LIIII. VENTURA COUNTY

In Ventura County, according to statistics from the California Department of Health, there was one Indian child in a State-administered foster family home in 1974.\(^1\) There are 278 Indian children under twenty-one years old in Ventura County.\(^1\) Thus, one out of 278 Indian children is in a foster family home.

Conclusion

In Ventura County Indian children are in State-administered foster family homes at a per capita rate 1.6 times (160 percent) the State-wide rate for non-Indians in California.

LIV. YOLO COUNTY

In Yolo County, according to statistics from the California Department of Health, there was one Indian Child in a State-administered foster family home in 1974.\(^1\) There are 213 Indian children under twenty-one years old in Yolo County.\(^1\) Thus, one out of 213 Indian children is in a family foster home.

Conclusion

In Yolo County Indian children are in State-administered foster family homes at a per capita rate 1.6 times (160 percent) the State-wide rate for non-Indians in California.

LV. YUBA COUNTY

In Yuba County, according to statistics from the California Department of Health, there were 213 Indian children under twenty-one years old in Yuba County.\(^1\) Thus, one out of 213 Indian children is in a foster family home.

LVI-LVIII. COLUSA, MARIPOSA AND TRINITY COUNTIES

The California Department of Health was unable to supply any foster care data for Colusa, Mariposa and Trinity counties.\(^1\) There are 278 Indian children under twenty-one years old in these three counties.\(^1\)

\(^{1}\) AAIA Questionnaire, op. cit.
\(^{2}\) Race of the Population by County: op. cit. 1970: 6, 7.
Indian children are removed from their families at rates far exceeding those for non-Indian children. The above figures are based only on the statistics of the Idaho Department of Health and Welfare and do not include private agency placements. They are therefore minimum figures.

**IDaho APPENDIX**

**County-by-County Analysis of Idaho Foster Care Statistics**

**I. BENEWAH, BONNER, BOUNDARY, KOOTENAI AND SHOSHONE COUNTIES**

In Benewah, Bonner, Boundary, Kootenai and Shoshone counties, according to statistics from the Idaho Department of Health and Welfare, there were 85 Indian children in State-administered foster care in Fiscal Year 1976. There are 446 Indian children under twenty-one years old in these five counties. Thus one in every 13.3 Indian children is in foster care.

**Conclusion**

In Benewah, Bonner, Boundary, Kootenai and Shoshone counties Indian children are in State-administered foster care at a per capita rate 6.1 times (610 percent) greater than the State-wide rate for non-Indians in Idaho.

**II. CLEARWATER, IDAHO, LATAH, LEWIS AND NEZ PERCE COUNTIES**

In Clearwater, Idaho, Latah, Lewis and Nez Perce counties, according to statistics from the Idaho Department of Health and Welfare, there were 62 Indian children in State-administered foster care in Fiscal Year 1976. There are 827 Indian children under twenty-one years old in these five counties. Thus one in every 13.3 Indian children is in foster care.

**Conclusion**

In Clearwater, Idaho, Latah, Lewis and Nez Perce counties Indian children are in State-administered foster care at a per capita rate 6.2 times (620 percent) greater than the State-wide rate for non-Indians in Idaho.

**III. ADAMS, CANYON, GEM, OWYHEE, PAYETTE AND WASHINGTON COUNTIES**

In Adams County, Canyon, Gem, Owyhee, Payette and Washington counties, according to statistics from the Idaho Department of Health and Welfare, there were 20 Indian children in State-administered foster care in Fiscal Year 1976. There are 285 Indian children under twenty-one years old in these six counties. Thus one in every 14.9 Indian children is in foster care.

**Conclusion**

In Adams, Canyon, Gem, Owyhee, Payette and Washington counties Indian children are in State-administered foster care at a per capita rate 5.6 times (560 percent) greater than the State-wide rate for non-Indians in Idaho.

**IV. ADA, BOISE, ELMORE AND VALLEY COUNTIES**

In Ada, Boise, Elmore and Valley counties, according to statistics from the Idaho Department of Health and Welfare, there were 17 Indian children in State-administered foster care in Fiscal Year 1976. There are 243 Indian children under twenty-one years old in these four counties. Thus one in every 14.3 Indian children is in foster care.

**Conclusion**

In Ada, Boise, Elmore and Valley counties Indian children are in State-administered foster care at a per capita rate 5.8 times (550 percent) greater than the State-wide rate for non-Indians in Idaho.

**V. BLAINE, CAMAS, CASSEL, GOODING, JEROME, LINCOLN, MINIDOKA, AND TWIN FALLS COUNTIES**

In Blaine, Camas, Cassia, Gooding, Jerome, Lincoln, Minidoka and Twin Falls counties, according to statistics from the Idaho Department of Health and Welfare, there were 19 Indian children in State-administered foster care in Fiscal Year 1976. There are 236 Indian children under twenty-one years old in these eight counties. Thus one in every 12.4 Indian children is in foster care.

**Conclusion**

In Blaine, Camas, Cassia, Gooding, Jerome, Lincoln, Minidoka and Twin Falls counties Indian children are in State-administered foster care at a per capita rate 6.7 times (670 percent) greater than the State-wide rate for non-Indians in Idaho.

**VI. BONNEVILLE, BINGHAM, CARIBOU, FRANKLIN, ONEIDA, AND POWERS COUNTIES**

In Bonneville, Bear Lake, Bingham, Caribou, Franklin, Oneida, and Power counties, according to statistics from the Idaho Department of Health and Welfare, there were 128 Indian children in State-administered foster care in Fiscal Year 1976. There are 1,647 Indian children under twenty-one years old in these seven counties. Thus one in every 12.9 Indian children is in foster care.

**Conclusion**

In Bonneville, Bear Lake, Bingham, Caribou, Franklin, Oneida and Power counties Indian children are in State-administered foster care at a per capita rate 6.4 times (640 percent) greater than the State-wide rate for non-Indians in Idaho.

**VII. BONNEVILLE, BUTTE, CLARK, CUSTER, FREMONT, JEFFERSON, LEWISH, MADISON AND TETON COUNTIES**

In Bonneville, Butte, Clark, Custer, Fremont, Jefferson, Lemhi, Madison and Teton counties, according to statistics from the Idaho Department of Health and Welfare, there were 17 Indian children in State-administered foster care in Fiscal Year 1976. There are 355 Indian children under twenty-one years old in these nine counties. Thus one in every 21.7 Indian children is in foster care.

**Conclusion**

In Bonneville, Butte, Clark, Custer, Fremont, Jefferson, Lemhi, Madison and Teton counties Indian children are in State-administered foster care at a per capita rate 4.2 times (420 percent) greater than the State-wide rate for non-Indians in Idaho.

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2 The total Indian population of Benewah, Bonner, Boundary, Kootenai and Shoshone counties is 729 (U.S. Bureau of the Census, Census of Population: 1970 Supplementary Report PC(81)-104, "Race of the Population by County: 1970" (U.S. Government Printing Office: Washington, D.C. 1975), pp. 12-18.) Assuming that the age breakdown of the Indian population of Benewah, Bonner, Boundary, Kootenai and Shoshone counties is similar to the State-wide age breakdown of the Indian population in Idaho, 0.3 percent are under twenty-one years old. (There are 3,808 under twenty-one year old American Indians in Idaho out of a total Indian population of 6,315. See footnote 2 to the Idaho statistics, and the U.S. Census Bureau references cited therein.) 735 times 503 equals 446 total Indian population under twenty-one years of age in these five counties. The same formula is used to determine the Indian under twenty-one year old population in the other Idaho counties.

3 Ms. Ruth Pefley, op. cit. These counties comprise Region II of the Idaho Department of Health and Welfare.

4 "Race of the Population by County," loc. cit.

5 Ms Ruth Pefley, op. cit. These counties comprise Region III of the Idaho Department of Health and Welfare.

6 "Race of the Population by County," loc. cit.

7 Ms. Ruth Pefley, op. cit. These counties comprise Region IV of the Idaho Department of Health and Welfare.

8 "Race of the Population by County," loc. cit.

9 Ms. Ruth Pefley, op. cit. These counties comprise Region V of the Idaho Department of Health and Welfare.

10 Ms. Ruth Pefley, op. cit.

11 Ms. Ruth Pefley, op. cit. These counties comprise Region VI of the Idaho Department of Health and Welfare.

12 Ms. Ruth Pefley, op. cit.

13 Ms. Ruth Pefley, op. cit. These counties comprise Region VII of the Idaho Department of Health and Welfare.

14 "Race of the Population by County," loc. cit.
MAINE INDIAN ADOPTION AND FOSTER CARE STATISTICS

Basic Facts

1. There are 396,110 under twenty-one year olds in Maine.
2. There are 1,084 under twenty-one-year-old American Indians in the State of Maine.
3. There are 395,026 non-Indians under twenty-one in Maine.

I. ADOPTION

In the State of Maine, according to the Maine Department of Human Services, there was an average of two public agency adoptions per year of Indian children during 1974-1975. This data base is too small to allow realistic projection of the total number of Indian children in adoptive care. We can say though that during 1974-1975 0.4 percent of Maine Indian children were placed for adoption.

During 1974-1975, according to the Maine Department of Human Services, an average of 1,057 non-Indian children were placed for adoption in Maine. Thus, during 1974-1975, 0.3 percent of Maine non-Indian children were placed for adoption.

Conclusions

Based on limited data, and not in including any private agency placements, Indian and non-Indian children are placed for adoption by public agencies at approximately similar rates.

II. FOSTER CARE

According to statistics from the Maine Department of Human Services, in 1975 there were 82 Indian children in foster homes. This represents one out of every 13.2 Indian children in the State. By comparison there were 1,508 non-Indian children in foster homes in 1975, representing one out of every 204 non-Indian children in the State.

Conclusion

By rate, therefore, Indian children are placed in foster homes 10.1 times (1,010%) more often than non-Indians in Maine. As of 1978, the last year for which a breakdown is available, 64 percent of the Indian children in foster care were in non-Indian homes.

III. COMBINED FOSTER CARE AND ADOPTIVE CARE

Since we are unable to estimate the total number of Indian children currently in adoptive care in Maine, it is not possible either to estimate the total number of Indian children receiving adoptive and foster care. The foster care statistics alone make it unmistakably clear that Indian children are removed from their families at rates far exceeding those for non-Indian children.

APPENDIX: HISTORICAL NOTE TO THE MAINE FOSTER CARE STATISTICS

I. 1969

In 1969, according to statistics from the Maine Department of Human Services, there were 82 Indian children in foster homes. This represented one out of every 15.2 Indian children in the State. By comparison, there were 2,099 non-Indian children in foster homes in 1969, representing one out of every 188.2 non-Indian children in the State.

Conclusion

In 1969, Indian children were placed in foster homes at a rate 14.3 times (1,480%) greater than that for non-Indians in the State of Maine.

II. 1972

In 1972, according to statistics from the Maine Department of Human Services, there were 136 Indian children in foster homes. This represented one out of every eight Indian children in the State. By comparison, there were 1,918 non-Indian children in foster homes in 1972, representing one out of every 206 non-Indian children in the State.

Conclusion

By rate, therefore, Indian children are in foster care at a per capita rate 25.8 times (2,380%) greater than that for non-Indians in the State of Maine.

III. 1972-AROOSTOOK COUNTY

Aroostook County (home of the Micmac and Malecite tribes accounted for more than half of the Indian foster care placements in 1972, in Aroostook County alone, according to statistics from the Maine Department of Human Services, there were 73 Indian children in foster care in 1972. This represented one out of every 3.3 Indian children in Aroostook county.

Conclusion

In Aroostook County in 1972 Indian children were placed in foster homes at a rate 62.4 times (6,240 percent) greater than the State-wide rate for non-Indians.

IV. 1973

In 1973, according to statistics from the Maine Department of Human Services, there were 104 Indian children in foster homes. This represented one out of every 10.4 Indian children in the State. By comparison, there were 1,961 non-Indian children in foster homes in 1973, representing one out of every 212.3 non-Indian children in the State.

Conclusion

In 1973, Indian children were placed in foster homes at a rate 204 times (2,040 percent) greater that for non-Indians in the State of Maine.

1 Telephone interviews with Ms. Freda Plumley, Substitute Care Consultant, Maine Department of Human Services, June 29-30, 1976. Letter from Ms. Plumley, July 13, 1976
2 Ibid.
3 Ibid.
4 Ibid. 1972 was the only year for which the Maine Department of Human Services was able to supply a county-by-county breakdown of Indian foster care placements.
5 The total Indian population of Aroostook County is 436. (U.S. Bureau of the Census, Census of Population: 1970 Supplementary Report PC(81)-104, "Race of the Population by County: 1970." U.S. Government Printing Office: Washington, D.C.: 1975), p. 22.) Assuming that the age breakdown of the Indian population of Aroostook County is similar to the state-wide age breakdown of the Indian population in Maine, 55.3 percent under twenty-five years old. (There are 1,084 under twenty-one-year-old American Indians in Maine out of a total Indian population of 1,961. See footnote 2 to the Maine statistics, and the U.S. Census Bureau references cited therein.) 436 times 55.3 percent equals 241 total Indian population under twenty-one years of age in Aroostook County.
6 Statistics from Ms. Freda Plumley, op. cit.
7 Ibid.
Note. The Maine Indian community undertook concerted action in 1972-73 concerning the massive numbers of Indian children being placed in foster care. The drop in foster care rates reflects the notable progress brought about by Maine Indian people. The current rates reflect how much still needs to be done.

In February 1973 the Maine Advisory Committee to the United States Commission on Civil Rights held hearings into the issue. Two of the recommendations included by the Maine Advisory Committee were:
1. That Maine's Department of Health and Welfare identify and secure Federal funds to upgrade potential Indian foster homes for Indian children, and that Maine's Department of Health and Welfare upgrade the homes which it built on the Passamaquoddy Reservation.
2. That the U.S. Commission on Civil Rights initiate a national Indian foster care project to determine if there is massive deculturization of Indian children.


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**Michigan Indian Adoption and Foster Care Statistics**

**Basic Facts**

1. There are 3,727,485 under twenty-one years old in the State of Michigan.
2. There are 7,404 under twenty-one year old American Indians in the State of Michigan.
3. There are 3,720,081 non-Indians under twenty-one in the State of Michigan.

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**Adoption**

In the State of Michigan, according to the Michigan Department of Social Services, and 12 private child placement agencies in Michigan, there were 92 Indian children placed in adoptive homes during 1973. Using State figures reported to the National Center for Social Statistics of the U.S. Department of Health, Education and Welfare, 63 percent (or 59) are under one year of age when placed. Another 20 percent (or 12) are one year to less than six years old when placed; 13 percent (or eight) are six years, but less than twelve when placed; and 4 percent (or three) are twelve years and over. Using the formula that: 39 Indian children per year are placed in adoption for at least 12 years, 12 Indian children are placed in adoption for 5 percent (or 12) are one year to less than six years old when placed. Another 20 percent (or eight) are six years, but less than twelve when placed; and 4 percent (or three) are twelve years and over. Using the formula that: 39 Indian children per year are placed in adoption for at least 12 years, 12 Indian children are placed in adoption for a minimum average of 12 years, eight Indian children are placed in adoption for an average of nine years, and three Indian children are placed in adoption for an average of three years; there are 912 Indian children under twenty-one years old in adoption at any one time in the State of Michigan. This represents one out of every 8.1 Indian children in the State.

There were 8,302 non-Indians under twenty-one years old placed in adoptive homes in Michigan in 1973. Using the same formula as above, there are 920,860 non-Indians in adoptive homes in Michigan, or one out of every 30.3 non-Indian children.

**Conclusion**

There are therefore by proportion 2.7 times (37 percent) as many Indian children as non-Indian children in adoption in Michigan.

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4. Letter from Bethany Christian Home, N.E. Grand Rapids (4 children); Catholic Social Services of the Diocese of Grand Rapids (11 children); Catholic Social Services, Pontiac (1 child); Child and Family Services of Michigan, Inc., Alpena (2 children); Brighton (5 children), Farmington (5 children), Fort Huron (2 children); Child and Family Services of the Upper Peninsula, Marquette (1 child); Family and Child Care Service, Traverse City (1 child); Clarence D. Fischer (1 child); Michigan Children's and Family Service, Traverse City (1 child); Regular Baptist Children's Home (2 children).
6. The median age at time of placement of children adopted by unrelated petitioners in 1974 in Michigan was 2.4 months. Ibid., p. 15.
II. FOSTER CARE

According to statistics from the Michigan Department of Social Services and seven private child placement agencies there were 82 Indian children in foster homes in 1973. This represents one out of every 90 Indian children in the State. By comparison there were 5,801 non-Indian children in foster homes, representing one out of every 601 non-Indian children in the State.

Conclusion

By rate therefore Indian children are placed in foster homes 7.1 times (710 percent) more often than non-Indian children in the State of Michigan.

III. COMBINED FOSTER CARE AND ADOPTIVE CARE

Using the above figures a total of 994 under twenty-one year old Indian children are either in foster homes or adoptive homes in the State of Michigan. This represents one out of every 7.4 Indian children. Similarly, for non-Indians in the State, 125,661 under twenty-one year olds are either in foster care or adoptive care, representing one in every 28.9 non-Indian children.

Conclusion

By rate therefore Indian children are removed from their homes and placed in adoptive care or foster care 3.8 times (380 percent) more often than non-Indian children in the State of Michigan.

1. There are 1,585,186 under twenty-one year olds in Minnesota.
2. There are 12,872 under twenty-one year old American Indians in Minnesota.
3. There are 1,572,514 non-Indians under twenty-one year old in Minnesota.

I. ADOPTION

In the State of Minnesota, according to the Minnesota Department of Public Welfare, there was an average of 2,08 under twenty-one year old American Indians adopted per year from 1964-1975. Using the State's own age-at-adoption figures reported to the National Center for Social Statistics of the U.S. Department of Health, Education and Welfare, we can estimate that 65 percent (or 67) are under one year of age when placed. Another 9 percent (or nine) are one year to less than two years old when placed; 15 percent (or 15) are two years, but less than six years old when placed; 10 percent (or ten) are six years, but less than twelve when placed; and 2 percent (or two) are twelve years and over. Using the formula then that: 67 Indian children per year are placed in adoption for at least 17 years, nine Indian children are placed in adoption for an average of 15.5 years, 15 Indian children are placed in adoption for an average of 14 years, 15 Indian children are placed in adoption for an average of nine years, and two children are placed for adoption for an average of three years; there are 1,504 Indian under twenty-one year olds in adoption at any one time in the State of Minnesota. This represents one out of every 7.9 Indian children in the State.

Using the same formula for non-Indians (there was an average of 3,271 non-Indian children adopted per year from 1964-1975), there are 50,518 under twenty-one year old non-Indians in adoption in Minnesota. This represents one out of every 31.1 non-Indian children in the State.

Conclusion

There are therefore by proportion 3.9 times (390 percent) as many Indian children as non-Indian children in adoptive homes in Minnesota. 97.5 percent of the Indian children for whom adoption decrees were granted in 1974-1975 were placed with a non-Indian adoptive mother.

II. FOSTER CARE

In the State of Minnesota, according to the Minnesota Department of Public Welfare, there were 737 Indian children in foster family homes in December 1973. The median age of children adopted by unrelated petitioners in 1974-1975 was 3.5 months. Ibid., p. 13.

"Ibid., p. 28, Table XVIII-A, "Degrees granted 1974-75 by type of adoption and race of child and race of adoptive mother."
1972. This represents one out of every 17.2 Indian children. By comparison, there were 5,541 non-Indian children in foster family homes, representing one out of every 28.8 non-Indian children in the State.

Conclusion

There are therefore by proportion 16.5 times (1,650 percent) as many Indian children as non-Indian children in foster family homes in Minnesota.

III. COMBINED ADOPTIVE CARE AND FOSTER CARE

Using the above figures, a total of 2,531 under twenty-one year old Indian children are either in foster family homes or adoptive homes in the State of Minnesota. This represents one out of every 54 Indian children. Similarly for non-Indians in the State 56,084 under twenty-one year olds are either in foster family homes or adoptive care, representing one in every 28 non-Indian children.

Conclusion

By per capita rate Indian children are removed from their homes and placed in adoption or foster family care 5.2 times (520 percent) more often than non-Indian children in the State of Minnesota.

**Note**: Figures are based on the Minnesota Department of Public Welfare's report, “A Special Report: Racial Characteristics of Old Reports, 1972.” Table C, “Living Arrangement by Race of All Children,” p. 2. In this report, the Minnesota Department of Public Welfare itself states: “A larger proportion of Indian children (receiving child-welfare services from counties and private agencies) were in foster family homes (20.2 percent) than were children of any other race.” Ibid., p. 4.

1. Ibid., p. 3.

Montana Indian Adoption and Foster Care Statistics

**Basic Facts**

1. There are 288,573 under twenty-one-year-olds in Montana.1
2. There are 15,124 under twenty-one-year-old American Indians in Montana.2
3. There are 274,449 non-Indians under twenty-one in Montana.

**I. ADOPTION**

In the State of Montana, according to the Montana Department of Social and Rehabilitation Services, there were an average of 23 public agency adoptions of Indian children per year from 1973-1975.3 Using federal age-at-adoption figures, 83 percent (or 28) are under one year of age when placed. Another 13 percent (or four) are one year to less than six years old when placed; and 3 percent (or one) are six years, but less than twelve years old when placed.4 Using the formula then that: 28 Indian children per year are placed in adoption for at least 11 years, four Indian children are placed in adoption for a minimum average of 14 years, and one Indian child is placed in adoption for an average of nine years; there are 541 Indians under twenty-one years old in adoption at any one time in the State of Montana. This represents one in every 30 Indian children in the State.

Using the same formula for non-Indians (there were an average of 117 public agency adoptions of non-Indians per year from 1973-1975),5 there are 1,898 non-Indians under twenty-one years old in adoptive homes at any one time; or one out of every 144.6 non-Indian children.

Conclusion

There are therefore by proportion 48 times (480 percent) as many Indian children as non-Indian children in adoptive homes in Montana: 87 percent of the Indian children placed in adoption by public agencies in Montana from 1973-1975 were placed in non-Indian homes.6

II. FOSTER CARE

In Montana, according to the Montana Department of Social and Rehabilitation Services, there were 188 Indian children in State-administered foster care during June 1976.7 This represents one out of every 80.4 Indian children in the State. In addition the Billings Area Office of the U.S. Bureau of Indian Affairs reported 346 Indian children in BIA foster care in 1974, the last year for which statistics have been compiled.8 When these children are added to the State

5. 1% of the adoptions involve children twelve years and older. Ibid.
7. Ibid.


(211)
figures, we can estimate that there are a total of 534 Indian children in foster care at any one time in Montana, representing one out of every 283 Indian children in the State. By comparison, there were 735 non-Indian children in State-administered foster care during June 1976, representing one out of every 363.5 non-Indian children in the State.

Conclusion
By rate therefore Indian children are in foster care at a per capita rate 12.8 times (1,280 percent) greater than that for non-Indian children in Montana.

III. COMBINED ADOPTIVE CARE AND FOSTER CARE

Using the above figures, a total of 1,075 under twenty-one-year-old Indian children are either in foster homes or adoptive homes in the State of Montana. This represents one in every 14.1 Indian children. Similarly, for non-Indians in the State 2,653 under twenty-one-year-olds are either in foster care or adoptive care, representing one out of every 103.4 non-Indian children.

Conclusion
By rate Indian children are removed from their homes and placed in adoptive care or foster care 7.3 times (730 percent) more often than non-Indian children in the State of Montana.

The above figures are based only on the statistics of the Montana Department of Social and Rehabilitation Services and do not include private agency placements. They are therefore minimum figures.


d Letter from Ms. Jeri Davis, op. cit.

NEVADA ADOPTION AND FOSTER CARE STATISTICS

Basic Facts
1. There are 191,657 under twenty-one-year-olds in Nevada.
2. There are 3,759 under twenty-one-year-old American Indians in Nevada.
3. There are 187,898 under twenty-one-year-old non-Indians in Nevada.

I. ADOPTION

In Nevada, according to the Nevada State Division of Welfare, there were an average of seven public agency adoptions of Indian children per year in 1974-1975. This data base is too limited to permit an estimate of the total number of Indian children in adoption in Nevada. However, it does indicate that during 1974-1975 adoption petitions were granted for a yearly average of one out of every 534.1 Indian children in the State.

Using the same formula for non-Indians (there were an average of 345 public agency adoptions of non-Indians in Nevada in 1974-1975), adoption petitions were granted for one out of every 555.5 non-Indian children in the State.

Conclusion
Based on limited data, by per capita rate therefore, Indian children are adopted approximately as often as non-Indian children in Nevada.

II. FOSTER CARE

In Nevada, according to the Nevada State Division of Welfare, there were 48 Indian children in foster care in June 1976. In addition, the Inter-Tribal Council of Nevada reported 27 Indian children in foster care. This combined total (75) represents one in every 51.2 Indian children. By comparison, there were 787 non-Indian children in foster care, representing one in every 336.6 non-Indian children in the State.

Conclusion
By rate therefore, Indian children are placed in foster care 7.0 times (700 percent) as often as non-Indian children in Nevada.

III. COMBINED FOSTER CARE AND ADOPTIVE CARE

Since we are unable to estimate the total number of Indian children currently in adoptive care in Nevada, it is not possible either to estimate the total number of Indian children receiving adoptive and foster care. The foster care statistics alone make it unmistakably clear that Indian children are removed from their families at rates far exceeding those for non-Indian children.

2 Ibid., p. 30-33 (Table 10), p. 30-267 (Table 129). Indian people compose 18.8 percent of the total non-white population according to Table 10. According to Table 10 there are 19,839 non-whites under twenty-one. 19,839 x 18.8 percent = 3,759.
4 Telephone interview with Mr. Ira Gunn, July 13, 1976.
5 Letter from Mr. Ira Gunn, August 2, 1976.
6 Telephone interview with Mr. Efando Peetstra, Chief, Field Services, Inter-Tribal Council of Nevada (NITC), August 5, 1976. NITC reported a total of 42 Indian children in foster care, of whom 17 were in foster homes (mostly non-Indian) under a BIA contract with the State. These 17 have been subtracted from the total to avoid duplication of State figures.
7 Telephone interview with Mr. Ira Gunn, July 15, 1976.
NEW MEXICO INDIAN ADOPTION AND FOSTER CARE STATISTICS

Basic Facts

1. There are 461,535 under twenty-one-year-olds in the State of New Mexico.
2. There are 41,316 under twenty-one-year-old American Indians in the State of New Mexico.
3. There are 420,219 non-Indians under twenty-one in the State of New Mexico.

I. ADOPTION

In the State of New Mexico, according to the New Mexico Department of Health and Social Services, there were 13 American Indian children placed for adoption by public agencies in Fiscal Year 1976. This data base is too small to allow realistic projection of the total number of Indian children in adoptive care. We can say though that during Fiscal Year 1976, 0.003 percent of New Mexico Indian children were placed for adoption by public agencies. Thus during FY 1973, 0.02 percent of New Mexico non-Indian children were placed for adoption by public agencies.

Conclusion

Based on limited data, and not including any private agency placements, Indian children were placed for adoption by public agencies in fiscal year 1976 at a rate per capita 1.5 times (150 percent) the rate for non-Indian children.

II. FOSTER CARE

In the State of New Mexico, according to statistics from the New Mexico Department of Health and Social Services, there were 172 Indian children in foster homes in June 1976. In addition the Navajo and Albuquerque area offices of the U.S. Bureau of Indian Affairs report a combined total of 145 Indian children in foster homes in New Mexico. Combining the State and BIA figures, there were 257 Indian children in foster homes in June 1976. This represents one out of every 141 Indian children in the State. By comparison there were 1,225 non-Indian children in foster care in June 1976, representing one out of every 343 non-Indian children.

Conclusion

By per capita rate Indian children are placed in foster care 2.4 times (240 percent) as often as non-Indian children in New Mexico.

III. COMBINED FOSTER CARE AND ADOPTIVE CARE

Since we are unable to estimate the total number of Indian children currently in adoptive care in New Mexico, it is not possible either to estimate the total number of Indian children needing adoptive and foster care. The foster care statistics alone, and the adoption data we do have, make it unmistakably clear that Indian children are removed from their families at rates disproportionate to their percentage of the population.
In addition to those Indian children in foster care or adoptive care, 7,428 Indian children in New Mexico are away from home and their families most of the year attending boarding schools operated by the U.S. Bureau of Indian Affairs. An additional 1,524 Indian children in New Mexico live in BIA-operated dormitories while attending public schools. These children properly belong in any computation of children separated from their families. Adding the 8,552 Indian children in federal boarding schools or dormitories in New Mexico to those in foster care alone, there are a minimum (excluding adoptions) of 9,062 Indian children separated from their families. This represents one in every 4.6 Indian children in New Mexico.

Conclusion

By per capita rate therefore Indian children are separated from their families to be placed in foster care or boarding schools 74.8 times (7,460 percent) more often than non-Indian children in New Mexico.


# Ibid., pp. 22-23.

(216)
alone, and the adoption data we do have, make it unmistakably clear that Indian
children are removed from their families at rates far exceeding those for non­
Indian children.

Note: A report on the numbers of American Indian children in adoption in
New York State would be incomplete without mentioning those Indian children
placed by the Indian Adoption Project, a cooperative effort of the U.S. Bureau
of Indian Affairs and the Child Welfare League of America. From 1958-1967, the
nine full years of operation by the Indian Adoption Project, 74 Indian children,
m ost from Arizona and South Dakota, were placed for adoption in New York.

New York Appendix
Analysis of Upstate New York Counties With Greater Than 1,000 Total Indian
Population

I. Cattaraugus County

In Cattaraugus County, according to statistics from the New York State Board
of Social Welfare, there were 28 Indian children in foster (family) boarding
homes in June 1976. There are 786 Indian children under twenty-one years old
in Cattaraugus County. Thus one out of every 28.8 Indian children is in a foster
(family) boarding home.

Conclusion
In Cattaraugus County Indian children are in foster (family) boarding homes
at a per capita rate 9.4 times (940 percent) greater than the State-wide rate for
non-Indians in New York.

II. Erie County

In Erie County, according to statistics from the New York State Board of Social
Welfare, there were 50 Indian children in foster (family) boarding homes in
June 1976. There are 1,094 Indian children under twenty-one years old in Erie
County. Thus one out of every 31.2 Indian children is in a foster (family) board­
ing home.

Conclusion
In Erie County Indian children are in foster (family) boarding homes at a
per capita rate 7.1 times (710 percent) greater than the State-wide rate for
non-Indians in New York.

III. Franklin County

In Franklin County, according to statistics from the New York State Board of Social
Welfare, there were 50 Indian children in foster (family) boarding homes in
June 1976. There are 566 Indian children under twenty-one years old in Franklin
County. Thus one out of every 112.2 Indian children is in a foster (family)
boarding home.

Conclusion
In Franklin County Indian children are in foster (family) boarding homes at a
per capita rate 1.6 times (160 percent) the State-wide rate for non-Indians in New York.

Indian Adoption Project placed a total of 305 American Indian children for adoption in
26 states and Puerto Rico, virtually always with non-Indian families.

2 Letter and computer print-out from Mr. Bernard S. Bernstein, Director, Bureau of

3 41.9% of the New York Indian population is under twenty-one years old. U.S. Bureau
population of Cattaraugus County is 1,318. U.S. Bureau of the Census, Census of Popula­
same formula is used to determine the Indian under twenty-one year old population in the
other New York counties.

4 Mr. Bernard S. Bernstein, op. cit.

5 Mr. Bernard S. Bernstein, op. cit.


7 Mr. Bernard S. Bernstein, op. cit.

NORTH DAKOTA ADOPTION AND FOSTER CARE STATISTICS

I. ADOPTION

In the State of North Dakota, according to the Social Service Board of North Dakota, there were 16 Indian children placed for adoption in 1975. Using State figures reported to the National Center for Social Statistics of the U.S. Department of Health, Education and Welfare, we can estimate that 86 percent (or 14) are under one year of age when placed. One child is between one and two years old; and one child is between two and six years old. Using the formula that: 14 Indian children are placed in adoption for at least 17 years, one Indian child is placed in adoption for 16.5 years, and one Indian child is placed in adoption for 14 years; there are an estimated 256 Indian children in adoption in North Dakota. This represents one out of every 30.4 Indian children in the State.

Using the same formula for non-Indians (there were 178 non-Indian children placed for adoption in North Dakota in 1975), there are an estimated 2,943 under twenty-one-year-old non-Indians in adoption in North Dakota. This represents one out of every 86.2 non-Indian children in the State.

Conclusion

There are, therefore, by proportion 2.8 times (280 percent) as many Indian children as non-Indian children in adoptive homes in North Dakota; 75 percent of the Indian children placed for adoption in 1975 were placed in non-Indian homes.

II. FOSTER CARE

In the State of North Dakota, according to the Social Services Board of North Dakota, there were 218 Indian children in foster care in May 1976. This represents one out of every 37.5 Indian children in the State. In addition, there were 75 North Dakota Indian children receiving foster care from the U.S. Bureau of Indian Affairs in May 1976. The combined total of 296 Indian children in foster care represents one out of every 27.7 Indian children in the State. By comparison there were 455 non-Indian children in foster care in May 1976, representing one out of every 507.8 non-Indian children.

Conclusion

There are therefore by proportion 20.1 times (2,010 percent) as many Indian children as non-Indian children in foster care in North Dakota.

III. COMBINED ADOPTIVE CARE AND FOSTER CARE

Using the above figures, a total of 503 under twenty-one-year-old Indian children are either in foster homes or adoptive homes in the State of North Dakota. This represents one out of every 14.5 Indian children. Similarly for non-Indians in the State 3,398 under twenty-one year olds are either in foster care or adoptive care, representing one out of every 74.7 non-Indian children.

Conclusion

By per capita rate Indian children are removed from their homes and placed in adoptive care or foster care 5.2 times (520 percent) more often than non-Indian children in the State of North Dakota.

1 Telephone Interviews with Mr. Roger Lonnevik and Ms. Beverly Haug, Division of Social Services, U.S. Bureau of Indian Affairs Aberdeen Area Office, July 20-21, 1976. The BIA had 114 North Dakota Indian children in foster care in May 1976. As of April 1976 (the last month for which the BIA has statistics—BIA indicates that the numbers do not fluctuate significantly from month to month), 36 Indian children were in foster care administered by the State, but paid for by the BIA. 114-562-78.

2 Telephone Interview with Mr. Donald Schmid, op cit.
OKLAHOMA INDIAN ADOPTION AND FOSTER CARE STATISTICS

Basic Facts
1. There are 974,937 under twenty-one-year-olds in the State of Oklahoma.
2. There are 45,489 under twenty-one-year-old American Indians in the State of Oklahoma.
3. There are 929,448 non-Indians under twenty-one in the State of Oklahoma.

I. ADOPTION

In the State of Oklahoma, according to the Oklahoma Public Welfare Commission, there were 69 Indian children placed in adoptive homes in 1972. Using federal age-at-adoption figures, 83 percent (or 57) are under one year of age when placed. Another 13 percent (9) are one year to less than six years old when placed; 3 percent (or 2) are six years but less than twelve years old when placed; and 1 percent (or 1) are twelve years of age and older. Using the formula then that: 57 Indian children per year are placed in adoption for at least 10 years, nine Indian children are placed in adoption for a minimum average age of 14 years, two Indian children are placed in adoption for an average of nine years, and one Indian child is placed for adoption for an average of three years; there are an estimated 1,116 Indian children in adoption in Oklahoma. This represents one out of every 40.8 Indian children in the State.

Using the same formula for non-Indians (there were 317 non-Indian children placed in adoptive homes in 1972), there are an estimated 5,144 under twenty-one year old non-Indians in adoption in Oklahoma. This represents one out of every 180.7 non-Indian children in the State.

Conclusion
There are therefore by proportion 4.4 times (440 percent) as many Indian children as non-Indian children in adoptive homes in Oklahoma.

II. FOSTER CARE

In the State of Oklahoma, according to the Oklahoma Public Welfare Commission, there were 335 Indian children in State-administered foster care in August 1972. In addition, there were two Oklahoma Indian children receiving foster care from the U.S. Bureau of Indian Affairs in 1972. The combined total of 337 Indian children in foster care represents one out of every 135 Indian children in the State. By comparison there were 1,757 non-Indian children in foster care, representing one out of every 529 non-Indian children.

Conclusion
There are therefore by proportion 3.9 times (390 percent) as many Indian children as non-Indian children in foster care in Oklahoma.

III. COMBINED FOSTER CARE AND ADOPTIVE CARE

Using the above figures, a total of 1,453 under twenty-one-year-old Indian children are either in foster care or adoptive homes in the State of Oklahoma. This represents one out of every 31.3 Indian children. Similarly for non-Indians in the State, 6,971 under twenty-one year olds are either in foster care or adoptive care, representing one out of every 134.7 non-Indian children.

Conclusion
By per capita rate Indian children are removed from their homes and placed in adoptive care or foster care 4.3 times (430 percent) more often than non-Indian children in the State of Oklahoma.

The above figures are based only on the statistics of the Oklahoma Public Welfare Commission and do not include private agency placements. They are therefore minimum figures.
OREGON ADOPTION AND FOSTER CARE STATISTICS

Basic Facts

1. There are 807,211 under twenty-one year olds in the State of Oregon.1
2. There are 8,889 under twenty-one year old American Indians in the State of Oregon.2
3. There are 800,372 non-Indians under twenty-one in the State of Oregon.

I. ADOPTION

In the State of Oregon, according to the Oregon Children's Services Division, there were 28 American Indian children placed in adoptive homes during fiscal year 1975.3 Using the State's own figures reported to the National Center for Social Statistics of the U.S. Department of Health, Education and Welfare, 46 percent (or 18) were under one year of age when placed. Another 8 percent (or two) were between one and two years old; 17 percent (or five) were between two and six years old; and 12 percent (or three) were between six and twelve years old.5 Using the formula that: 16 Indian children are placed in adoption for at least 17 years, two Indian children are placed in adoption for an average of 16.5 years, five Indian children are placed in adoption for an average of 14 years, and three are placed in adoption for an average of nine years; there are 402 Indian children under twenty-one year olds placed in adoption at any one time in the State of Oregon. This represents one out of every 17 Indian children in the State.

Using the same formula for Non-Indians (3,742 non-Indian children were placed in adoption during Fiscal Year 1975),6 there are 41,718 non-Indian children in adoption at any one time in the State of Oregon. This represents one out of every 19.2 non-Indian children in the State.

Conclusion

There are therefore by proportion 1.1 times (110 percent) as many Indian children as non-Indian children in adoption in Oregon.

II. FOSTER CARE

According to statistics from the Oregon Children's Services Division, there were 241 Indian children in foster care as of June 1976.7 This represents one out of every 27.7 Indian children in the State. By comparison there were 3,562 non-Indian children in foster care as of April 76,8 representing one out of every 208.6 non-Indian children in the State.

Conclusion

By rate therefore Indian children are placed in foster homes 8.2 times (820 percent) more often than non-Indian children in the State of Oregon.

III. COMBINED FOSTER CARE AND ADOPTIVE CARE

Using the above figures, a total of 649 Indian children are either in foster homes or in adoptive homes in the State of Oregon. This represents one in every 10.5 Indian children. Similarly, for non-Indians in the State, 45,218 under twenty-one year olds are either in foster care or adoptive care, representing one in every 17.7 non-Indian children.

Conclusion

By rate therefore Indian children are removed from their homes and placed in adoptive care or foster care 17 times (170 percent) as often as non-Indian children in Oregon. The similarity in adoption rates in Oregon dominates the combined rates given above, and leads to a combined rate of Indian children removed from their families that is—in comparison to other States with significant Indian populations—relatively low. This may be deceptive. It is likely that the vast majority of Indian adoptions reported by the Children's Services Division involve children adopted by unrelated petitioners. This report compares the figures with the total number of related and unrelated adoptions in Oregon. Of that total, 72 percent involve children adopted by related petitioners.9 Were the adoption comparison to be made only on the basis of unrelated adoptions, the comparative rate for Indian adoptions and the combined rate for adoptive and foster care, would be several times higher than indicated here.

OREGON: APPENDIX

County-by-County Analysis of Oregon Foster Care Statistics

I. BAKER COUNTY

In Baker County, according to statistics from the Oregon Children's Services Division, there was one Indian child in foster care in January 1975.10 There are 19 Indian children under twenty-one years old in Baker County. Thus one out of 16 Indian children is in foster care.

Conclusion

In Baker county Indian children are in foster care at a per capita rate 14.3 times (1,430 percent) greater than the State-wide rate for non-Indians in Oregon.

II. BENTON COUNTY

In Benton County, according to statistics from the Oregon Children's Services Division, there were two Indian children in foster care in January 1975.11 There are 75 Indian children under twenty-one years old in Benton County; thus one of every 38 Indian children is in foster care.

Conclusion

In Benton County Indian children are in foster care at a per capita rate 6.0 times (600 percent) greater than the State-wide rate for non-Indians in Oregon.

III. CLACKAMAS COUNTY

In Clackamas County, according to statistics from the Oregon Children's Services Division, there were seven Indian children in foster care in January 1975.12 There are 394 Indian children under twenty-one years old in Clackamas County.

Thus one out of every 43.4 Indian children is in foster care.
Conclusion
In Clackamas County Indian children are in foster care at a per capita rate
5.5 times (350 percent) greater than the State-wide rate for non-Indians in Oregon.

IV. CLACKAMAS COUNTY
In Clackamas County, according to statistics from the Oregon Children's Services
Division, there were four Indian children in foster care in January 1975.* There
are 48 Indian children under twenty-one years old in Clackamas County.† Thus one
out of every 12 Indian children is in foster care.

Conclusion
In Clackamas County Indian children are in foster care at a per capita rate
19.0 times (1,900 percent) greater than the State-wide rate for non-Indians in Oregon.

V. COOS COUNTY
In Coos County, according to statistics from the Oregon Children's Services
Division, there was one Indian child in foster care in January 1973.* There
are 214 Indian children under twenty-one years old in Coos County.

VII. CROOK COUNTY
In Crook County, according to statistics from the Oregon Children's Services
Division, there were no Indian children in foster care in January 1975.* There
are 47 Indian children under twenty-one years old in Crook County.

VIII. CURRY COUNTY
In Curry County, according to statistics from the Oregon Children's Services
Division, there were no Indian children in foster care in January 1975.* There
are 93 Indian children under twenty-one years old in Curry County.

IX. DESCHUTES COUNTY
In Deschutes County, according to statistics from the Oregon Children's Services
Division, there were four Indian children in foster care in January 1975.* There
are 43 Indian children under twenty-one years old in Deschutes County.† Thus one
out of every 12 Indian children is in foster care.

Conclusion
In Deschutes County Indian children are in foster care at a per capita rate
19.0 times (1,900 percent) greater than the State-wide rate for non-Indians in Oregon.

X. DOUGLAS COUNTY
In Douglas County, according to statistics from the Oregon Children's Services
Division, there were no Indian children in foster care in January 1975.* There
are 214 Indian children under twenty-one years old in Douglas County.

XL GILLIAM COUNTY
In Gilliam County, according to statistics from the Oregon Children's Services
Division, there were no Indian children in foster care in January 1975.* There
are five Indian children under twenty-one years old in Gilliam County.

AAIA Questionnaire, op. cit.
†Race of the Population by County: op. cit. 1970; 6, 7.
In Lane County, according to statistics from the Oregon Children's Services Division, there were three Indian children in foster care in January 1975.* There are 306 Indian children under twenty-one years old in Lane County,† Thus one out of every 102 Indian children is in foster care.

Conclusion
In Lane County Indian children are in foster care at a per capita rate 1.7 times (170%) the State-wide rate for non-Indians in Oregon.

XXI. LINCOLN COUNTY

In Lincoln County, according to statistics from the Oregon Children's Services Division, there was one Indian child in foster care in January 1975.* There are 105 Indian children under twenty-one years old in Lincoln County.† Thus one out of 105 Indian children is in foster care.

Conclusion
In Lincoln County, Indian children are in foster care at a per capita rate 1.4 times (140%) the State-wide rate for non-Indians in Oregon.

XXII. LINN COUNTY

In Linn County, according to statistics from the Oregon Children's Services Division, there were 14 Indian children in foster care in January 1975.* There are 148 Indian children under twenty-one years old in Linn County.† Thus one out of 14 Indian children is in foster care.

Conclusion
In Linn County Indian children are in foster care at a per capita rate 1.5 times (150%) the State-wide rate for non-Indians in Oregon.

XXIII. MALHEUR COUNTY

In Malheur County, according to statistics from the Oregon Children's Services Division, there were no Indian children in foster care in January 1975.* There are 43 Indian children under twenty-one years old in Malheur County.†

Conclusion
In Malheur County Indian children are in foster care at a per capita rate 0.7 times (70%) the State-wide rate for non-Indians in Oregon.

XXIV. MARION COUNTY

In Marion County, according to statistics from the Oregon Children's Services Division, there were 20 Indian children in foster care in January 1975.* There are 429 Indian children under twenty-one years old in Marion County.† Thus one out of every 21 Indian children is in foster care.

Conclusion
In Marion County Indian children are in foster care at a per capita rate 10.0 times (1,000%) greater than the State-wide rate for non-Indians in Oregon.

XXV. MORGAN COUNTY

In Morrow County, according to statistics from the Oregon Children's Services Division, there were no Indian children in foster care in January 1975.* There are 15 Indian children under twenty-one years old in Morrow County.†

Conclusion
In Morrow County Indian children are in foster care at a per capita rate 0.7 times (70%) the State-wide rate for non-Indians in Oregon.

XXVI. POLK COUNTY

In Polk County, according to statistics from the Oregon Children's Services Division, there were no Indian children in foster care in January 1975.* There are 143 Indian children under twenty-one years old in Polk County.†

XXVII. SHERMAN COUNTY

In Sherman County, according to statistics from the Oregon Children's Services Division, there were no Indian children in foster care in January 1975.* There are 12 Indian children under twenty-one years old in Sherman County.†

* Source: Questionnaire, op. cit.
† Source: Race of the Population by County, 1970, op. cit.
XXXVI. MULTNOMAH COUNTY

In Multnomah County, according to statistics from the Oregon Children’s Services Division, there were 38 Indian children in foster care in January 1975.1 There are 1,885 Indian children in Multnomah County.2 Thus one out of every 30.4 Indian children is in foster care.

Conclusion
In Multnomah County Indian children are in foster care at a per capita rate 6.3 times (630 percent) the State-wide rate for non-Indians in Oregon.

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SOUTH DAKOTA ADOPTION AND FOSTER CARE STATISTICS

Basic Facts

1. There are 279,136 under twenty-one year olds in South Dakota.3
2. There are 18,322 under twenty-one year old American Indians in South Dakota.4
3. There are 260,814 non-Indians under twenty-one in South Dakota.

I. ADOPTION

In the State of South Dakota, according to the South Dakota Department of Social Services, there were an average of 63 adoptions per year of American Indian children from 1970-1975.5 Using South Dakota’s own age-at-adoption figures reported to the National Center for Social Statistics of the U.S. Department of Health, Education, and Welfare,6 81 percent (or 51) are under one year of age when placed. Another 6 percent (or four) are one year to less than two years old when placed; 7 percent (or four) are two years to less than six years old when placed; 4 percent (or three) are between six and twelve years old; and 2 percent (or one) are twelve years and over.7 Using the formula then that; 51 Indian children per year are placed in adoption for at least 17 years, four Indian children are placed in adoption for 165 years, four Indian children are placed in adoption for an average of 11 years, three Indian children are placed in adoption for an average of nine years, and one Indian child is placed in adoption for an average of three years; there are 1,019 Indians under twenty-one year olds in adoption at any one time in the State of South Dakota. This represents one out of every 18 Indian children in the State.

Using the same formula for non-Indians (there were an average of 561 adoptions per year of non-Indian children from 1970-1975)8 there are 9,073 non-Indian children in adoptive homes in South Dakota, or one out of every 28.7 non-Indian children.

Conclusion
There are therefore by proportion 1.6 times (100 percent) as many Indian children as non-Indian children in adoption in South Dakota.

II. FOSTER CARE

According to statistics from the South Dakota Department of Social Services, there were 521 Indian children in State-administered foster care in October 1974.9 In addition, there were 311 South Dakota Indian children receiving

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3 Telephone interviews with Dr. James Marquart, Office on Children and Youth, South Dakota Department of Social Services, July 19-20, 1976.
5 The median age at time of placement of children adopted by unrelated petitioners in 1974 in South Dakota was 2.5 months. Ibid., p. 15.
6 Telephone interview with Dr. James Marquart, op. cit.
7 Ibid.

(231)
foster care from the U.S. Bureau of Indian Affairs in October 1974. The combined total of 862 non-Indian children in foster care represents one out of every 22 non-Indian children in the State. By comparison there were 630 non-Indian children in State-administered foster care in October 1974, representing one out of every 492.1 non-Indian children.

### Conclusion

There are therefore by proportion 22.4 times (2240 percent) as many Indian children as non-Indian children in foster care in South Dakota.

#### III. COMBINED ADOPTIVE CARE AND FOSTER CARE

Using the above figures, a total of 1,851 under twenty-one year old Indian children are either in foster homes or adoptive homes in the State of South Dakota. This represents one out of every 8.9 Indian children. Similarly for non-Indians in the State 9,089 under twenty-one year olds are either in foster care or adoptive care, representing one out of every 27.2 non-Indian children.

### Conclusion

By per capita rate Indian children are removed from their homes and placed in adoptive care or foster care 2.7 times (270 percent) more often than non-Indian children in the State of South Dakota.

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*Telephone interview with Dr. James Marquart, op. cit.*

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**UTAH INDIAN ADOPTION AND FOSTER CARE STATISTICS**

### Basic Facts

1. There are 488,924 under twenty-one year olds in Utah.1
2. There are 8,964 under twenty-one year old American Indians in Utah.2
3. There are 482,964 non-Indians under twenty-one years old in Utah.

#### I. ADOPTION

In the State of Utah, according to the Utah Department of Social Services, there were 20 Indian children placed for adoption in 1976.3 Using the State's own age-at-adoption figures reported to the National Center for Social Statistics of the U.S. Department of Health, Education, and Welfare,4 we can estimate that 86 percent (or 17) are under one year of age when placed. One child is between one and two years old; one child is between two and six years old; and one child is between six and twelve years old. Using the formula then that: 17 Indian children are placed in adoption for at least 17 years, and three Indian children are placed in adoption for a minimum average of 13 years, there are 228 Indians under twenty-one years old in adoption in Utah. This represents one out of every 20.4 Indian children in the State.

Using the same formula for non-Indians (there were 428 non-Indian children placed for adoption in Utah in 1976)5 there are 7,040 under twenty-one year old non-Indians in adoption in Utah. This represents one out of every 68.5 non-Indian children in the State.

### Conclusion

There are therefore by proportion 3.4 times (340 percent) as many Indian children as non-Indian children in adoptive homes in Utah.

#### II. FOSTER CARE

In the State of Utah, according to the Utah Department of Social Services, there were 249 Indian children in foster care in May 1976.6 This represents one out of every 26.9 Indian children in the State. By comparison, there were 1,197 non-Indian children in foster care in May 1976,7 representing one out of every 402.9 non-Indian children in the State.

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3 Telephone interview with Mr. Dick Wheelock, Research Analyst, Utah Department of Social Services, July 14, 1976.
4 National Center for Social Statistics, U.S. Department of Health, Education and Welfare, "Adoptions in 1974," DHEW Publication No. (0RR) 75-00500, NCSS Report K-19 (1974), Table 10, "Children adopted by unrelated petitioners by age at time of placement, by State, 1974," p. 15. (Absolute numbers converted into percentages for purposes of this report.) The ages and percentages are: under one year, 88 percent; between one and two years, 8 percent; between two and six years, 5 percent; between six and twelve, 5 percent; twelve and older, 1 percent. Multiplying the total number of adoptions in 1974 by these percentages and rounding off to the nearest whole number yields the figures that follow in the body of this report.
5 The median age for children placed in adoption in Utah is less than one month. Ibid., p. 15.
6 Telephone interview with Mr. Dick Wheelock, Research Analyst, Utah Department of Social Services, July 14, 1976.
7 Letter from Ms. Mary Lines, MSW, Program Specialist, Utah Department of Social Services, July 2, 1976.
8 Ibid. Confirmed by telephone interview with Mr. Dick Wheelock, Utah Department of Social Services, July 14, 1976.
Conclusion
There are therefore by proportion 15 times (1,500 percent) as many Indian children as non-Indian children in foster care in Utah. 88% of the Indian children in foster care are in non-Indian homes.1

III. COMBINED FOSTER CARE AND ADOPTIVE CARE

Using the above figures, a total of 537 under twenty-one years old Indian children are either in foster homes or adoptive homes in the State of Utah. This represents one in every 11.6 Indian children. Similarly for non-Indians in the State 2,237 under twenty-one-year-olds are either in foster care or adoptive care, representing one in every 93.5 non-Indian children.

Conclusion
By rate Indian children are removed from their homes and placed in adoptive care or foster care 5 times (500 percent) more often than non-Indian children in the State of Utah.

APPENDIX

County-by-County Analysis of Utah Foster Care Statistics

I. BOX ELDER, Cache AND RICH COUNTIES

In Box Elder, Cache, and Rich counties, according to statistics from the Utah Department of Social Services, there were 14 Indian children in State-administered foster care in May 1976.2 There are 437 Indian children under twenty-one years old in these three counties.2 Thus one in every 31.2 Indian children is in foster care.

Conclusion
In Box Elder, Cache and Rich counties Indian children are in State-administered foster care at a per capita rate 15.2 times (1,290 percent) greater than the State-wide rate for non-Indian children in Utah.

II. DAVIS, Morgan AND WEBER COUNTIES

In Davis, Morgan and Weber counties, according to statistics from the Utah Department of Social Services, there were nine Indian children in State-administered foster care in May 1976.2 There are 553 Indian children under twenty-one years old in these three counties. Thus one in every 61.3 Indian children is in foster care.

Conclusion
In Davis, Morgan and Weber counties Indian children are in State-administered foster care at a per capita rate 6.8 times (630 percent) greater than the State-wide rate for non-Indian children in Utah.

III. SALT LAKE AND TOOELE COUNTIES

In Salt Lake and Tooele counties, according to statistics from the Utah Department of Social Services, there were 13 Indian children in State-administered foster care in May 1976.2 There are 1,205 Indian children under twenty-one years old in these two counties.3 Thus one in every 92.7 Indian children is in foster care.

IV. SUMMIT, UTAH AND WASATCH COUNTIES

In Summit, Utah and Wasatch counties, according to statistics from the Utah Department of Social Services, there were 15 Indian children in State-administered foster care in May 1976.2 There are 267 Indian children under twenty-one years old in these two counties.4 Thus one in every 17.5 Indian children is in foster care.

V. JUAB, MILLARD, PIUTE, SANPETE, SEVIER, AND WAYNE COUNTIES

In Juab, Millard, Piute, Sanpete, Sevier and Wayne counties, according to statistics from the Utah Department of Social Services, there were 19 Indian children in State-administered foster care in May 1976.5 There are 138 Indian children under twenty-one years old in these six counties.6 Thus one in every 7.65 Indian children is in foster care.

VI. BEAVER, GARFIELD, ION, KANE AND WASHINGTON COUNTIES

In Beaver, Garfield, Iron, Kane, and Washington counties, according to statistics from the Utah Department of Social Services, there were 21 Indian children in State-administered foster care in May 1976.7 There are 276 Indian children under twenty-one years old in these five counties.7 Thus one in every 14.5 Indian children is in foster care.

VII. DUGGERT, DUCHARNE AND UINTAH COUNTIES

In Daggett, Duchesne and Uintah counties, according to statistics from the Utah Department of Social Services, there were 73 Indian children in State-administered foster care in May 1976.8 There are 1,069 Indian children under twenty-one years old in these three counties.8 Thus one in every 14.5 Indian children is in foster care.

1 Letter from Ms. Mary Lines, MSW, op. cit.
2 Letter from Ms. Mary Lines, MSW, Program Specialist Utah Department of Social Services, July 2, 1976. These counties comprise District I of the Utah Department of Social Services.
4 Letter from Ms. Mary Lines, MSW, op. cit. These counties comprise District II-A of the Utah Department of Social Services.
5 Letter from Ms. Mary Lines, MSW, op. cit. These counties comprise District II-B of the Utah Department of Social Services.
7 Letter from Ms. Mary Lines, MSW, op. cit. These counties comprise District II-C of the Utah Department of Social Services.
Conclusion

In Daggett, Duchesne and Uintah counties Indian children are in State-administered foster care at a per capita rate 27.8 times (2,780 percent) greater than the State-wide rate for non-Indian children.

VIII. CARBON, EMERY AND GRAND COUNTIES

In Carbon, Emery and Grand counties, according to statistics from the Utah Department of Social Services, there were four Indian children in State-administered foster care in May 1976. There are 37 Indian children under twenty-one years of age in these three counties. Thus one in every 9.3 Indian children is in foster care.

Conclusion

In Carbon, Emery and Grand counties Indian children are in State-administered foster care at a per capita rate 43.3 times (4,330 percent) greater than the State-wide rate for non-Indians in Utah.

IX. SAN JUAN COUNTY

In San Juan County, according to statistics from the Utah Department of Social Services, there were 81 Indian children in State-administered foster care in May 1976. There are 8,005 Indian children under twenty-one years old in the County. Thus one in every 37.1 Indian children is in foster care.

Conclusion

In San Juan County, Indian children are in State-administered foster care at a per capita rate 10.9 times (1,090 percent) greater than the State-wide rate for non-Indians in Utah.

1 Letter from Ms. Mary Lines, MSW, op. cit. These three counties comprise District VII-A of the Utah Department of Social Services.
3 Letter from Ms. Mary Lines, MSW, op. cit. San Juan County comprises District VII-B of the Utah Department of Social Services.

WASHINGTON INDIAN ADOPTION AND FOSTER CARE STATISTICS

Basic Facts

1. There are 1,351,455 under twenty-one year olds in the State of Washington.
2. There are 15,980 under twenty-one year old American Indians in the State of Washington.
3. There are 1,335,475 non-Indians under twenty-one years old in Washington.

I. ADOPTION

In the State of Washington, according to the Washington Department of Social and Health Services, 48 Indian children were placed for adoption by public agencies in 1972. Using State figures reported to the National Center for Social Statistics of the U.S. Department of Health, Education and Welfare, we can estimate that 69 percent (or 33) are under one year of age when placed. Another 21 percent are one year to less than six years old when placed; 5 percent are six years and over. Using the same formula for non-Indians (213 non-Indian children were placed for adoption by public agencies in Washington in 1972) there are an estimated 760 Indian children in adoption in Washington. This represents one out of every 2.6 Indian children in the State.

Using the same formula for non-Indians (213 non-Indian children were placed for adoption by public agencies in Washington in 1972) there are an estimated 3,294 under twenty-one year old non-Indians in adoption in Washington. This represents one out of every 405.4 non-Indian children.

Conclusion

There are therefore by proportion 18.8 times (1,880 percent) as many Indian children as non-Indian children in adoptive homes in Washington; 69 percent of the Indian children placed for adoption in 1972 were placed in non-Indian homes.

II. FOSTER CARE

According to statistics from the Washington Department of Social and Health Services there were 558 Indian children in foster homes in February 1973. This represents one out of every 28.6 Indian children in the State. By comparison there were 4,873 non-Indian children in foster homes in February 1973, representing one out of every 274.1 non-Indian children.

3 Letter and AAIA child-welfare survey questionnaire submitted by Dr. Robert J. Shearer, Assistant Secretary, Social Services Division, Washington Department of Social and Health Services, April 4, 1973.
5 The median age at time of placement of children adopted by unrelated petitioners in 1974 in Washington was 3.0 months. Ibid., p. 25.
6 Dr. Robert J. Shearer, op. cit., p. 16.
Conclusion
By per capita rate Indian children are placed in foster homes 0.6 times (960 percent) as often as non-Indian children in the State of Washington.

III. COMBINED FOSTER CARE AND ADOPTIVE CARE
Using the above figures, a total of 1,298 under twenty-one year old Indian children are either in foster homes or adoptive homes in the State of Wisconsin. This represents one out of every 12.3 Indian children. Similarly for non-Indians in the State, 8,167 under twenty-one year olds are either in foster homes or adoptive homes, representing one out of every 163.5 non-Indian children.

Conclusion
By per capita rate Indian children are removed from their homes and placed in adoptive homes or foster homes 13.3 times (1,830 percent) more often than non-Indian children in the State of Wisconsin.

Wisconsin Indian Adoption and Foster Care Statistics

Basic Facts
1. There are 1,824,713 under twenty-one year olds in the State of Wisconsin.
2. There are 10,176 under twenty-one-year-old American Indians in the State of Wisconsin.
3. There are 1,814,537 non-Indians under twenty-one in Wisconsin.

I. ADOPTION
In the State of Wisconsin, according to the Wisconsin Department of Health and Social Services, there were an average of 48 Indian children per year placed in non-related adoptive homes by public agencies from 1966-1970. Using the State's own figures, 69 percent (or 33) are under one year of age when placed. Another 11 percent (or five) are one or two years old; 9 percent (or four) are three, four, or five years old; and 11 percent (or six) are over the age of five. Using the formula then that: 33 Indian children per year are placed in adoption for at least 17 years; five Indian children are placed in adoption for a minimum average of 16 years; four Indian children are placed in adoption for an average of 14 years; and six Indian children are placed in adoption for six years; there are an estimated 753 Indian children under twenty-one years old in nonrelated adoptive homes at any one time in the State of Wisconsin. This represents one out of every 13.9 Indian children in the State.

Using the same formula for non-Indians (an average of 473 non-Indian children per year were placed in non-related adoptive homes by "public agencies from 1966-1970"), there are an estimated 7,288 non-Indians under twenty-one years old in non-related adoptive homes in Wisconsin. This represents one out of every 249 non-Indian children in the State.

Conclusion
There are therefore by proportion 17.9 times (1,790 percent) as many Indian children as non-Indian children in non-related adoptive homes in Wisconsin.

II. FOSTER CARE
In the State of Wisconsin, according to the Wisconsin Department of Health and Social Services, there were 545 Indian children in foster care in March 1973. This represents one out of every 18.7 Indian children. By comparison, there were 7,266 non-Indian children in foster care in March 1973, representing one out of every 250 non-Indian children.

Conclusion
There are therefore by proportion 13.4 times (1,340 percent) as many Indian children as non-Indian children in foster care in the State of Wisconsin.

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3 Letter and statistics from Mr. Frank Neygert, Administrator, Division of Family Services, Wisconsin Department of Health and Social Services, April 25, 1973.
4 Ibid.
5 Ibid.
6 Ibid.
III. COMBINED FOSTER CARE AND ADOPTIVE CARE

Using the above figures, a total of 1,278 under twenty-one year old American Indian children are either in foster care or adoptive homes in the State of Wisconsin. This represents one out of every 8 Indian children. A total of 14,554 non-Indian children are in foster care or adoptive homes, representing one out of every 124.7 non-Indian children.

Conclusion

By per capita rate Indian children are removed from their homes and placed in adoptive homes or foster care 15.6 times (1,590 percent) more often than non-Indian children in the State of Wisconsin.

The Wisconsin statistics do not include adoption placements made by private agencies, and therefore are minimum figures.

Wyoming Adoption and Foster Care Statistics

Basic Facts

1. There are 137,339 under twenty-one year olds in Wyoming.
2. There are 2,832 under twenty-one year old American Indians in Wyoming.
3. There are 134,507 non-Indians under twenty-one in Wyoming.

I. ADOPTION

In the State of Wyoming, according to the Wyoming State Division of Social Services, there were an average of six adoptions per year of Indian children from 1972-1975. This data base is too small to allow realistic projection of the total number of Indian children in adoptive care. We can say though that during 1972-1975, 0.8 percent of Wyoming Indian children were placed for adoption.

During 1972-1975, according to the Wyoming State Division of Social Services, an average of 73 non-Indian children were placed for adoption in Wyoming. Thus, during 1972-1975, 0.2 percent of Wyoming non-Indian children were placed for adoption.

Conclusion

Based on the four year period 1972-1975, Indian children were placed for adoption at a per capita rate four times (400%) greater than that for non-Indians.

II. FOSTER CARE

According to statistics from the Wyoming State Division of Social Services, there were 24 Indian children in foster care in June 1976. An additional 74 Indian children were in foster care administered by the U.S. Bureau of Indian Affairs.

The combined total of 98 represents one out of every 28.9 Indian children in the State. By comparison, there were 446 non-Indian children in foster care in May 1976, representing one out of every 301.6 non-Indian children.

Conclusion

There are therefore by proportion 10.4 times (1,040 percent) as many Indian children as non-Indian children in foster care in Wyoming; 57 percent of the children in State-administered foster family care are in non-Indian homes. 51 percent of the children in BIA-administered foster family care are in non-Indian homes.

2 Ibid.
3 Telephone interview with Mr. John Steinberg, Director of Adoptions, Wyoming State Division of Social Services, July 15, 1976. A total of 22 Indian children were placed for adoption during these four years.
4 Ibid. A total of 296 non-Indian children were placed for adoption during these four years.
5 Telephone interview with Ms. Janet Shriner, Foster Care Consultant, Wyoming State Division of Social Services, July 20, 1976. Twenty-three of these children were in foster family homes, and one in a residential treatment center.
6 Telephone interview with Mr. Clyde W. Hobbs, Superintendent, Wind River Indian Agency, July 22, 1976. Of these children, 47 were in foster family homes, and 27 in group homes. The tribal breakdown was: Shoshone, 12; Arapahoe, 39; Non-enrolled, 2.
7 Telephone interview with Mr. Clyde W. Hobbs, op. cit.
8 Ibid.
In addition to the above figures, 134 Wyoming Indian children between the ages of fifteen and eighteen were away from their homes attending BIA boarding schools in other states. These children, all from the Wind River Reservation, spent at least part of the 1975-1976 school year in boarding schools in California, New Mexico, Oklahoma, South Dakota, and Utah.\(^\text{22}\)

### IV. COMBINED ADOPTIVE CARE AND FOSTER CARE

Since we are unable to estimate the total number of Indian children currently in adoptive care in Wyoming, it is not possible either to estimate the total number of Indian children receiving adoptive and foster care. The foster care statistics alone make it unmistakably clear that Indian children are removed from their homes at rates far exceeding those for non-Indian children.

#### NOTE ON FEDERAL BOARDING SCHOOLS

In addition to those Indian children removed from their families to be placed in adoptive care, foster care, or special institutions, thousands of Indian children (many as young as five-ten years old) are placed in U.S. Bureau of Indian Affairs boarding schools. Enrollment in BIA boarding schools and dormitories is not based primarily on the educational needs of the children; it is chiefly a means of providing substitute care. The standards for taking children from their homes for boarding school placement are as vague and as arbitrarily applied as are standards for Indian foster care placements.

The table below presents a state-by-state breakdown of the number of Indian children living in dormitories while they attend BIA boarding schools.

<table>
<thead>
<tr>
<th>State</th>
<th>BIA boarding school students</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alaska</td>
<td>604</td>
</tr>
<tr>
<td>Arizona</td>
<td>10,977</td>
</tr>
<tr>
<td>California</td>
<td>714</td>
</tr>
<tr>
<td>Mississippi</td>
<td>197</td>
</tr>
<tr>
<td>Nevada</td>
<td>517</td>
</tr>
<tr>
<td>New Mexico</td>
<td>4,325</td>
</tr>
<tr>
<td>North Dakota</td>
<td>481</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>1,973</td>
</tr>
<tr>
<td>Oregon</td>
<td>549</td>
</tr>
<tr>
<td>South Dakota</td>
<td>1,207</td>
</tr>
<tr>
<td>Utah</td>
<td>1,063</td>
</tr>
</tbody>
</table>

| Total            | 25,860                       |

Indian children living in dormitories operated by the BIA for children attending public schools...... 3,384

| Total            | 29,184                       |

These children should be included in any compilation of Indian children away from their families.


\(^{22}\) Ibid.

## APPENDIX C

### JURISDICTION OVER INDIAN HUNTING AND FISHING ACTIVITY

(Prepared for American Indian Policy Review Commission Task Force on Federal, State, and Tribal Jurisdiction by David H. Getches)

The law of Indian hunting and fishing rights is an actively developing area of Indian law. Several cases now in litigation may affect the conclusions reached in this paper and thus we have tried to indicate where the law is unsettled or likely to have further definition in the near future. It should be noted that generalizations in this area must be carefully viewed, as the nature and extent of Indian rights based on treaty turn upon the specific terms of the particular treaty.

We discuss in the following pages, first on-reservation, and then off-reservation, hunting and fishing rights, and the extent of state, federal and tribal regulation of those rights in each situation. Aboriginal rights are treated in a third section, although the law is especially sparse in that area. The recommendations in the final section are not for substantive legislation, but rather to facilitate enforcement and recognition of treaty rights through litigation and to identify federal actions which interfere with established Indian rights.

#### ON-RESERVATION HUNTING AND FISHING RIGHTS

**State Regulation**

Indian reservations are the exclusive domain of the tribe or tribes for which they are established. As such, state laws generally have no application to Indians on the reservation. These principles are well established and do not apply merely to Indian hunting and fishing activity, but to virtually all attempts of a state to control or regulate on-reservation activities by Indians. "The policy of leaving Indians free from state jurisdiction and control is deeply rooted in the Nation's history," Rice v. Olson, 324 U.S. 786, 789 (1945). That policy was first articulated by Chief Justice John Marshall in the seminal case of Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832).

The Worcester case recognized the sovereign status of Indian tribes as being inconsistent with the exercise of state power within lands reserved for them. This sovereignty, limited by the United States' power to deal exclusively with the tribes in extinguishing their property rights, was recognized by virtue of treaties entered into between the United States and the tribes. The embodiment of Indian rights in treaties is the factor which protects those rights from regulation, invasion, qualification by the states as a result of Article VI of the United States Constitution, the supremacy clause, which states:

"That all treaties made or which shall be made under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution Laws of any State to the Contrary notwithstanding."

The supremacy clause, of course, applies fully to Indian treaties as it does to international treaties. E.g., United States v. 43 Gallons of Whiskey, 93 U.S. 188 (1879).

Because of the anomalous nature of Indian sovereignty and the panoply of Congressional acts which have had the effect of modifying sovereign powers of tribes, the analysis of modern courts has tended "away from the idea of inherent Indian sovereignty as a bar to state jurisdiction on federal pre-emption." McLellan v. Arizona Tax Commission, 411 U.S. 164, 172 (1973).

Although the question of state jurisdiction is not dealt with in the typical treaties, the courts have construed the creation of a reservation to preclude ex-
tensions of state law to Indians on the reservation. See, e.g., McGowan v. Arizona Tax Commission, supra, 411 U.S. at 174-75. Silence as to such matters in treaties cannot be construed to extend jurisdiction. Courts have fashioned certain axioms of treaty construction which would preclude such an implication. Treaties would not have been made, as the Indians would have understood them (United States v. Winslow, 198 U.S. 570, 390-81 (1905)), doubtfull expressions must be resolved in favor of Indian parties (Alaska Pacific Fisheries v. United States, 245 U.S. 260, 38 S.Ct. 175, 62 L.Ed. 304 (1918)), and the treaties must be construed literally in favor of the Indians (Futaleufú v. Washington, 315 U.S. 681, 684-85 (1942)). Furthermore, in analyzing Indian treaties, in absence of express treatment of the question, the exercise of state power must be pre-empted by the creation of a reservation purpose and its resultant use and occupation of the land. Lands reserved in a treaty are, of course, the property of the Indians. The extent of those property rights is determined by the same rules of construction summarized above. Accordingly, courts have insisted that rights be specifically given up before they find that the Indians no longer retain them. This is the doctrine of reserved rights which was first articulated by the United States Supreme Court in an early fishing rights decision, United States v. Winslow, supra, 411 U.S. at 175-76.

"The treaty was not a grant of rights to the Indians, but a grant of rights from them—a reservation of those not granted." Based on this doctrine, the courts have concluded that tribal hunting and fishing rights are reserved by treaties which are silent on the subject. E.g., Menominee Tribe v. United States, 391 U.S. 404 (1968).

Questions have arisen about the extent of impliedly reserved fishing rights where a reservation of land is bordered by waters in which those rights are claimed. In that situation the court has looked to the circumstances in which the reservation was created to determine whether the purpose of making the reservation was to include rights to utilize adjacent waters. In Alaska Pacific Fisheries v. United States, supra, the Supreme Court held that "the body of lands known as Annette islands" included the adjacent fishing ground as well as the upland because "[t]he Indians could not sustain themselves from the upland alone. The use of the adjacent fishing grounds was equally essential to the Indians naturally looking to that part of the islands and proceeded on that theory in soliciting the reservation." 245 U.S. at 39.

As with rights to the land itself, and to water, timber, etc., hunting and fishing rights are property rights of the particular tribe. As a diminishment or destruction of those rights would be a taking within the meaning of the Fifth Amendment to the Constitution and would entitle the tribe to compensation. E.g., Menominee Tribe v. United States, 315 U.S. 681 (1942), affirmed 391 U.S. 404 (1968); Hynes v. Grimes Packing Company, 377 U.S. 88, 105 (1964); Whitefoot v. United States, 265 F.2d 658 (Cl. Ct. 1961), cert. denied 369 U.S. 517 (1964).

The United States by reason of the relationship created in its dealings with the Indians has an obligation to protect property rights secured to the tribes. That relationship is one of trusteeship or guardianship which binds the United States to deal fairly and protectively with all Indian rights. Subjection of those rights to state regulation or qualification decreases their value and effectively is a taking. Cf. Choate v. Trapp, 224 U.S. 665 (1912). Consequently, the courts will not imply the withdrawal of those rights upon a clear congressional statement before finding that hunting and fishing rights have been extinguished. Even termination legislation designed to extinguish federal supervision of the federal trust relationship with an Indian tribe has been held not to destroy state hunting and fishing rights absent an express statement to that effect. The Supreme Court stated in Menominee Tribe v. United States, supra:

"We find it difficult to believe that Congress, without explicit statement, would subject the United States to claim for compensation by destroying property rights conferred by treaty."
against that intention could not be implied into a general congressional enactment because the subject of Indian property interests is traditionally left to tribal self-government.

It is clear that Congress has the power to abrogate Indian treaties all or in part. See United States v. Hitchcock, 187 U.S. 553 (1903). Hunting and fishing rights will not be found absent a clear indication of congressional intent, however. Menominee Tribe v. United States, supra. But a proper exercise of congressional power can provide the necessary authority for the Executive to promulgate tribal regulations governing on-reservation Indian fishing. See Akishakpa Indian Community v. Egan, 390 U.S. 45 (1962). Tribal Regulation.

It is beyond doubt that tribes have the sovereign authority to regulate, restrict, and deny hunting and fishing within their reservations. The exclusiveness of a tribe’s management members who have only reservation lands within the reservation as a matter of federal law. But a tribe cannot regulate fishing that is off-reservation. This is often referred to as “usual and accustomed places” secured to Indians by treaty. This phrase permits the right of the Indians to be regulated by the state with respect to the extent of that right or the jurisdiction of a state to regulate. Proper construction often demands extensive reference to historical and anthropological evidence to determine the intent and understanding of the parties at the time of the treaty. See, e.g., United States v. Metaelleatta, 34 Stat. 579 (1873), cert. denied—U.S.—(1976) v. Smith, 382 F. Supp. 599 (D. Ore. 1969); State v. Gurnoe, supra; State v. Timo, 94 Idaho 579, 497 P.2d 585 (1972), cert. denied—U.S.—(1973).

The following analysis of established regulatory jurisdiction over off-reservation hunting and fishing rights at the discretion of the state and the limitations on the construction of the language used. In the absence of language, or whether the state or federal government’s interest in the exercise of their right to regulate hunting and fishing. The United States has inherent authority to regulate the taking of fish and game within its boundaries. Missouri v. Holland, 252 U.S. 416 (1920).
discriminate against Indians. Puyallup Tribe v. Department of Game, 391 U.S. 392 (1968) (Puyallup I). In subsequent proceedings in the same case, the Court made it clear that only state regulations which have been shown to be necessary for conservation, to prevent destruction of the fish resource, should be considered consistent with the treaty rights of the Indians. Puyallup Tribe v. Department of Game, 384 U.S. 44 (1965) (Puyallup II).

Whatever apparent practical wisdom may have motivated the decisions in the Puyallup cases, allowing the exercise of state police power over a federally reserved right seems inconsistent with the principle that Indian rights stemming from federal treaties are immune from state regulation because of the Supreme Court's decision in United States v. Kagama. The Court held that in exercising its police power, a state is enjoined from interfering with activities reserved to the Indians. While there are instances in which a state may be able to regulate Indian treaty rights, those cases are not applicable here.

The Ninth Circuit courtroom in affirming the district court decision in United States v. Washington, supra, cited the state's authority to regulate Indians because of the tribe's hunting and fishing activities. The Court of Appeals rejected this reasoning, stating: "The state has the power, under the police power, to control any activity which is injurious to the general public welfare of the state. When the state possesses such power, the tribes have no authority to regulate the state's activity." United States v. Washington, supra, 462 F.2d at 461 (Or. App. 1969).

The Ninth Circuit Court of Appeals in affirming the district court decision in United States v. Washington, supra, provided a cogent, after-the-fact explanation of why state law would be applicable to Indians exercising an "in common" treaty right. The court analogized the relationship of treaty Indians and other fishermen to a co-tenancy. The agreement of the Indians to allow non-Indians to fish "in common with" them, thus means that neither party can destroy the subject matter of the treaty and the state can interfere with the Indians' right to fish when it is necessary to prevent destruction of a particular species.

Where the Supreme Court modifies the Puyallup rule allowing state regulation of Indian treaty rights which may be exercised "in common with" non-Indians, the rule undoubtedly will be applicable to off-reservation rights to hunt and fish which are "reserved to them for their common use" and not reserved to them for their exclusive use. Puyallup I, supra, 391 U.S. at 390. The Court recognized that the right of the Indians to fish could not be conditioned upon the purchase of a state license. "Puyallup II, supra. While allowing state regulation of "the manner of fishing, the size of the take, the restriction of commercial fishing, and the like," the Supreme Court restated that state regulation of regulations to which Indians may be subjected to those which are required to conserve the resource. Thus, regulations applicable to Indians are not judged by the normal standards which govern applicability of state laws without treaty rights. Instead they are held to the higher, "necessary for conservation" standard. United States v. Winans, supra, 388 U.S. at 401 n.14. And consequently, regulations which are applicable to both Indians and non-Indians, such as those restricting all net fishing for steelhead, are discriminatory as to Indians. Puyallup II, supra.

Other recent cases have applied the Puyallup rules, refining the concepts to distinguish the states and the tribes in their application. In the Goodyear case, the district court considered the necessary presence of the fish resource fit the "necessary for conservation" standard. Department of Game v. Puyallup Tribe, 414 U.S. 44 (1973) (Puyallup II).
concurring opinion of Justice McQuade criticizes this aspect of the decision, insisting that "[n]othing in Pu'yallup requires deviation from Arthur in deciding this case." 497 F.2d at 1806.

The Supreme Court of Michigan also has recognized the distinction between the off-reservation rights considered in Pu'yallup and its progeny and other rights, not subject to the same qualification. A Chippewa treaty provision, 39 Stat. 750, 153 N.W.2d 457 (1967). A Lower Michigan court has ruled that "the right of hunting in the land ceded" found in 1835 Chippewa and Ottawa Treaty as well as the Washington territories which are "necessary for preventing the complete and total destruction of the fish supply." People v. Lebin, 222 N.W.2d 305 (1974). On appeal, the Indian defendant has argued that the site of his arrest was not in the ceded area but is within the Bay Mills Indian Reservation, but that if the court finds it to be off the reservation, that the Pu'yallup rule ought not to be applied to this unqualified treaty right. The case awaits decision.

Because of the savings clause in Public Law 280, the conclusions as to the limits of state jurisdiction over off-reservation rights are the same in both P.L. 280 and non-Public Law 280 states. E.g., State v. Gurnee, supra.

Federal Regulation

The Federal Government has acted in at least one instance to provide regulations for off-reservation treaty fishing. In 1967 the Secretary of the Interior promulgated regulations that appear at 25 C.F.R. Part 256. Those regulations have been reenacted on several occasions. The regulations provide merely for identification cards for treaty fishing, a framework for later issuance of substantive regulations to govern the exercise of treaty fishing rights.

We have indicated above that the Secretary has been held to lack power to regulate treaty rights on the reservation. It would seem to follow that he could not regulate the Indians outside the reservation without enabling legislation. See Hobbs, "Indian Hunting and Fishing Rights II," 37 G. Wash. L. Rev. 1251, 1266 n.57. The authority of the Secretary to enact off-reservation treaty fishing regulations in absence of legislation has not been tested. It is reasonable to predict that if there were such a test, the result would track decisions regarding a state's power to regulate the same rights. Thus, where a right is specifically to be shared between Indians and non-Indians, as is the case with the "in common with" right, federal regulations may be upheld, while rights not subject to such qualification would not be. Congress has given the President power to prescribe regulations to carry out provisions of acts and treaties relating to Indian affairs. 25 U.S.C. §§ 9; U.S. v. Clepor, 35 F. 753 (D. Ore. 1888). Under this authority the Secretary may make any regulations which are in fulfillment of the treaty purposes. Under Pu'yallup reasoning as expanded by the United States v. Washington co-tenancy analogy, it would appear that the Secretary clearly could promulgate regulations necessary to preserve the resource which is to be shared as between Indians and non-Indians according to treaty terms. Compare, The James G. Susan, 50 F. 108 (D. Wash. 1892).

Some treaties by their terms may furnish a basis for the Executive to promulgate regulations. For instance, it has been suggested that the phrase "until otherwise ordered by the President" following definition of the hunting and fishing rights in the Chippewa Treaty of 1854 would empower the President to "issue an order limiting or extinguishing the hunting and fishing rights of the Indians in the Pu'yallup region," supra, 183 N.W. 2d 305, at 308. It certainly would seem that any such order would have to be consistent with the purposes of the treaty as understood by the Indians at the time they entered into it. The conclusion of the Michigan court is probably correct but should be limited to situations in which regulations can be demonstrated to fulfill treaty purposes. Compare, Rockbridge v. Lincoln, 490 F.2d 567 (9th Cir. 1971).

Tribal Regulation

The discussion of the limits on state regulation carries the clear implication that the appropriate regulator of fish and game taking pursuant to treaty rights is the Indian tribe which holds the right. In Settler v. Lamer, 50 F.2d 231 (9th Cir. 1934), it was decided that Indians' off-reservation treaty fishing rights include a right to regulate. It was specifically held that non-Indians and the off-reservation right "in common with the citizens of the territory" has authority to arrest and prosecute tribal members outside the reservation for violation of tribal fishing regulations. The holding was supported by evidence as to the Indians' managing practices concerning control of tribal members at the time of the treaty. The fact that continued Indian self-regulation was implied by the treaty enables the tribe today to exercise its regulatory power at "usual and accustomed places" outside reservation boundaries.

The relationship of the United States to Indians—one of having an exclusive right to deal with the Indians and to extinguish their rights—was first articulated in the case of Johnson v. McIntosh, 218 U.S. 513 (1910). That case makes it clear that the United States succeeded to the sovereign rights of the "discovering" nations who first came to the New World, but that sovereignty was subject to a right of occupancy, or aboriginal title, of the Indians. 218 U.S. 513 at 523. The Supreme Court has recently said of these principles of aboriginal title,

"It very early became accepted doctrine in this Court that although fee title to lands in many instances had passed from the Indians and from the United States to the states, yet, the right of occupancy in the Indian tribes was never extinguished, and it was a principle that the states, the sovereign power, could not take and hold the title of the States and the United States—rights of occupancy in the Indian tribes was never extinguished. That right, sometimes called Indian title and good against all but the sovereign, could be terminated only by sovereign act. Once the United States was organized and the Constitution adopted, these tribal
rights to Indian lands became the exclusive province of the federal law. Indian title recognized to be only a right of occupancy was extinguishable only by the United States.


The exclusive right of extinguishing aboriginal property rights of Indians was reflected in the Indian Nonintercourse Acts, now codified in the current form at 25 U.S.C. § 177. It would appear, then, that the supremacy clause to the United States Constitution, operating via 25 U.S.C. § 177 which embodies the preemptive right of the United States to deal with Indians, would preclude the exercise of any state authority over presently existing aboriginal rights.

In State v. Quigley, 52 Wash.2d 234, 324 P.2d 827 (1958), the Washington Supreme Court held that an Indian did not possess aboriginal rights which excluded the exercise of state power to regulate his hunting and fishing. But it held that his aboriginal right continued extinguished. He had been arrested on lands he had purchased from a non-Indian. The Quigley panel was of the view that Indian title had been extinguished, although there was no express statutory or other clear manifestation of the exercise of any state authority over presently existing aboriginal rights.

In the case with the Kootenai Tribe of Idaho which received compensation for lands taken mistakenly from that tribe which never participated in a treaty with the United States.

Memorandum from Associate Solicitor to Commissioner of Indian Affairs, dated October 29, 1975. The same opinion deals with the question of to what extent a state might regulate the exercise of their aboriginal rights. It points out that there is no sound authority that the aboriginal rights, as they were specifically extinguished, could not be protected by the supremacy clause. But in the case of Kake v. Egan, 369 U.S. 60 (1962), the Court held that the aboriginal fishing rights of Alaska Natives were not exclusive, and certain federal regulations could not exempt them. Alaska's anti-trap law was declared constitutionally invalid. The Court acknowledged that the aboriginal fishing rights of the Indians over which Alaska had disclaimed jurisdiction in its statehood enabling act, but that the enabling act did not mandate exclusive federal jurisdiction over such matters. It seems to allow state regulation based on the "migratory habits of salmon" which would make the presence of fishing traps "no merely local matter." Kake was actually concerned with the extent of permissible federal power to regulate Indian fishing. It does not appear that the basis for the preemptive impact of aboriginal rights over the exercise of state regulatory power was fully considered. Furthermore, the anomalous situation of Alaska Natives was in a state of confusion until the Supreme Court of Idaho, 45 U.S.C. § 1601 et seq. The Supreme Court of Idaho will soon decide the question of whether to what extent a state may regulate the exercise of aboriginal hunting rights of the Kootenai Tribe. State v. Coffee, No. 12046.

RECOMMENDATIONS

1. It is not recommended that any specific legislation be enacted relative to Indian hunting and fishing rights. The subject is properly charged in some areas, such as the Northwest. In the present milieu, however, it is generally possible that state interests. Already a vocal non-Indian minority is calling for congressional abrogation of Indian treaty hunting and fishing rights in the wake of a few court decisions upholding those rights. Abrogation probably would be personally distasteful to much of Congress and the public because of the moral and legal interests involved. The price of compensating Indians for extinguishment of the rights would be staggering. Congress has considered the subject in the context of Washington Indian rights and has elected not to act. H.R.J. Res.

2. Congress has rejected Indian treaty fishing rights in the form.
A. Federal Taxation of Indians and Property

In resolving questions concerning the extent of federal taxing jurisdiction over Indians and Indian property, it is generally accepted that federal tax statutes apply to Indians and Indian property unless such taxation is inconsistent with specific rights reserved either by treaty or federal statute. Thus, while the United States has recognized that Indian tribes are not taxable entities, Rev. Rule 67-294, 1967-2 Cum. Bull. 55, the courts have taken a case-by-case approach to determine whether general federal taxing status should be applied in a given case to an Indian or to Indian property. In Chouteau v. Burnett, 283 U.S. 691 (1931) and in Superintendent of Free Civilized Tribes v. Commissioner, 255 U.S. 418 (1921), the courts were designed to apply to each individual resident of the United States and to all income from whatever source, including income earned by an Indian. Nevertheless, the Court in Squire v. Copeman, 351 U.S. 1 (1956), exempted income derived directly from a trust allotment because of the prohibition in the allotment act against taxation and because of a provision in the applicable treaty reserving the land from taxation. The allotment exemption was followed in and with the states in which they are located. On numerous occasions their jurisdictional problems have involved various attempts by the United States and the states to tax Indians and Indian property.

The unique tax status of Indians is central to the special legal and social relationships which the United States has created for Indians and their reservations. The tax aspects of this relationship limit the United States and the states from imposing their taxes against Indians and Indian reservations in the same broad manner that they normally tax persons and property within their jurisdictions. The relationship which the United States has created with the tribe is a trust relationship between Indians and the United States, and to formulate congressional legislation which would clarify this tax status in two areas which require special consideration.

I. A SUMMARY OF THE TAX STATUS OF INDIANS

Indian tribes were once characterized as distinct, independent, political communities. Worcester v. Georgia, 31 U.S. (6 Pet.) 351 (1853). While the legal status of Indian tribes has undergone many changes since this characterization, it remains clear today that Indian tribes are “unique aggregations possessing attributes of sovereignty over their members and their territory,” United States v. Mazer, 419 U.S. 544, 557 (1975). As distinct political bodies with attributes of sovereignty, Indian tribes have long had problems in their governmental relationships both with the United States Stevens v. Commissioner, 452 F.2d 678 (9th Cir. 1971), involving the federal taxability of income earned from allotments which had been acquired by gift or exchange from other Indians, but which was not followed in Holt v. Commissioner, 384 F.2d 58 (8th Cir. 1966), cert. denied, 389 U.S. 871 (1967), in that the state of Indian income from federal taxation, each analyze under various circumstances whether an Indian exemption exists to limit federal tax liability.

B. State Taxation of Indians and Indian Property

In resolving questions concerning the extent of state jurisdiction over reservation Indians, it has been held that the sovereignty of Indians should be maintained. This does not mean that the state, no longer the sole determining factor, must still be considered because it provides a backdrop against which the applicable treaties and federal statutes must be read. McClanahan v. Arizona State Tax Commission, 411 U.S. 164, 172 (1973). Given the existing federal relationship between Indian tribes and the United States, state taxation over reservation Indians or property can only be sustained if authorized by an act of Congress. Moreover, such authorization must be specific and narrow so that it is clearly recognizable as to the extent of state taxation which requires a narrow construction to be given to the scope and extent of state taxation authority. See Mescalero Apache Tribe v. Jones, 411 U.S. 345, 357 (1973); McClanahan v. Arizona State Tax Commission, 411 U.S. 164, 172 (1973). The scope of state taxing authority over reservation Indians and reservation property. Presumably, a favorable outcome in Bryan will mean that Public Law 280 reservations will be treated no differently than non-Public Law 280 reservations—namely, in the alternative, the new regime is unfavorable. Indians and non-trust property on Public Law 280 reservations will be subject to comprehensive state taxation.

Court decisions have confirmed that the states lack the authority to tax either Indian income earned on a reservation or Indian real or personal property located on a reservation, whether held in trust or not. More recently, Ariz. Board of Tax Appeals v. Ariz. Tax Commission; Moe v. Salish and Kootenai Tribes, 44 U.S.L.W. 4355, April 27, 1976. In the circumstances of the Moe case, the Supreme Court was unwilling to strike down the portion of the state law which required the Indian retailer to collect the tax for the state, because the Court found that the burden imposed on the Indian of collecting the tax did not significantly interfere with the right of the reservation Indians to exercise governmental authority on the reservation free of state interference.

State taxation of non-Indians in businesses dealing with Indian property has been upheld either because an express act of Congress authorized the tax, see, e.g., Great Northern Ry. Co. v. Board of Tax Commissioners, 289 U.S. 159 (1933); cf. Santa Fe & N. M. Ry. Co. v. Kansas Tax Com'rs, 312 U.S. 117 (1941); or because the tax is imposed by an Indian tribe acting in a sovereign capacity, see, e.g., Blackfeet Tribe v. Moe, 336 U.S. 342 (1949); Apache-Rican Bank of Mission Indians v. County of Riverside, 442 F.2d 1184 (9th Cir. 1967), cert. denied, 406 U.S. 923 (1973); Moe v. Salish and Kootenai Tribes, 44 U.S.L.W. 4355, April 27, 1976.

An important unresolved aspect of the Indian tax status involves state attempts at taxing reservation businesses that are treated no differently than non-Indian businesses. The federal government and the states have conflicting economic interests that are not significantly interfered with by the state taxation. The state taxation of non-Indians by the states is treated no differently than non-Indian businesses. The state taxation of non-Indians by the states is not significantly interfered with by the state taxation. The state taxation of non-Indians by the states is not significantly interfered with by the state taxation.

C. Taxation by Indian Tribes

Ample authority exists for tribes to impose taxes on Indians and non-Indians with their reservations. Iron Ore v. Oglala Sioux Tribe, 321 F.2d 89 (8th Cir. 1963); Bester v. Wright, 335 F. 947 (8th Cir. 1956); Morris v. Hitchcock, 21 Ind. 388 (1863), aff'd, 194 U.S. 841 (1904). Even though such authority has existed for years, tribes are just now beginning to realize the need to impose tribal taxes on reservation enterprises in order to support increasing tribal governmental activity.

However, the assertion of tribal taxation alone will not assist tribes in expanding their governmental revenues. A second step is necessary to allow tribal governments to realize a full and fair share of reservation income. That second step is to eliminate double taxation by ousting state taxation authority. The value of tribal taxation is significantly diminished if state taxation is not at the same time prevented, for it is clearly not in the interest of Indian tribes to have Indian and non-Indian businesses on their reservations subjected to both state and tribal taxation. Such a result will inevitably deter non-Indian financial and management involvement which is badly needed on many reservations.

Establishing the primary tax authority of Indian tribes could be achieved through litigation which demonstrates that the state tax creates an unacceptable double tax burden on reservation taxpayers and hence significantly interferes with the primary right of reservation Indians to govern themselves. However, a preferred approach would be for Congress to enact a bill confirming the primary taxing authority of Indian tribes over reservation business ventures. Such a bill is proposed in Part II of this paper.

The main legal restraint on tribal taxation is found in the general limitations on tribal jurisdiction as defined by the Indian Civil Rights Act, 25 U.S.C. § 1301, et seq. At least two separate problems exist: first is whether the equal protection provisions in the Indian Civil Rights Act require that any tribal tax be applied indiscriminately as between Indians and non-Indians. Second is whether a pre-emptive tax on non-Indians who would have no rights and influence tribal governmental policies violates the right of non-Indians to due process under law.

The equal protection problems can be avoided by utilizing tribal taxes which although authorizing taxes over Indians and non-Indians are so structured as to limit the impact of the state on less affluent Indian Indians and non-Indians affected thereby. This can be achieved by imposing exemptions which would affect the level of taxation or by authorizing credits for tribal members in furnishing of tribal governmental policies.
Mr. Ullman introduced the following bill; which was referred to the Committee on Ways and Means

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Resource Tax Act of 1976".

FINDINGS AND DECLARATION OF PURPOSE

SECTION 1. The Congress finds that—
(a) the governmental status and powers of Indian tribes has been repeatedly recognized and affirmed by the Congress, the executive branch, and the courts from the earliest days of the Republic, and
(b) notwithstanding such recognition, Indian tribes have been effectively prohibited from asserting tribal taxes on businesses owned and operated by non-Indians located on reservations which are involved directly with reservation resources, because states have undertaken broad taxation of reservation resource development, and
(c) establishing the primary tax jurisdiction of Indian tribes over reservation resource development would recognize the unique governmental status of Indian tribes, the depletion of treaty reserved Indian trust properties which often occurs as a result of the development of Indian resources, the contribution of Indian resources to American economic needs, the special governmental services provided to reservation Indians by Indian tribes, and at the same time recognize the limited responsibilities which the states have over reservation affairs.

SECTION 2. A new Section, 25 U.S.C. § 481, shall be added to Vol. 25 U.S.C. which shall provide, "When a tribal tax is imposed with respect to a business owned in part or in whole by a non-Indian and the business is directly involved with development and sale of a resource which is peculiar to the reservation or secured for the benefit of the Indians, the tribal tax shall preempt any inconsistent state taxes which might be otherwise applicable."