LIII. 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.* There are 515 Indian children under twenty-one years old in Ventura County.† Thus, one out of 515 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 0.7 times (70 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.* There are 213 Indian children under twenty-one years old in Yolo County.† 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 no Indian children in State-administered foster family homes in 1974.* There are 94 Indian children under twenty-one years old in Yuba County.†

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.* There are 278 Indian children under twenty-one years old in these three counties.*†

*AAIA Questionnaire, *op. cit.*
†Race of the Population by County: *op. cit.* 1970; 6, 7.

IDAHO INDIAN ADOPTION AND FOSTER CARE STATISTICS

Basic Facts

1. There are 302,170 under twenty-one year olds in the State of Idaho.[1]
2. There are 3,808 under twenty-one year old American Indians in the State of Idaho.[2]
3. There are 298,902 non-Indians under twenty-one years old in the State of Idaho.

I. ADOPTION

In the State of Idaho, according to the Idaho Department of Health and Welfare, there were an average of 14 public agency adoptions per year of American Indian children from 1973–1975.[3] 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 1973–1975 1.1 percent of Idaho Indian children were placed for adoption.

During 1973–1975, according to the Idaho Department of Health and Welfare, there were an average of 109 public agency adoptions per year of non-Indian children in Idaho.[4] Thus, during 1973–1975, 0.1 percent of Idaho non-Indian children were placed for adoption.

Conclusion

Based on the three-year period 1973–1975, and not including any private agency placements, Indian children were placed for adoption at a per capita rate 11 times (1,100 percent) greater than that for non-Indian children; 88 percent of the Indian children placed in adoption by public agencies in Idaho in 1975 were placed in non-Indian homes.[5]

II. FOSTER CARE

According to statistics from the Idaho Department of Health and Welfare, there were 296 Indian children in foster care in Fiscal Year 1976.[6] This represents one out of every 12.9 Indian children in the State. By comparison there were 3,615 non-Indian children in foster care during Fiscal Year 1976,[7] representing one out of every 82.7 non-Indian children in the State.

Conclusion

There are therefore, by proportion, 6.4 times (640 percent) as many Indian children as non-Indian children in foster care in Idaho.

III. COMBINED FOSTER CARE AND ADOPTIVE CARE

Since we are unable to estimate the total number of Indian children currently in adoptive care in Idaho, it is not possible either to estimate the total number of Indian children receiving adoptive and foster care. The foster care statistics alone, and the adoption data we do have, make it unmistakably clear

[1] U.S. Bureau of the Census, Census of Population: 1970, Volume I, Characteristics of the Population, Part 14, "Idaho" (U.S. Government Printing Office: Washington, D.C.: 1973), pp. 14–43.
[2] Ibid., pp. 14–43 (Table 19), pp. 14–265 (Table 139). Indian people comprise 54 percent of the total non-white population according to Table 139. According to Table 19 there are 7,051 non-whites under twenty-one. 7,051 times .54 equals 3,808.
[3] Telephone interview with Ms. Shirley Wheatley, Adoptions Coordinator, Idaho Department of Health and Welfare, July 23, 1976. A total of 41 Indian children were placed for adoption by the Idaho Departement of Health and Welfare during these three years.
[4] Ibid. A total of 328 non-Indian children were placed for adoption by the Idaho Department of Health and Welfare during these three years.
[5] Ibid.
[6] Telephone interview with Ms. Ruth Pefley, Bureau of Research and Statistics, Idaho Department of Health and Welfare, July 23, 1976.
[7] Ibid.

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that 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 33 Indian children in State-administered foster care in Fiscal Year 1976.[1] There are 446 Indian children under twenty-one years old in these five counties.[2] Thus one in every 13.5 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 Statewide 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.[3] There are 827 Indian children under twenty-one years old in these five counties.[4] 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 Statewide rate for non-Indians in Idaho.

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

In Adams 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.[5] There are 298 Indian children under twenty-one years old in these six counties.[6] 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 Statewide rate for non-Indians in Idaho.

[1] Letter and table ("Foster Care by Region") from Ms. Ruth Pefley, Research Analyst, Idaho Department of Health and Welfare, July 27, 1976. These counties comprise Region I of the Idaho Department of Health and Welfare.

[2] The total Indian population of Benewah, Bonner, Boundary, Kootenai and Shoshone counties is 739. [U.S. Bureau of the Census. Census of Population: 1970 Supplementary Report PC(S1)–104, "Race of the Population by County: 1970" (U.S. Government Printing Office: Washington, D.C.: 1975), pp. 12–13.] 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, 60.3 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.) 739 times .603 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.

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.[7] There are 243 Indian children under twenty-one years old in these four counties.[8] 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 (580 percent) greater than the State-wide rate for non-Indians in Idaho.

V. BLAINE, CAMAS, CASSIA, 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.[9] There are 236 Indian children under twenty-one years old in these eight counties.[10] Thus one in every 12.4 Indian children is in foster care.

Conclusion

In Blain, 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. BANNOCK, BEAR LAKE, BINGHAM, CARIBOU, FRANKLIN, ONEIDA, AND POWERS COUNTIES

In Bannock, 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.[11] There are 1,647 Indian children under twenty-one years old in these seven counties.[12] Thus one in every 12.9 Indian children is in foster care.

Conclusion

In Bannock, 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, LEMHI, 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.[13] There are 335 Indian children under twenty-one years old in these nine counties.[14] Thus one in every 19.7 Indian children is in foster care.

Thus one in every 19.7 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%) greater than the State-wide rate for non-Indians in Idaho.

[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] "Race of the Population by County," loc. cit.

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

[12] "Race of the Population by County," loc. 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.[1]
2. There are 1,084 under twenty-one-year-old American Indians in the State of Maine.[2]
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.[3] 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.[4] 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.[5] This represents one out of every 13.2 Indian children in the State. By comparison there were 1,568 non-Indian children in foster homes in 1975,[6] representing one out of every 251.9 non-Indian children in the State.

Conclusion

By rate, therefore, Indian children are placed in foster homes 19.1 times (1,910%) more often than non-Indians in Maine. As of 1973, the last year for which a breakdown is available, 64 percent of the Indian children in foster care were in non-Indian homes.[7]

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.

[1] U.S. Bureau of the Census, 1970 Census of the Population, Volume I: Characteristics of the Population, Part 21: "Maine" (Washington, D.C.: U.S. Government Printing Office: 1973). Table 19, p. 21–43.

[2] Ibid., p. 21–43 (Table 19), p. 21–257 (Table 139). Indian people comprise 35 percent of the total non-white population according to Table 139. According to Table 19 there are 3,098 non-whites under twenty-one. 3,098 times 35 percent equals 1,084.

[3] 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.

[4] Telephone interviews with Ms. Freda Plumley, op. cit. Cf. National Center for Social Statistics, U.S. Department of Health, Education and Welfare, "Adoptions in 1974." DHEW Publication No. (SRS) 76–03259, NCSS Report E–10 (1974), April 1976. Table 1, "Children for whom adoption petitions were granted," p. 7.

[5] Telephone interviews with Ms. Freda Plumley, op. cit.

[6] Ibid.

[7] Ibid.

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.[1] This represented one out of every 13.2 Indian children in the State. By comparison, there were 2,099 non-Indian children in foster homes in 1969,[2] 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 (1,430%) 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.[3] 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,[4] representing one 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 (2,580%) 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.[5] This represented one out of every 3.3 Indian children in Aroostook county.[6]

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.[7] This represented one out of every 10.4 Indian children in the State. By comparison, there were 1,861 non-Indian children in foster homes in 1973,[8] 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 20.4 times (2,040 percent) greater than 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. The years included in this historical note are the last years for which the Maine Department of Human Services is able to supply statistics.

[2] Ibid.

[3] Ibid.

[4] Ibid.

[5] 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.

[6] The total Indian population of Aroostook County is 436. (U.S. Bureau of the Census, Census of Population: 1970 Supplementary Report PC(S1)–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-one 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.

[7] Statistics from Ms. Freda Plumley, op. cit.

[8] 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 made 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 deculturation of Indian children.[9]

[9] Maine Advisory Committee to the United States Commission on Civil Rights, *Federal and State Services and the Maine Indian* (Washington, D.C.: U.S. Commission on Civil Rights: 1975), p. 89.

MICHIGAN INDIAN ADOPTION AND FOSTER CARE STATISTICS

Basic Facts

1. There are 3,727,438 under twenty-one year olds in the State of Michigan.[1]
2. There are 7,404 under twenty-one year old American Indians in the State of Michigan.[2]
3. There are 3,720,034 non-Indians under twenty-one in the State of Michigan.

I. ADOPTION

In the State of Michigan, according to the Michigan Department of Social Services[3] and 12 private child placement agencies in Michigan,[4] there were 62 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,[5] 63 percent (or 39) 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.[6] Using the formula then that: 39 Indian children per year are placed in adoption for at least 17 years, 12 Indian children are placed in adoption for a minimum average of 14 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.[7] Using the same formula as above, there are 122,860 non-Indians in adoptive homes in Michigan, or one out of every 30.3 non-Indian children.

Conclusion

There are therefore by proportion 3.7 times (370 percent) as many Indian children as non-Indian children in adoption in Michigan.

[1] U.S. Bureau of the Census, Census of Population: 1970, Volume I, Characteristics of the Population, Part 24, "Michigan" (U.S. Government Printing Office: Washington, D.C.: (1973), pp. 24–65.

[2] U.S. Bureau of the Census, Census of Population: 1970: Subject Reports, Final Report PC(2)–1F, "American Indians" (Washington, D.C.: U.S. Government Printing Office: 1973). Table 2, "Age of the Indian Population by Sex and Urban and Rural Residence: 1970," p. 8.

[3] Letter from R. Bernard Houston, Director, Michigan Department of Social Services, February 23, 1973.

[4] Leter 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).

[5] National Center for Social Statistics, U.S. Department of Health, Education and Welfare, "Adoptions in 1974," DHEW Publication No. (SRS) 76–03259, NCSS Report E–10 (1974), April 1976. Table 10, "Children adopted by unrelated petitioners by age at time of placement, by state, 1974," p. 16. (Absolute numbers converted into percentages for purposes of this report.

[6] The median age at time of placement of children adopted by unrelated petitioners in 1974 in Michigan was 5.4 months. Ibid., p. 15.

[7] National Center for Social Statistics, U.S. Department of Health, Education and Welfare, "Adoptions in 1973," DHEW Publication No. (SRS) 76–03259, NCSS Report E–10 (1973), July 1975. Table 1, "Children for whom adoption petitions were granted in 41 reporting States," p. 4.

II. FOSTER CARE

According to statistics from the Michigan Department of Social Services[8] and seven private child placement agencies[9] 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,[10] representing one out of every 641 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, 128,661 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 3.9 times (390 percent) more often than non-Indian children in the State of Michigan.

[8] Letter from R. Bernard Houston, op. cit.

[9] Letters from Bethany Christian Home, N.E. Grand Rapids (16 children); Catholic Social Services of the Diocese of Grand Rapids (3 children); Child and Family Services of the Upper Peninsula, Marquette (1 child); Detroit Baptist Children's Home, Royal Oak (2 children); Family and Child Care Service, Traverse City (5 children); Family and Children Services of the Kalamazoo Area (2 children); Michigan Children's and Family Services, Traverse City (2 children).

[10] National Center for Social Statistics, U.S. Department of Health, Education and Welfare, "Children Served by Public Welfare Agencies and Voluntary Child Welfare Agencies and Institutions March 1971," DHEW Publication No. (SRS) 73-03258, NCSS Report E-9 (3/71), April 27, 1973. Table 8, "Children receiving social services from public welfare agencies and voluntary child welfare agencies and institutions."

MINNESOTA INDIAN ADOPTION AND FOSTER CARE STATISTICS

Basic Facts

1. There are 1,585,186 under twenty-one year olds in Minnesota.[1]
2. There are 12,672 under twenty-one year old American Indians in Minnesota.[2]
3. There are 1,572,514 non-Indians under twenty-one years old in Minnesota.

I. ADOPTION

In the State of Minnesota, according to the Minnesota Department of Public Welfare, there was an average of 103 adoptions of Indian children per year from 1964–1975.[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 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; 14% (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.[5] 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 16.5 years, 15 Indian children are placed in adoption for an average of 14 years, ten 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 1,594 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),[6] there are 50,543 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.[7]

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

[1] U.S. Bureau of the Census, Census of Population: 1970, Volume I, Characteristics of the Population, Part 25, "Minnesota" (U.S. Government Printing Office: Washington, D.C.: 1973), pp. 25–68.

[2] U.S. Bureau of the Census, Census of Population: 1970; Subject Reports, Final Report PC(2)–1F, "American Indians" (Washington, D.C.: U.S. Government Printing Office: 1973), Table 2, "Age of the Indian Population by Sex and Urban and Rural Residence: 1970," p. 8.

[3] Minnesota Department of Public Welfare, "Annual Report Adoptions 1974–1975" (Research and Statistics Division: November 1975). Table XV–A, "Decrees granted 1964–65 through 1974–75 by race," p. 20.

[4] National Center for Social Statistics, U.S. Department of Health, Education and Welfare, "Adoptions in 1974," DHEW Publication No. (SRS) 76–03259, NCSS Report E–10 (1974), April 1976. Table 10, "Children adopted by unrelated petitioners by age at time of placement by State, 1974," p. 16. (Absolute numbers converted into percentages for purposes of this report.)

[5] The median age of children adopted by unrelated petitioners in 1974 in Minnesota was 5.3 months. Ibid., p. 15.

[6] "Annual Report Adoptions 1974–1975," loc. cit.

[7] Ibid., p. 23, Table XVIII–A, "Decrees granted 1974–75 by type of adoption and race of child and race of adoptive mother."

1972.[8] This represents one out of every 17.2 Indian children. By comparison, there were 5,541 non-Indian children in foster family homes,[9] representing one out of every 283.8 non-Indian children in the State.

Conclusion

There are therefore by prportion 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 2,331 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 5.4 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 adoptive care or foster family care 5.2 times (520 percent) more often than non-Indian children in the State of Minnesota.

[8] Minnesota Department of Public Welfare, "A Special Report: Racial Characteristics of Children Under Agency Supervision as of December 31, 1972" (Research and Statistics Division: November 1973). Table C., "Living Arrangement by Race of All Children," p. 3. 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 (25.2 percent) than were children of any other race." Ibid., p. 4.

[9] Ibid., p. 3.

MONTANA INDIAN ADOPTION AND FOSTER CARE STATISTICS

Basic Facts

1. There are 289,573 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 33 public agency adoptions of Indian children per year from 1973–1975.[3] Using federal age-at-adoption figures,[4] 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.[5] Using the formula then that: 28 Indian children per year are placed in adoption for at least 17 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 year olds 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),[6] 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 4.8 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.[7]

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.[8] 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.[9] When these children are added to the State

[1] U.S. Bureau of the Census, Census of Population: 1970, Volume I, Characteristics of the Population, Part 28, "Montana" (U.S. Government Printing Office: Washington, D.C.: 1973), p. 28–35.

[2] U.S. Bureau of the Census, Census of Population: 1970: Subject Reports, Final Report PC(2)–1F, "American Indians" (Washington, D.C.: U.S. Government Printing Office: 1973), Table 2, "Age of the Indian Population by Sex and Urban and Rural Residence: 1970," p. 9.

[3] Telephone interview with Mrs. Betty Bay, Adoption Consultant, State of Montana Social and Rehabilitation Services, July 20, 1976.

[4] National Center for Social Statistics, U.S. Department of Health, Education, and Welfare, "Adoptions in 1971," DHEW Publication No. (SRS) 73–03259, NCSS Report E–10 (1971), May 23, 1973. Table 6, "Children adopted by unrelated petitioners: Percentage distribution by age at time of placement, by type of placement, 1971."

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

[6] Telephone interview with Mrs. Betty Bay, July 20, 1976.

[7] Ibid.

[8] Letter from Ms. Jeri Davis, Research Specialist, Bureau of Statistics and Research, State of Montana Social and Rehabilitation Services, July 12, 1976.

[9] Division of Social Services, U.S. Bureau of Indian Affairs, "Fiscal year 1974—Child Welfare (Unduplicated Case Count by Areas)." Table, p. 1.

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 28.3 Indian children in the State. By comparison, there were 735 non-Indian children in State-administered foster care during June 1976,[10] 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.

[10] 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.[1]
2. There are 3,739 under twenty-one-year-old American Indians in Nevada.[2]
3. There are 187,918 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.[3] 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),[4] 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.[5] In addition, the Inter-Tribal Council of Nevada reported 25 Indian children in foster care.[6] This combined total (73) represents one in every 51.2 Indian children. By comparison, there were 527 non-Indian children in foster care,[7] representing one in every 356.6 non-Indian children in the State.

Conclusion

By per capita 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.

[1] U.S. Bureau of the Census, 1970 Census of the Population, Volume I: Characteristics of the Population, Part 30: "Nevada" (Washington, D.C.: U.S. Government Printing Office: 1973), Table 19, p. 30–36.

[2] Ibid., p. 30–36 (Table 19), p. 30–207 (Table 139). Indian people comprise 18.8 percent of the total non-white population according to Table 139. According to Table 19 there are 19,889 non-whites under twenty-one. 19,889 × 18.8 percent = 3,739.

[3] Telephone interview with Mr. Ira Gunn, Chief of Research and Statistics, Nevada State Division of Welfare, July 15, 1976. The 1974 adoption figures are also available in: National Center for Social Statistics, U.S. Department of Health, Education and Welfare. "Adoptions in 1974." DHEW Publications No. (SRS) 76–03259. NCSS Report E–10 (1974), April 1976. Table 3, "Children adopted by unrelated petitioners," p. 9. (All of the Indian children placed for adoption by the Nevada State Division of Welfare in 1974 were adopted by unrelated petitioners.)

[4] Telephone interview with Mr. Ira Gunn, July 15, 1976.

[5] Letter from Mr. Ira Gunn, August 2, 1976.

[6] Telephone interview with Mr. Efraim Estrada, 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.[1]
2. There are 41,316 under twenty-one-year-old American Indians in the State of New Mexico.[2]
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.[3] 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.

During fiscal year 1976, according to the New Mexico Department of Health and Social Services, there were 77 non-Indian children placed for adoption by public agencies.[4] 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 per capita rate 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 142 Indian children in foster homes in June 1976.[5] 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.[6] Combining the State and BIA figures, there were 287 Indian children in foster homes in June 1976. This represents one out of every 144 Indian children in the State. By comparison there were 1,225 non-Indian children in foster care in June 1976,[7] 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.

[1] U.S. Bureau of the Census, Census of Population: 1970, Volume I, Characteristics of the Population, Part 33, "New Mexico" (U.S. Government Printing Office: Washington, D.C.: 1973), p. 33-34.

[2] U.S. Bureau of the Census, Census of Population: 1970; Subject Reports, Final Report PC(2)-1F, "American Indians" (Washington, D.C.: U.S. Government Printing Office: 1973), Table 2, "Age of the Indian Population by Sex and Urban and Rural Residence: 1970," p. 10.

[3] Telephone interview with Ms. Heidi Illanes, Assistant Adoption Director, New Mexico Department of Health and Social Services, July 23, 1976.

[4] Ibid.

[5] Telephone interview with Ms. Pat Diers, Social Services Agency, New Mexico Department of Health and Social Services, July 26, 1976.

[6] The BIA Navajo Area Office reported 18 Indian children in foster care in New Mexico during April 1976. (Telephone interview with Mr. Steve Lacy, Child Welfare Specialist, Navajo Area Office, July 26, 1976.) The BIA Albuquerque Area Office reported 172 Indian children in foster homes in New Mexico during June 1976. (Telephone interview with Ms. Betty Dillman, Division of Social Services, Albuquerque Area Office, July 28, 1976). Of the 190 children the BIA had in foster homes in New Mexico, 45 were under a BIA contract with the State under which the BIA reimburses the State for foster care expenses. These 45 children have been subtracted from the BIA total. 190—45=145.

[7] Telephone interview with Ms. Pat Diers, *op. cit.*

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 receiving 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.[8] An additional 1,324 Indian children in New Mexico live in BIA-operated dormitories while attending public schools.[9] These children properly belong in any computation of children separated from their families. Adding the 8,752 Indian children in federal boarding schools or dormitories in New Mexico to those in foster care alone, there are a minimum (excluding adoptions) of 9,039 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 74.6 times (7,460 percent) more often than non-Indian children in New Mexico.

[8] Office of Indian Education Programs, U.S. Bureau of Indian Affairs, "Fiscal Year 1974 Statistics Concerning Indian Education" (Lawrence, Kansas: Haskell Indian Junior College: 1975), pp. 12–13.
[9] Ibid., pp. 22–23.

NEW YORK ADOPTION AND FOSTER CARE STATISTICS

Basic Facts

1. There are 6,726,515 under twenty-one-year-olds in the State of New York.[1]
2. There are 10,627 under twenty-one-year-old American Indians in the State of New York.[2]
3. There are 6,715,888 non-Indians under twenty-one in the State of New York.

I. ADOPTION

In the State of New York, according to the New York Board of Social Welfare, there were 12 Indian children placed for adoption as of June 1976.[3] 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 as of June 1976, 0.1 percent of New York Indian children were placed for adoption.

As of March 1976, according to the New York State Board of Social Welfare, 1,807 non-Indian children were placed for adoption in New York.[4] Thus, as of March 1976, 0.03% of New York non-Indian children were placed for adoption.

Conclusion

Based on limited data, Indian children are placed for adoption at a per capita rate 3.3 times (330%) the rate for non-Indian children in New York.

II. FOSTER CARE

According to statistics from the New York State Board of Social Welfare, there were 142 Indian children in foster (family) boarding homes in June 1976.[5] This represents one out of every 74.8 Indian children in the State. By comparison there were 30,170 non-Indian children in foster (family) boarding homes in March 1976,[6] representing one out of every 222.6 non-Indian children in the State.

Conclusion

By per capita rate therefore Indian children are placed in foster homes 3.0 times (300 percent) as often as non-Indian children in New York.

An estimated 96.5% of the Indian children in foster (family) boarding homes are placed in non-Indian homes.[7]

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 York, it is not possible either to estimate the total number of Indian children receiving adoptive and foster care. The foster care statistics

[1] U.S. Bureau of the Census, Census of Population: 1970, Volume I, Characteristics of the Population, Part 34, Section 1, "New York" (U.S. Government Printing Office: Washington, D.C.: 1973), p. 34–75.
[2] U.S. Bureau of the Census, Census of Population: 1970; Subject Reports, Final Report PC(2)–1F, "American Indians" (Washington, D.C.: U.S. Government Printing Office: 1973), Table 2, "Age of the Indian Population by Sex and Urban and Rural Residence: 1970," p. 10.
[3] Letter and computer print-out from Mr. Bernard S. Bernstein, Director, Bureau of Children's Services, New York State Board of Social Welfare, July 16, 1976.
[4] Telephone interview with Mr. Bernard S. Bernstein, New York State Board of Social Welfare, July 21, 1976.
[5] Letter and computer print-out from Mr. Bernard S. Bernstein, *op. cit.*
[6] Telephone interview with Mr. Bernard S. Bernstein, *op. cit.*
[7] This estimate is based on telephone interviews from July 22–27, 1976 with Department of Social Services personnel in Cattaraugus, Erie, Niagara and Onondaga counties. 115 out of a total of 135 Indian children under public care in foster (family) boarding homes in June 1976 were placed in these four counties—and approximately 111 of such placements were in non-Indian homes.

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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 effect 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, mostly from Arizona and South Dakota, were placed for adoption in New York.[1]

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 23 Indian children in foster (family) boarding homes in June 1976.[1a] There are 548 Indian children under twenty-one years old in Cattaraugus County.[2] Thus one out of every 23.8 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 53 Indian children in foster (family) boarding homes in June 1976.[3] There are 1,654 Indian children under twenty-one years old in Erie County.[4] Thus one out of every 31.2 Indian children is in a foster (family) boarding 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 five Indian children in foster (family) boarding homes in June 1976.[3] There are 696 Indian children under twenty-one years old in Franklin county.[4] Thus one out of every 139.2 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.

[1] David Fanshel, *Far From the Reservation: The Transracial Adoption of American Indian Children* (Metuchen, N.J.: The Scarecrow Press, Inc.: 1972), pp. 34–35. The Indian Adoption Project placed a total of 395 American Indian children for adoption in 26 states and Puerto Rico, virtually always with non-Indian families.

[1a] Letter and computer print-out from Mr. Bernard S. Bernstein, Director, Bureau of Children's Services, New York State Board of Social Welfare, July 16, 1976.

[2] 41.6% of the New York Indian population is under twenty-one years old. [U.S. Bureau of the Census, Census of Population: 1970; Subject Report PC(2)–1F, "American Indians" (Washington, D.C.: U.S. Government Printing Office: 1973), Table 2, "Age of the Indian Population by Sex and Urban and Rural Residence: 1970," p. 10.] The total Indian population of Cattaraugus County is 1,318. [U.S. Bureau of the Census, Census of Population: 1970 Supplementary Report PC(S1)–104, "Race of the Population by County: 1970" (Washington D.C.: U.S. Government Printing Office: 1975), p. 32.] 1,318×.416=548. The same formula is used to determine the Indian under twenty-one year old population in the other New York counties.

[3] Mr. Bernard S. Bernstein, *op. cit.*

[4] "Race of the Population by County: 1970," *op. cit.*, p. 32.

IV. MONROE COUNTY

In Monroe County, according to statistics from the New York State Board of Social Welfare, there were four Indian children in foster (family) boarding homes in June 1976.[5] There are 520 Indian children under twenty-one years old in Monroe County.[6] Thus one out of every 130 Indian children is in a foster (family) boarding home.

Conclusion

In Monroe County Indian children are in foster (family) boarding homes at a per capita rate 1.7 times (170 percent) the State-wide rate for non-Indians in New York.

V. NIAGARA COUNTY

In Niagara County, according to statistics from the New York State Board of Social Welfare, there were 12 Indian children in foster (family) boarding homes in June 1976.[5] There are 749 Indian children under twenty-one years old in Niagara County.[6] Thus one out of every 62.4 Indian children is in a foster (family) boarding home.

Conclusion

In Niagara County Indian children are in foster (family) boarding homes at a per capita rate 3.6 times (360 percent) greater than the State-wide rate for non-Indians in New York.

VI. ONONDAGA COUNTY

In Onondaga County, according to statistics from the New York State Board of Social Welfare, there were 27 Indian children in foster (family) boarding homes in June 1976.[5] There are 942 Indian children under twenty-one years old in Onondaga County.[6] Thus one out of every 34.9 Indian children is in a foster (family) boarding home.

Conclusion

In Onondaga County Indian children are in foster (family) boarding homes at a per capita rate 6.4 times (640 percent) greater than the State-wide rate for non-Indians in New York.

[5] Mr. Bernard S. Bernstein, *op. cit.*

[6] "Race of the Population by County: 1970," *op. cit.*, p. 33.

North Dakota Adoption and Foster Care Statistics

Basic Facts

1. There are 261,998 under twenty-one year olds in the State of North Dakota.[1]
2. There are 8,186 under twenty-one-year-old American Indians in the State of North Dakota.[2]
3. There are 253,812 non-Indians under twenty-one in the State of North Dakota.

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.[3] Using State 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 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.[5] Using the formula then 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 269 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),[6] 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.[7]

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.[8] This represents one out of every 37.6 Indian children in the State. In addition, there were 78 North Dakota Indian children receiving foster care from the U.S. Bureau of

[1] U.S. Bureau of the Census, Census of Population: 1970, Volume I. Characteristics of the Population, Part 36, "North Dakota" (U.S. Government Printing Office: Washington, D.C.: 1973), p. 36–38.

[2] U.S. Bureau of the Census, Census of Population: 1970; Subject Reports, Final Report PC(2)–1F, "American Indians" (Washington, D.C.: U.S. Government Printing Office: 1973), Table 2, "Age of the Indian Population by Sex and Urban and Rural Residence: 1970," p. 12.

[3] Telephone interview with Mr. Donald Schmid, Administrator, Child Welfare Services, Social Services Board of North Dakota, July 21, 1976. These children were placed by three private agencies that do virtually all the adoptions in North Dakota. The Social Services Board rarely, if ever, handles adoptions.

[4] National Center for Social Statistics, U.S. Department of Health, Education and Welfare, "Adoptions in 1974," DHEW Publication No. (SRS) 76–03259, NCSS Report E–10 (1974), April 1976, Table 10, "Children adopted by unrelated petitioners by age at time of placement, by State, 1974," p. 16. (Absolute numbers converted into percentages for purposes of this report.)

[5] 3% of the children are between six and twelve years old; and 1% are twelve or older. (*Ibid.*). The median age for children placed in adoption in North Dakota was two months. *Ibid.*, p. 15.

[6] Telephone interview with Mr. Donald Schmid, *op. cit.* (See footnote 3.)

[7] *Ibid.*

[8] *Ibid.*

Indian Affairs in May 1976.[9] 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,[10] representing one out of every 557.8 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 565 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.

[9] 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. 114–36=78.

[10] 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.[1]
2. There are 45,489 under twenty-one-year-old American Indians in the State of Oklahoma.[2]
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.[3] Using federal age-at-adoption figures,[4] 83 percent (or 57) are under one year of age when placed. Another 13 percent (or nine) are one year to less than six years old when placed; 3 percent (or two) 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 17 years, nine Indian children are placed in adoption for a minimum average 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),[5] 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.[6] In addition, there were two Oklahoma Indian children receiving foster care from the U.S. Bureau of Indian Affairs in 1972.[7] 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,[8] representing one out of every 529 non-Indian children.

[1] U.S. Bureau of the Census, Census of Population: 1970, Volume I, Characteristics of the Population, Part 38, "Oklahoma" (U.S. Government Printing Office: Washington, D.C.: 1973), p. 38–48.
[2] U.S. Bureau of the Census, Census of Population: 1970; Subject Reports, Final Report PC(2)–1F, "American Indians" (Washington, D.C.: U.S. Government Printing Office: 1973), Table 2, "Age of the Indian Population by Sex and Urban and Rural Residence: 1970," p. 12.
[3] Letter from L. E. Rader, Director of Institutions, Social and Rehabilitative Services, Oklahoma Public Welfare Commission, May 2, 1974.
[4] National Center for Social Statistics, U.S. Department of Health, Education and Welfare, "Adoptions in 1971." DHEW Publication No. (SRS) 73–03259, NCSS Report E–10 (1971), May 23, 1973, Table 6, "Children adopted by unrelated petitioners: Percentage distribution by age at time of placement, by type of placement, 1971."
[5] Letter from L. E. Rader, *op. cit.*
[6] *Ibid.*
[7] Division of Social Services, U.S. Bureau of Indian Affairs, "Fiscal year 1972—Child Welfare—Unduplicated Case Count [by States]" (Table).
[8] National Center for Social Statistics, U.S. Department of Health, Education and Welfare, "Children Served by Public Welfare Agencies and Voluntary Child Welfare Agencies and Institutions March 1971." DHEW Publication No. (SRS) 73–03258; NCSS Report E–9 (March 1971), April 27, 1973, Table 8.

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 6,901 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 6,839 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 26 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,[4] 61 percent (or 16) 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 then 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 years old 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 (2,742 non-Indian children were placed in adoptive homes during Fiscal Year 1975),[6] there are 41,716 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 247 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 3,502 non-Indian children in foster care as of April 1976,[8] representing one out of every 228.5 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.

[1] U.S. Bureau of the Census, Census of Population: 1970, Volume I, Characteristics of the Population, Part 39, "Oregon" (U.S. Government Printing Office: Washington, D.C.: 1973), p. 39–47.

[2] U.S. Bureau of the Census, Census of Population: 1970; Subject Reports, Final Report PC(2)–1F, "American Indians" (Washington, D.C.: U.S. Government Printing Office: 1973), Table 2, "Age of the Indian Population by Sex and Urban and Rural Residence: 1970," p. 13.

[3] AAIA child-welfare survey questionnaire completed by Mr. George Boyles, Manager, Research and Statistics, Oregon Children's Services Division, July 16, 1976.

[4] National Center for Social Statistics, U.S. Department of Health, Education and Welfare, "Adoptions in 1974," DHEW Publication No. (SRS) 76–03259, NCSS Report E–10 (1974), April 1976, Table 10, "Children adopted by unrelated petitioners by age at time of placement, by State, 1974," p. 16. (Absolute numbers converted into percentages for purposes of this report.)

[5] 2% of the children were twelve years of age or older. The median age at time of placement of children adopted by unrelated petitioners in 1974 in Oregon was 3.9 months. *Ibid.*

[6] Questionnaire completed by Mr. George Boyles, *op. cit.*

[7] *Ibid.*

[8] *Ibid.*

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 1.7 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 that figure with the total number of related and unrelated adoptions in Oregon. Of that total, 72 percent involve children adopted by related petitioners.[1] 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.[1a] There are 16 Indian children under twenty-one years old in Baker County.[2] 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.* There are 75 Indian children under twenty-one years old in Benton County.† Thus one out 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.* There are 304 Indian children under twenty-one years old in Clackamas County.†

Thus one out of every 43.4 Indian children is in foster care.

[1] "Adoptions in 1974," op. cit. Table 1, "Children for whom adoption petitions were granted." p. 7.

[1a] AAIA child-welfare survey questionnaire completed by Mr. George Boyles, Manager of Research and Statistics, Oregon Children's Services Division, July 16, 1976.

[2] 51.8% of the Oregon Indian population is under twenty-one years old. [U.S. Bureau of the Census, Census of Population: 1970; Subject Report PC(2)–1F, "American Indians" (Washington, D.C.: U.S. Government Printing Office: 1973), Table 2, "Age of the Indian Population by Sex and Urban and Rural Residence: 1970," p. 13.] The total Indian population of Baker County is 31. [U.S. Bureau of the Census, Census of the Population: 1970 Supplementary Report PC(S1)–104. "Race of the Population by County:" 1970 (Washington, D.C.: U.S. Government Printing Office: 1975), p. 38.] 31 x .518=16. The same formula is used to determine the Indian under twenty-one year old population in the other Oregon counties.

*AAIA Questionnaire, *op. cit.*

†Race of the Population by County: *op. cit.* 1970; 6, 7.

Conclusion

In Clackamas County Indian children are in foster care at a per capita rate 5.3 times (530 percent) greater than the State-wide rate for non-Indians in Oregon.

IV. CLATSOP COUNTY

In Clatsop County, according to statistics from the Oregon Children's Services Division, there were four Indian children in foster care in January 1975.* There are 64 Indian children under twenty-one years old in Clatsop County.† Thus one out of every 16 Indian children is in foster care.

Conclusion

In Clatsop 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.

V. COLUMBIA COUNTY

In Columbia County, according to statistics from the Oregon Children's Services Division, there was one Indian child in foster care in January 1975.* There are 46 Indian children under twenty-one years old in Columbia County.† Thus one out of 46 Indian children is in foster care.

Conclusion

In Columbia County Indian children are in foster care at a per capita rate 5.0 times (500 percent) greater than the State-wide rate for non-Indians in Oregon.

VI. 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 188 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 staistics 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 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 in Douglas County.†

XI. 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.

XII. GRANT COUNTY

In Grant 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 Grant County.†

XIII. HARNEY COUNTY

In Harney County, according to statistics from the Oregon Children's Services Division, there were five Indian children in foster care in January 1975.* There are 66 Indian children under twenty-one years old in Harney County.† Thus one out of every 13 Indian children is in foster care.

Conclusion

In Harney County Indian children are in foster care at a per capita rate 17.6 times (1,760 percent) greater than the State-wide rate for non-Indians in Oregon.

XIV. HOOD RIVER COUNTY

In Hood River County, according to statistics from the Oregon Children's Services Division, there were no Indian children in foster care in January 1975.* There are 58 Indian children under twenty-one years old in Hood River County.†

XV. JACKSON COUNTY

In Jackson County, according to statistics from the Oregon Children's Services Division, there was one Indian child in foster care in January 1975.* There are 224 Indian children under twenty-one years old in Jackson County.† Thus one out of 224 Indian children is in foster care.

Conclusion

In Jackson County Indian children are in foster care at a per capita rate identical to the State-wide rate for non-Indians in Oregon.

XVI. JEFFERSON COUNTY

In Jefferson County, according to statistics from the Oregon Children's Services Division, there were 21 Indian children in foster care in January 1975.* There are 686 Indian children under twenty-one years old in Jefferson County.† Thus one out of every 33 Indian children is in foster care.

Conclusion

In Jefferson County Indian children are in foster care at a per capita rate 6.9 times (690 percent) greater than the State-wide rate for non-Indians in Oregon.

XVII. JOSEPHINE COUNTY

In Josephine County, according to statistics from the Oregon Children's Services Division, there were no Indian children in foster care in January 1975.* There are 122 Indian children under twenty-one years old in Josephine County.†

XVIII. KLAMATH COUNTY

In Klamath County, according to statistics from the Oregon Children's Services Division, there are 32 Indian children in foster care in January 1975.* There are 736 Indian children under twenty-one years old in Klamath County.† Thus one out of every 23 Indian children is in foster care.

Conclusion

In Klamath County Indian children are in foster care at a per capita rate 9.9 times (990%) greater than the State-wide rate for non-Indians in Oregon.

XIX. LAKE COUNTY

In Lake County, according to statistics from the Oregon Children's Services Division, there were no Indian children in foster care in January 1975.* There are 35 Indian children under twenty-one years old in Lake County.†

†Race of the Population by County: 1970, *op. cit.*
*AAIA Questionnaire, *op. cit.*

XX. LANE COUNTY

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 396 Indian children under twenty-one years old in Lane County.† Thus one out of every 132 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 165 Indian children under twenty-one years old in Lincoln County.† Thus one out of 165 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 percent) 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 was one Indian child in foster care in January 1975.* There are 148 Indian children under twenty-one years old in Linn County.† Thus one out of 148 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.†

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 10.9 times (1,090%) greater than the State-wide rate for non-Indians in Oregon.

XXV. MORROW 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.†

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.†

*AAIA Questionnaire *op. cit.*
†Race of the Population by County: 1970, *op. cit.*

XXVIII. TILLAMOOK COUNTY

In Tillamook County, according to statistics from the Oregon Children's Services Division, there was one Indian child in foster care in January 1975.* There are 61 Indian children under twenty-one years old in Tillamook County.† Thus one out of 61 Indian children is in foster care.

Conclusion

In Tillamook County Indian children are in foster care at a per capita rate 3.7 times (370 percent) greater than the State-wide rate for non-Indians in Oregon.

XXIX. UMATILLA COUNTY

In Umatilla County, according to statistics from the Oregon Children's Services Division, there were 23 Indian children in foster care in January 1975.* There are 506 Indian children under twenty-one years old in Umatilla County.† Thus one out of every 22 Indian children is in foster care.

Conclusion

In Umatilla County Indian children are in foster care at a per capita rate 10.4 times (1,040 percent) greater than the State-wide rate for non-Indians in Oregon.

XXX. UNION COUNTY

In Union County, according to statistics from the Oregon Children's Services Division, there were no Indian children in foster care in January 1975.* There are 44 Indian children under twenty-one years old in Union County.†

XXXI. WALLOWA COUNTY

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

XXXII. WASCO COUNTY

In Wasco County, according to statistics from the Oregon Children's Services Division, there were six Indian children in foster care in January 1975.* There are 248 Indian children under twenty-one years old in Wasco County.† Thus one out of every 41 Indian children is in foster care.

Conclusion

In Wasco County Indian children are in foster care at a per capita rate 5.6 times (560 percent) greater than the State-wide rate for non-Indians in Oregon.

XXXIII. WASHINGTON COUNTY

In Washington County, according to statistics from the Oregon Children's Services Division, there were no Indian children in foster care in January 1975.* There are 183 Indian children under twenty-one years old in Washington County.†

XXXIV. WHEELER COUNTY

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

XXXV. YAMHILL COUNTY

In Yamhill County, according to statistics from the Oregon Children's Services Division, there was one Indian child in foster care in January 1975.* There are 173 Indian children under twenty-one years old in Yamhill County.† Thus one out of 173 Indian children is in foster care.

Conclusion

In Yamhill County Indian children are in foster care at a per capita rate 1.3 times (130 percent) the State-wide rate for non-Indians in Oregon.

*AAIA Questionnaire, *op. cit.*
†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.* There are 1,385 Indian children in Multnomah County.† Thus one out of every 36.4 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.

*AAIA Questionnaire, *op. cit.*
†Race of the Population by County: 1970, *op. cit.*

South Dakota Adoption and Foster Care Statistics

Basic Facts

1. There are 279,136 under twenty-one year olds in South Dakota.[1]
2. There are 18,322 under twenty-one year old American Indians in South Dakota.[2]
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.[3] 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,[4] 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.[5] 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 16.5 years, four Indian children are placed in adoption for an average of 14 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 Daokta. 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) [6] 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 (160 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.[7] In addition, there were 311 South Dakota Indian children receiving

[1] U.S. Bureau of the Census, Census of Population: 1970, Volume I, Characteristics of the Population, Part 43, "South Dakota" (Washington, D.C.: U.S. Government Printing Office: 1973), p. 43–47.
[2] U.S. Bureau of the Census, Census of Population: 1970; Subject Reports, Final Report PC(2)–1F, "American Indians" (Washington, D.C.: U.S. Government Printing Office: 1973), Table 2, "Age of the Indian Population by Sex and Urban and Rural Residence: 1970," p. 14.
[3] Telephone interviews with Dr. James Marquart, Office on Children and Youth, South Dakota Department of Social Services, July 19–20, 1976.
[4] National Center for Social Statistics, U.S. Department of Health, Education, and Welfare, "Adoptions in 1974," DHEW Publication No. (SRS) 76–03259, NCSS Report E–10 (1974), April 1976. Table 10, "Children adopted by unrelated petitioners by age at time of placement, by State, 1974," p. 16. (Absolute numbers converted into percentages for purposes of this report.)
[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.*

foster care from the U.S. Bureau of Indian Affairs in October 1974.[8] The combined total of 832 Indian children in foster care represents one out of every 22 Indian children in the State. By comparison there were 530 non-Indian children in State-administered foster care in October 1974,[9] representing one out of every 492.1 non-Indian children.

Conclusion

There are therefore by proportion 22.4 times (2,240 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 9.9 Indian children. Similarly for non-Indians in the State 9,603 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.

[8] 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 358 South Dakota Indian children in foster care in October 1974. 47 Indian children were in foster care administered by the State, but paid for by the BIA. 358—47=311.

[9] Telephone interviews with Dr. James Marquart, *op. cit.*

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 6,690 under twenty-one year old American Indians in Utah.[2]
3 There are 482,234 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 1975.[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.[5] 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 328 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 1975),[6] 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.[7] 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,[8] representing one out of every 402.9 non-Indian children in the State.

[1] U.S. Bureau of the Census, Census of Population: 1970, Volume I, Characteristics of the Population, Part 46, "Utah" (Washington, D.C.: U.S. Government Printing Office: 1973), p. 46–39.

[2] U.S. Bureau of the Census, Census of Population: 1970; Subject Reports, Final Report PC(2)–1F, "American Indians" (Washington, D.C.: U.S. Government Printing Office: 1973), Table 2, "Age of the Indian Population by Sex and Urban and Rural Residence: 1970," p. 15.

[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. (SRS) 76–03259, NCSS Report E–10 (1974), April 1976. Table 10, "Children adopted by unrelated petitioners by age at time of placement, by State, 1974," p. 16. (Absolute numbers converted into percentages for purposes of this report.) The ages and percentages are: under one year, 86 percent; between one and two, 3 percent; between two and six, 5 percent; between six and twelve, 5 percent; twelve and older, 1 percent. Multiplying the total number of adoptions in 1975 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 577 under twenty-one year 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 8,237 under twenty-one year olds are either in foster care or adoptive care, representing one in every 58.5 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.[1a] 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 12.9 times (1,290 percent) greater than the State-wide rate for non-Indians in Utah.

II. DAVIS, MORGAN AND WEBER COUNTIES

In Davis, Morgan and Weber counties, according to statistics from the Utath Department of Social Services, there were nine Indian children in State-administered foster care in May 1976.[3] There are 573 Indian children under twenty-one years old in these three counties.[4] Thus one in every 63.7 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 6.3 times (630 percent) greater than the State-wide rate for non-Indians 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.[5] There are 1,205 Indian children under twenty-one

[1] Letter from Ms. Mary Lines, MSW, *op. cit.*

[1a] 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.

[2] 63.4 percent of the Utah Indian population is under twenty-one years old. [U.S. Bureau of the Census, Census of Population: 1970; Subject Report PC(2)–1F, "American Indians" (Washington, D.C.: U.S. Government Printing Office: 1973). Table 2, "Age of the Indian Population by Sex and Urban and Rural Residence: 1970," p. 15.] The total Indian population of Box Elder, Cache and Rich counties is 690. [U.S. Bureau of the Census, Census of Population: 1970 Supplementary Report PC(S1)–104. "Race of the Population by County: 1970" (Washington, D.C.: U.S. Government Printing Office: 1975), p. 47.] 690 times .634 equals 437. The same formula is used to determine the Indian under twenty-one year old population in the other Utah counties.

[3] Letter from Ms. Mary Lines, MSW, *op. cit.* These counties comprise District II–A of the Utah Department of Social Services.

[4] "Race of the Population by County: 1970," *op. cit.*, p. 47.

[5] Letter from Ms. Mary Lines, MSW, *op. cit.* These counties comprise District II–B of the Utah Department of Social Services.

years old in these two counties.[6] Thus one in every 92.7 Indian children is in foster care.

Conclusion

In Salt Lake and Tooele counties Indian children are in State-administered foster care at a per capita rate 4.3 times (430 percent) greater than the State-wide rate for non-Indians in Utah.

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.[7] There are 397 Indian children under twenty-one years old in these three counties.[8] Thus one in every 26.5 Indian children is in foster care.

Conclusion

In Summit, Utah and Wasatch counties Indian children are in State-administered foster care at a per capita rate 15.2 times (1,520 percent) greater than the State-wide rate for non-Indians in Utah.

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 21 Indian children in State-administered foster care in May 1976.[9] There are 158 Indian children under twenty-one years old in these six counties.[10] Thus one in every 7.5 Indian children is in foster care.

Conclusion

In Juab, Millard, Piute, Sanpete, Sevier and Wayne counties Indian children are in State-administered foster care at a per capita rate 53.7 times (5,370 percent) greater than the State-wide rate for non-Indians in Utah.

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

In Beaver, Garfield, Iron, Kane, and Washington counties, according to statistics from the Utah Department of Social Services, there were 19 Indian children in State-administered foster care in May 1976.[11] There are 276 Indian children under twenty-one years old in these five counties.[12] Thus one in every 14.5 Indian children is in foster care.

Conclusion

In Beaver, Garfield, Iron, Kane, and Washington 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 in Utah.

VII. DAGGETT, DUCHESNE 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.[13] There are 1,059 Indian children under twenty-one years old in these three counties.[14] Thus one in every 14.5 Indian children is in foster care.

[6] "Race of the Population by County: 1970," *op. cit.*, p. 47.

[7] Letter from Ms. Mary Lines, MSW, *op. cit.* These counties comprise District III of the Utah Department of Social Services.

[8] "Race of the Population by County: 1970," *op. cit.*, p. 47.

[9] Letter from Ms. Mary Lines, MSW, *op. cit.* These counties comprise District IV of the Utah Department of Social Services.

[10] "Race of the Population by County: 1970," *op. cit.*, p. 47.

[11] Letter from Ms. Mary Lines, MSW, *op. cit.* These counties comprise District V of the Utah Department of Social Services.

[12] "Race of the Population by County: 1970," *op. cit.*, p. 47.

[13] Letter from Ms. Mary Lines, MSW, *op. cit.* These counties comprise District VI of the Utah Department of Social Services.

[14] "Race of the Population by County: 1970," *op. cit.*, p. 47.

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.[15] There are 37 Indian children under twenty-one years old in these three counties.[16] 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.[17] There are 3,005 Indian children under twenty-one years old in the County.[18] 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 Statewide rate for non-Indians in Utah.

[15] Letter from Ms. Mary Lines, MSW, *op. cit.* These three counties comprise District VII–A of the Utah Department of Social Services.
[16] "Race of the Population by County: 1970," *op. cit.*, p. 47.
[17] Letter from Ms. Mary Lines, MSW, *op. cit.* San Juan County comprises District VII–B of the Utah Department of Social Services.
[18] "Race of the Population by County: 1970," *op. cit.*, p. 47.

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.[1]
2. There are 15,980 under twenty-one year old American Indians in the State of Washington.[2]
3. There are 1,335,475 non-Indians under twenty-one in the State of 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.[3] Using State figures reported to the National Center for Social Statistics of the U.S. Department of Health, Education and Welfare,[4] we can estimate that 69 percent (or 33) are under one year of age when placed. Another 21 percent (or ten) are one year to less than six years old when placed; 8 percent (or four) are six years, but less than twelve when placed; and 2 percent (or one) are twelve years and over.[5] Using the formula then that: 33 Indian children are placed in adoption for at least 17 years, ten Indian children are placed in adoption for a minimum average of 14 years, four 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 740 Indian children in adoption in Washington. This represents one out of every 21.6 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),[6] 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.[7]

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.[8] 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,[9] representing one out of every 274.1 non-Indian children.

[1] U.S. Bureau of the Census, Census of Population: 1970, Volume I, Characteristics of the Population, Part 49, "Washington" (U.S. Government Printing Office: Washington, D.C.: 1973), p. 49–43.
[2] U.S. Bureau of the Census, Census of Population: 1970; Subject Reports, Final Report PC(2)–1F, "American Indians" (Washington, D.C.: U.S. Government Printing Office: 1973), Table 2, "Age of the Indian Population by Sex and Urban and Rural Residence: 1970," p. 16.
[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.
[4] National Center for Social Statistics, U.S. Department of Health, Education and Welfare, "Adoptions in 1974," DHEW Publication No. (SRS) 76–03259, NCSS Report E–10 (1974), April 1976. Table 10, "Children adopted by unrelated petitioners by age at time of placement, by State, 1974," p. 16. (Absolute numbers converted into percentages for purposes of this report.)
[5] The median age at time of placement of children adopted by unrelated petitioners in 1974 in Washington was 3.6 months. *Ibid.*, p. 15.
[6] Dr. Robert J. Shearer, *op. cit.*
[7] *Ibid.*
[8] *Ibid.*
[9] *Ibid.*

Conclusion

By per capita rate therefore Indian children are placed in foster homes 9.6 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 Washington. 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 (1,330 percent) more often than non-Indian children in the State of Washington.

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.[1]
2. There are 10,176 under twenty-one-year-old American Indians in the State of Wisconsin.[2]
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.[3] Using the State's own figures,[4] 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 733 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),[5] 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.[6] 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,[7] 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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[1] U.S. Bureau of the Census, Census of Population: 1970, Volume I, Characteristics of the Population, Part 51, "Wisconsin" (U.S. Government Printing Office: Washington, D.C.: 1973), p. 51–60.

[2] U.S. Bureau of the Census, Census of Population: 1970; Subject Reports, Final Report PC(2)–1F, "American Indians" (Washington, D.C.: U.S. Government Printing Office: 1973), Table 2, "Age of the Indian Population by Sex and Urban and Rural Residence: 1970," p. 16.

[3] Letter and statistics from Mr. Frank Newgent, Administrator, Division of Family Services, Wisconsin Department of Health and Social Services, April 25, 1973.

[4] *Ibid.*

[5] *Ibid.*

[6] *Ibid.*

[7] National Center for Social Statistics, U.S. Department of Health, Education and Welfare, "Children Served by Public Welfare Agencies and Voluntary Child Welfare Agencies and Institutions, March 1973," DHEW Publication No. (SRS) 76–03258, NCSS Report E–9 (3/73), November 1975. Table 4, p. 10.

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 (1,560 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.[1]
2. There are 2,832 under twenty-one year old American Indians in Wyoming.[2]
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.[3] 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.[4] 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.[5] An additional 74 Indian children were in foster care administered by the U.S. Bureau of Indian Affairs.[6]

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,[7] 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.[8] 51 percent of the children in BIA-administered foster family care are in non-Indian homes.[9]

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[1] U.S. Bureau of the Census, Census of Population: 1970, Volume I, Characteristics of the Population, Part 52, "Wyoming" (U.S. Government Printing Office: Washington, D.C.: 1973), p. 52–30.

[2] *Ibid.*, p. 52–30 (Table 19), p. 52–189 (Table 139), Indian people comprise 59.2 percent of the total non-white population according to Table 139. According to Table 19 there are 4,783 non-whites under twenty-one. 4,783 times .592 equals 2,832.

[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 293 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; Aropahoe, 39; Non-enrolled, 23. The BIA figures are as of July 1976.

[7] Telephone interview with Ms. Janet Shriner, *op. cit.*

[8] *Ibid.*

[9] Telephone interview with Mr. Clyde W. Hobbs, *op. cit.*

III. U.S. BUREAU OF INDIAN AFFAIRS BOARDING SCHOOLS

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.[10]

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.

State:	*BIA boarding school students*
Alaska	664
Arizona	10,977
California	714
Mississippi	197
Nevada	517
New Mexico	7,428
North Dakota	481
Oklahoma	1,973
Oregon	549
South Dakota	1,207
Utah	1,093
Total	25,800
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.

Source: Office of Indian Education Programs, U.S. Bureau of Indian Affairs, "Fiscal Year 1974: Statistics Concerning Indian Education" (Lawrence, Kans.: Haskell Indian Junior College: 1975), pp. 12–15, 22–23.

[10] *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 (1876).

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 and toward reliance on federal pre-emption." *McClanahan* v. *Arizona Tax Commission*, 411 U.S. 164, 172 (1973).

Although the question of state jurisdiction is not dealt with in the typical treaty, the courts have construed the creation of a reservation to preclude ex-

tensions of state law to Indians on the reservation.[1] *See, e.g., McClanahan* 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 must be interpreted as the Indians would have understood them (*United States* v. *Winans*, 198 U.S. 370, 380–81 (1908)), doubtful expressions must be resolved in favor of Indian parties (*Alaska Pacific Fisheries* v. *United States*, 248 U.S. 78, 89 (1918)) and the treaties must be construed liberally in favor of the Indians (*Tulee* v. *Washington*, 315 U.S. 681, 684–85 (1942)). Thus, when 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 pursuant to federal law for the use and occupation of Indians.

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. *Winans*, *supra*, 198 U.S. at 381:

"[T]he 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 preserved 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 found that reservation of "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 use of the upland alone. The use of the adjacent fishing grounds was equally essential. . . . The Indians naturally looked on the fishing grounds as part of the islands and proceeded on that theory in soliciting the reservation." 248 U.S. at 89.

As with rights to the land itself, and to water, timber, etc., hunting and fishing rights are property rights of the particular tribe. Any destruction or diminishment 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*, 318 F.2d 998 (Ct. Cl. 1967), *affirmed* 391 U.S. 404 (1968); *Hynes* v. *Grimes Packing Company*, 377 U.S. 86, 105 (1949); *see Whitefoot* v. *United States*, 293 F.2d 658 (Ct. Cl. 1961), *cert. denied* 369 U.S. 818 (1962).

The United States by reason of the relationship created in its dealings with 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 such takings but insist upon a clear congressional statement before finding that hunting and fishing rights have been extinguished or diminished. Even termination legislation designed to extinguish federal supervision of the federal trust relationship with an Indian tribe has been held not to destroy treaty 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."

[1] Where treaty rights are referred to in this paper they include rights established by a treaty, an act of Congress, an agreement or executive order. The validity and the force of each method of creating reservations and preserving other rights is well established. *See* Wilkinson and Volkman, "Judicial Review of Indian Treaty Abrogation: 'As Long as Water Flows, or Grass Grows Upon the Earth'—How Long a Time Is That?", 63 Calif. L. Rev. 601, 615–16.

91 U.S. at 413. *Accord, Kimball* v. *Callahan*, 493 F.2d 564 (9th Cir. 1974), *cert. denied* 419 U.S. 1019 (1974). Indian hunting and fishing rights, then, are shielded from state control or regulation by the status of the reservation, but in addition, the right when embodied in a treaty, act or agreement (either expressly or by implication) provides a further ground for excluding state jurisdiction in that the right and its exemption from state control constitute a property right which cannot be taken away without express congressional act and appropriate compensation.

The conclusion which can be summarized from the foregoing discussion and authorities is that whenever an Indian reservation is created, hunting and fishing rights attach within reservation boundaries and, unless specifically limited by the treaty, they belong exclusively to the tribe and they may be exercised free of the application of state law. The courts have considered this right in many contexts and universally have held that on-reservation hunting and fishing activity is exempt from any state regulation. *E.g., Moore* v. *United States*, 157 F.2d 760 (9th Cir. 1946), *cert. denied* 330 U.S. 827 (1946); *Leech Lake Band of Chippewa Indians* v. *Herbst*, 334 F. Supp. 1001 (D. Minn. 1971); *Klamath and Modoc Tribes* v. *Maison*, 139 F. Supp. 634 (D. Ore. 1956); *Pioneer Packing Co.* v. *Winslow*, 159 Wash. 655, 294 P. 557 (1930); *State* v. *Edwards*, 188 Wash. 467, 62 P.2d 1094 (1936); *Arnett* v. *Five Gill Nets*, 48 Cal. App.3d, 121 Cal. Rptr. 906 (1975), *cert. denied*, 44 U.S.L.W. 3545 (March 29, 1976); *Elser* v. *Gill Net No. 1*, 245 Cal. App.2d 30, 54 Cal. Rptr. 568 (1966).

It is immaterial that some of the land in an Indian reservation has passed out of Indian title and into non-Indian ownership. The principle that Indian hunting and fishing rights may be exercised free from state regulation still obtains. Thus, in *Leech Lake Bank of Chippewa Indians* v. *Herbst*, *supra*, an act of Congress which was by its terms "a complete extinguishment of the Indian title" based upon an agreement between the United States and the Indians in which the Indians agreed to "grant, cede, and relinquish and convey . . . all our rights, title and interest in and to the land" did not abrogate the Indians' unrestricted hunting and fishing rights on the reservation. 334 F. Supp. at 1003. This holding is consistent with the definition of "Indian country" for jurisdiction purposes found in the federal criminal statutes which extends to all land within reservations and allotments "notwithstanding the issuance of any patent, and, including rights-of-way. . . ." 18 U.S.C. § 1151.

Enactment of Public Law 280 and its application in several states has had no impact upon the ability of Indians to exercise their fishing and hunting rights free of state regulation within their reservations. Title 18, U.S.C. § 1162 codifies the criminal sections of Public Law 280. Subsection (b) is a saving clause in which it is stated that:

"[n]othing in this section . . . shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof."

The courts have held that Public Law 280 states have no jurisdiction to regulate on-reservation hunting and fishing rights. *E.g., Klamath and Modoc Tribes* v. *Maison*, *supra*; *Quechan Tribe of Indians* v. *Rowe*, 531 F.2d 408 F/G No. 72–3199 (9th Cir. Feb. 2, 1976).

Federal Regulation

The few courts to consider the question have indicated that regulation of on-reservation hunting and fishing by the Federal Government will not be permitted. In *Mason* v. *Sams*, 5 F.2d 255 (W.D. Wash. 1925), the court held that regulations promulgated by the Commissioner of Indian Affairs and the Secretary of the Interior concerning on-reservation fishing were beyond their authority in that they were not authorized under the treaty. A federal tax on the exercise of the treaty fishing right within the waters of a reservation was found unlawful in *Strom* v. *Commissioner*, 6 Tax Ct. 621 (1946).

It has been held that even where a treaty subsequent to the Indian treaty outlaws hunting of migratory birds it does not alter the Indians' right to hunt on the reservation. *United States* v. *Cutler*, 37 F. Supp. 724 (D. Ida. 1941). Similarly, in *United States* v. *White*, 508 F.2d 453 (8th Cir. 1947), it was held that the Bald Eagle Protection Act was inapplicable to an Indian hunter within the boundaries of a reservation who took an eagle in violation of the act. The court found that the statute did not adequately express an intention to abrogate Indian hunt-

ing rights and that this 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. *E.g., Lone Wolf* v. *Hitchcock*, 187 U.S. 553 (1903). An abrogation of 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 regulations governing Indian on-reservation fishing. *Metlakatla Indian Community* v. *Egan*, 369 U.S. 45 (1962). *Tribal Regulation*.

It is beyond doubt that tribes have the sovereign authority to regulate, restrict, and license hunting and fishing within their reservations. The exclusiveness of a tribe's jurisdiction over members within the reservation has only been diminished insofar as a treaty or a federal statute so provides. Many, if not most, tribes with substantial fish and game resources regulate the exercise of such rights. *See, e.g.*, Hobbs, "Indian Hunting and Fishing Rights," 32 Geo. Wash. L. Rev. 504, 523, nn. 100–101. On a number of occasions the Department of the Interior Solicitor has concluded that a tribe may adopt ordinances to preserve and protect its reservation hunting and fishing rights. Sol. Op. M–36638 (May 16, 1962). Typically these ordinances are enforced through a system of tribal enforcement officers and courts. These are the exclusive entities having any jurisdiction over purported violations. *See State* v. *McClure*, 127 Mont. 534, 268 P. 2d 629 (1954). Statutes removing or diminishing the right of a tribe to exercise sovereign powers within the reservation would effect a taking of property compensable by the United States.

Consistent with a tribe's sovereignty over its own territory, it can enforce its regulations relating to hunting and fishing as against non-members of the tribe as well as members. *See Quechan Tribe of Indians* v. *Rowe*, *supra*. Similarly, the tribe possesses exclusive authority to license non-Indians to hunt and fish within the reservation. *Colville Tribe* v. *State of Washington*, 412 F. Supp. 651 (April 14, 1976).

Some state courts have reached the questionable conclusion that tribes lack jurisdiction over non-Indians hunting and fishing on the reservation. *E.g., State* v. *Danielson*, 427 P. 2d 689 (Mont. 1967); *see also, In re Crosby*, 149 P. 989 (Nev. 1915). A California court has taken a middle ground, holding that where a non-member Indian goes on a reservation to hunt and fish, state game laws apply to him but that permission to fish on the reservation given by authorities of the tribe on whose reservation he is fishing is a complete defense. *Donahue* v. *Justice Court*, 15 Cal. App. 2d 557, 93 Cal. Rptr. 310 (1971). It was suggested in the *Leech Lake* case, *supra*, that exclusivity of an Indian tribe's rights to regulate fishing of Indians and non-Indians within the reservation depends upon the types of congressional acts which manifest the relationships between the tribe and the United States. 334 F. Supp. at 1006. In that case, virtually all of the federal legislation had allowed virtually all of the reservation to pass into non-Indian ownership.

Because of a paucity of cases and some conflict, particularly among state courts, there may still be a question in some states as to the propriety of application and enforcement of state fish and game laws as to non-Indians within Indian reservations. Tribes may be limited as to how far their fish and game ordinances apply because of provisions in their own constitutions which limit their jurisdiction to members or to Indians, and there may be treaties or legislation which limit their powers or allow the importation of state laws. But generally it appears that the trend, and certainly a better view, is that tribal laws apply to Indians and non-Indians alike who are hunting and fishing within the boundaries of a Indian reservation. This application would lead to the exclusion of state laws except when the tribe itself requires that non-Indians comply with state regulations as they have in some situations. *See, e.g., Quechan Tribe* v. *Rowe*, — F.2d —, No. 72–3199 (9th Cir., Feb. 2, 1976).

That Congress contemplated non-Indian hunting and fishing activities within reservation boundaries only upon the condition that tribal consent has been obtained is evidenced by 18 U.S.C. § 1165. This law makes it illegal for a non-Indian to go within the boundaries of an Indian reservation for the purpose of hunting or fishing unless he or she has the consent of the tribe. While the provision does not seek to bring non-Indians under the aegis of any federal regulatory scheme, it puts muscle in the requirement that non-Indians comply with

tribal requirements of licensing and other regulations upon which consent to hunting and fishing might be conditioned.

OFF-RESERVATION HUNTING AND FISHING

Although there has been little contest over the applicability of jurisdictional principles within the boundaries of Indian reservations, jurisdiction over Indians exercising hunting and fishing rights secured by federal treaty or agreement while outside reservation boundaries has been an area of intensive litigation. States have inherent authority to regulate the taking of fish and game within their boundaries. *Geer* v. *Connecticut*, 161 U.S. 519 (1896). Usually state law can be applied to Indians who are outside the reservation, but there can be no such application if it would "impair a right granted or reserved by federal law." *Mescalero Apache Tribe* v. *Jones*, 411 U.S. 145, 148 (1973). Accordingly, a federal treaty may override state power to regulate the taking of game. *Missouri* v. *Holland*, 252 U.S. 416 (1920).

To determine when and to what extent state regulatory power over off-reservation Indian hunting and fishing is preempted by treaties it is, of course, essential to examine the specific terms of the particular treaty or other federal law. Typically, a treaty cedes a land area to the United States, retaining a defined parcel for a reservation. Also reserved in many treaties is a right to continue hunting or fishing on lands other than those retained.

Some of the most commonly reserved off-reservation rights are found in treaties with Indians of the Northwest. Those treaties often reserve a right to fish "at usual and accustomed places" which is "in common with the citizens of the territory". *See, e.g.*, Treaty with the Yakimas, 12 Stat. 951. Hunting rights have been referred to as "the privilege of hunting... on open and unclaimed lands." *E.g.*, Treaty of Medicine Creek, 10 Stat. 1132. Or the right may be "on unclaimed lands in common with citizens". *E.g.*, Treaty with the Walla-Wallas, 12 Stat. 945. Other treaties have acknowledged that Indians have "the right to hunt on the unoccupied lands of the United States so long as the game may be found thereon, and so long as peace subsists among the whites and the Indians on the borders of the hunting districts." *E.g.*, Treaty with the Eastern Band Shoshone and Bannock, 15 Stat. 673.

Off-reservation hunting and fishing rights have been an important subject of litigation also in the Great Lakes region. Treaties there have been less explicit. One treaty provides that Indians residing in the territory ceded by the treaty "shall have the right to hunt and fish therein, until otherwise ordered by the President." Chippewa Treaty of 1854, 10 Stat. 1109. And because of the great importance to Indians of the Great Lakes of fishing, it has been held that a treaty which says merely that certain lands adjacent to a lake will be set aside "for the use of the Chippewas of Lake Superior" includes fishing rights in the lake even though it is outside reservation boundaries. *State* v. *Gurnoe*, 53 Wis.2d 390, 192 N.W.2d 892 (1972).

How a court will construe an off-reservation treaty hunting or fishing right with respect to the extent of that right or the jurisdiction of a state to regulate it necessarily turns on the construction of the language used. The rules of treaty construction discussed above at pp. 3–4 are especially important in dealing with off-reservation rights. Proper construction often demands extensive reference to historical and anthropological evidence to determine the intent and understanding of the Indians at the time of the treaty. *See, e.g., United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), *aff'd* 520 F.2d 676 (9th Cir. 1975), *cert. denied*—U.S.—(1976); *Sohappy* v. *Smith*, 302 F. Supp. 899 (D. Ore. 1969); *State* v. *Gurnoe*, *supra*; *State* v. *Tinno*, 94 Ida. 759, 497 P.2d 1386 (1972). *Cf. United States* v. *Winans*, *supra*.

The following analysis of established regulatory jurisdiction over off-reservation hunting and fishing rights relates to particular cases. It should be read with the understanding that the principles in those cases are to be applied in light of the language and circumstances of the particular treaties.

State Regulation

By far the most extensively litigated off-reservation rights have been fishing rights at "usual and accustomed places" secured to Indians "in common with the citizens of the territory." It has been held by the United States Supreme Court that this phrase permits the right of the Indians to be regulated by the state where such regulation is reasonable, necessary for conservation, and does not

discriminate againts 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 to prevent destruction of the fish resource fit the "necessary for conservation" standard. *Department of Game* v. *Puyallup Tribe*, 414 U.S. 44 (1973) (*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 supremacy clause. Further, the holding is difficult to reconcile with axioms of treaty construction, as Indians hardly could understand that their treaty rights would be subjected to control by some non-Indian entity, indeed one that was not then even in existence—the state. It also seems inconsistent with the Court's own requirement in *Puyallup I* that the treaty right cannot be "qualified or conditioned by the State." 391 U.S. at 399.

Remarkably, the Supreme Court in *Puyallup I* cited no case or other authority specifically holding that Indian treaty rights can be regulated by the state. Instead, a few cases in which *dicta* to that effect appeared were cited. The Court simply reached the conclusion based on its inability to find any reason that the rights could not be regulated, stating: "And we see no reason why the right of the Indians may not also be regulated by an appropriate exercise of the police power of the State." 391 U.S. at 398. The lack of foundation for the Supreme Court's extension of state power over federally secured rights has been strongly criticized. *See United States* v. *Washington, supra*, 384 F. Supp. at 334–39; and Johnson, "The State v. Indian Off-reservation Fishing: United States Supreme Court Error," 47 Wash. L. Rev. 212 (1972). It would appear that the Court was heavily influenced by an improvident stipulation in the case that Indian fishing "would virtually exterminate the salmon and steelhead fish runs" if it were allowed to continue free of state regulation. 391 U.S. at 403 n.15. Whatever questions might be raised as to the correctness of the *Puyallup* decisions allowing state regulation, it is the law of the land.

The *Puyallup* cases reaffirm an earlier decision of the Court based on the same treaty language which indicated that Indian rights were more extensive than those of the average citizen and any holding to the contrary would be "an impotent outcome to negotiations and the convention, which seem to promise and give the word of the nation for more." *United States* v. *Winans, supra*, 198 U.S. at 380. The Court had also recognized that the right of the Indians to fish could not be conditioned upon the purchase of a state license. *Tulee* v. *Washington, 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 restricts the type 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 to citizens without treaty rights. Instead they are held to the higher, "necessary for conservation" standard. 391 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 give the states and the tribes guidance in their application. *Sohappy* v. *Smith, supra*; *United States* v. *Washington, supra*. *Sohappy* indicated that in order for a state regulation to be necessary for conservation, it must be the least restrictive which can be imposed consistent with assuring that enough fish escape harvest in order to spawn, that state regulatory agencies must deal with Indian treaty fishing as a separate and distinct subject from fishing by others, and that Indian interests must be considered just as the interests of sport and commercial fishermen are considered. The court rejected the notion that "conservation" includes state goals beyond assuring that the continued existence of the fish resource would not be imperiled. Regulations based on state policies concerned with allocation and use of the fish resource, not merely its perpetuation, are therefore inapplicable to Indian treaty fishermen.

In *United States* v. *Washington*, the district court followed *Sohappy* and went farther in delineating the circumstances under which the states might regulate the Indian treaty fishing right off the reservation. Conservation was defined as

allowing state regulation only where the state measures are required for the perpetuation of a particular species of fish which cannot be achieved by restricting non-Indian fishing. In addition, the court found that the tribes themselves have the power to regulate their members' treaty fishing. If tribes meet certain conditions and qualifications designed to demonstrate capability to promulgate and enforce fishing regulations, the state may not regulate their treaty rights at all, although the tribe must adopt and enforce any state conservation measure which it has shown to the court to be necessary for conservation. The state may regulate the fishing of all other tribes any time that it demonstrates to the court in advance that such a regulation is necessary for conservation. The advance showing is not necessary in cases of emergency.

It has been held by one court that Indian fishing inconsistent with tribal regulations is outside the protection of the "in common" treaty right and thus is subject to state law. *State* v. *Gowdy*, 462 P.2d 461 (Or. App. 1969).

The Ninth Circuit Court of Appeals in affirming the district court decision in *United States* v. *Washington* provided a cogent, after-the-fact explanation of why state conservation regulations should be applicable to Indians exercising an "in common" treaty right. The court analogized the relationship of treaty Indians and other fishermen a cotenancy. The agreement of the Indians to allow the 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.

Unless and until the Supreme Court modifies the *Puyallup* rule allowing state regulation of Indian treaty rights which may be exercised "in common with" non-Inlians, the rule undoubtedly will be applicable to off-reservation rights to hunt and fish which are couched in that language or other language nearly identical to it. The court has recently shown its intent to apply the rule to an agreement providing for an Indian hunting right on lands given up by the Indians "in common with all other persons." *Antoine* v. *Washington*, 420 U.S. 194 (1975).

Holcomb v. *Confederated Tribes of the Umatilla Indian Reservation*, 382 F.2d 1013 (9th Cir. 1967) utilized the "necessary for conservation" standard as the measure of permissible state regulation of an off-reservation "privilege of hunting . . . on unclaimed lands in common with citizens." Another pre-*Puyallup* case required that state regulation of Indian treaty fishing under the "in common with" language to be indispensable to accomplishing the conservation objective. *Maison* v. *Confederated Tribes of the Umatilla Indian Reservation*, 314 F.2d 169 (9th Cir. 1963).

Where the off-reservation right is not qualified by language indicating that Indians intended to share it with non-Indians, the allowance of state regulation loses its rationale. Thus, in *State* v. *Arthur*, 74 Ida. 251, 261 P.2d 135 (1953), the Idaho Supreme Court held that a treaty with the Nez Perce Indians reserving the right to hunt upon "open and unclaimed land" entitled them to hunt on land owned by the federal government and other land not settled and occupied by whites under possessory rights or patent "without limitation, restriction or burden" imposed by state regulations.

More recently, and after the *Puyallup* decisions, the same court construing a Shoshone-Bannock treaty "right to hunt on the unoccupied lands of the United States so long as game may be found thereon, and so long as peace subsists among the whites and Indians on the borders of the hunting districts," found that like the right in the Nez Perce treaty, it was "unequivocal" and "unqualified". *State* v. *Tinno, supra*. Based on the Indians' understanding at the time of the treaty, the court found that the hunting right expressed in the treaty included fishing activity. The court, however, seemed to soften the earlier decision in *Arthur* by suggesting that state regulation of the fishing right might be possible upon a showing of necessity for conservation. The court neither expressly overruled *Arthur* nor stated that had the state shown necessity for conservation it would have upheld the regulation. The court said:

"It would appear that if *qualified* treaty fishing rights received this kind of special protection . . . the exercise of an unqualified treaty right to fish . . . certainly cannot be regulated by the state unless it clearly proves regulation of the treaty Indians fishing in question to be necessary for preservation of the fishery." (497 P.2d at 1393.)

The Tinno court did not really have to reach the question of whether the *Puyallup* rule *must* be applied but rather seems to be reasoning *a fortiori*. The

concurring opinion of Justice McQuade criticizes this aspect of the decision, insisting that "[n]othing in *Puyallup* requires deviation from *Arthur* in deciding this case." 497 P.2d at 1396.

The Supreme Court of Michigan also has recognized the distinction between the off-reservation rights considered in *Puyallup* and its progeny and other rights, not subject to the same qualification. A Chippewa treaty provided that the Indians who "reside in the territory hereby ceded, shall have the right to hunt and fish therein, until otherwise ordered by the President." The court found that this off-reservation right rendered invalid the game regulations of the state as to Indians covered by the treaty. *People* v. *Jondreau*, 384 Mich. 539, 185 N.W.2d 375 (1971). A lower Michigan court has ruled that "the right of hunting on the land ceded" found in an 1835 Chippewa and Ottawa Treaty subjected the Indians to state regulations which are "necessary to prevent a substantial depletion of the fish supply." *People* v. *LeBlanc*, 55 Mich. App. 684, 223 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 *Puyallup* 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. *Gurnoe*, *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 twice have been reformulated but never have been fully implemented. The regulations provide merely for identification cards for Indians, identification of fishing equipment and 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 them outside the reservation without enabling legislation. *See* Hobbs, "Indian Hunting and Fishing Rights II," 37 G. Wash. L. Rev. 1251, 1266 n.87. 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" rights, 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. *Clapox*, 35 F. 575 (D. Ore. 1888). Under this authority the Secretary could make any regulations which are in fulfillment of the treaty purposes. Under the *Puyallup* 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 betwen Indians and non-Indians according to treaty terms. *Compare*, *The James G. Swan*, 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 right in the Chippewa Treaty of 1854 would empower the President to "issue an order limiting or extinguishing the hunting and fishing rights of the Indian." *People* v. *Jondreau*, *supra*, 185 N.W. 2d at 381. 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*, 499 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. *Lameer*, 507 F.2d 231 (9th Cir. 1974), it was decided that Indians' off-reservation treaty fishing rights include a right to regulate. It was specifically held that a tribe with an 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' understanding and customary practices concerning control of members at the time of the treaty. The fact that continued Indian self-regulation was comprehended by the treaty enables the tribe today to exercise its regulatory power at "usual and accustomed places" outside reservation boundaries. This does not infringe on the state's sovereignty because the tribe's regulatory power is protected by the supremacy clause of the constitution.

We have indicated in the section concerning state regulation of off-reservation rights that the court in *United States* v. *Washington* also validated the power of the tribes to regulate their members' treaty fishing outside reservations at usual and accustomed fishing sites. If tribes meet certain qualifications and conditions fashioned by the court, the state is enjoined from any regulation whatsoever. While as a matter of law under *Puyallup* the state possesses at least concurrent jurisdiction to prevent damage to the resource, a remedy was developed which assured such responsible tribal management that any state control could be precluded. *See United States* v. *Washington*, *supra*, 520 F.2d at 686. It was also provided in the injunction that a qualified tribe must adopt and enforce as its own any state regulation shown to the court to be necessary for conservation. Failure to do so could be a ground for stripping the tribe of its self-regulating status.

The sphere of permissible state regulatory power over Indian treaty fishing probably is greatest in the case of the "in common with" treaty language. What the exact limits of state vis-a-vis tribal rights are must be determined by reference to the treaty language and evidence as to treaty purposes and the understanding of the parties. Accordingly, the question of whether there is any concurrent state regulatory power and the extent of it would depend on those factors.

Although the conclusion in *State* v. *Gowdy*, *supra*, that Indian fishing in violation of tribal regulations subjects that fishing to state regulation appears to be basically correct, it should be pointed out that Indian regulation, as non-Indian regulation, takes account of many goals which are not strictly related to conservation (e.g., allocation of fishing opportunity and fishing sites. *See Settler* v. *Lameer*, *supra*, 507 F.2d at 237). And violation of a tribal regulation which is not necessary for conservation should not open an Indian guilty of such infraction to the full range of state regulatory power.

ABORIGINAL FISHING RIGHTS

An area which has received almost no consideration by the courts is Indian hunting and fishing outside Indian reservation boundaries which is not embodied in any treaty. Most Indian rights which are found in treaties are aboriginal rights that have been preserved by mention of the rights in the treaty, with language preserving them all or in part, or by absence of any language giving up the rights. Because any analysis of Indian treaties is necessarily based upon the notion of reserved rights—that anything not given up is retained, the total absence of a treaty would argue for a continuation of aboriginal rights as they always were.

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*, 21 U.S. (8 Wheat.) 543 (1823). 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. 21 U.S. at 596. 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 the lands occupied by the Indians when the colonists arrived became vested in the sovereign—first the discovering European nation and later the original States and the United States—a right of occupancy in the Indian tribes was nevertheless recognized. 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."

Oneida Indian Nation v. County of Oneida, 414 U.S. 661, 667 (1974)

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. In that case, the Indian failed to show that his aboriginal right continued unextinguished. 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 extinguishment. The case is questionable for this reason. Further, the court failed to distinguish between an extinguishment of title as to land and the right to hunt on such land. Court of Claims cases have made clear that the two rights are severable and distinct.

Even though aboriginal title to land may have been extinguished by a tribe's acceptance of compensation for the government's unauthorized taking of lands, that would not necessarily extinguish aboriginal hunting and fishing rights unless they were specifically dealt with in resolving the Indians' claim against the government. The Interior Department Solicitor is of the opinion that this is 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 permitting state jurisdiction over the rights, as they would appear to 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 from Alaska's anti-fish trap law without appropriate legislation. The Court acknowledged that the aboriginal fishing rights of the Indians' is property 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 and permit 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 considerable uncertainty at the time of the *Kake* decision: it has now been resolved by the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 *et seq.* The Supreme Court of Idaho will soon be deciding the question of whether and to what extent a state may regulate the exercise of aboriginal hunting rights of the Kootenai Tribe. *State* v. *Coffee*, No. 12040.

RECOMMENDATIONS

1. It is not recommended that any specific legislation be enacted relative to jurisdiction over Indian hunting and fishing rights. The subject is politically charged in some areas, such as the Northwest. In the present milieu the legislative process would be encumbered by emotionalism and pressures from special 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 questions involved. The price of compensating Indians for extinguishment of the rights would be staggering. Congress has considered the subject before in the context of Washington Indian rights and has elected not to act. H.R.J. Res. 698, 87th Cong., 2d Sess. (1962); H.R.J. Res. 48, 88th Cong., 1st Sess. (1963); S.J. Res. 170 & 171, 88th Cong., 2d Sess. (1964).

2. Courts, not Congress, are forums for resolving unsettled questions in the area. The law is not simple or fully developed and would benefit from clarification, particularly as to off-reservation rights. But rights vary considerably from place to place and would have to be dealt with on an *ad hoc* basis rather than in sweeping legislation. Courts are competent to discern the jurisdictional attributes of off-reservation treaty hunting and fishing rights by reference to the language and circumstances of the treaties involved. Principles to guide judicial treaty construction are well established. Reference to rules of federal supremacy, as modified by the *Puyallup* rule, provides the necessary guideposts for judicial analysis in the area.

3. To facilitate litigation to determine and enforce treaty rights, provision should be made for tribes to recover their attorney's fees and expenses of suit. Presumably a lawsuit should only be necessary when the parties—typically a state and a tribe—have been unable to resolve their differences short of invoking the aid of the courts. The history of litigation concerning Indian treaty hunting and fishing rights in the Northwest is long and tortured. Indians have spent many years and untold sums of money litigating and relitigating rights under age-old treaties. In the meantime, the rights have been rendered nugatory because state police power prevents Indians from hunting or fishing pending the outcome of the current legal battle. A concurring judge in the Ninth Circuit Court of Appeals opinion in *United States* v. *Washington, supra*, recognized the problem:

"The record in this case, and the history set forth in the Puyallup and Antoine cases, among others, make it crystal clear that it has been recalcitrance of Washington State officials (and their vocal non-Indian commercial and sports fishing allies) which produced the denial of Indian rights requiring intervention by the district court. This responsibility should neither escape notice nor be forgotten."

To place the burden of enforcing Indian rights where the responsibility for their denial lies, Congress should enact legislation entitling an Indian tribe to recover its attorney's fees and other expenses when it is successful in such a suit. Without statutory authorization or special circumstances it appears that federal courts are powerless to make such awards. *See Alyeska Pipeline Service* v. *Wilderness Society*, 421 U.S. 24, 44 L.Ed.2d 141 (1975). Examples abound of such congressional action when important federal rights are vindicated by private litigants. 44 L.Ed.2d at 155 n.33. The possibilities are many, but one approach would be to amend 28 U.S.C. § 1362 (federal question jurisdiction for tribal plaintiffs). It might read:

"A court may award attorney's fees and other expenses against any litigant to an Indian tribe which is successful in an action under this section to enforce or prevent infringement of its property or other rights protected or secured by a federal treaty, act, agreement or executive order."

4. It is recommended that, independent of the question of jurisdiction over treaty hunting and fishing rights, Congress be wary of legislation which would indirectly result in intrusion upon Indian rights or resources. For instance, authorization of a dam to be built on a river may not appear at first to involve Indian rights. However, if the impact is to prevent the exercise of Indian off-reservation treaty rights by destroying access to usual and accustomed fishing places or damaging fish habitat and thus reducing numbers of fish available to Indians, a direct clash with treaty rights is presented. Such projects are vulnerable to challenge as in violation of the treaty unless Congress specifically terminates treaty rights with appropriate compensation. *See, e.g., Umatilla Tribe* v. *Froelke*, U.S.D.C., D. Ore. Civil No. 72-211 (final judgment 8/17/73) (Challenge to construction of dams which would flood fishing sites and interfere with fish migration. Settled on stipulated judgment.).

While compensating a tribe for loss of fishing opportunity as a result of a federal project is a lawful way to deal with the matter, (*see Whitefoot* v. *United States*, 293 F.2d 658 (Ct. Cl. 1961), *cert. denied* 369 U.S. 818 (1962)), far more desirable from the Indian standpoint would be development means to protect the rights and minimize impacts on them from federal projects. Perhaps the ultimate solution lies in developing a review procedure similar to that under Section 102(C) of the National Environmental Policy Act, 43 U.S.C. § 4332, which would require investigation and research into possible infringements on Indian rights inherent in any proposed major federal action.

APPENDIX D

A Proposal for Clarifying the Tax Status of Indians

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

A. Federal Taxation of Indians and Indian 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 67–284, 1967–2 Cum. Bull. 55, the courts have taken a case-by-case approach to determine whether general federal taxing status should apply in a given case to an Indian or to Indian property. In *Choteau* v. *Burnett*, 283 U.S. 691 (1931) and in *Superintendent of Five Civilized Tribes* v. *Commissioner*, 295 U.S. 418 (1935), the Court ruled that federal income statutes 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. *Capoeman*, 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 relationship 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 purpose of this paper is to *summarize* the existing tax relationships between Indians and the United States and the states, and to *formulate* congressional legislation which would clarify the Indian 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.) 515 (1832). 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. *Mazurie*, 419 U.S. 544, 557 (1975). As distinct political bodies with attributes of sovereignity, Indian tribes have long had problems in their governmental relationships both with the United States *Stevens* v. *Commissioner*, 452 F.2d 741 (9th Cir. 1971), involving the federal taxability of income earned from allotments which had been acquired by gift or exchange from other Indians, but it was not followed in *Holt* v. *Commissioner*, 364 F.2d 38 (8th Cir. 1966), *cert. denied*, 386 U.S. 931 (1967), involving the federal taxability of income earned by a member of an Indian tribe from leased tribal lands. *Big Eagle* v. *United States*, 300 F.2d 765 (Ct. Cl. 1962). *United States* v. *Hallam*, 304 F.2d 620 (10th Cir. 1962). *Commissioner* v. *Walker*, 362 F.2d 261 (9th Cir. 1964), and Rev. Rule 67–284, which spells out in detail the position of the Internal Revenue Service on exemptions 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 Indian tribes, although no longer the sole determining factor, must still be considered because it provides a background 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 precise for the Supreme Court recognizes that there is a "special area 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. 145, 148 (1973); *McClanahan* v. *Arizona State Tax Commission*, and *Moe* v. *Confederated Salish and Kootenai Tribes*, ——U.S.——, 96 S.Ct. 1634 (1976).

Currently before the Supreme Court is *Bryan* v. *Itasca County*, ——U.S.——, 96 S.Ct. 2102 (June 14, 1976) which will determine whether Congress in enacting Public Law 280, 28 U.S.C. § 1360 and 18 U.S.C. § 1162, conferred 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—in the alternative, if the outcome 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 and personal property located on a reservation, whether held in trust or not. *McClanahan* v. *Arizona Tax Commission; Moe* v. *Salish and Kootenai Tribes*, 44 USLW 4535, April 27, 1976. *United States* v. *Rickert*, 188 U.S. 432 (1903).

The scope of state taxing authority over Indians and Indian property located off the reservation is similar to the scope of federal taxing power over Indians where ever located. Thus, Indians and their property are exempt only if a federal statute or treaty specifically provides for an exemption. *Mescalero Apache Tribe* v. *Jones*.

A retail trading business subject to federal control and supervision operating on an Indian reservation, whether owned by an Indian or non-Indian, is not subject to state taxation on its business transactions with Indians. *Moe* v. *Salish and Kootenai Tribes; Warren Trading Post* v. *Arizona Tax Commission*, 380 U.S. 685 (1965). In *Moe*, the Court authorized the State of Montana to require an Indian retailer to collect a tax imposed on a non-Indian purchaser of cigarettes and in doing so distinguished the case from the state tax which was improperly asserted against the federally licensed trader, not the purchaser, in *Warren Trading Post*. In the circumstances of the *Moe* case, the Supreme Court was unwilling to strike down that 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 retailer 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 engaging in businesses dealing with Indian property has been upheld either because an express act of Congress authorized the tax [*see, e.g., British-American Oil Producing Co.* v. *Board of Equalization*, 299 U.S. 159 (1936); *cf. Santa Rita Oil & Gas Co.* v. *Board of Equalization*, 101 Mont. 268, 54 P. 2d 117 (1936)], or because it was found that the state tax would not significantly interfere with the right of reservation Indians to govern themselves. *See, e.g., Oklahoma Tax Commission* v. *Texas Co.*, 336 U.S. 342 (1949); *Agua Caliente Band of Mission Indians* v. *County of Riverside*, 442 F.2d 1184 (9th Cir. 1971), *cert. denied* 405 U.S. 933 (1972); *Moe* v. *Salish and Kootenai Tribes*, 44 USLW 4535, April 27, 1976.

An important unresolved aspect of the Indian tax status involves state attempts at taxing on-reservation business ventures entered into jointly between Indians and non-Indians. This area of Indian taxation, more than any other, should be clarified in order to allow tribes and individual Indians to make business and development decisions with a reasonable degree of certainty as to their tax consequences. Thus, where a reservation venture is owned and operated in part by an Indian (or tribe) and in part by a non-Indian, the current state of the law may result in state taxation over only the non-Indian portion. Presumably the Indian portion of the business assets, inventory and income would be exempt because Congress has not specifically authorized state taxation. However, the non-Indian portion would be taxable in the absence of either an act of Congress prohibiting the tax or a finding that the state taxation significantly interferes with the right of reservation Indians to govern themselves. As discussed below, the establishment of tribal taxes for assertion against such ventures will demonstrate most directly that the state taxes interfere unlawfully with the exercise of tribal

self-government. *See, e.g., Williams* v. *Lee*, 358 U.S. 217 (1959); *Fisher* v. *District Court*, —— U.S. ——, 96 S.Ct. 943 (1976).

C. Taxation by Indian Tribes

Ample authority exists for tribes to impose taxes on Indians and non-Indians with their reservations. *Iron Crow* v. *Oglala Sioux Tribe*, 231 F.2d 80 (8th Cir. 1956); *Buster* v. *Wright*, 135 F. 947 (8th Cir. 1905), *appeal dismissed*, 203 U.S. 599 (1906); *Morris* v. *Hitchcock*, 21 App. D.C. 556 (1903), *aff'd*, 194 U.S. 384 (1904). Even though such authority has existed for years, tribes are just now beginning to realize the need to impose tribal taxes over reservation ventures 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 taxing 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 governmental action imposed 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 tribally imposed tax on non-Indians who have no power to vote and influence tribal government 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 designed that the impact on less affluent Indian taxpayers is minimized. This can be achieved by imposing exemptions which would affect the level of taxation or by authorizing credits for tribal members in furtherance of tribal governmental policies benefiting tribal members.

The second concern, namely potential due process problems raised by the inability of non-Indians to participate directly in formulating tribal governmental decisions, can be ameliorated in part by establishing a governmental agency such as a tax commission which could include non-Indians as members or which could implement tribal council taxing authorizations through a procedure for rulemaking which would allow public comment and input from both Indians and non-Indians alike.

II. CLARIFYING THE TAX STATUS OF INDIANS THROUGH CONGRESSIONAL LEGISLATION

Because nearly all of the law determining the scope of federal and state taxing authority over Indians and Indian reservations has been developed by court decisions, there are necessarily certain aspects of the tax status of Indians which could be clarified by congressional legislation. Such legislation could rely on the existing patterns of law for its foundation and could provide the tribes, the United States, and the states a degree of certainty and predictability which has not heretofore existed.

The first need for clarification deals with the status of Indian tribes as governmental units under federal tax law. This problem is well on its way to being corrected—the result of two bills presently before Congress. The Indian Tribal Government Tax Status Act (S. 2664, H.R. 16058, 94th Cong., 1st Sess. 1975) attempts to provide Indian tribes with the same privileges granted generally to state and local governments. Thus, the Act would exclude from federal taxation interest on bonds issued by Indian tribes, would allow a deduction against federal income tax liability for taxes paid to an Indian tribe, would authorize estate and gift deductions for gifts to Indian tribes, and would provide tribal enterprises with certain exemptions from gasoline and fuel excise taxes already granted state and local governments.

Any attempted legislation designed to create an across-the-board exemption for Indians and/or Indian property from federal income taxation may well be unrealistic. The exemption would be fundamentally inconsistent with the often held position of the United States Supreme Court that federal taxes apply to Indians in the absence of some specific statutory exemption. However, even in the absence of such a broad exemption, the enactment of the Indian Tribal Government Tax Status Act would provide significant benefits to reservation Indians for it would strengthen the ability of tribes to undertake additional governmental programs and to participate in new proprietary activities without disturbing their exempt tax status.

Perhaps the greatest need for clarification of the tax status of Indians, which can be achieved through congressional legislation, is in the scope of state tax authority over reservation ventures which include both Indian and non-Indian interests. On one hand, Congress cannot be expected to enact legislation which would grant reservation Indians the power to sell at wholesale or retail free of state taxation products normally manufactured and sold off the reservation. This of course seems to be the ruling in *Moe* v. *Salish and Kootenai Tribes*. On the other hand, where the subject of the venture is peculiar to the Indian reservation, such as the development of minerals, timber, commercial fish, and other resources peculiarly associated with the reservation, Congress would be much more sympathetic to enacting legislation granting the Indian tribes primary jurisdiction to impose tribal taxes over such activities. Such legislation would provide that an authorized tribal tax imposed on a business venture would preempt state taxes otherwise applicable.

This legislation would be in line with the current state of the law which suggests that state laws, including tax laws, may not be authorized against non-Indians on a reservation where their application would significantly interfere with the right of reservation Indians to govern themselves. Since the proposed legislation would be limited to business ventures tied peculiarly to resources of the Indian reservation, the legislation could not be open to the criticism that it would create a "tax haven" for Indians. Moreover, to the extent that the states presently have no taxing authority over that portion of a venture which is Indian owned, the proposed congressional enactment would clarify the lack of state authority over only that portion of the venture not owned or controlled by Indian interests. Finally, nothing in the proposed legislation would prevent a tribe from inducing reservation development by offering business ventures a temporary exemption from the otherwise applicable tribal tax. A copy of the proposed tax enactment is attached to this report.

III. CONCLUSIONS

The subject of the unique Indian tax status has been given considerable attention recently by the United States Supreme Court. In a number of far reaching decisions the Court has clarified considerably the scope of the exemptions enjoyed by Indian tribes, reservation Indians and Indian property against both federal and state taxes. The scope of the exemption is significantly greater for state taxes than it is for federal taxes. Federal legislation has been introduced clarifying the government tax status of Indian tribes and providing tribes with significant benefits. It is proposed that federal legislation be enacted to clarify the most important unresolved aspect of the Indian tax status. The proposed legislation would confirm the primary authority of tribal taxation over reservation businesses and would provide that where reservation business ventures are involved directly with reservation resources tribal taxing authority may preempt state taxation.

Of course, nothing in this proposed legislation would prevent tribes from asserting in federal court litigation that state taxation of *any* Indian or non-Indian reservation business unlawfully interfere with the right of reservation Indians to govern themselves where the tribe has enacted a lawful tax on that reservation business.

[In the House of Representatives]

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."

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