NOTE

THE DEPENDENCY TABOO: PROTECTING HUMAN RIGHTS AGAINST THE TRIBAL SOVEREIGNTY CLAIM

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* J.D. Candidate, '24, Cornell Law School. Ms. Elliott dedicates this Note to the people of the Cayuga Nation who have exhibited bravery and resilience in the face of unimaginable hardship, but who continue to fight to protect their culture and traditions against systems of immense coercive power. This Note respects everything you have sacrificed in your struggle against Goliath. Ms. Elliott is thankful to Joe Heath, who has contributed invaluably to New York public interest law and New York public policy over the last half-century; to Michael Sliger, who shaped her legal writing; to Danica Murthy, with whom she has spent many all-nighters researching federal Indian law; to Wally Yeager, who laid claim to the first published copy of this work years in advance; and to her mother, Mary Elliott, who helped develop her written voice.

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INTRODUCTION

On August 3rd, 2022, in the small upstate New York town of Varick, a crowd of onlookers stood in anticipation across the street from a beautiful white house with large windows and a green tin roof.[1] The property was maintained by Wanda John, a Cayuga (Gayogo_hó:nǫ') Nation elder known as "Grandma" by her community.[2] A barn behind the house—one of the oldest structures in Varick, and a protected historical site—had been converted into a makeshift ceremonial longhouse after the community's legitimate longhouse was demolished without warning by the Cayuga Nation government in 2020.[3] The barn housed sacred Gayogo_hó:nǫ' artifacts, including sacred ceremonial items.[4] In that space, Wanda and other Gayogo_hó:nǫ' members held traditional ceremonies and taught the community children the Gayogo_hó:nǫ' language.[5]

In front of the property stood a line of sunglassed Cayuga Nation police, feet spread slightly past their shoulders, gloved thumbs tucked into black vests and backpacks.[6] Many wore shrouds over their mouths and noses.[7] None were Indigenous Gayogo_hó:nǫ', but were predominantly white men who had served on outside police or military forces.[8] Most stood stoic while the small crowd on the street grew.[9]

"I hope you're proud of yourselves," spit one onlooker, pacing on the street with his camera. "I hope none of you guys are wearing American

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[1] Charles Bowman, FACEBOOK (Aug. 3, 2022, 6:01 PM), https://www.facebook.com/100000861672627/videos/440652977989133/https://www.facebook.com/100000861672627/videos/440652977989133/.

[2] Jimmy Jordan & Zoë Freer-Hessler, *House demolition marks latest escalation in Gayogo_hó:nǫ' tension in Seneca County*, THE ITHACA VOICE (Aug. 4, 2022), https://ithacavoice.com/2022/08/house-demolition-marks-latest-escalation-in-gayogo_ho%EA%9E%89nǫ'-tension-in-seneca-county/.

[3] Megan Zerez, *More violence, surprise demolitions on Cayuga tribal lands as leadership dispute continues*, NCPR (Aug. 8, 2022), https://www.northcountrypublicradio.org/news/story/46377/20220808/more-violence-surprise-demolitions-on-cayuga-tribal-lands-as-leadership-dispute-continues.

[4] *Id.*

[5] *Id.*

[6] Bowman, *supra* note 1.

[7] *Id.*

[8] Leslie Logan, *Cayuga Nation's division leads to a 'human rights catastrophe'*, INDIANZ.COM (Mar. 4, 2020), https://www.indianz.com/News/2020/03/04/cayuga-nations-division-leads-to-a-human.asp.

[9] Bowman, *supra* note 1.

flags, 'cause that's a bunch of shit." "You have to go home at night. What do you tell your kids?"[10]

After the Cayuga Nation Police Department (CNPD) was done looting items of value from the home and neighboring historic barn, the demolition process kicked into motion.[11] The "Cayuga Nation" police dragged the elderly Wanda John from the structure before throwing her to the ground and stepping on the back of her neck, resulting in significant bruising.[12] They zip-tied Wanda's hands and forced her to watch as they drove a bulldozer dramatically through Gayogo_hó:nǫ' ceremonial sites and over sacred items—without even delaying to disconnect the house's electric and propane lines.[13] Peaceful protestors were "soaked" with pepper spray.[14]

Clint Halftown, the federally-recognized leader of the Cayuga Nation, described these structures as "uninhabitable" and "eyesores," which community members and demolition videos strongly dispute.[15] The Gayogo_hó:nǫ' community's Summer Youth Group had been held in the house three hours before demolishment.[16] "Those children are retraumatized because they watched their first sacred place go down, their first schoolhouse go down, first community spot go down," said Gayogo_hó:nǫ' member Leanna Young. "Their safe place has been desecrated again."[17]

The August 3rd demolitions followed a string of overt human rights abuses against Cayuga Nation traditionalists: condoled chiefs and clan mothers previously appointed as Cayuga Nation leadership according to tribal law and pre-existing governance structures from time immemorial.[18] However, federal Bureau of Indian Affairs (BIA) actors in 2016 and again in 2019 overrode ancient Cayuga law by instating their own selected leader:

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[10] *Id.*

[11] Interview with Joseph Heath, Attorney for the Traditional Cayuga Nation Council of Chiefs and Clanmothers (TCNCC), in Pulteney, N.Y. [hereinafter "Heath interview"], at 7:30-9:52, 10:00-10:31 (Aug. 19, 2023).

[12] Hilary-Anne Coppola & Joe Heath, *Voices: Statement of the Traditional Gayogo_hó:nǫ' (Cayuga) Council of Chiefs and Clan Mothers Regarding the Halftown Council's Destruction of the Homes of Gayogo_hó:nǫ' Citizens*, URBANCNY.COM (Aug. 5, 2022), https://www.urbancny.com/statement-of-the-traditional-gayogo_ho%EA%9E%89nǫ-cayuga-council-of-chiefs-and-clan-mothers-regarding-the-halftown-councils-destruction-of-the-homes-of-gayogo_ho%EA%9E%89nǫ/; Zerez, *supra* note 3.

[13] Coppola & Heath, *supra* note 12.

[14] Jordan & Freer-Hessler, *supra* note 2.

[15] *Id.*; Bowman, *supra* note 1.

[16] Jordan & Freer-Hessler, *supra* note 2.

[17] *Id.*

[18] Leslie Logan, *Cayuga Nation's division leads to a 'human rights catastrophe'*, ICTNEWS.ORG (Mar. 3, 2020), https://indiancountrytoday.com/news/cayuga-nations-division-leads-to-a-human-rights-catastrophe; Tim Ryan, *Cayuga Tribe Takes on Secretary of the Interior*, COURTHOUSE NEWS SERVICE (Sep. 22, 2017), https://www.courthousenews.com/cayuga-tribe-takes-secretary-interior/.

Clint Halftown, an individual who is not recognized as a legitimate leader by Cayuga clan mothers responsible under Cayuga law for declaring chiefs, nor by the other member Nations of the Haudenosaunee Confederacy, of which the Cayuga Nation is a part.[19] There is no basis in tribal law, in other words, for Halftown's leadership—only a vague personal claim to power by Halftown and a small group of Halftown's supporters that garnered support from individuals within the BIA.[20]

Since the federal government solidified Halftown's control over Cayuga Nation funding in 2019, the Halftown Faction has repeatedly committed egregious human rights violations against Gayogo_hó:nǫ' citizens, including uncompensated destruction of property, irrational arrests, preventing access to fair judicial trials, and repeated violent assaults against law-abiding civilians.[21] The United States government continues to directly fund human rights abuses against these American citizens by improperly assigning governments to Indigenous nations, like the Cayuga Nation—governments which do not follow traditional tribal laws and customs. The United States will then refuse to remedy these harms under a hypocritical, selectively-followed "self-determination" policy against involvement in the internal tribal affairs.[22]

This Note examines how the BIA's current system of selective Indigenous interference propagates antiquated colonial values and allows federal actors to effectively control Indigenous governments, under the ironic guise of respecting Indigenous sovereignty. Part I will detail the historic and continuing interests of the United States federal government in designing its own Indigenous governance structures, both for the benevolent aims of protecting the rights of both United States and Indigenous citizens and for the nation's own self-interests in limiting Indigenous claims to power over land and resources. Part II will demonstrate the extent that the federal government, despite its purported non-interference policy, is inextricably involved with Indigenous Nations' modern governments, whether in providing funding, choosing to act on Indigenous concerns, or refusing to act on those concerns. It will detail, for example, Clint Halftown's rise to power through a federal leadership recognition system operating entirely outside the realm of Gayogo_hó:nǫ' law, as well as his use of federal funding to violently suppress traditional expressions of Cayuga culture by those who have challenged Halftown's authority. This

[19] Ryan, *supra* note 18; Zerez, *supra* note 3.

[20] Ryan, *supra* note 18. For a discussion of Cayuga leadership law, *see generally* Declaration of Bear Clan Chief Samuel George (June 10, 2014).

[21] *See* Ryan, *supra* note 18; Zerez, *supra* note 3; Jordan & Freer-Hessler, *supra* note 2; Jimmy Jordan, *Years long dispute in Cayuga Nation sees tribal arrests, trials* beginning, THE ITHACA VOICE (Sep. 13, 2022), https://ithacavoice.com/2022/09/years-long-dispute-in-cayuga-nation-sees-tribal-arrests-trials-beginning/.

[22] *See* Ryan, *supra* note 18.

part will also demonstrate the destructive power of the BIA's refusal to direct its funding of Indigenous nations—albeit in the benevolent interest of preserving sovereignty—and will use Michigan's Saginaw-Chippewa Indian Tribe to illustrate how funding without human rights safeguards has led to rampant disenrollment of Saginaw-Chippewa members in order to create a smaller pool of individuals eligible for federal fund portions.

Finally, Part III proposes a new universal BIA policy using the rationale of *Brown v. Haaland*, a 2022 decision out of the U.S. District of Nevada holding that the BIA has a duty to reassume funding contracts under the Indian Self-Determination and Education Assistance Act when an Indigenous government operates against the imminent safety and welfare of its citizens.[23] While this Note upholds *Brown* as an important first step in recognizing that imminent human rights concerns trigger BIA action, it argues that the *Brown* discussion limiting repercussions to reassuming self-determination contracts or self-governance compacts does not go far enough in protecting the safety and human rights of Indigenous citizens. Rather, substantiated claims of significant, widespread human rights abuses against Indigenous civilians should trigger automatic reconsideration of federal funding recipients *and BIA-appointed leadership* in line with Indigenous law. While such redetermination may carry controversial overtones of federal control of internal Indigenous affairs, this Note emphasizes that (1) federal involvement has been a fact of Indigenous governmental structure since the United States government seized control of the continent, (2) the federal government is dangerously hypocritical in designing hazardous governments and then immediately switching to non-involvement policies, and (3) the federal government owes all of its citizens—including those dually existing as citizens of both Indigenous governments and the United States—protections regarding public safety and welfare.

I. POLICY AND HISTORY BEHIND BIA INVOLVEMENT WITH INDIGENOUS NATIONS

A. Early Dealings Between the Federal Government and Indigenous Nations

Initially, Indigenous nations were seen as analogous to foreign nations.[24] The United States Constitution echoed this sentiment by granting Congress the power of the "Indian Commerce Clause": to "regulate Commerce with foreign Nations, and among the several States,

[23] *See generally* Brown v. Haaland, 604 F.Supp.3d 1059 (D. Nev. 2022).

[24] Geoffrey D. Strommer & Stephen D. Osborne, *The History, Status, and Future of Tribal Self-Governance Under the Indian Self-Determination and Education Assistance Act*, 39 AM. INDIAN L. REV. 1 (2014), https://digitalcommons.law.ou.edu/ailr/vol39/iss1/1

and with the Indian Tribes."[25] The Indian Commerce Clause has continued throughout U.S. history to provide a source of federal authority over Indigenous nations.[26]

As early as 1789, the United States set forth an official rhetoric of moral benevolence towards Indigenous governments and persons.[27] The Northwest Ordinance of 1789, for example, stated that the "utmost good faith shall always be observed towards the Indians; their land and property shall never be taken from them without their consent."[28]

Johnson v. M'Intosh posed an early challenge to the feasibility of maintaining both this moral responsibility sentiment and Manifest Destiny notions of continental control—particularly as pertaining to the vast amount of United States territory already unlawfully taken from existing Indigenous lands or from areas protected by treaties between the federal government and Indigenous nations.[29] The United States Supreme Court purportedly sought to preserve Indigenous rights to Indigenous lands and resources, as well as to legitimize United States conquest.[30] In doing so, Chief Justice Marshall stated that U.S. Indigenous nations maintained property rights over their remaining lands subject only to federal extinguishing of title.[31] This ruling, combined with Marshall's later *Cherokee Nation v. Georgia* ruling, established tribes as "domestic dependent nations": distinct political entities with a relationship to the federal government similar to that of "a ward to his guardian," indicating—albeit condescendingly and paternalistically by modern standards—a duty of care and protection by the federal government towards Indigenous groups.[32] The United States Supreme Court, in other words, has recognized an inherent duty to protect Indigenous rights—a duty the United States repeatedly and selectively ignored over subsequent centuries.

In 1824, Secretary of War John C. Calhoun created the Bureau of Indian Affairs (BIA): an agency originally intended to assimilate and subjugate Indigenous Americans within United States territories.[33] The BIA was heavily involved in operating and overseeing federal boarding schools for Indigenous children in the United States. Between 1819 and 1969, the federal government operated or helped propagate 408 such

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[25] U.S. CONST. art. I, § 8, cl. 3.

[26] Strommer & Osborne, *supra* note 24, at 7.

[27] *Id.* at 8.

[28] *Id.*

[29] *Id.*at 9-10; *see generally* Johnson v. M'Intosh, 21 U.S. 543 (1823).

[30] Strommer & Osborne, *supra* note 24, at 10.

[31] *Id.*; *M'Intosh*, 21 U.S. at 584-85.

[32] Cherokee Nation v. State of Ga., 30 U.S. 1, 17 (1831).

[33] Bureau Indian Affs., *200 Years of Bureau of Indian Affairs History*, BIA.GOV, https://www.bia.gov/bia (last visited Mar. 14, 2024).

schools across most of its territories.[34] These schools forced Indigenous children to perform industrial labor and regularly train for military service, and discouraged or prohibited them from exercising any form of Indigenous culture or religion.[35] The Dawes Act of 1887 further allowed the United States to "assimilate" Native Americans into mainstream society by partitioning tribal lands into small plots, dismantling Indigenous living and hunting customs while forcing individual Indigenous families to survive on European-style ranching and agriculture.[36] These lands were often unsuitable for such purposes.[37]

Despite widespread, purportedly helpful "assimilation" initiatives, in 1886, Theodore Roosevelt—who would later become the most popular president of his time—stated in a New York speech that "the most vicious cowboy has more moral principle than the average Indian," and that even if he did not "go so far as to think that the only good Indians are dead Indians," he believed that "nine out of every ten [were]."[38]

The Haudenosaunee Confederacy member-nations did not escape the early-white-American dual narratives of purported federal interest in moral responsibility towards Indigenous life and lands, and overt disinterest or even intense disdain for Indigenous treaties and existence. The city of Syracuse, New York, was founded on top of land reserved to the Haudenosaunee Confederacy by the Treaty of Canandaigua in 1794, and the city's downtown area is still situated within the federally-delineated Onondaga Nation.[39] Syracuse's 1934 Christopher Columbus statute, which is now slated for removal after a long litigation battle, depicts Columbus standing atop the disembodied heads of four Indigenous chiefs, and its panels depict Indigenous Americans groveling at the feet of regal European arrivals.[40]

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[34] Fed. Indian Boarding Sch. Initiative Investigative Rep. (May 2022), Letter from Bryan Newland, Assistant Sec'y of Indian Affs., to Deb Haaland, Sec'y of the Interior (Apr. 1, 2022), https://www.bia.gov/sites/default/files/dup/inline-files/bsi_investigative_report_may_2022_508.pdf.

[35] Fed. Indian Boarding Sch. Initiative Investigative Rep. (May 2022) at 51-53, https://www.bia.gov/sites/default/files/dup/inline-files/bsi_investigative_report_may_2022_508.pdf.

[36] The Dawes Act, NATIONAL PARK SERVICE, https://www.nps.gov/articles/000/dawes-act.htm (last updated July 9, 2021).

[37] *Id.*

[38] Sidney Milkis, *Theodore Roosevelt: Impact and Legacy*, UVA MILLER CENTER, https://millercenter.org/president/roosevelt/impact-and-legacy (last visited Jan. 09, 2023); Alysa Landry, *Theodore Roosevelt: 'The Only Good Indians Are the Dead Indians'*, ICTNEWS.ORG (Sep. 13, 2018), https://indiancountrytoday.com/archive/theodore-roosevelt-the-only-good-indians-are-the-dead-indians.

[39] *See* Treaty of Canandaigua, 1794, 7 Stat. 44, Art. II-III; cf. H. Wadsworth Clarke, *Map of the city of Syracuse*, LIBR. OF CONG., https://www.loc.gov/resource/g3804s.wd000507/?r=-0.668,0.019,2.337,1.101,0.

[40] *See* Teri Weaver, *Vandals hit Columbus Monument overnight in downtown Syracuse*, SYRACUSE.COM (Nov. 24, 2011), https://www.syracuse.com/news/2011/11/vandals_hit_columbus_monument.html; Advance Media NY Editorial Board, *Choose healing over division.*

The nearby Cayuga and other Haudenosaunee Nations were likewise forcibly driven out of the Finger Lakes region and forced to sell their land to New York State.[41] The land was later acquired by Ezra Cornell to found Cornell University via the Morrill Act, or "An Act Donating Public Lands to the Several States and Territories Which May Provide Colleges for the Benefit of Agriculture and the Mechanic Arts."[42] The "public" lands used to subsidize Cornell University's endowment contained over 230 Indigenous groups across fifteen states.[43]

The federal government's dealings with Indigenous nations, embodied in the BIA's work (and abstentions) since its founding, have been historically unreliable, malicious, geared towards cultural genocide, and fueled by racial narratives. The national tone against Indigenous rights and protections did not fundamentally shift until the cultural revolution in the second half of the twentieth century, which saw Indigenous self-determination rights acquire significant protection through the 1975 Indian Self-Determination and Assistance Act.

B. The ISDEAA and the Twentieth Century's Tonal Shifts

Public and political attitudes towards Indigenous Americans and Indigenous self-governance shifted wildly and repeatedly over the course of the twentieth century. In the early 1950s, the federal government commenced the "Termination Era," in which it terminated federal recognition of more than a hundred Indigenous tribes.[44] This abandonment of protections for Indigenous communities was designed to weaken Indigenous governments, thus facilitating the United States' long-term assimilation aspirations.[45] The new policy came on the heels of the 1934 Indian Reorganization Act, which—in significant contrast—aimed to strengthen Indigenous autonomy by enabling Indigenous nations to create formal tribal constitutions, tribal corporations, and federally-recognized tribal membership enrollment procedures.[46]

The 1960s saw even more whiplash in federal policy regarding tribal autonomy, with the Kennedy Administration refusing to terminate

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Remove Syracuse's Columbus statue (Editorial Board Opinion), SYRACUSE.COM (Oct. 10, 2021), https://www.syracuse.com/opinion/2021/10/choose-healing-over-division-remove-syracuses-columbus-statue-editorial-board-opinion.html.

[41] Review Staff, *Cornell's Land Acknowledgement is a Waste of Time and Webpage Pixels*, THE CORNELL REV. (Oct. 22, 2022), https://www.thecornellreview.org/cornells-land-acknowledgment-is-a-waste-of-time-and-webpage-pixels/.

[42] Cornell University Department of Science & Technology Studies, *Morrill Hall and Land Grab Universities*, CORNELL UNIVERSITY, https://sts.cornell.edu/morrill-hall-and-land-grab-universities (last visited Jan. 9, 2023).

[43] *Id.*

[44] Strommer & Osborne, *supra* note 24 at 15.

[45] *Id.* at 15-16.

[46] *Id.* at 14-15.

recognition of more tribes and the Johnson Administration directing significant investments into infrastructure and social programs for reservations and their inhabitants.[47] President Nixon championed the abolition of termination and assimilation practices, instead proving to be a staunch supporter of self-determination.[48] His proposal to Congress transferring Indigenous-benefitting programs to Indigenous governmental control was ultimately codified as the Indian Self-Determination and Education Assistance Act ("ISDEAA") in 1975.[49] The Act was gradually amended over subsequent decades to increase input from Indigenous governments and citizens.[50]

Today, the Act allows Indigenous governments to assume responsibility for and administer federally-funded, Indigenous-targeted programs largely overseen by the BIA.[51] Participation in ISDEAA agreements is voluntary, and Indigenous nations may receive services in a variety of forms, including direct physical services from the BIA, a contract with the BIA allowing the nation to assume responsibility for programs or services the BIA would otherwise directly provide (a self-determination contract), a BIA agreement that the nation will assume control over such programs (a self-governance compact), or a combination of the latter two.[52]

C. Contemporary Policies

The BIA's current Mission Statement is to "enhance the quality of life, to promote economic opportunity, and to carry out the responsibility to protect and improve the trust assets of American Indians, Indian tribes and Alaska Natives."[53] The BIA currently purports to support a policy of non-involvement in tribal governance structures where possible, unless necessary to declare at least one actor the proper recipient of an Indigenous government's federal funding where none were previously identifiable.[54]

However, BIA adjudicative decisions regarding the proper scope of BIA intra-tribal involvement have varied widely across separate interactions with Indigenous governments and across various

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[47] *Id.* at 16.

[48] *Id.* at 17.

[49] *Id.* at 17-18.

[50] *See generally id.*

[51] *Indian Self-Determination and Education Assistance Act (ISDEAA) 1975*, UAF.EDU, https://uaf.edu/tribal/academics/112/unit-3/indianselfdeterminationandeducationassistanceactisdeaa1975.php (last visited Jan. 9, 2023).

[52] Indian Self-Determination and Education Assistance Act (ISDEAA) and the Bureau of Indian Affairs, CONGRESSIONAL RESEARCH SERVICE (July 5, 2021), https://crsreports.congress.gov/product/pdf/IF/IF11877/2.

[53] BIA.GOV, https://www.bia.gov/bia (last visited Jan. 9, 2023).

[54] *See generally* Brown v Haaland, 604 F Supp 3d 1059 (D. Nev. 2022); U.S. Dep't of the Interior, Bureau of Indian Affairs, Opinion Letter Recognizing Halftown Council as the Governing Council for Contractual Purposes (Dec. 15, 2016) [hereinafter Maytubby Decision].

jurisdictions.[55] This variety is in part the result of BIA decisions regarding certain tribal leadership being left in the hands of single individuals, or small group discussions, without any meaningful mandate to follow prior BIA precedent in deciding Indigenous governmental leadership.[56]

In 2016, illustratively, BIA Eastern Regional Director Bruce Maytubby finally answered a years-long lobbying campaign by Cayuga Nation member Clint Halftown to acquire government support for a mail-in survey.[57] The survey asked Cayuga Nation members, both on and off the traditional Cayuga reservation, to decide whether to install Halftown as Cayuga Nation Leader—circumventing the ages-old Cayuga matriarchal system of government in which Clan Mothers had exclusive power to elect Cayuga leadership figures. Despite the Cayuga Nation's fully functional governmental structure and no pressing governmental need to respond to Halftown's request, Maytubby quickly involved the BIA in affirming Halftown as Cayuga Nation leader.[58] Maytubby provided as his reasoning the Anglo-American notion that the ancient process of Clan Mothers selecting Cayuga leaders was not a democratic system, and was therefore unacceptable.[59]

The BIA, as evidenced by its imposition of American democracy on an Indigenous nation without any pressing need to select a ISDEAA funding recipient—and its subsequent hypocritical refusal to question Halftown's leadership due to a lack of that same need[60]—evidently does not have any universal standard on what constitutes governmental overreach in Indigenous affairs.

II. FEDERAL HYPOCRISY IN SELECTIVE INACTION

The BIA's demonstrated hypocrisy between its upholding of the 2016 Maytubby decision, which rewrote the Cayuga Nation's governance system, and its refusal to question Halftown's authority over the Cayuga Nation due to a purported refusal to challenge Indigenous systems of governance,[61] provides insight into the unpredictability of BIA rulings and how Indigenous citizens are on the front lines of corresponding governmental instability. However, federally-recognized Indigenous nations are largely reliant on BIA activity, such as fund distribution to Indigenous governments and recognition of Indigenous leaders as funding recipients. These BIA duties have, for certain recipient communities,

55 *See, e.g.* Brown v. Haaland, 604 F Supp 3d 1059; Maytubby Decision, *supra* note 54.

56 Ryan, *supra* note 18.

57 *Id.*

58 *Id.*

59 *Id.*

60 U.S. Dep't of the Interior, Bureau of Indian Affairs, Opinion Letter on Legal Authority Over Internal Tribal Government Dispute (Feb. 23, 2022).

61 *Id*; Maytubby Decision, *supra* note 54.

created more destruction of cultural autonomy than they have provided value in funds for select individuals in positions of power; therefore, the BIA may stand in direct contradiction of its own purported mission: protecting Indigenous culture and quality of life. This section will illustrate two such examples of Indigenous communities that have been attacked or even decimated by their own governments as a result of the BIA's loose, inconsistent policies in its purported pursuit of Indigenous sovereignty.

A. *The Federal Government's Inextricable Link with Indian Affairs*

In fiscal year 2022, of the 574 federally-recognized Indigenous governments within United States territory, an estimated 275 tribes participated in ISDEAA contracts and an estimated 292 tribes participated in ISDEAA compacts.[62] Nearly all of these governments received additional funding from the U.S. Department of Housing and Urban Development (HUD).[63] As of 2018, the United States government provided about $20 billion in support for its Indigenous tribes and communities.[64] Many Indigenous governments rely on federal funding for a majority of their governmental services.[65] This reliance stems from a history of financial and relocation-related abuse suffered by Indigenous peoples—including, notably, the Indian Removal Act of 1830, which forced Indigenous groups towards lands out west that the United States government considered to be of poor quality.[66] Today, the federal government continues to perpetuate poverty among these groups by curtailing their ability to own and develop the low-quality land forcibly assigned to them in the 19th century.[67] Indigenous governments, for example, do not own their own land, and often do not own their own homes on assigned reservation land.[68] Therefore, Indigenous Americans (1) generally cannot control the limited natural resources within their own reservation boundaries, and (2) cannot enter into mortgage agreements for bank loans—preventing many from starting businesses.[69] Every development project on reservations which

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62 Indian Self-Determination and Education Assistance Act (ISDEAA) and the Bureau of Indian Affairs, CONGRESSIONAL RESEARCH SERVICE (July 5, 2021), https://crsreports.congress.gov/product/pdf/IF/IF11877/2.

63 Fiscal Year 2021 IHBG allocations, HUD.GOV, https://www.hud.gov/sites/dfiles/PA/documents/IndianBlockGrantChart.pdf.

64 Mark Fogarty, *$20 Billion: Total US Support for American Indians*, ICTNEWS.ORG (Sep. 13, 2018), https://ictnews.org/archive/20-billion-total-us-support-for-american-indians.

65 NCAI, *A Call to Honor the Promises to Tribal Nations in the Federal Budget*, NATIONAL CONGRESS OF AMERICAN INDIANS (Apr. 19, 2013), https://www.ncai.org/resources/ncai_publications/honor-the-promises-the-tribal-nations-in-the-federal-budget.

66 The Borgen Project, *Poverty on Native American Reservations*, BORGEN MAGAZINE (Nov. 15, 2021), https://www.borgenmagazine.com/native-american-reservations/.

67 *See id.*

68 *Id.*

69 *Id.*

does surmount such financial hurdles must then receive government approval—a slow, complicated process which may take years.[70]

Land "ownership" on reservations may prove too complicated for many inhabitants to even approach the concept of starting businesses. Federal inheritance laws mandating Indigenous lands be divided evenly among multiple heirs, over many generations, have led to lands "so fractionated that there are often hundreds of owners per parcel"—rendering these lands unmanageable and unusable.[71]

Even if an Indigenous entrepreneur could manage to pass the hurdles of land ownership, lack of financial or natural resources, and complicated federal development permissions procedures, she might still be thwarted under federal practice. The BIA has a record of undervaluing Indigenous assets to the extent that a federal commission reviewing such deals from 1977 declared them "some of the poorest agreements ever made in American history."[72]

Thus, Indigenous governments and peoples are largely trapped in cycles of poverty perpetuated by past crimes against humanity by the United States government, as well as by contemporary policies that severely hinder Indigenous communities' abilities to re-acquire resources or income. The United States government, in forcing Indigenous reliance on its financial handouts and development permits, has created a system in which Indigenous governments *must* rely on federal support, and the federal government *must* therefore make its own determinations of which Indigenous actors it will recognize as community leaders to receive subsequent funds.

B. Federal Involvement and the Destruction of the Cayuga Nation

1. Halftown's Rise to Power Outside of Tribal Law

In 1997, Clint Halftown acquired his first taste of power within the Cayuga Nation after his election by Cayuga Clan Mothers as a "seatwarmer" for the late Heron Clan Chief.[73] A four-person unanimous Cayuga Nation Council vote in 2003 provided Halftown with the temporary power and authority of the Heron Clan Chief's council seat.[74] Halftown was removed under Cayuga law by a Clan Mother in 2004—a demotion which he ignored.[75] After two more Council deaths, four Council Chiefs—including Halftown and two seatwarmers, none of whom had been given official or permanent Cayuga Nation leadership privileges by the Clan

70 *Id.*
71 *Id.*
72 *Id.*
73 Cayuga Nation v. Zinke, 302 F. Supp. 3d 362 (DDC 2018) AR-000007.
74 *Id. at* AR-000008.
75 *Id. at* AR-0000045.

Mothers—decided among themselves to recognize Halftown as the Cayuga Nation's BIA representative, a designation approved and confirmed by the BIA.[76] Multiple Clan Mothers, as well as other Cayuga Nation chiefs and clan seatwarmers, denied Halftown any authority to act on behalf of the Cayuga Nation.[77] Despite Clan Mothers and multiple Cayuga Nation chiefs notifying the BIA regional director that Halftown had been replaced, and despite subsequent litigation in an attempt to convince the BIA to affirm the traditional Cayuga leadership's governance decisions, the BIA Regional Director issued a 2005 decision to continue recognizing Halftown as the Nation's representative—with the protective caveat that Halftown was not authorized to represent the Nation in its government-to-government relations, including any receival of federal funds.[78]

By 2006, Gary Wheeler and Tim Twoguns—two of the four 2004 Council Actors who had written to the BIA in support of Halftown as Cayuga Nation representative—had joined the Clan Mothers and other Cayuga chiefs to sign a Council Resolution overwhelmingly removing Halftown as BIA representative.[79] The BIA declined to recognize this decision.[80] Although the Cayuga Nation Council in 2011 again unanimously revoked Halftown's representative status and the BIA subsequently recognized the Cayuga Nation Council sans Halftown, the Interior Board of Indian Appeals vacated this decision, stating that the BIA should never have issued a decision in this instance regarding the leadership dispute.[81] It ignored the BIA's previous involvements in similar disputes, and failed to rectify the BIA's then-current status as the only entity vesting Halftown with tribal power—an egregious use of external federal authority to impose an unwanted, unelected leader on an Indigenous nation, without regard for multiple official Cayuga Nation statements disavowing such recognition.[82]

2. The Maytubby and Sweeney Decisions

On June 17, 2016, BIA Eastern Regional Director Bruce Maytubby issued, after closed-door conversations with Halftown and his group of supporters (the "Halftown Faction"), a decision permitting the Halftown Faction to carry out a "mail-in survey" asking Cayuga citizens to "vote" for their governmental representative.[83] Mail-in surveys are directly precluded

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76 *Id. at* AR-000860.

77 *Id. at* AR-0000045.

78 *Id. at* AR-000049.

79 *Id. at* AR-000058.

80 See generally George v. E. Regional Dir., Bureau of Indian Affairs, 49 IBIA 164 (2009) (affirming the previous BIA decision to designate Clint Halftown as the Cayuga Nation's representative to the BIA).

81 *Id.* at AR-002126-42; *see generally* Cayuga Nation v. E. Regional Dir., Bureau of Indian Affairs, 58 IBIA 171 (2014).

82 *See id.*

83 Ryan, *supra* note 18.

by Cayuga law, and the Cayuga Nation Council of Chiefs and Cayuga Clan Mothers immediately objected to the Maytubby ruling.[84] In December of 2016, however, Maytubby certified the results of this "survey" in favor of the Halftown Faction, providing in this decision a statement detailing the properness of propagating Western democratic governmental systems over the Cayuga Nation's ancient Clan-Mother-Based consensus system.[85]

The Halftown Faction's "mail-in survey" was mostly answered by Cayuga Nation members not residing within Cayuga Nation territory and thus not subject to the Halftown Faction's jurisdictional reach. In other words, most respondents would be perfectly insulated from any ensuing human rights abuses should the Halftown Faction take control of Cayuga lands.[86] The "surveys" contained one singular voting option that *yes*, Clint Halftown should lead the Cayuga Nation, and were not sent to any Cayuga citizen who had disavowed Halftown.[87] The survey was funded using federal BIA funds, and the Halftown Faction continued to conduct secret consultations with Maytubby throughout 2016.[88] The survey envelopes were sent within days of substantial Cayuga Nation distribution checks, both addressed from Halftown's government.[89] Despite such egregious flaws in this process, Maytubby subsequently recognized the Halftown Faction as the government of the Cayuga Nation with 60% of this "vote," and awarded Halftown an ISDEAA funding contract while declining to award the traditional Cayuga Nation Council or Clan Mothers any federal funding.[90] After lengthy appeals processes, in November of 2019, Assistant Secretary of Indian Affairs Tara Sweeney—without any appropriate justification for federal intervention—specially affirmed Clint Halftown as the leader of the matriarchal Cayuga Nation as a matter of federal law, effectively vesting in Halftown full, unbridled power over all affairs within Cayuga Nation territory.[91]

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84 *Id.*

85 *Id.*; *see generally* Maytubby decision, *supra* note 54.

86 Heath interview, *supra* note 11, at 28:50-32:02.

87 *Id.* Heath states that not one of the Cayuga Traditionalists received a "ballot." *Id.* at 39:58-40:05. For a discussion of further collusion allegations during this time frame, *see id.* at 32:03-33:41.

88 *Id.*; Cayuga Nation v. Zinke, 1:17-cv-01923-CKK (D.D.C. Sept. 20, 2017), at 9.

89 Heath interview, *supra* note 11, at 38:45-39.06.

90 Cayuga Nation v. Zinke, 1:17-cv-01923-CKK (D.D.C. Sept. 20, 2017), at 10. In his decision, Maytubby found that under 25 C.F.R. 81, the mail-in survey would have been legally invalid due to biased language, voter secrecy, lack of multiple legitimate choices, and non-anonymous ballots. Maytubby Decision, *supra* note 54, at 8. Maytubby also recognized the undisputed evidence that at least 90% of survey recipients accepted cash payments from Halftown shortly before completing the mail-in survey. *Id.* at 12. Despite these holdings, however, Maytubby recognized Halftown as Cayuga Nation leader because he believed the Cayuga Nation citizens' human rights hinged on a westernized democratic governmental system. *See id.* at 7.

91 Letter from Tara Sweeney, Assistant Secretary of Indian Affairs (Nov. 14, 2019).

3. Ensuing Civilian Abuses

Clint Halftown's targeting of Cayuga Nation civilians began in a limited capacity after the 2016 Maytubby decision which instated Halftown as the purportedly rightful leader of the Cayuga Nation.[92] Within months of the 2019 Tara Sweeney decision, however, the Halftown Faction began its reign of terror with full force.

This effort opened with a plethora of lawsuits seeking to permanently remove the "traditionalist" Cayuga government members—as well as their supporters—from Cayuga Nation territory.[93] Halftown claimed these individuals owed tens of thousands of dollars in back rent—rent which had never been previously requested or even articulated—for decades of living in reservation-controlled structures, despite Halftown's new government (1) not being in power for the majority of that time and (2) refusing to perform any previously-promised work or services on the properties or provide any Housing and Urban Development ("HUD") funds designed to support citizens in such housing.[94] One Cayuga Nation elder, Theresa Longboat, was told that "Clint Halftown would not install a disability ramp for [her] residence or accommodate any of [her] medical needs unless [she] signed a document stating that [she] support[s] Clint Halftown's leadership."[95]

The traditionalists did not appear for their court dates in a unanimous refusal to recognize the new Cayuga Nation Tribal Court ("Halftown Court")'s legitimacy.[96] The traditionalists likewise refused to recognize the Halftown Court's summonses, which were not served within the time frame required by Cayuga law.[97] The Halftown Court itself was invalid under Cayuga law as it did not have any trial or appellate judges who were enrolled Cayuga Nation members.[98]

As such, the Halftown Court issued default judgments against each defendant for a collective hundreds of thousands of dollars in "back

[92] *See* Cayuga Nation v. Zinke, 1:17-cv-01923-CKK (D.D.C. Sept. 20, 2017), at 17.

[93] *Id.*; *see* Eviction Lawsuits, *infra* note 99.

[94] *See* CAYUGA NATION OF NEW YORK 2020 REMOTE MONITORING REVIEW (2020).

[95] Teresa Longboat Aff. at ¶ 23, *Cayuga Nation v. Teresa Longboat*, File No. CV-008-21 (last updated Nov. 18, 2021).

[96] Heath interview, *supra* note 11, at 18:40-24:04.

[97] *See* § 735 of the Cayuga Nation Rules of Real Property Actions and Proceedings Law. Note that this Note was written in 2023, and the Halftown Court has a habit of amending its own laws after being accused of violating them to avoid state court liability. *See* Heath interview, *supra* note 11, at 12:30-15:33. For a discussion of the Halftown Government's repeated tendency to violate its own laws, *see id.* at 6:30-7:20, 12:22-18:18.

[98] Cayuga Nation Judiciary Law, §11.1(a)(1), (2022). Van Every, Jimerson, Miller, Kettle, Seneca, Consolidated Appellants Br. ("App. Br.").

rent"—none of which Halftown, due to these defaults, ever had to substantiate in any court of law.[99]

In early 2020, Halftown began likewise targeting Cayuga Nation civilians with violence with the help of his non-Indigenous Cayuga Nation Police Department ("CNPD"), a group described as Halftown's personal mercenary force.[100] On February 22, The CNPD bulldozed homes, orchards, a longhouse, a daycare, and multiple Cayuga-owned businesses.[101] It violently seized one citizen-operated business with guns drawn, pressing those guns to the heads of the store's security guards before bulldozing the business facility. The CNPD also raided a separate citizen-owned business around the same time, physically and verbally assaulting its owners. It removed, for itself, cash and items worth a collective hundreds of thousands of dollars.[102] The CNPD has since patrolled the streets with melee weapons, including hammers and sledgehammers,[103] and has continued to violently abuse its Cayuga citizens.

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[99] See, e.g. Cayuga Nation v. John, No. CV-001-21 (May 2021); Cayuga Nation v. Kettle, No. CV-003-21 (May 2021); Cayuga Nation v. Kettle, No. CV-005-21 (May 2021); Cayuga Nation v. Kettle, No. CV-012-21 (May 2021); Cayuga Nation v. Seneca, No. CV-013-21 (May 2021); Cayuga Nation v. Van Every, No. CV-014-21 (May 2021). 6 Seneca, Mot. to Vacate at 1, No. CV-013-21; Van Every, Mot. to Vacate at 1, No. CV-007-21; Van Every, Mot. to Vacate at 1, No. CV-014-21; Young, Mot. to Vacate at 1, No. CV-005-21; Miller, Mot. to Vacate at 1, No. CV-002-21; Jimerson, Mot. to Vacate at 1, No. CV-008-21; Longboat, Mot. to Vacate at 1, No. CV-008-21 [hereinafter "Eviction Lawsuits"].

[100] *See* Rochester Democrat & Chronicle, *PHOTOS: Gayogo̱hó꞉nǫ' home in Seneca County bulldozed in Cayuga Nation power dispute*, ROCHESTER DEMOCRAT & CHRONICLE (Aug. 16, 2022), https://www.democratandchronicle.com/picture-gallery/news/2022/08/16/cayuga-nation-home-seneca-county-bulldozed-clint-halftown/10283065002/; Aaron Fernando, *Clint Halftown, US-Enabled Tyrant of the Cayugas*, THE REAL NEWS NETWORK (Sep. 29, 2022), https://therealnews.com/clint-halftown-us-enabled-tyrant-of-the-cayugas.

[101] David Shaw, *Tensions Explode: Cayuga Nation Buildings in SF Demolished*, FINGER LAKES TIMES (Feb. 23, 2020).

[102] Meyer Third-Party Compl. at ¶¶ 35-36 & Parker Third-Party Compl. at ¶ 40, Cayuga Nation v. Parker et al., 5:22-cv-00128.

[103] *See* Kettle Aff. at 2-3 (Feb. 13, 2021). Darren Kettle recounts of the night of February 22, 2020:

> . . .[O]n Feb. 22 at about 2:00 am I heard my coworker say over the walkie talkie 'cops, cops, cops' and right after I can hear someone say '[p]olice, [p]olice, [p]olice, [g]et out of the car!' Then there was a bang on my passenger door on my driver side. Right after my driver [side] door is opened and someone is trying to pull me out. A few seconds later my passenger [side] door opens and someone is yelling '[g]et out of the car!' while trying to push me out [of] the driver side. When I realized what was happening I noticed another person holding my door open with his hand on his chest and I noticed a gun in his hand, and at that point I complied, because I was afraid they would shoot me if I didn't. After I complied they got me out of my car, they zip tied me then stood me up to move me, and that's when I noticed they were Cayuga Nation Police. I also noticed two more holding hammers, one a claw hammer, and the other a small sledgehammer. After I noticed that, they moved me and sat me on a bench right outside the store, where they said they had a search warrant, at which point I asked to see it and they said that they would show it to me in a little bit. Shortly after they moved me and searched me, and put me on the bus with a number three on my hand. Once on the bus I waited there and they put another five people [on the bus]. There

The Halftown Faction released a statement following the events of February 22 in which it claimed that the demolitions of traditionalists' homes and businesses were necessary to "eliminate certain public safety issues" as well as "any further friction in the community going forward."[104] One local official condemned these attacks as "domestic terrorism," and Senator Charles Schumer stated that "[w]hat happened was awful, and cannot go unpunished."[105] Cayuga citizens who had planned a press conference in the rubble of the demolished buildings were met with nightsticks, pepper spray, and arrests.[106]

2022, likewise, brought a string of demolitions targeting civilians' private homes, including that of Wanda John on August 3rd.[107] On its official website, Halftown's Cayuga Nation described these structures as "abandoned" and "destroyed" by an "extremist group" and its "criminal allies"—referring to Gayogo̱hó:nǫ' traditionalists and Halftown's political dissenters.[108]

2022 also saw physical attacks against non-violent civilians by CNPD officers.[109] In late August, the CNPD intentionally surrounded the children of Carlin Seneca, a vocal dissenter against Halftown's authority, while the family was grocery shopping.[110] Jason John, a Canadian First Nations member, and Dylan Seneca, brother of Carlin Seneca, approached CNPD headquarters—referred to locally as "the boathouse"—without weapons,

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> were a total of eight people they gathered up. We all waited for them to tell us what was going on and what was happening. While we were waiting, around 3:30 am, they started to demolish the buildings. When they were about halfway done with the demo, they showed us the so-called search warrant, which from where I was seated I couldn't see it. They took our names and addresses. They also said that we were trespassing and that if we signed a paper saying that we acknowledged we were trespassing. . .they would let us go, and if we refused they would arrest us and take us to court to answer to the charge. So I signed the paper so I could go home because I also work at Walmart in Waterloo. They released me at 5:45 am, after I signed the paper."

104 Andrew Naughtie, *Leadership Struggle in New York Tribe Descends Into 'Domestic Terrorism' as Buildings Bulldozed*, THE INDEPENDENT (Feb. 26, 2020), https://www.the-independent.com/news/world/americas/us-politics/new-york-cayuga-indian-nation-tribe-building-bulldozed-clint-halftown-a9360001.html.

105 *Id.*

106 Gabriel Pietrorazio, *Tensions Reach Breaking Point in Seneca Falls over Cayuga Nation Leadership*, FINGERLAKES1.COM (Mar. 1, 2020), https://www.fingerlakes1.com/2020/03/01/tensions-reach-breaking-point-in-seneca-falls-over-cayuga-nation-leadership/.

107 *See* Bowman, *supra* note 1.

108 *See* Cayuga Nation, *Cayuga Nation Demolishes Abandoned Nation-Owned Mobile Home Destroyed by Extremist Group and Criminal Allies*, CAYUGA NATION NEWS (Sep. 7, 2022), https://cayuganation-nsn.gov/news/cayuga-nation-demolishes-abandoned-nation-owned-mobile-home-destroyed-by-extremist-group-and-criminal-allies.

109 *See* Leslie Logan, *Cayuga Nation's Division Leads to a 'Human Rights Catastrophe'*, INDIANZ.COM (Mar. 4, 2020), https://www.indianz.com/News/2020/03/04/cayuga-nations-division-leads-to-a-human.asp.

110 Jimmy Jordan, *Years Long Dispute in Cayuga Nation Sees Tribal Arrests, Trials Beginning*, THE ITHACA VOICE (Sep. 13, 2022), https://ithacavoice.org/2022/09/years-long-dispute-in-cayuga-nation-sees-tribal-arrests-trials-beginning/.

seeking to verbally discuss the incident.[111] The CNPD quickly escalated to brutal violence against both men, finding cause to detain John on an outstanding warrant for failure to appear for an earlier court date of which John was uninformed.[112]

John's arrest came as one of at least four Cayuga Nation arrests of outspoken Halftown regime opponents in August 2022.[113] Despite the charges for each individual being minor and grounds for immediate release in New York state courts, at least three of these four individuals—including John—were incarcerated for nine or more days pre-arraignment, despite Halftown's own Criminal Procedure law mandating arraignment within 72 hours.[114] When John was ultimately arraigned, he was taken by the CNPD from the Cambria County Prison in Pennsylvania to Halftown's Court in upstate New York—a 4-and-a-half-hour trip—during which the CNPD refused to respond to John's medical needs as a diabetic, resulting in John arriving at Halftown's Court in severe diabetic shock, vomiting down the front of his shirt.[115] When John was finally let out of court to seek medical attention, the CNPD blocked any emergency or other assistance vehicles from reaching John—causing John's attorney, Michael Benson, to have to support John past a CNPD-guarded gate and all the way out to NYS Route 89.[116] John appeared "sluggish and dazed" as his attorney helped him walk, and vomit still stained the front of John's shirt.[117]

The HalftownMustGo campaign, led by Cayuga traditionalists and other Halftown dissenters, reported that John suffered grossly inadequate medical care within both the Halftown-chosen Cambria County Prison and CNPD custody, during which he developed sepsis and subsequently required surgery to remove bones from his foot.[118]

The Gayogo_hó:nǫ' people under this regime have been removed from their ancestral lands, targeted with weapons by a non-Indigenous private mercenary force, beaten and harassed, thrown to the mercy of a Halftown-installed court that does not follow its own tribal laws[119] and serves only at the pleasure of the Halftown Faction, and denied any financial support by

[111] *Id.*; Heath interview, *supra* note 11, at 2:13-4:15, 4:45-7:20.

[112] Jordan, *supra* note 110.

[113] *Id.*

[114] Cayuga Nation Rules of Crim. Procedure §205(1) (2023); *see id.*

[115] Jordan, *supra* note 110; Driving Directions from Cayuga Nation of Indians to Cambria County Prison, GOOGLE MAPS, http://maps.google.com (follow "Directions" hyperlink; then search starting point field for "Cambria County Prison" and search destination field for "Cayuga Nation of Indians") (last visited Sept. 6, 2023).

[116] Jordan, *supra* note 110.

[117] *Id.*

[118] Halftown Must Go (@HalftownMustGo), TWITTER (Sep. 28, 2022, 11:07 AM), https://mobile.twitter.com/halftownmustgo (account run by an activist group of Cayuga citizens calling for Halftown's removal from power).

[119] As a further example of this, in October of 2022, after all evictions had been adjudicated, Halftown's Court hastily changed its own law by deleting the requirement that all Cayuga Nation

those the BIA has deemed responsible to distribute necessary housing and public funds. As Joe Heath, veteran Haudenosaunee attorney representing the Cayuga traditionalists, states:

> I'm lucky enough to represent a traditional nation that still follows the Great Law of Peace.[120] One of the fundamental principles of the Great Law is to respect individuals and to take care of everybody on an equal basis. Their term for it is that 'everything that comes in goes into one bowl, and then one spoon is passed around,' so that things are shared equally. And a corollary of that is that individuals are respected, and protected, and taken care of. That's the function of the clan system in a traditional government. And that's been flipped within the Halftown regime, and those principles of peace and respect have been replaced by the principles of greed, and violence. And that's what's so tragic over there.[121]

These abuses have been enabled by individual actors in the BIA, particularly Bruce Maytubby, who have implicitly claimed and affirmed that westernizing the ancient Gayogo_hó:nǫ' governmental structure was a pressing cause for BIA involvement in intra-tribal affairs even after purporting to respect the sovereignty and self-determination of Indigenous governments. Despite the egregious effects of these decisions on the Gayogo_hó:nǫ' civilian population, the BIA currently has no agency-wide mechanism with which to give Indigenous citizens the ability to fight BIA decisions in extreme instances when these decisions lead to widespread, systematic human rights abuses.

C. Disenrollment

The Saginaw-Chippewa Tribe of Michigan is comprised of three Ojibwe bands—by name, Saginaw, Black River, and Swan Creek—who have inhabited what is now eastern Michigan since the 13th or 14th century, and who trace their ancestry in the Americas back more than 10,000 years.[122] The Tribe is currently central to, but not a party in, an ongoing legal battle between a large group of disenrolled Saginaw-Chippewa members and

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judges be Indigenous Cayuga Nation members. *See* Cayuga Nation Jud. L. §5.1; Heath, *supra* note 11, at 12:30-15:33.

[120] The Great Law of Peace, or the Great Law, is the central philosophy to the Haudenosaunee Confederacy and its nations. For more information, *see* Oneida Nation, Kayanlaˀ Kówa – Great Law of Peace, https://oneida-nsn.gov/our-ways/our-story/great-law-of-peace/ (last visited Aug. 19, 2023).

[121] Heath interview, *supra* note 11, at 10:45-11:29.

[122] Seebiwing Center, *History of the Tribe*, ZIIBIWING CENTER, http://www.sagchip.org/ziibiwing/aboutus/history.htm (last visited Jan. 10, 2023).

the Department of the Interior ("DOI"), with the former group petitioning Secretary of the Interior David Bernhardt to force the Saginaw-Chippewa Tribe to restore the membership of those individuals.[123]

In 1986, the Judgment Funds Act ("JFA") provided the first distribution of "JFA funds," given in compensation for lands taken from the Tribe by the United States in the early 19th century.[124] The JFA mandated that the Tribe amend its constitution to allow enrollment of those who were Saginaw-Chippewa descendants, but whose ancestors had been incorrectly excluded from recognition by the federal government based on a law making residency within the Saginaw-Chippewa reservation a prerequisite for membership.[125] The JFA funds were to be split evenly among all Saginaw-Chippewa members.[126]

In 1996, the Saginaw-Chippewa Tribal Council began a disenrollment campaign targeting new enrollees under the JFA as well as their children—an attempted workaround of the JFA's "nondiscrimination mandate," which prohibited any discrimination whatsoever in including new members in JFA fund distribution.[127]

Disenrollment efforts continued into 2015, when the tribe attempted to disenroll more than 230 individuals—some deceased, and many with previously-closed cases—as a result of drastic efforts to shrink the Saginaw-Chippewa population eligible for a share of per-capita payments.[128] The group of individuals who in 2020 began the present lawsuit against the Secretary of the Interior were disenrolled from 2016 to 2017.[129] Disenrollment meant sudden deprivation of health insurance, Saginaw-Chippewa healthcare services and providers, educational funds, per capita payments, and—most notably—Tribal heritage, identity, and community, according to the 2020 complaint demanding federally-mandated re-enrollment.[130]

The DOI stated in a court motion in April of 2021 that "an examination of the plain text of the Funds Act shows that the statute does not authorize Interior's intervention in membership matters," because the law "permits Interior to take enforcement actions on a discretionary basis, but only

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123 Compl. at ¶ 1, Cavazos v. Bernhardt, No. 1:20-cv-02942 (D.C. filed Oct. 14, 2020) (hereinafter "Complaint").

124 *Id.* at ¶ 3.

125 *Id.* at ¶ 4.

126 *Id.* at ¶ 5.

127 *Id.* at ¶ 6-7.

128 Indianz Law, *Saginaw Chippewa Tribe removes members amid per cap issues*, INDIANZ.COM (Oct. 20, 2016), https://www.indianz.com/News/2016/10/20/saginaw-chippewa-tribe-removes-members-a.asp.

129 Complaint at ¶ 7.

130 *Id.* at ¶ 8.

under the narrow circumstances where a requirement of the Act has been violated."[131]

Thus, the Saginaw-Chippewa Tribe faces a conundrum. The official, federally-recognized Tribe claims that a ruling forcing re-enrollment would be "effectively returning the tribe to the days when the United States could dictate who the tribe recognized as members."[132] However, the current Saginaw-Chippewa power structure—led by a core group of members who can trace their ancestry to those living on the Saginaw-Chippewa reservation at the time of federal recognition, versus those disenfranchised because their ancestors lived on the other side of the metaphorical line in the sand drawn by the United States in declaring reservation boundaries—has already been delineated by historical federal involvement. By carving up the Saginaw-Chippewa Tribe, maintaining historical and contemporary systems guaranteeing Indigenous reliance on federal funds, providing a funding pot in which the funds are split evenly among the Tribe's remaining members, and inadvertently generating arbitrary tiers of entitlement to those funds by recognizing different member groups at different times, the federal government is not perpetuating Indigenous health or sovereignty. Rather, it is irresponsibly creating a major, unbridled incentive for Indigenous leadership to overwhelmingly shrink its own communities. It is on the federal government, therefore, to ensure that the Saginaw-Chippewa Tribe has the resources and safeguards needed to protect the status of all its members.

United States policy sacrifices the spirit of sovereignty—the perpetuation of identity and cultural practice over generations, and the health and well-being of members—for the mere purpose of protecting the financial sovereignty of a small group of leaders who would dismantle or weaken such institutions as a result of federally-funded incentives. The federal government should not pretend to support the notion that sovereignty lies predominantly in the ability of Indigenous governments to freely spend money or remove members, insofar as the United States itself continues to be the entity both hindering these governments in earning their own private incomes and creating the ultimate financial pressure behind disenrollment.

"They should ask themselves who's next," warned Kristi Potter, who claims direct descendancy from a chief who signed multiple tribal treaties. Around 60 of her family members have either already been disenrolled or were in the disenrollment process at the time of her statement.[133]

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131 Andrew Westney, *DOI Must Rethink Staying Out Of Tribal Disenrollment Fight*, LAW360 (Jan. 11, 2022), https://www.law360.com/articles/1454256/doi-must-rethink-staying-out-of-tribal-disenrollment-fight.

132 *Id.*

133 Indianz Law, *supra* note 128.

III. THE BROWN SOLUTION: RETURNING THE DISCUSSION TO HUMAN RIGHTS

A. *BIA Involvement in Destabilizing the Winnemucca Indian Colony*

The Winnemucca Indian Colony ("the Colony") was created between 1917 and 1918, when then-President Woodrow Wilson granted 320 acres of land to a group of Paiute and Shoshone citizens based on a 1916 member census.[134] The federally-run census, however, was underinclusive regarding actual Shoshone and Paiute populations.[135] In 1986, the BIA found that most Colony members could not trace their ancestry back to the 1916 census, as required for membership by the Colony's tribal law.[136] The BIA, based on both this holding and concerns that most Colony citizens were also enrolled in the Fort McDermott Paiute Shoshone Tribe—thus potentially receiving duplicative federal benefits—withdrew the Colony government's federal recognition status and seized its assets.[137] A few years later, and despite persisting questions regarding dual tribal enrollment, the BIA re-designated the Colony as a federally-recognized Indigenous government—but, rather than reinstating the Colony's previous government, recognized a new governing council whose members met membership requirements under the Colony constitution.[138] However, intra-Colony conflict persisted over membership eligibility standards, with residents facing disenrollment—despite meeting the Colony's constitutional membership criteria—because council member Glen Wasson had allegedly falsely claimed these individuals were receiving money from other tribes.[139] Members also claimed that Colony meetings were being held behind closed doors, that multiple residents faced eviction, and that the Colony's public tribal administration office had been locked.[140] The BIA refused to involve itself in these intra-tribal conflicts arising from the new BIA-appointed Colony leadership, instead advising that such accusations against the Colony be litigated in the Colony's own tribal court.[141]

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[134] Brown v. Haaland, 604 F.Supp.3d 1059 (D. Nev. May 26, 2022); *Decades of Dispute: A Closer Look at the History of The Winnemucca Indian Colony*, The Nevada Independent (hereinafter "*Decades of Dispute*"), https://cdn.knightlab.com/libs/timeline3/latest/embed/index.html?source=1RFtk0GfDVMbtHF1Or1fxoUZp_2paqZ2_Ue35f9Rchwk&font=Default&lang=en&initial_zoom=2&height=650 (last visited Jan 10, 2023).

[135] *See* Tabitha Mueller & Gustavo Sagrero, *'Land protectors' step in as Winnemucca Indian Colony dispute simmers*, THE NEV. INDEP. (Feb. 8, 2022), https://thenevadaindependent.com/article/land-protectors-step-in-as-buffer-as-winnemucca-indian-colony-dispute-simmers (stating that although most Colony residents are Shoshone and/or Paiute, they cannot trace their ancestry to those recorded on the 1916 census).

[136] *Brown,* 604 F. Supp. 3d, at 1068.

[137] *Id.*

[138] *See id.*; *Decades of Dispute*, *supra* note 134.

[139] *Decades of Dispute*, *supra* note 134.

[140] *Id.*

[141] *Id.*

In 2000, Glen Wasson was stabbed to death by persons unknown on the steps of the Colony's Administrative Building.[142] Multiple factions quickly emerged to fill the Colony's power vacancy, namely those led by Glen Wasson's son Thomas ("the Wasson Faction") and by William Bills, Colony Vice Chairman under Glen Wasson's time in Colony leadership ("the Bills Faction").[143] The BIA, after receiving a district court order mandating recognition of at least one entity to serve as Colony representative, chose to simultaneously recognize both Bills and Wasson as a combined government and council.[144] The new council broke down within a year, inciting further BIA involvement in structuring the Colony's government.[145] The BIA elected to recognize only Bills, but was overridden by the district court and directed to recognize only Wasson.[146]

Under its new power, the Wasson Faction in 2013 held a Colony council election which it confined to a mere 30 purportedly eligible voters.[147] None of these purportedly legitimate Colony members, nor the elected members of the new Colony council, actually lived in the Colony.[148] "I call them 'the fake council,'" said 55-year-old Colony resident Elena Loya, "because one, they don't live here, two, they don't even hold an office here or an election here. None of us have nominated or voted for them so I don't know how they get off saying they're a council."[149]

Another Colony group, the "Ayer Faction," disputed these results, as it claimed as well to be the Colony's legitimate electorate body.[150] Regardless of such contentions, after subsequent rulings by the Wasson Faction's Colony tribal court, the district court ultimately ordered the BIA to recognize the new faction.[151] Despite a later Ninth Circuit holding that the district court had wrongly interfered with the BIA's ongoing process of resolving the Colony's leadership dispute, the BIA maintained recognition of the Wasson Faction's "elected" government in 2021.[152] The BIA had thus

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142 *Id.*; Brown v. Haaland, 604 F. Supp. 3d 1059, 1068 (D. Nev. 2022); Michelle Cook, *Winnemucca Indian Colony leadership disputes far from settled*, GREAT BASIN SUN (July 9, 2019), https://greatbasinsun.com/news/2019/jul/09/winnemucca-indian-colony-leadership-disputes-far-f/.

143 *Brown*, 604 F. Supp. 3d at 1068-69.

144 *Id.* at 1069.

145 *See id.*

146 *Id.*

147 *Id.*; *Decades of Dispute*, *supra* note 134.

148 Tabitha Mueller, *Residents fear loss of homes during disputed clean-up effort at Winnemucca Indian Colony*, THE NEV. INDEP. (May 17, 2020), https://thenevadaindependent.com/article/residents-fear-loss-of-homes-during-disputed-clean-up-effort-at-winnemucca-indian-colony; Mueller & Sagrero, *supra* note 135.

149 Mueller, *supra* note 148.

150 *See* Brown v. Haaland, 604 F. Supp. 3d 1059, 1069-70 (D. Nev. 2022).

151 *Id.*; *see* Winnemucca Indian Colony v. United States ex rel. Dep't of the Interior, No. 3:11-cv-00622-RCJ-VPC, 2018 U.S. Dist. LEXIS 174486 at *1 (D. Nev. Oct. 1, 2018).

152 Winnemucca Indian Colony v. United States ex rel. Department of Interior, 819 Fed. Appx. 480, 482–83 (9th Cir. 2020); *Brown*, 604 F. Supp. 3d at 1070; Plaintiff's First Amended

doubled down on creating and instating its own Indigenous government consisting of non-reservation residents, while ignoring any conflict that federal recognition of one group may have created between these non-reservation actors and actual disenfranchised reservation citizens.[153]

B. The Colony Council Turns on its Citizens

The new Colony government had, meanwhile, begun a string of abuses against its political dissenters similar to that suffered by the Cayuga Nation's Gayogo_hó:nǫ' citizens.[154] The Colony council began its campaign with trespass actions against multiple Colony residents, including the ten residents involved in litigation challenging the Colony government's power.[155] Social media posts promptly began alerting Winnemucca Indian Colony residents and outsiders of the Colony council's attempts to bulldoze the homes of its dissenters—including many elderly residents—leading sympathizers to drive up to six or more hours to form tent barricades protecting these homes from bulldozers.[156] Residents have stated that despite a purported Colony council decision declaring a state of emergency and subsequent moratorium on evictions at the beginning of the Covid-19 outbreak in the spring of 2020, work crews nevertheless attempted to pressure residents out of their homes on March 31st and April 1st of that year.[157] Even after a Court of Indian Offenses judge issued a temporary restraining order on April 2nd preventing Colony council members from entering residents' property, "cleanups" continued on May 4th.[158] Alexandra Rawlings, representative of some of the Colony citizens facing eviction, issued the following statement:

> Despite Petitioners' claims that they must remove 'solid and hazardous waste,' the necessity of such action is not supported by evidence. Rather, Petitioners' activities on the Colony appear to be for the primary purpose of intimidating Colony residents, destroying their dwellings and other property, and forcibly evicting them from their homes.[159]

Complaint for Injunctive Relief at 11, Brown v. Haaland, 604 F. Supp. 3d 1059 (D. Nev. 2022) (No. 3:21-CV-00344).

153 *See Brown*, 604 F. Supp. 3d at 1070; Mueller, *supra* note 148.

154 First Amended Complaint for Injunctive Relief, Brown v. Haaland, No. 63, No. 3:21-cv-0034, at 9 (entered May 4, 2022).

155 *Id.*

156 Mueller & Sagrero, *supra* note 135.

157 Mueller, *supra* note 148.

158 *Id.*

159 *Id.*

Colony residents have likewise noted that the BIA's decision to approve and empower the current Colony council has actively harmed the people living on Colony land.[160]

The Colony government, in contrary and *Halftown*-esque fashion, has pushed a narrative claiming that homes targeting for bulldozing have already been abandoned, and that "cleanups are needed" to mitigate crime and drug use within Colony borders.[161] As in the Cayuga Nation, Colony residents have repeatedly and entirely rejected these claims.[162]

The BIA, despite these hazardous and targeted "eviction" proceedings, awarded the council access to Colony-controlled federal funds via tribal funding agreements known as 638 Contracts, and permitted transfer of ongoing eviction cases against Colony citizens to the council's own tribal court.[163] Subsequent protest by Colony residents against this transfer incited *Brown v. Haaland*, a noteworthy case in which the federal government finally began to reframe its responsibilities towards Indigenous Americans within the context of protecting human rights and cultural identity.[164]

C. *Brown and the Emergence of the Human Rights Narrative*

1. *Brown*: Policies and Duties

On May 26, 2022, the District Court of Nevada held that the plaintiffs, who included endangered residents of the Winnemucca Indian Colony, had sufficiently demonstrated that the BIA had violated its "nondiscretionary duty to consider whether complaints that raise concerns about the safety and welfare of individual Indians warrant the reassumption of [an ISDEAA] self-determination contract."[165] The court noted that the primary intent of such contracts was not exclusively to uphold tribal autonomy "in and of itself," but was instead to enhance benefits and services for Colony members—a goal incidentally achieved via autonomy.[166] The ISDEAA, the court held, therefore necessarily assumes that "the tribe operating its programs is acting in the interests of its community, and that services will be rendered in a fair manner for the benefit of all."[167] With these policy considerations expressly stated, the court then laid out the requisite factors for an Administrative Procedure Act ("APA") agency inaction claim: that an agency (1) had a nondiscretionary duty to act, (2) delayed acting, and (3) such delay was unreasonable.[168]

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160 *Id.*
161 Mueller & Sagrero, *supra* note 135.
162 Mueller, *supra* note 148.
163 *Brown*, 604 F. Supp. 3d at 1071.
164 *See generally id.*
165 *Brown*, 604 F. Supp. 3d at 1080.
166 *Id.* at 1078.
167 *Id.* at 1079.
168 *Id.* at 1079-80.

In determining agency duty to act, the court found that "when read together, 25 U.S.C. §§ 5329-5330 confer a mandatory duty on the BIA to (1) consider allegations that the health, safety, and welfare of any persons are being endangered by a tribe's performance under a self-determination contract and (2) determine whether reassumption is warranted."[169] The plaintiffs, by repeatedly notifying the BIA that the Colony leadership was harming its members and formally requesting investigations into these abuses, had thus adequately triggered the BIA's duty to perform these actions.[170] The BIA, however, had failed to adequately respond to these allegations.[171]

Thus, the district court considered the reasonability of, and harm caused by, the BIA's delay in responding to Colony abuses towards residents.[172] The court considered this delay entirely unreasonable in light of imminent harms inflicted on elderly or dependent residents by the Colony council, such as denying these residence meal deliveries, emergency services, and health support.[173] The court further held that imminent harm, described as "[present] suffering [of] irreparable harm which could be exacerbated by requiring administrative exhaustion," provided adequate grounds for an agency's emergency reassumption (i.e. immediate rescission) of an ISDEAA funding contract with an Indigenous government.[174]

However, despite recognizing the critical nature of immediate BIA intervention in light of an Indigenous government's attacks on the health, safety, and welfare of its own citizens, the court held that it did not have subject matter jurisdiction to hear any claims regarding the BIA's statutory breach of the ISDEAA, as it could only hear ISDEAA claims brought by an Indigenous government against the federal government—precluding the plaintiffs, as citizens rather than recognized Colony leadership, from succeeding on such a claim.[175] The plaintiffs filed an amended complaint on June 25, 2022, with the added accusation that the Colony's tribal court has not investigated allegations of membership fraud regarding its current Colony council—claims that the BIA had not acted on for decades despite being allegedly aware of the fraud.[176] However, the Colony council and tribal court—with BIA funding and protection—then fast-tracked trespass and eviction actions against the plaintiffs while carrying out demolition projects on private homes without compensation.[177]

169 *Id.* at 1083.
170 *See id.* at 1083-85.
171 *Id.* at 1085.
172 *Id.* at 1079-80.
173 *Id.* at 1086.
174 *Id.* at 1088.
175 *Id.* at 1091-92.
176 Brown v. Haaland, No. 84, No. 3:21-cv-0034, at 4-6 (entered Nov. 16, 2022).
177 *Id.* at 4.

2. A *Brown*-Inspired Humanitarian Rule

Regardless of whether the *Brown* plaintiffs would be able to convince a court of subject-matter jurisdiction on appeal, *Brown* proffers two important truths. First—and most importantly—the *Brown* case has brought into the legal discourse a positive affirmation of the BIA's APA duty to protect Indigenous sovereignty not only by way of enabling ultimate Indigenous governmental control over allocated federal funds, but also by guaranteeing that larger Indigenous civilian populations are able to thrive in health, safety, and culture under any regime propagated by, or whose power is traceable to, federal involvement in intra-tribal affairs.[178] In doing so, *Brown* places the importance of pure freedom of community safety and cultural identity alongside the importance that "the tribe operating its own programs is acting in the interests of its community, and that services will be rendered in a fair manner for the benefit of all."[179]

A major potential concern of this rhetoric is that it does not expressly delineate how far federal entities like the BIA may reach in determining what constitutes protecting the health, safety, and welfare of Indigenous communities. It may rather come full-circle in affirming positions like that of Bruce Maytubby, who forced his own westernized versions of 'integral' human rights—in that case, a democratic system of governance—on the peaceful matriarchal society of the Cayuga Nation, to the widespread suffering of its citizens. A federal policy championing *Brown*'s focus on human rights must thus have strict limitations. First, in recognizing *Brown*'s egregious subject matter, a policy demanding BIA intervention in response to human rights abuses must be triggered only in extreme instances involving current or imminent harm suffered directly by Indigenous civilians, such as physical harm to self, loss of resources necessary to physical safety (such as shelter, health resources, or food), or imminent loss of culture or cultural identity. Second, to avoid as much as possible infringing on actual Indigenous self-determination, humanitarian intervention should be triggered only when the harm-administering Indigenous government itself is strongly traceable to federal, rather than Indigenous, design—such as when the BIA designates a brand-new government or overrides tribal law in appointing its own preferred leadership—and when that government's attacks on civilians are perpetuated by federal funding.

The *Brown* case, however, does not go far enough in its consideration of what constitutes effective federal intervention. In simply rescinding ISDEAA or other federal funding contracts from Indigenous governments, Indigenous communities, already suffering from federally-propagated

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178 *See generally Brown*, 604 F. Supp. 3d 1059.
179 *Id.* at 1078-79.

poverty cycles, would face further potential decreases in access to adequate resources, housing, and healthcare. Corrupt or fraudulent Indigenous government actors, like Clint Halftown or the members of the Winnemucca Colony council, may not necessarily be deterred in punishing those whose litigation efforts led to decreased Indigenous funding. Limiting federal resources may even incentivize further cost-cutting harms directed at Indigenous civilians, like additional disenrollment in an effort to avoid providing members with healthcare or other tribal services. Thus, *Brown*'s discussion of consequence for human rights abuses does not go far enough in setting up an effective BIA policy designed to protect Indigenous quality of life. Rather, such a policy should have more particularized consequences for Indigenous leaders—namely, the ability for the BIA to reconsider current Indigenous leadership or funding recipients, and potentially consider competing claims to community leadership based on tribal law, opinions of reservation citizens, and historical Indigenous systems of government before the federal establishment of a problematic regime. This is not to say that Indigenous communities cannot modernize their governmental structures if they so choose; rather, historical practice may help complete a vast mosaic of circumstances which may evidence leadership claims.

The BIA and district court were, in the case of the Winnemucca Indian Colony, directly involved in decisions controlling the Colony's financial sovereignty, which led to immediate corresponding harm on the other side of the sovereignty coin: the ability for a community to safely and healthily practice its own culture, and to express the will of its constituent civilians. The Colony's residents, in common with multiple Indigenous populations facing immediate crises as a result of federally-created systems of Indigenous government or funding, are in critical need of a safety mechanism allowing citizens, rather than Indigenous governments, to invoke corrective BIA involvement after the BIA has already improperly acted, and that decision to act has devolved into a human rights catastrophe.

Thus, to live up to its own mission statement as well as international law, the BIA must adopt a policy of allowing reservation communities an opportunity to re-declare their own governmental structures and federal fund recipients in extreme cases where (1) an Indigenous government actively targets the health, safety, welfare, or cultural identity of its civilian body, and (2) the federal government, rather than tribal procedures independent of federal involvement, is responsible for deliberately instating or provoking such abuse. "Reservation members" should entail those individuals directly at the mercy of an Indigenous government's abuse of its people, either currently or formally. In terms of an advocate base for a replacement Indigenous government, this definition base avoids an overly broad inclusion of distant non-reservation members receiving "surveys" accompanied by money in the mail, or an overly narrow exclusion of disenrolled individuals with genuine blood connections to an Indigenous community.

Only if the federal government is entirely unable to point to any feasible Indigenous government to replace the abusive leadership, or if multiple groups cannot come to a timely resolution regarding governmental structure, at the risk of delayed funding, should it ever be allowed to designate Indigenous leadership itself, and for the sole purpose of ensuring communities receive timely federal funds. The BIA should, however, automatically discount in its recognition decision any Indigenous leadership that has widely abused the health, safety, welfare, or cultural identity of its constituent citizens, when such abuse was directly—whether intentionally or unintentionally—provoked or enabled by federal involvement in tribal affairs. While a humanitarian trigger for federal involvement in Indigenous affairs may appear paternalistic, this rule is limited to instances in which the federal government has *already* involved itself in such affairs, to the dangerous albeit correctable infringement of the often overlooked elements of sovereignty: health, safety, and freedom to practice cultural traditions without persecution.

Should the BIA refuse to correct its own mistakes and instead continue to recognize corrupt federally-appointed tribal leadership, the BIA will continue to contravene many articles of the United Nations Declaration of Rights of Indigenous Peoples and the Universal Declaration of Human Rights, both ratified by the United States.[180]

CONCLUSION

When a federal agency has already committed improper federal intervention in tribal affairs, subsequent refusal to correct this action *is not* then proper refusal to intervene; *it is a continuing facilitation of the previous improper action*. Adhering to a policy of non-intervention should mean reversing decisions that inappropriately restructure Indigenous governments—not allowing the consequences of such decisions to fall onto civilians.

There is no excuse for the United States government to fund egregious and consistent human rights abuses or tribal destruction, even when carried out through an Indigenous government. The BIA cannot claim a policy of inaction in the face of such abuses under the protection of a "tribal sovereignty" argument when it has already inextricably involved jtself in tribal self-determination through a history of conquest, infringement of lands and treaties, and subsequent forced reliance on federal funding by tribes. The federal government, both on macro-Manifest Destiny and micro-Bruce Maytubby levels, has proven itself historically unreliable in wielding power over Indigenous leadership recognition, and corresponding

[180] *See* United Nations, Declaration of Rights of Indigenous Peoples, Art. 1, 3, 4, 5, 7, 8(1), 18, 22, 35, 40, Sep. 13, 2007; United Nations, Universal Declaration of Human Rights, Art. 3, 5, 8, 9, 10, 12, 15, 17(2), 27(1), 28, Dec. 10, 1948.

funding decisions, without any checks on such powers or safeguards when leadership decisions prove imminently dangerous to Indigenous civilians' safety and welfare. The Indigenous peoples of America, in other words, will not be truly sovereign so long as their human rights are subject to the whims of closed-door BIA decisions or individuals corrupted by ISDEAA payouts to act against the will of the larger citizen population.

Rather than weighing Indigenous sovereignty exclusively in terms of an Indigenous government's ability to use United States funds any way its leadership elects, the BIA should additionally recognize and weigh the other side of Indigenous autonomy: the freedom to participate and practice ancient languages, cultures, and governmental structures without coercion from federal financial pressure. While contemporary discussion of Indigenous sovereignty repels ideas which appear to paternalistically direct the expenses of Indigenous governments regarding internal Indigenous affairs, the BIA cannot avoid its duty to protect and serve the people that the United States left in a state of dependency after centuries of exploitation and abuse by simply claiming that assistance would limit the freedom of those placed in power *by the federal government* to carry out corruption and human rights violations.

This Note does not advocate for a complete, or even significant, retraction of current Indigenous governments' powers to direct funding for the benefit of their people. It does, however, call for an emergency escape hatch for when the BIA, acting on behalf of the United States government, involves itself in internal Indigenous affairs by way of either necessary, standardized funding interactions, or by more specialized circumstances in which the government dictates an Indigenous government's leadership. Should a BIA-designated Indigenous power use such federal recognition to, in extreme circumstances, infringe on its citizens' rights to safe and peaceful cultural sovereignty, the BIA should automatically have a duty of action to reverse the harmful effects of its intra-tribal involvement and reconsider not just ISDEAA funding contracts, but Indigenous figures' competing claims to tribal leadership. The BIA, under the sentiment expressed as early as the Northwest Ordinance of 1789, has a responsibility to clean up its messes: to protect the safety and cultural sovereignty of the many over the individual freedoms of those dangerous individuals which BIA funding may vest with ultimate power. Only when the BIA accepts this extra responsibility in extreme circumstances to protect human rights and Indigenous cultural health, even if seen by some as regressing towards paternalism, will it finally be in accordance with its Mission Statement: to "enhance the quality of life, to promote economic opportunity, and to carry out the responsibility to protect and improve the trust assets of American Indians."[181]

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[181] *History of BIA*, U.S. Department of the Interior, Indian Affairs, https://www.bia.gov/bia.