



Tribal Sovereignty and Child Welfare¹

Practice Tips for social workers to understand government to government relations in ICWA cases

Merriam Webster defines ‘sovereignty’ as (a) supreme power especially over a body politic; (b) freedom from external control: see autonomy; (c) controlling influence²

Why is there an act that specifically targets American Indian children in child welfare? Why aren't there other laws that address the needs of other groups such as African Americans or Hispanics/Latinos? Simply put, the United States has a government-to-government relationship with American Indian/Alaska Native tribes. Being American Indian is not only a racial/ethnic distinction; it is also a political status. The fact that the U.S. and other countries have/had treaties with Indian Tribes demonstrates the historical status of tribes as sovereign nations.

Social workers who have American Indian/Alaska Native children in their case load may be unaware of the sovereign status of the child's tribe and how it can affect a child welfare/Indian Child Welfare Act case. Today Tribes exercise their sovereignty to define expert witness criteria and conduct Tribal Customary Adoptions (CA AB 1325).

Sovereignty is a word of many meanings. At the most basic level, the term refers to the inherent right or power to govern. Under the U.S. constitutional system, the right is inherent in the people and is exercised through their representative local, state, and federal governments. This is somewhat comparable to the inherent sovereignty of Indian people in the tribal context (Canby, 1981; Deloria and Lytle, 1983).³

As active sovereign entities tribes have designated ICWA representatives for the process of receiving notice from state child welfare agencies and state courts in which an Indian child welfare case has been filed. The tribe appoints an ICWA representative in order to ensure that the tribe is informed and can respond to the notice.

Tips for Social Workers

1. Learn about the tribe(s) in your county and state. You can obtain a copy of ICWA designated agents at <http://www.tribal-institute.org>.
2. Be aware when a tribe intervenes in an ICWA case involving their child, the tribe is then a party to the case and legally entitled to the same rights as all other parties to the case.

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² Retrieved www.merriam-webster.com October 1, 2010

³ Utter, Jack (1993). American Indians: Answers to Today's Questions: H-8s: Legal Status and Tribal Self-Government. Norman, Oklahoma: University of Oklahoma Press.

3. In cases where the child's tribe is geographically too far to participate in the court process, the tribe may designate a representative to appear in court on the tribe's behalf.
4. If the child's tribe does not intervene in a case or assume jurisdiction, the case continues to maintain ICWA status and culturally appropriate active reunification services are still required.
5. Tribes exercise sovereign status during Tribal Customary Adoption and define criteria for expert witness.
6. Communicate with tribes as though you were contacting the governor's office of a neighboring state. Show the same level of respect and adhere to appropriate protocols as you are dealing with representatives of a sovereign nation.
7. Respectfully consider what the tribe has to say, otherwise the tribe may decide to pursue legal avenues which could be timely and costly. If respect and courtesy is established early on in the relationship there is a greater potential for collaboration on case options. The more options, the better chances for positive outcomes for Indian children.
8. Attempt to resolve the case informally before having to resolve the case before a judge.

Sovereignty: A Historical Perspective

As declared by Congress, the Executive, and the Supreme Court; the present rights of tribes to govern their members and remaining territories derive from a sovereignty that predates European arrival. It was a sovereignty that once made them fully independent nations. That sovereignty has been limited, but not abolished, by the tribes' inclusion within the territorial boundaries of the United States.

The principal attributes of tribal sovereignty today can be generally summarized as follows: (1) Indian tribes possess inherent governmental power over all internal affairs, (2) the states are precluded from interfering with the tribes' self-government, and (3) Congress has plenary (i.e., near absolute) power to limit tribal sovereignty and thereby limit the first two attributes (Canby, 1981). The federal policy of tribal self-determination, with its beginnings in the 1930s and a renewal in the 1970s, has created opportunities for tribes to retain their sovereignty and to overcome some of the restraints arbitrarily or improperly placed on that sovereignty over the past 150 years (Ibid.).

Today one can see the visible results of tribal sovereignty and self-determination in areas of enterprise (e.g., gaming, agriculture, shopping malls, restaurants, and hotels), health care, ICWA, and Tribal Customary Adoption.