

Indian Child Welfare Information

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Policies/ Acts

Johnson V. McIntosh (1823) – This case determined that only the federal government had the ability to buy Native American land.

Cherokee Nation V. Georgia (1831) it was determined tribes to be domestic nations with in the American government.

Worcester v. Georgia (1832) – Determines that tribes had the ability to make treaties which indicates they were independent nations/ communities. This means state law is not enforced on sovereign land.

Indian Self Determination and Education Assistance Act of 1975- Allows for government agencies to make 683 contracts and grants for tribes to then assume administering the funds as appropriate for their people.

(McDonald, 2013)

Adoption and Safe Families Act- (ASFA) reduces the state's requirements to narrow "reasonable efforts" to reunite child with biological family. This means the state can now determine if family is incapable of change and can adopt child out. It requires a permanency plan within 12-18 months of removal.

Existing Indian Family Exception- started in Kansas and some states follow the act stating that if the child residing in the Indian parents home, or the parent was not a traditional Indian person, ICWA does not have to be followed.

Public Law 280 provides for five states, including Minnesota (with the exception of the Red Lake reservation), Alaska, California, Oregon and Wisconsin to assume general criminal and some civil jurisdiction over Indian reservations within the state. Tribes retain limited criminal and general civil jurisdiction.

(Fletcher, Singel, & Fort, 2009)

Sovereignty

"As sovereign entities, Indian nations are guaranteed the power and/or right to determine their form of government, define citizenship, make and enforce laws through their own police force and courts, collect taxes, and regulate property use. Yet the fight to preserve tribal sovereignty and treaty rights has long been at the forefront of the Native American civil rights struggle."

(Fedbarblog, 2017)

Preferred Placement Order

extended family members
home licensed by the tribe
Tribal member
Tribal home
institution approved by tribe
non-Tribal home
(tribes can create their own preferred order)

Indian Child Welfare Act of 1978

Congress intended to "protect the best interests of Indian children and to promote the stability and security of Indian tribes and families"

Safeguards rights include;

- Transfer child welfare case to tribal courts
- Notice and intervention to the child's community
- Remedial services designed to prevent breakup biological family and community
- Written protections against improper termination of parental rights
- Application of "prevailing and cultural standards of tribal communities"
- Tribal determination of their own preferential placement
- It also requires "active efforts" to prevent the removal and to return home. The state requires "reasonable efforts to prevent removal and reunify when removed."

(Nicwa, 2020)

ICWA Limitations

ICWA is only impactful when it is followed. In 1990 Michigan created a taskforce to change systemic practices and implementation of ICWA practices they reported that 6 major findings

- 1) Native Americans were the poorest of any population
- 2) 50% of the population was under 18 years
- 3) Increased trends of out of home placements, sexual abuse, cases of neglect due to alcohol abuse
- 4) Both DSS and state governments did not understand sovereignty
- 5) Empowered Native led services reduced long-term reliance of public services
- 6) Programs taught through a cultural lens were more successful.

(Fletcher, Singel, & Fort, 2009)

Boarding School Era

1860-1978

Carlisle - "Kill the Indian save the child."

• **Indian Civilization Act** This act was cloaked to appear more human than physical genocide. It was determined to be more cost efficient to assimilate Native Americans than wage war. This act then encouraged Native people to adopt agricultural roles. It was created to forcibly assimilate Native children in white society.

• **BIA** (in the Federal War Department) 1891. They were tasked with distributing funds to churches to provide the cultural genocide.

• **Peace Policy of 1869** goals: 1) the replacement of corrupt government officials, called the "Indian Ring," with religious men, nominated by churches to oversee the Indian agencies on reservations; and 2) to Christianize the Native tribes and eradicate their culture and religion, primarily through removal of the children from reservation settings; they determined that children who still had access to home would hold on to their traditional belief system.)

• **1879 Carlisle Indian school** was established, the first Indian boarding school in the United States

• **The boarding year** - This would be precursor to the Scoop Era of the 20th century. Indigenous boarding school children were sent to an Anglo-White family to live and assimilate into Western culture. This would also limit their family and community ties with their tribe.

• **Throughout the inception of Indian boarding schools**, Native children were severely abused, mentally, physically, sexually and would come up missing. There are accounts of mass grave sites of Native boarding school attendees. They were also at increase risk of illness like Tuberculosis. (over 6,000 documented) deaths of children while at school in Canada alone. Many believe it to be 3-10x more due to lack of quality record keeping

• (Fletcher, Singel, & Fort, 2009)

1950's-1980's

Sixties Scoop Era

- **Child Welfare League of America** funded by a federal contract from the Bureau of Indian Affairs and the U.S. Children's Bureau. Fast track adoption of indigenous children out of their homes and communities into non-Native homes. Primary focus was poverty
- **Indian Adoption Project of 1958-1967**
- **Most Indigenous children** were taken due to cultural bias and poverty.
- **1969-1974**, between 25%-35% of all Indian children removed from their homes due to poverty or alcoholism.
- **85% of those removed** and placed into non-tribal homes.
- **Indigenous children** were removed 15.6% more than the general population. This does not include private adoption which would increase the numbers
- **Over 20,000 Indigenous youth** were removed from their homes during the 60's scoop Era in Canada alone

• (Fletcher, Singel, & Fort, 2009)

Present

Historical Trauma

• **Historical trauma** is the trauma one experiences as a result of the multigenerational, collective experience of spiritual, emotional and psychological injury of communities and their descendants. As a result of loss of land, language, and traditional practices and social structures.

Individually

People may then experience a loss of self-identity, low self-esteem and lack a sense of personal safety. They may also struggle to build healthy relationships. They can also become institutionalized replacing traditional cultural behaviors with those embedded in boarding schools, similar to those who have been incarcerated for long periods of time.

Families

For families that were forced to send their children to boarding schools, they can feel a lack of parental power. They were unable to instill their own cultural values through traditional childrearing practices. Once families were reunited, familial ties are negatively impacted and cause further stressors. For survivors, of boarding school the experience of childrearing in those boarding schools. This can make it difficult to have healthy childrearing practices when they become parents.

Tribal Communities

Most Indigenous history and practices are passed down from oral history and/or direct interaction with knowledge keepers. As generations were taken and Western practices were embedded. Many tribal communities lost their language, traditional practices, ceremonies, traditional dress and sense of community living.

Tribal Nations

When there is a breakdown of the tribal community it then affects the tribe as a nation. This then weakens the structure of the nation. With high rates of tribal members living off reservation it can affect if they enroll as members. This depletion of enrollment can affect power of the nation.

(Nabs. (n.d.))

Additional Suggested Resources

Films

"Dawnland" is the untold story of Indigenous child removal in the US through the nation's first-ever government-endorsed truth and reconciliation commission, which investigated the devastating impact of Maine's child welfare practices on the Wabanaki people.

"Indian Horse" An adaptation of Ojibway writer Richard Wagamese's award-winning novel, this moving and important drama sheds light on the dark history of Canada's boarding schools or Indigenous Residential Schools and the indomitable spirit of aboriginal people.

Youtube videos

"The Heart of ICWA: Becky" This is a video of the lived experience of a multigenerational survivor of the Sixties Scoop Era <https://www.youtube.com/watch?v=TYMG13pkGwY>

"Namwajuyt: we as all one. Truth and reconciliation in Canada" - Chief Robert Joseph shares his experience as a residential school survivor and the importance of truth and reconciliation in Canada <https://www.youtube.com/watch?v=2aURQmwaBEY>

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