

Tribal Sovereignty & the Indian Child Welfare Act or ICWA

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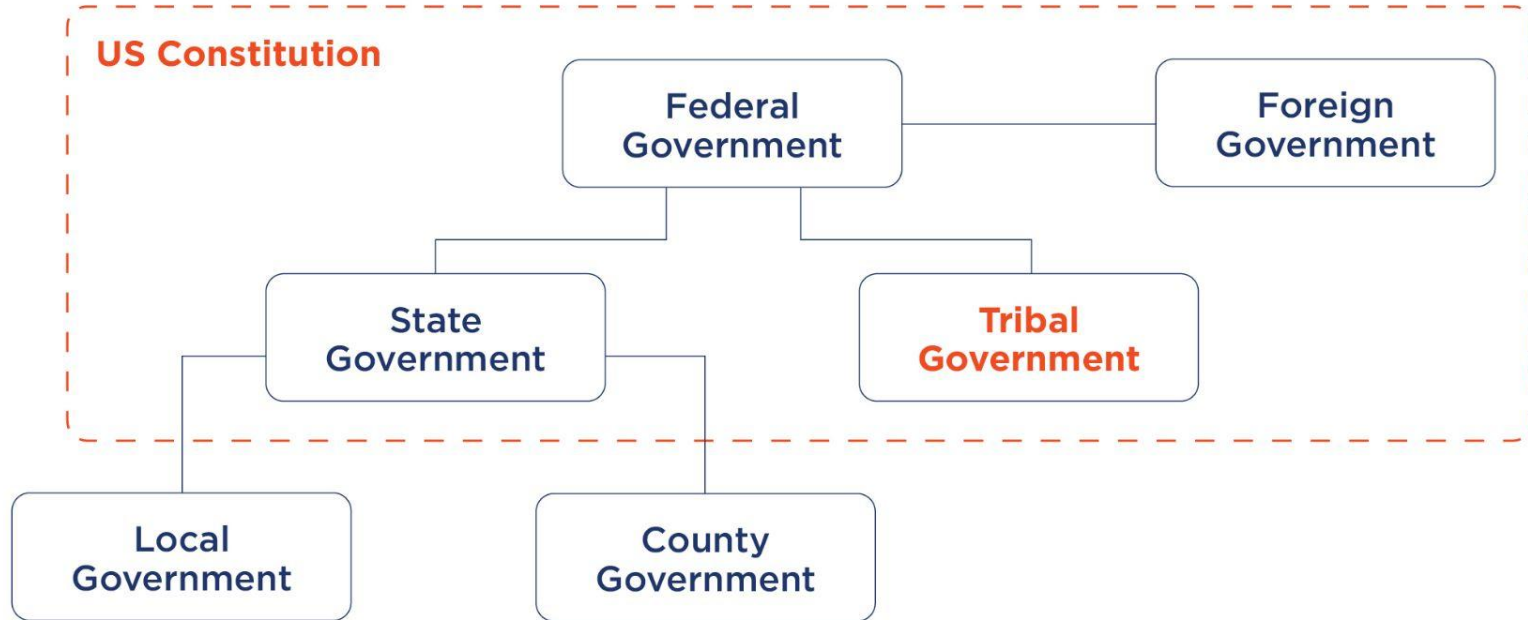
Ethnological term "Indian"

Political/legal term "Indian"

Political/legal term refers to an individual's member status of a Tribe that is recognized by the United States government and with which the US and said Tribe share in a special trust relationship.

Tribal Nations are Recognized Sovereigns

The US Constitution explicitly recognizes four sovereigns:



Residential schools in the US.

- Over 400 federally or Christian church run schools.
- By 1900, over 20,000 children in boarding schools
- By 1925, that number tripled
- Investigations show that death numbers could be in the tens of thousands
 - Results of abuse, torture, neglect, and disease

<https://indiancountrytoday.com/news/we-wont-forget-the-children>





HENRY STANDING BEAR
WOUNDED YELLOW ROBE CHAUNCY YELLOW ROBE

SIoux BOYS AS THEY ENTERED THE SCHOOL IN 1883.

THREE YEARS LATER.



<https://www.theindigenousfoundation.org/articles/us-residential-schools>



<https://heard.org/boardingschool/journey-and-arrival/>

Morton v Mancari 1974

Native people and governments have a political relationship with the U.S government. This was decided by the 1974 case Morton v Mancari.

Native peoples and governments have inherent rights and a political relationship with the U.S. government that does not derive from race or ethnicity. Tribal members are citizens of three sovereigns: their tribe, the United States, and the state in which they reside.

The Indian Child Welfare Act of 1978

The Indian Child Welfare Act was enacted in 1978 and established standards for the removal and placement of indigenous children. Considered to the gold standard

Prior to ICWA

- ❖ 25-35% of all American Indian and Alaska Native children were separated by state child welfare and private adoption agencies
- ❖ 80-85% of those children were placed in non-Native homes
- ❖ 75-80% of American Indian families living on reservations lost at least one child to the American foster care system

What is ICWA and why is it important?

What does ICWA do?

- ❖ establishes minimum federal standards for state removal of Indigenous children from their families
- ❖ recognizes tribes' inherent tribal jurisdiction over child custody proceedings
- ❖ provides tribal funding for the operation of child and family programs

<https://aila.ngo/protect-icwa/amp/>

PROTECT ICWA

WHAT IS IT?

ICWA is the acronym for the Indian Child Welfare Act, passed into law in the US in 1978. It is a law made to protect Indigenous children and keep them close to their tribes and families.

WHAT DOES ICWA DO?

- ICWA was created to stop the systemic removal of Native children from their family and tribes.
- Ensures Native kids get through foster care and adoption safely.
- Requires child welfare agencies to make active efforts to reunify with their parents.
- If a child can't be reunified with their parents, ICWA sets up placement preferences for where the child should go next.
- Allows the Tribe to advocate for the child.

WHY IS IT IMPORTANT?

- Prior to ICWA, post boarding schools, Indigenous children were still taken from their families and separated from their cultures at high rates due to adoptions and the foster care system
- From 1958-1967, the BIA (Bureau of Indian Affairs) encouraged this adoption of Native children by non-Native families through the Indian Adoption Project
- In 1978- 25%-35% of all Native children were removed from their homes
- As a result of this, activists and advocates pushed the federal government to pass ICWA in 1978

HOW TO PROTECT ICWA:

- Research ICWA
- Write to your legislators to ensure ICWA stays
- Listen to the stories of survivors and elders
- Text PCCPGW to 50409

2016 Final Rule

Highlights of the updated regulations include:

- ❖ Clear guidance on “active efforts” that state courts and agencies must employ to provide services and programs designed to prevent removal and encourage reunification
- ❖ Clarification of notice and time frames to improve compliance and expedite the process
- ❖ A requirement that state courts and agencies inquire whether ICWA applies in every child custody proceeding
- ❖ Procedures governing emergency removal of Indian children
- ❖ Clarification that the “existing Indian family doctrine” is not an exception to ICWA’s application and only the tribe has the power to determine a child’s membership status

Haaland v Brackeen

In previous hearings

- ❖ 486 Tribal Nations
- ❖ 59 Native organizations
- ❖ 31 child welfare orgs
- ❖ 26 states + DC
- ❖ 77 members of Congress

offered support for ICWA.

Haaland v. Brackeen is a pending Supreme Court of the United States case brought by the states of Texas, Louisiana, and Indiana, and individual plaintiffs, that seeks to declare the Indian Child Welfare Act unconstitutional

Haaland- Deb Haaland United States Secretary of the Interior

Brackeen- a white family attempting to adopt an Indigenous child

If ICWA is overturned...

- ❖ Tribal sovereignty will be threatened
- ❖ Native children will lose their protections
- ❖ Native families will lose their children at increasing rates

Over turning ICWA will allow for genocide to continue and grow against First Nations peoples. We will see protected lands being lost, decreases in activism as Native youth is historically at the forefront of many protests, as well as the fall of other laws that hold protections for Indigenous people and government.

What can we do?

Listen to Indigenous voices.

Share information and raise awareness.

Support Native organisations.

Use your own voice to amplify others.

Other Questions to Consider

How do we expand education on this topic?

What steps can be taken to protect Indigenous people at the community level?

Do you have any questions?

Sources

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