



TEXAS
Department of Family
and Protective Services



2021 Texas ICWA Summit



SUPREME COURT OF TEXAS PERMANENT JUDICIAL
COMMISSION FOR CHILDREN, YOUTH AND FAMILIES

Slides were created for an event held on January 22, 2021

Creation and Significance of the Indian Child Welfare Act of 1978

The Creation & Significance of the ICWA

**Sheldon
Spotted Elk, JD**

January 22,
2021

**Texas ICWA
Summit**



NATIONAL COUNCIL OF
JUVENILE AND FAMILY COURT JUDGES

WWW.NCJFCJ.ORG

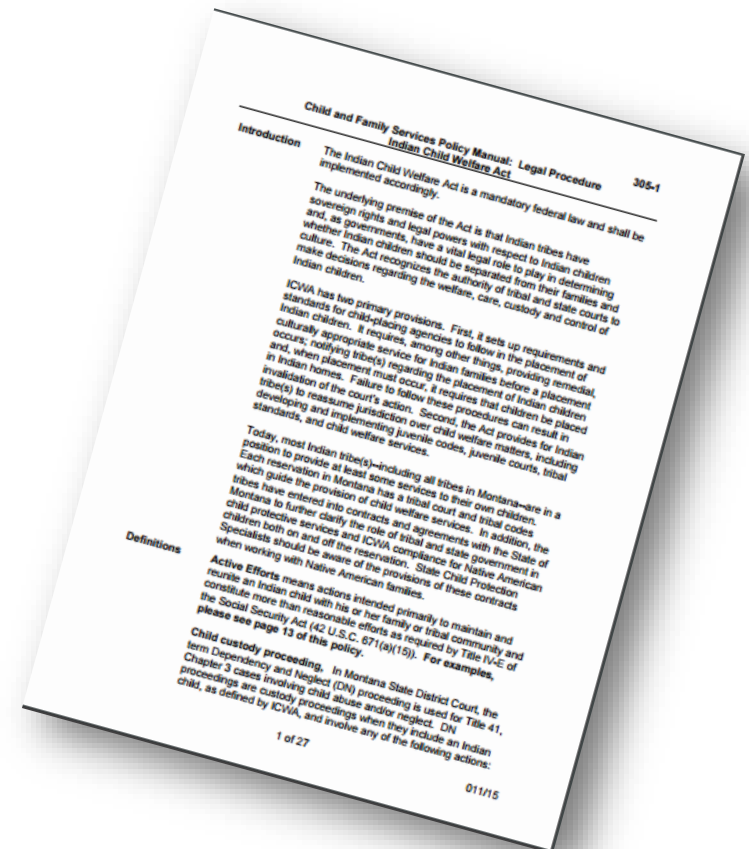
Why ICWA?

*“ICWA is a federal law that imposes special standards and requirements when a child welfare agency seeks to intervene to protect an “Indian child [...]. **The law was enacted to protect not only Indian children, but their families and tribes.**”*

- Texas DFPS Policy Manual

ICWA Responsibilities

- Identification of “*Indian Child(ren)*”
- Proper exercise of jurisdiction
- Proper notice of proceedings
- “*Active efforts*” to preserve the family
- Use of QEW & proper standard of review
- Placement preferences
- Transfer to Tribal Court(s)



How do I know where to look?

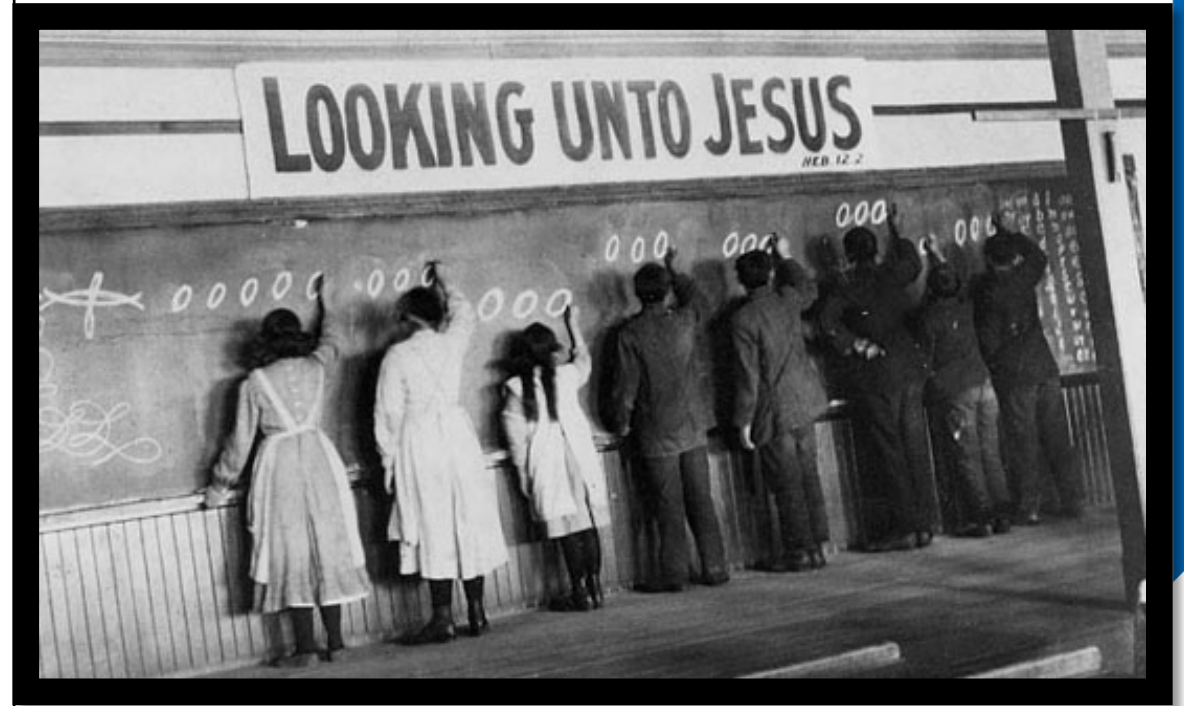
- Indian Child Welfare Act of 1978
- *ICWA Regulations
- Texas Laws
- Texas Court Decisions
- Tribal-State Agreements
- DFPS Policies and Procedures
- *ICWA Guidelines
- ICWA Bench book, Texas Children's Commission

http://benchbook.texaschildrenscommission.gov/library_item/gov.texaschildrenscommission.benchbook/146

Attack on the Indian Family

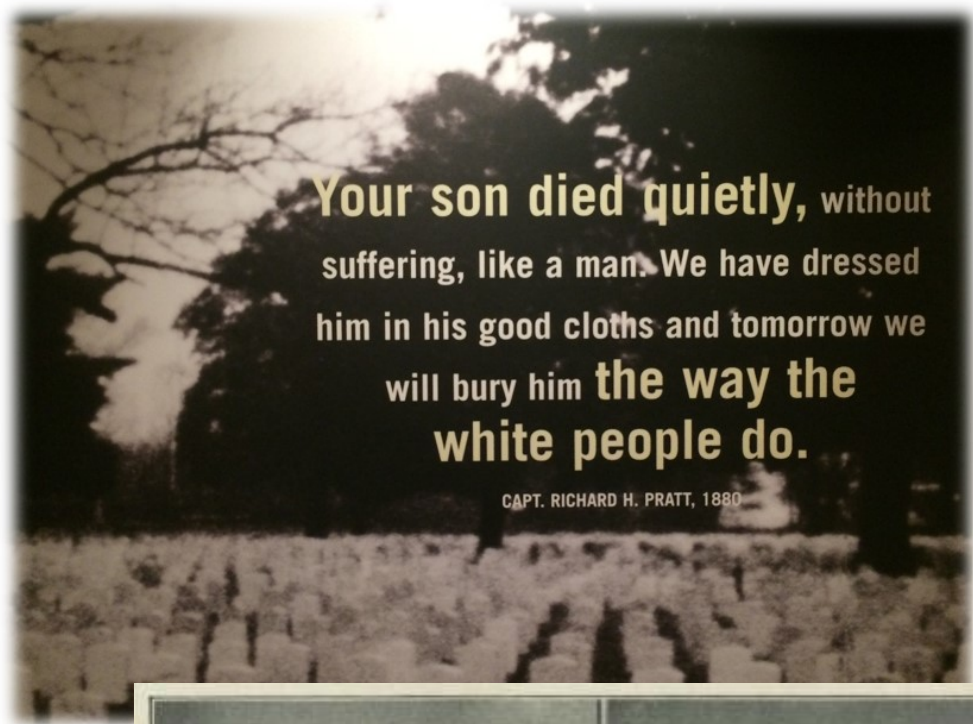
Indian Civilization Act of 1819

- Act intended to civilize and Christianize Indians.
- Funding directed to missionary schools to provide for “*moral education*”.



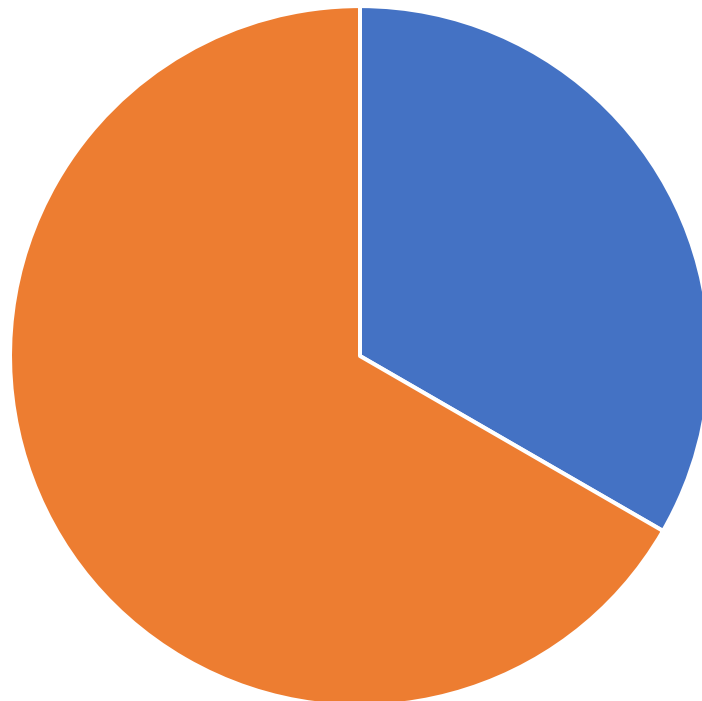
Boarding Schools

- Era is 1860 – present
- 357 known boarding schools
- “Kill the Indian, save the man.”*



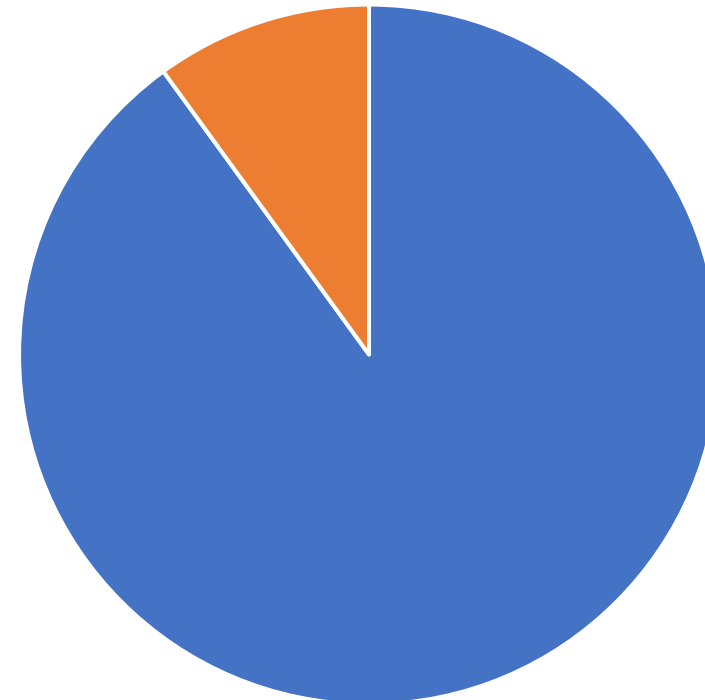
Congressional Findings in ICWA Hearings

All American Indian Children



■ Out of Home ■ American Indian children ■ ■

Out of Home Placement of AI/NA Children



■ Non Native Homes ■ Relative/Native Homes ■ ■

What is the legacy
of ICWA of 1978?

Memetics



“Beliefs that survive aren’t necessarily true, rules that survive aren’t necessarily fair, and rituals that survive aren’t necessarily necessary. Things that survive do so because they are good at surviving.”

ICWA as a reparative law

“After all ICWA is just **bleeping** words on a paper, it takes people working together for it to reach its highest aspirations.”

-- *Bertram Hirsch*



Relevance of Federal Indian Law

"Like the miner's canary, the Indian marks the shift from fresh air to poison gas in our political atmosphere; and our treatment of Indians, even more than our treatment of other minorities, reflects the rise and fall in our democratic faith."

--Felix S. Cohen, 1953



Pillars of Federal Indian law



Tribal Sovereignty

Indian Property



Limited State Authority



Federal Trust
and Power

Inherent Tribal Powers – Federal Indian Law

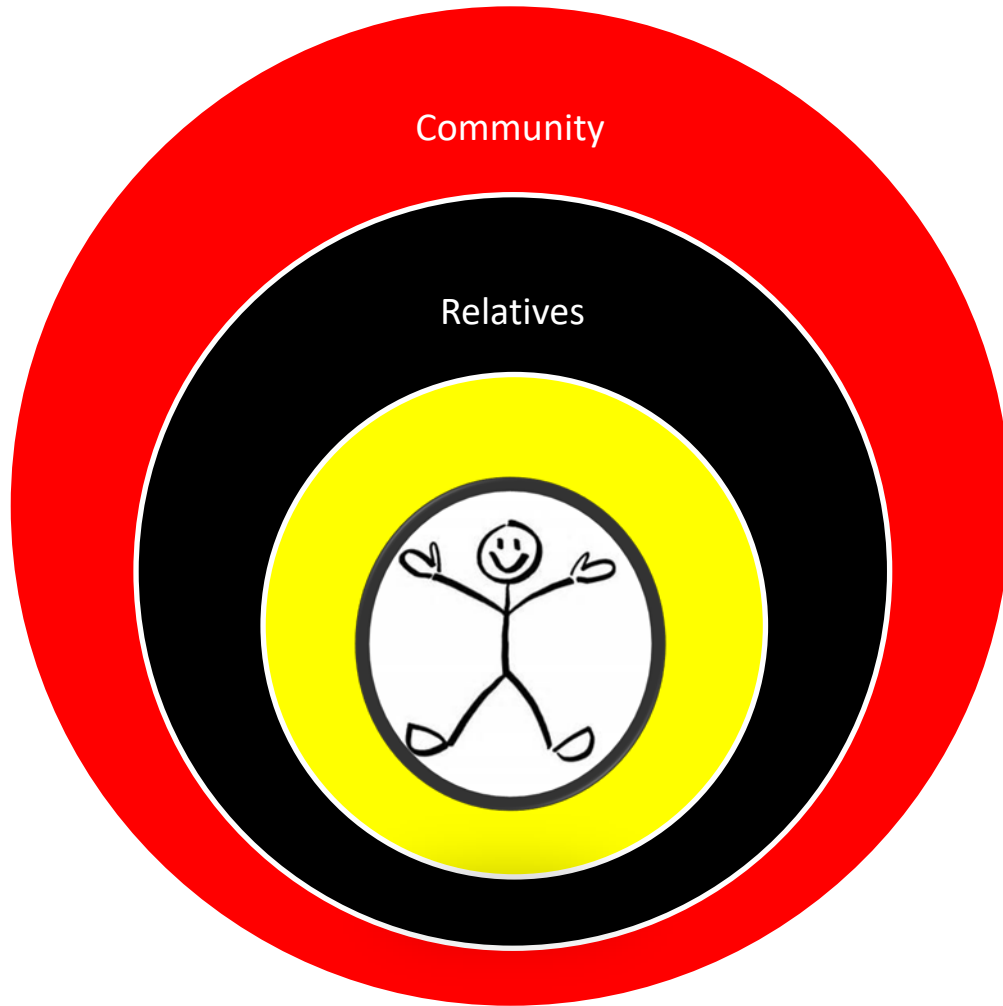
Tribes “retain their inherent power to determine tribal membership, to regulate domestic relations among members, and to prescribe rules of inheritance for members.”

Montana v. United States,
450 US 544 (1981).

Indian Tribes possess ALL aspects of sovereignty NOT specifically withdrawn by: 1) treaty; 2) statute; 3) SCOTUS.

Similar to states, tribes are limited by NOT having the power to make war, engage in foreign relations, or print and issue currency.

Why the ***Gold Standard*** of child welfare?



Active efforts to keep children safely with their families or to reunify them with their families. **Placement Preferences** to keep them connected to identity and culture. All within a community context (**Transfer**).

“I am an AGENT OF CHANGE”

- Cultural humility
- Gold standard representation
- Solution orientation

