



Tribal Sovereignty and Child Welfare¹

Practice Tips for social workers to understanding government to government relations in ICWA cases.

Sovereignty is a word of many meanings. Merriam Webster defines Sovereignty as a: supreme power especially over a body politic; b: freedom from external control: see autonomy; c: controlling influence². Generally, the term refers to the inherent right or power to govern. Under the U.S. constitutional system, this 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.³

As recognized by Congress, the executive branch, and the Supreme Court, tribes' right to govern their members and remaining territories derive from a sovereignty that pre-dates European arrival. Treaties entered with tribes by the U.S. and other countries is one example of the longstanding relationship between the United States and tribes as sovereign nations.

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.⁴ The federal policy of tribal self-determination, with its beginnings in the 1930s and a renewal in the 1970s, had 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 years⁵.

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² Sovereignty. 2009. In *Merriam-Webster.com*. Retrieved July 15, 2009, from <http://www.merriam-webster.com/dictionary/sovereignty>

³ Utter, Jack, *American Indians: Answers to Today's Questions: H-8s: Legal Status and Tribal Self-Government* 1993

⁴ *Ibid.*

⁵ *Ibid.*



Social workers who have American Indian/Alaska Native children on their case load may be unaware that the Indian Child Welfare Act applies to their case or of the affect the law and tribal sovereignty may have on their case. Why is there a law 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 Hispanic/Latinos? Simply put, being American Indian is not only a cultural distinction; it is also a political one. The United States has a government-to-government relationship with American Indian/Alaska Native tribes and through that relationship has the obligation to protect the best interests of American Indian children and to promote the stability and security of Indian tribes and families⁶

Tribes exercise their sovereignty in *many ways*, including designating ICWA representatives to receive notice from state child welfare agencies and state courts; appointing an ICWA representative in order to ensure that the tribe is informed and can respond to the notice; defining expert witness criteria, and recommending Tribal Customary Adoption as a permanency option for its children.

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 that 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.
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 in many ways, including during Tribal Customary Adoption, and to define criteria for expert witness.

⁶ 25 U.S.C. §1902



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.