

Domestic Abuse

How the U.S. government is violating Native Americans' human rights.

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PICKSTOWN, S.D. -- Sandy Wade was 6 when she was sent away to St. Paul's Indian Mission, a boarding school overseen by the Bureau of Indian Affairs (BIA) on the Yankton Sioux reservation. At first, things weren't so bad. She got three meals a day -- a welcome change from home, where she and her nine brothers and sisters often went hungry. But, as she discovered, not everybody fared so well, especially younger boys like her brother Frank "Butch" Wright, who lived across campus in St. Katharine's dormitory, a red-brick building with bars on the windows and double-padlocked doors.

"When I saw him, he was always hungry and dirty and crying," says Wade, 58, who works as a computer technician and has a long, black braid that falls over her shoulder. "Stuff happened to him that he never really got over."

At age 14, Wright told her he'd been sexually abused at school. Four years later, he died of a drug-induced coma. Another former student, Sherwyn Zephier, a 47-year-old art teacher who carved a tattoo -- "PEACE" -- in his leg while living in St. Katharine's, recalls how he and other children were whipped and beaten on a regular basis.

"Human rights?" says Zephier, standing in front of St. Katharine's on an August evening. "I never knew we had such a thing."

On July 13, Zephier, Wade, and other former students filed a lawsuit against the Catholic Diocese of Sioux Falls, South Dakota, and several religious organizations, according to Gary Frischer, a Los Angeles-based legal consultant. (Jerry Klein, chancellor of the Sioux Falls diocese, said he preferred not to discuss the lawsuit, adding that the diocese "never ran or controlled the school.") Last year, on April 9, Zephier and others filed a class-action lawsuit against the U.S. government. David W. Anderson, the U.S. Department of the Interior's assistant secretary of Indian affairs, didn't respond to numerous requests for an interview.

Approximately 100,000 Native American children were placed in BIA-managed boarding schools over the past century, according to Andrea Smith, interim coordinator of the Boarding School Healing Project, a coalition of Native American organizations. In this little-known chapter of American history, many of these children were not only physically abused; they were also stripped of their cultural identity. As Zephier explains, children were forced to give up Indian names, stop speaking their own language, and cut off their long braids. The philosophy was simple: "Kill the Indian. Save the Man," according to Captain Richard C. Pratt, who opened the first BIA-run school in Carlisle Barracks, Pennsylvania, in 1879.

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Sadly, the abuse of Indian children is the tip of the iceberg. The U.S. government has violated human rights in its treatment of Native Americans over many generations and in a multitude of ways, say human-rights experts. Besides the right to religious freedom and physical safety, both of which were violated at the BIA-run schools, land rights, the right to self-determination, and many other rights have been systematically jeopardized -- mainly because a separate legal regime has been set up for Native Americans, which legal scholars say often denies them due process and little or no recourse when laws are violated.

The separate legal system dates back to 1775, when the United States signed its first treaty with a tribal government. According to that treaty (and many of the ones that followed), the United States recognizes tribal governments as autonomous and agrees to protect their land, resources, and treaty rights. But there's a catch: An 1886 Supreme Court case (*United States v. Kagama*) allowed Congress to limit tribal sovereignty. And over the years, say experts, Congress has ignored many of the treaties, violated Native American rights, and taken land at will.

"We need to look carefully at the domestic implementation of international standards that we've worked hard to develop around the world," says Hadar Harris, executive director of the American University's Center for Human Rights and Humanitarian Law. "A perfect example of the disconnect is the ways in which fundamental human rights of Native Americans have been affected."

The "disconnect" is rooted in official schizophrenia -- at least when it comes to federal policy toward Native Americans. "American policy has been on a pendulum for 200 years," says Keith Allred, an associate professor at Harvard's Kennedy School of Government who has mediated disputes between tribal and local governments. For years, he explains, the federal government has swung between granting and denying self-government to tribes. "We've left vestiges of old policies in place and moved to new ones and created a confusing and difficult patchwork of policies and institutions," he says.

But Paul DeMain, editor of the twice-monthly *News From Indian Country*, says the pendulum has mostly swung in one direction: toward the undermining of tribal governments, despite official claims of their sovereignty. "Congress can enact any law and make it impact Indian country," he says. "How can that be sovereignty? It's as sovereign as Iraq is. Which means the new Iraqi government will be as sovereign as the U.S. government allows them to be."

Native Americans are often frustrated by the restrictions on tribal self-government. But that's not all. They're also faced with a Congress that claims the right to wield "plenary," or absolute, power over them.

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The Western Shoshone land dispute, which began in 1974 when the U.S. government claimed Native American ancestral lands in Nevada, is a glaring example of how the United States can overstep its bounds. That year, U.S. officials said a Western Shoshone title on the land had expired and, as a result, it belonged to the public. Two sisters, Carrie and Mary Dann, who were letting their cattle graze the land, were accused of trespassing.

"You've got a Congress that's perfectly willing to go on using discriminatory doctrines against tribes," says Robert "Tim" Coulter, executive director of the Indian Law Resource Center in Helena, Montana. "And so, in desperation,

Indian leaders are working at the international level to create an awareness of what the law ought to be.”

The Dann sisters fought for their land, going beyond U.S. domestic courts to the Organization of American States (OAS). On December 27, 2002, they were handed a victory, of sorts: The organization’s Inter-American Commission on Human Rights found the United States in violation of international laws in its handling of their complaint.

The Danns aren’t the only ones who’ve sought justice at an international level. Increasingly, indigenous people in other parts of the world who’ve seen land, property, and cultural artifacts taken away are turning to organizations like the OAS and the United Nations, which has created a Permanent Forum on Indigenous Peoples to address their concerns. Under the auspices of the UN, indigenous people from around the world meet to discuss land rights and other issues. In addition, members of the Indian Law Resource Center have helped World Bank officials revise their policies, providing more protection for indigenous peoples. Yet international assistance only goes so far. The Bush administration, for example, didn’t exactly snap to attention after hearing the Inter-American Commission on Human Rights’ findings.

“They’ve basically ignored it,” says Harris.

For the Danns, the outcome has been catastrophic.

“Our livelihood is gone,” Carrie Dann said at a June 21 Ford Foundation meeting in New York. “They never did like us, but the attack now, under the current administration, is like nothing I’ve ever seen.”

Four days later, on June 25, Congress passed a bill that allows Western Shoshone tribal members to receive \$15,000 to \$30,000 apiece for the land. Its value was based on an 1872 price, roughly 15 cents an acre. On July 7, President Bush signed the Western Shoshone Distribution Act.

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Land grabs are only the most extreme and visible way that the denial of human rights affects Native Americans. Tribal governments have official legal systems -- some with their own police and courts, Allred notes, yet no jurisdiction over non-tribal members in ordinary legal disputes. So, for example, when tribal police get a call from an Indian woman who’s been assaulted by her white husband, they’re not allowed to arrest him.

“If it’s a heinous crime, the FBI steps in,” explains Charon Asetoyer, executive director of the Native American Women’s Health Education Resource Center, a nonprofit organization based in Lake Andes, South Dakota. “But how many times does a woman have to have a broken arm before they step in?”

It’s another way that an unjust legal system produces suffering. Says Allred, “Domestic abuse just goes rampant and unchecked in Indian country.”

This fall, activists working with the Boarding School Healing Project are fighting back. They’re documenting abuses at past and current BIA–run schools (a recent report issued by the Interior Department’s inspector general

says the federal agency recently hired individuals convicted of battery and child endangerment to work at the boarding schools) and are calling for a congressional hearing.

On a Saturday evening in August, Zephier sits at his computer in a home office as he clicks through photos of

St. Paul's. He recalls how hard it was to bring up the subject of abuse with his 83-year-old father. But a couple of months before his father's death in January 2002, Zephier spoke told him what had happened. "I said, 'Dad, I'm going to sue the U.S government for what they did to us.'"

His father, Chief Black Spotted Horse, was silent. Finally, he spoke.

"He said, 'Good. I hope you win,'" says Zephier. "That was his blessing to me."

Tara McKelvey is a Prospect senior editor.

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