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Around the World:
**Indigenous Children in Canada's Foster Care System: Bill C-92 and
the Importance of Cultural Identity**

Elizabeth Newland¹

I. INTRODUCTION

The history of colonialism has negatively impacted Indigenous people in Canada since the 1800s and the child welfare system has exasperated this impact. The current state of the Canadian child welfare system exists as a system akin to traditional residential schools due to the disproportionate representation of Indigenous children. The racial make-up of the foster care system continues to diminish Indigenous culture and history by stripping children from their communities. The Canadian child welfare system has a history of erasing Indigenous culture that legislation must address to preserve the connection between Indigenous children in the foster care system and their unique culture.

This article addresses the historical colonization of Indigenous people in Canada and how this is continued through the Canadian child welfare system. It will examine the history of colonialism of Indigenous children in Canada, specifically through the creation of residential schools, the increase of Indigenous children in foster care through the Sixties Scoop, and the current state of the Canadian child welfare system. The article then will explain the importance of protecting and enhancing Indigenous culture, especially in foster care. Finally, while recognizing that Canada has worked to rectify the actions of the past, this article will explain why the current foster care legislation, Bill C-92, falls short of the cultural protection of Indigenous children in the foster care system.

II. HISTORY OF COLONIALISM OF INDIGENOUS CHILDREN IN CANADA

A. Creation of Residential Schools

The Indian Act of 1876, enacted by the Parliament of Canada, gave the Canadian government the power to control Indigenous people's identities, political structure, systems of governance, and right to educate their children. First Nations people, also called Indigenous or Aboriginal, are the first people to inhabit the land that was colonized by what is now the country of Canada. The Act put stringent restrictions on Indigenous rights with the intent to produce good, moral Canadians. It did this by outlawing Aboriginal government systems, restricting their ability to practice religious ceremonies, and forcing their children away from the tribes. This bill also required First Nations children to attend either industrial or residential schools.

Government and church-run residential schools became an official part of Indigenous colonialism in the late 1800s. The Canadian government and Christian churches created

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these schools to educate, convert, and assimilate Indigenous children into Canadian society. The school's goal was to turn the children into upstanding, industrious workers and productive members of Canadian society. These schools physically abused students through severe beatings, isolation, and food deprivation, did not have adequate funding or resources, and did not offer a quality education. The government forced roughly 150,000 kids to attend these schools. Because the schools did not keep accurate records, the number of attendees and those that ultimately died at the hands of the school's abuse may not be completely accurate. Most of these schools began to close in the 1970s; however, the last federally funded school officially closed in the 1990s.

B. Sixties Scoop

The Sixties Scoop refers to the intentionally increased placement of Indigenous children in the foster care system from the 1960s-1980s as part of the aftermath of the residential school program. For example, in 1954 only 1% of children in care were indigenous in British Columbia, but by 1964 indigenous children made up 34% of all children in care. Increased removals occurred due to lack of culturally relevant training by child protective services. Social workers would remove Indigenous children from their homes because the homes did not conform with their Eurocentric ideals of a proper living environment. This included only having traditional and natural foods and wider societal problems like poverty and unemployment. The increase of children in foster care led to an increase in adoptions of Indigenous children by non-Indigenous families. One in three Aboriginal children were separated from their families through adoption or fostering by 1970. Scholarly statistics and reports about the disproportionality of Indigenous children removal during this period led to provincial policy changes that were theoretically supposed to address and end this practice. However, the reality and legacy of the sixties scoop did not end with new research. The Sixties Scoop paved the way for the current state of Indigenous overrepresentation in the Canadian foster care system.

C. Current Day Welfare System

Indigenous children are currently overrepresented in the Canadian foster care system. Indigenous children are placed in the state's care at thirteen times the rate of non-Indigenous children, even though they only make up less than 10% of the population of children in Canada. This equates to Indigenous children making up 50% of the entire foster child population. Most of these children are placed with non-Aboriginal families outside of their community group. The foster care system does not consider racial or cultural identities in foster placements; therefore, the government places most Indigenous children outside their community. After removal, caseworkers are supposed to attempt to place children with other family members outside their homes. However, when that is not possible, the government places these children with other willing foster families, most of whom are not Aboriginal. For example, in the province of Ontario, 40% of the children in foster care are Indigenous, while only 4% of the foster parents share this racial and cultural background.

D. Mass Graves

The continuous uncovering of mass graves associated with residential schools shows that the dark history of cultural erasure of Indigenous culture is far deeper than what meets the eye. These uncoverings started in 2015, with the most recent uncovering this year in Kamloops, British Columbia. The remains of 215 children were uncovered and continue a tragic pattern of mass, unmarked children's graves. The impact of this colonial system continues to show the loss of an entire generation of Indigenous children and its continued ramifications on the child welfare system.

III. THE IMPORTANCE OF EMPHASIZING CULTURE WITHIN THE FOSTER CARE SYSTEM

The uncovering of the Kamloops mass grave is yet another indication of the immense loss of culture due to a generation of abuse and premature death. Although residential schools alleged their purpose was to raise children to be upstanding members of Canadian society, it is now evident that the residential school's actual purpose was to eradicate the way of life of Indigenous children. This cultural erasure continues through the placement of children in foster care and the lack of consideration of their background and Aboriginal identity.

A strong cultural identity is important for all children. Being in foster care away from one's home greatly lowers a child's cultural sense of self. A strong cultural identity leads to greater self-esteem, higher education levels, better psychological adjustments, improved coping abilities, decreased levels of loneliness and depression, and an overall better social wellbeing. Emphasis on supporting and nurturing a child's sense of self-identity can strengthen their emotional growth.

The removal of Indigenous children from families and communities amplifies a generation of culture lost due to premature deaths and trauma at the hands of residential schools. These children are put into foster care with little to no recognition of their cultural practices, traditional food, holidays, clothing, and language. Indigenous children in foster care further the cultural erasure the residential schools began.

Indigenous children who grow up with non-Indigenous parents grapple with conflicting feelings of losing their birth culture, gaining an adopted culture, and ultimately must become "reacquainted with the most marginalized and oppressed group within Canadian society." Being in foster care can be a traumatizing and difficult transition for all children. Moreover, the stripping of Indigenous identity adds another layer of confusion and harm to children. Taking a child from a strong background and placing them with adults who do not know cultural customs or traditions can cause the child to experience increased mental and emotional pain.

Even before legislative and structural changes, there are steps that government agencies can take to foster culture within the foster care system. This might come in the form of increased emphasis on kinship care, which places children with other relatives, as well as community placement. Additionally, the government should emphasize better

family support services as a preventative method and culturally relevant practices when removal is necessary. Further, allowing for increased visits and community connections while children are in foster care is another way to keep Indigenous culture alive and growing. Culture and identity should be a central consideration of Indigenous child removal.

IV. CANADIAN LEGISLATION TO IMPROVE CULTURAL CONNECTEDNESS IN FOSTER CARE: BILL C-92

The Canadian government has taken substantial steps to begin the healing process stemming from the creation of residential schools through formal government apologies, the creation of the Truth and Reconciliation Committee, and monetary reconciliation settlements. Yet, there is a lack of legislative backing to ensure the protection of Indigenous culture within the foster care system.

The United States (U.S.) falls behind Canada in many ways regarding recognizing and reconciling its imperialistic relationship with Native Americans. However, the U.S. Congress passed the Indian Child Welfare Act (ICWA) of 1978 to combat the overrepresentation of Native American children in foster care and strengthen tribal communities. ICWA is one of the gold standards of Indigenous family services law. The strength of the American ICWA comes from the recognition of tribes as nations equipped with their own court system that retains jurisdiction over these cases. This extra layer of protection helps ensure that children are cared for by the tribal community and stay connected with their tribe's culture. It also allows tribal leaders to protect and strengthen the next generation of Indigenous people.

In early 2019, the Canadian government enacted a similar bill, Bill C-92, to combat the Indigenous inequalities in the foster care system. Scholars and officials have described Bill C-92 as the Canadian equivalent to ICWA. The government, Indigenous groups, provincial, and territorial partners drafted this bill to keep Indigenous children and youth connected to their families, communities, and culture. Bill C-92 addresses the first five points of Canada's Truth and Reconciliation Commission's Call to Action. The government formed this committee to provide a direct avenue for survivors of residential schools to share their experiences and hold the government accountable for their atrocities. Overall, this act attempts to protect the best interest of children by supporting Indigenous group jurisdiction over child and family services, addressing concerns laid out by the Canadian Truth and Reconciliation Commission, and increasing funding for these services.

While Bill C-92 takes initial steps towards stronger cultural protection for Indigenous children, aspects of the bill fall short of this goal. One criticism of the bill is the lack of tribal courts in Canada. The U.S.' ICWA is enforced and monitored by the 400 individual tribal court system. This system allows for increased accountability and self-governance in child welfare matters of Indigenous children. Tribal courts are necessary to ensure that Indigenous groups have the means and ability to have jurisdiction over children in foster care. Bill C-92 acknowledges Indigenous people's right to self-governance and jurisdiction over child and family services. Despite this acknowledgment, there is still a

disconnect between Indigenous governmental groups and provincial government standards.

A child living with an Indigenous family on a reserve or specified area falls under three distinct and conflicting jurisdictions: the federal government, the provincial government, and the Indigenous group. These three different governments often conflict when caring for the child. The conflicting jurisdictions are so problematic that Indigenous groups advocated for Jordan's Principle. The Canadian government enacted Jordan's Principle after an incident in which a First Nations foster child was unnecessarily left in a hospital for two years and ultimately died as a result. The government left the child in the hospital because of a jurisdictional dispute between the Province of Manitoba and the federal government regarding his at-home care. This payment dispute resulted because of his status as a First Nations foster child.

Bill C-92 provides only limited jurisdictional rights to Indigenous groups in child welfare matters. It limits their jurisdiction by stating that Indigenous laws can only be used if they are in the child's best interest. However, this stipulation still allows for almost unrestricted oversight and interference by non-tribal courts. So, while Indigenous groups are technically self-governing, other government bodies are often involved in much of the decision-making. While the bill allows for the gradual recognition of Indigenous jurisdiction, it does not adequately address the jurisdictional dilemmas faced by children in foster care.

V. CONCLUSION

While Bill C-92 needs improvement, it should be recognized as an incredibly powerful and important step towards reconciliation and rectification of a historically rooted problem. Bill C-92 specifically addresses point four of the Call to Action: "We call upon the federal government to enact Aboriginal child-welfare legislation that establishes national standards for Aboriginal child apprehension and custody cases." This bill is the first step to a more comprehensive policy that nurtures and emphasizes the importance of Indigenous culture and sovereignty. While this bill will not single-handedly or immediately change the structure of the Canadian child welfare system, it does promote growth and cultural healing.

Bill C-92 is the start of a nationwide attempt to make the child welfare scene more culturally competent and responsive to the Indigenous population by focusing on a community-centered approach to child and family safety. No amount of legislation or culturally relevant decision-making will undo the past injustices to all Indigenous folks. Despite this, there is hope and potential for a stronger community, cultural identity, and sense of belonging in the Indigenous community because of Bill C-92.

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