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The Long History of Native American Adoptions

The Supreme Court will decide a case that affects Native children and their adoptive families. Although both sides claim to have children's best interest at heart, removing kids from Native communities has a troubled history in America.

By [Elizabeth Hidalgo Reese](#) Published: Nov 30, 2022

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In October 2017, a group of non-Native families, along with the states of Texas, Louisiana, and Indiana, filed a lawsuit in a Texas federal district court. Their claim: A law called the Indian Child Welfare Act (ICWA) is unconstitutional, because it tramples on the States' rights and racially discriminates against both the non-Native families and the Native children they are trying to adopt. The case made its way through the federal court system until, on November 9, 2022, the United States Supreme Court spent four hours debating the fate of ICWA in the case, now called *Haaland v. Brackeen*.

The families claim that this law is nothing more than a racial preference that goes against what's in the best interest of these Native children. But this law, and the policies that gave rise to it, were never about race. Since a 1974 case called *Morton v. Mancari*, the Supreme Court has recognized that laws targeting members of Native American tribes are racially discriminatory, they are about the political identity that is tied to tribal sovereignty. As such, the government is given more leeway to pass laws that treat tribal members differently. That is why tribal members can live on federal lands reserved for their tribes, why they receive federal health care meant to fulfill treaty promises, and why tribes can have separate governments at all. None of this is a special right given to a racial group. It is fulfilling the United States' promises to tribal nations.

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Nations are complex, living, breathing entities. But they need one thing for sure to exist: people.

There are 574 tribal nations within the United States. These are the successors to the precolonial independent nations that once ruled the territory that is now the United States and have become "domestic dependent nations," as the Supreme Court first described them back in 1831. Native American tribes are an inspiring testament to what it means for people to love their countries so much, they ensured their survival, no matter the odds. Tribes survived not only violent conquest, but long and brutal periods of colonial rule during which the United States made it federal policy to try to dismantle tribal lands, borders, culture, and political identity.

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It is no accident that many of these efforts to dismantle tribes targeted tribal children. Nations are not just their governments, they are societies, made up of the food, the language, the songs, the traditions, and the politics. It is all these things and more. Nations are complex, living, breathing entities. But they need one thing for sure to exist: people. Citizens. The United States figured out a long time ago that it is impossible for a tribal nation to survive without its next generation.

In the late 1800s, in what we call the “assimilationist era” of federal policy toward Native nations, the United States took Native children away from their families and put them in government-run boarding schools aimed at erasing their tribal identities and ties to their communities. As Brigadier General Richard Henry Pratt, the architect of these schools described it, these schools were always acts of political violence. In the famous speech where he described the school policy to “kill the Indian in him, and save the man,” he also said, “Transfer the savage-born infant to the surroundings of civilization, and he will grow to possess a civilized language and habit. ... [Even older children] lose the already acquired qualities belonging to the side of their birth, and gradually take on those of the side to which they have been transferred. ... The [Indian boarding] school at Carlisle is an attempt on the part of the government to do this. Carlisle has always planted treason to the tribe and loyalty to the nation at large. ... Carlisle fills young Indians with the spirit of loyalty to the stars and stripes.”

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Indian boarding schools are a particularly horrific chapter of American history. But it was not the last time the United States encouraged the assimilation of Native children. In the 1950s, during the next anti-tribal era that is known as the “termination era” for the federal policy of explicitly terminating the political rights and identities of Indian tribes, the federal government again promoted taking Native kids away from their families. With the help of churches and adoption agencies, the federal government, in what is known as the Indian Adoption Project, encouraged the removal of Native children from their families and then their adoption by non-Native families. According to a 1976 report by the Association on American Indian Affairs, between 1941 and 1967, as many as one in three Native children were taken from their families. A 1976 report to Congress described these processes—which were not always ill intended—as follows, “Within these systems, two levels of abuse can and do occur. In the initial determination of parental neglect the conceptual basis for removing a child from the custody of his/her parents is widely discretionary and the evaluation process involves the imposition of cultural and familial values which are often opposed to values held by the Indian family. Second, assuming that there is a real need to remove the child from its natural parents, children are all too frequently placed in non-Indian homes, thereby depriving the child of his or her tribal and cultural heritage.”

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Following this report, and a brutal hearing documenting the devastation that these adoptions had caused to parents, children, and tribal communities, the United States realized the harm it was causing Native people. In 1978, Congress passed the Indian Child Welfare Act (ICWA), a law designed to prevent history from repeating itself.

The law protects Native families and the integrity of Native nations in multiple ways. Tribes are notified whenever one of their children is being put up for adoption and are given the right to intervene or transfer these cases in tribal court. There are also safeguards designed to prevent cultural bias and socioeconomic disparities from stacking the deck against Native families. State or private adoption agencies are required to take “active efforts”—in other words, to go above and beyond the traditional standard of “reasonable efforts”—to help get families help before giving up on family reunification. Whether they are struggling with the cycles of abuse, poverty, or addiction, which are so tragically intertwined with the trauma of colonized peoples, tribal parents are supposed to get help before the system gives up on them. And when tribal children are placed up for adoption, ICWA creates a set of family placement preferences. These preferences favor keeping the child with their extended family, a family that is also a member the child’s tribe, or a Native family enrolled in any tribe, before placing the child with a non-Indian family. Families without familial ties to the children or tribal identities say this set of preferences discriminates against them on the basis of race.

Native American may be a racial group, but the Native American tribes are a people, or more correctly, 574 different peoples. Just like the American people, the French people, or the Brazilian people, the Cherokee Nation people, the Navajo people, or the Standing Rock Sioux people are multiracial groups of citizens committed to their nations.

It is very hard for one nation to exist inside of another.

Nobody doubts that there is racial discrimination against Native people. But that is not what ICWA is. The law does not apply to all Native people; it applies only to tribal citizens and their children who are eligible for tribal citizenship.

I don’t doubt that the non-Native families in this case have good intentions, that they believe they are fighting for what is best for these children. But unfortunately, the road to Native genocide has often been paved with good intentions and the belief that non-Natives know better than Native people do about what’s best for them. And Native people, indeed, disagree; 497 of the 574 federally recognized Indian tribes signed on to a brief supporting ICWA. They are joined by countless child welfare, child psychology, and medical experts who all say laws like ICWA are what is in the best interests of these children. Perhaps most telling is the brief submitted by Native people who were placed in non-Native foster care or adoptions, and who wrote about the damage, grief, and loss they experienced as a result.

It is very hard for one nation to exist inside of another. Even without direct efforts to force tribal citizens to assimilate into broader American society, the pressures to conform to American cultural, economic, and political ways of life are strong. Yet, Native tribes have survived by protecting their distinct identities as something that is closely held, loved, nurtured, and protected. It is because of this failure of American ways of life catching on within Indian

reservations that policies taking children away from them were concocted. As General Pratt said, “We make our greatest mistake in feeding our civilization to the Indians instead of feeding the Indians to our civilization.”

To one side, this case is about the right of every American—no matter who they are—to adopt and raise Native children. To the other side, it is about survival, and the right of Native children to grow up as just that: *Native children*. The choice to “[sever their] tribal relation to the Indian tribes, and fully and completely [surrender themselves] to the jurisdiction of the United States” should never be made on behalf of anyone else, least of all children.

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