hundred boarding schools, which, at times, imprisoned nearly 83 percent of all school-age Native children. Predating the Canadian system and exceeding it in scope, American Indian boarding schools were designed with the express purpose to “kill the Indian, save the man” (Adams 1995; Echo-Hawk 2010; Newland 2022).

Symbolic murder in the form of using schools to kill the Indian (child) to “save the man” came on the heels of decades of warfare that used the logic of infanticide to acquire Native resources. For example, during the 1813–14 Creek War, which led to the loss of twenty-three million acres of Native land, the future US president Andrew Jackson instructed his troops to kill Native children to “complete the extermination” (Toensing 2018). Similarly, in an 1864 effort to protect white settlers invading