



UPHOLDING THE SPIRIT OF THE INDIAN CHILD WELFARE ACT

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A NOTE ON LANGUAGE

- American Indian v. Native American v. Indian v. Indigenous

CREATING CONTEXT



From Archives & Special Collections, Mansfield Library, The University of Montana-Missoula

TRIBES & TRIBAL SOVEREIGNTY

- 560+ Tribes in the United States
 - Differences among tribes
 - Differences within tribes
- 300+ Tribal Courts
 - Well developed to developing
- Government to government relationship with Federal government
- Political not racial class

WHAT IS HISTORICAL TRAUMA?

INVASION OF AMERICA

- <https://flowingdata.com/2015/01/13/mapped-history-of-how-native-american-land-was-taken/>

Three Lakota Boys, Carlisle Indian Industrial School, ca. 1900





UNITARIAN UNIVERSALIST WORLD

The Journal of the
Unitarian Universalist Association
25 Beacon St., Boston, Ma 02108
Vol. 17, No. 9 60 cents

November 15, 1986



The Montana Industrial School for Indians was established in October, 1886 by the American Unitarian Association. Founded by the Rev. Henry F. Bond and his wife, Pamela, the school, also known as Bond's Mission, was located on a Crow Indian reservation near Custer Station on the Big Horn River. Fifty Indian children at a time lived at the school, which taught farming, mechanics, and the domestic sciences. Students and faculty posed for this photograph in 1888. The school closed after a decade when the federal government withdrew the \$108 per pupil annual subsidy. The buildings were sold to the government for one dollar. For a comment on the school's centennial, see Page 2.

A CHILD IS WAITING Happy, Playful Girl



Sherri, 3 . . . loves to be hugged and cuddled.

Three-year-old Sherri can quickly win your attention with her wide smile and big brown eyes. An attractive girl, she has straight black hair cut

she is talking, repeating what others say and is more attentive. She is attending a speech therapy program once a week and her foster

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A CHILD IS WAITING



JASON, A LOVABLE LITTLE CHARMER
. . . is all-boy.

Youngster loves outdoors

Don't let his serious look fool you, twenty month old Jason is a happy boy who enjoys playing with his children and adults.

has fine dark brown hair, big brown eyes, chubby cheeks and a dark olive complexion.

For the first month of his

Newspaper clippings from the Sixties Scoop era promote adoption of First Nations children. (Karen Pauls/Twitter)

HISTORICAL EVENTS LEADING TO THE INDIAN CHILD WELFARE ACT (ICWA)

- Boarding school era:
 - Forcible removal of Native American children from their homes under the pretense of education
 - Placed in boarding schools
 - Physical, sexual & emotional abuse; malnourishment, disease and lack of medical care
 - Meriam Report of 1982 showed a 50% mortality rate in schools
- Designed to separate a child from his/her reservation, family and culture
 - Children were punished for using their native language, cultural practices in an attempt to compel them to adopt western practices and Christianity
- In 1971, over 34,000 indigenous children attended these types of schools = 17% of Native children from federally recognized tribes at the time

HISTORICAL EVENTS LEADING TO THE ICWA

- In a 1969 survey of 16 states, 85% of Native American children in foster care were placed in non-Indian homes
- In South Dakota, 40% of all adoptions between 1967-68 were Native American children. The total percentage of South Dakota population that was Native American equaled 7%
- The Northwest studies showed that only 1% of Native children removed from homes in North Dakota was due to allegations of abuse
- Congress found a crisis in Indian child welfare —> ICWA was passed in 1978

CONGRESSIONAL FINDINGS

- Lack of knowledge regarding Native American cultural values and social norms resulted in decisions that were inappropriate in the context of Native American family life
 - Discovery of neglect and abandonment where none exists
- Dynamics of Native American extended family was largely misunderstood
 - E.g. state social workers considered leaving the child with persons outside the nuclear family for extended periods of time as neglect

THE HEART OF ICWA

- <https://www.youtube.com/watch?v=tYMGI3pKq4Y>

ICWA

- Intent of Congress:
 - “to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families”
- What does it do:
 - Sets federal requirements that apply to state child custody proceedings involving an Indian child who is a member of, or eligible for membership in, a federally recognized tribe
- Proceedings ICWA applies to:
 - Foster care placement, termination of parental rights, adoption, and placements related to status offenses

ICWA

- How does ICWA protect American Indian/Alaska Native children and their families?
 - Child's tribe and family have an opportunity to be involved in decision affecting services and placements
 - A tribe, parent or Indian custodian can also petition to transfer jurisdiction of the case to the tribal court of the child's tribe
 - Sets out federal requirements regarding removal and placement

ICWA

- Placement preferences (unless there is good cause)
 - Adoption
 - 1) A member of the child's extended family; 2) other members of the Indian child's tribe or 3) other Indian families
 - Foster care or pre-adoptive placement
 - 1) a member of the Indian child's extended family; 2) a foster home licensed, approved, or specified by the Indian child's tribe; 3) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; to 4) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs

ICWA

- Active efforts:
 - Provide remedial services and rehabilitative programs designed to PREVENT the breakup of the Indian family
 - No foster care placement or termination of parental rights may be ordered without **clear and convincing evidence** (including testimony from a **qualified expert witness**) that the continued custody of the child by the parent or Indian custodian is likely to result in **serious** emotional or physical damage
 - Identify a placement that fits under the ICWA preference provisions
 - Working actively to involve the child's tribe and the child's parents in the proceedings

ICWA

- Social and cultural standards

The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

DISCUSSION

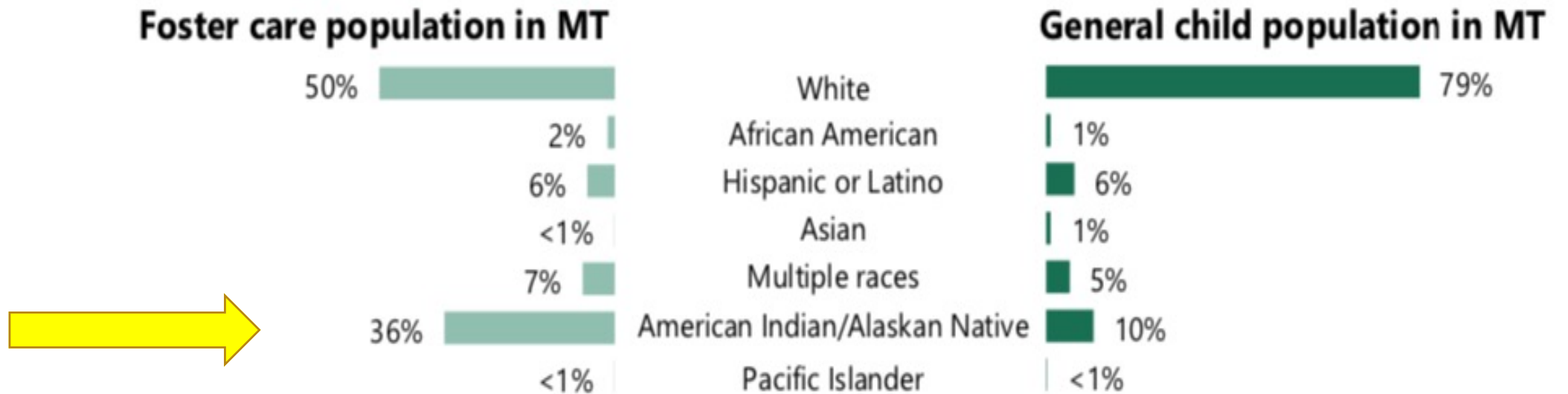
- How does ICWA inform your work?

CONTEMPORARY ISSUES

- In the 35+ years since ICWA was enacted:
 - Indian children are still removed from their homes and communities at a disproportionately higher rate than other children
 - In South Dakota, 90% of Native American children sent to foster care are placed in non-Native homes or group care (NPR, 2011).
- Implementation of ICWA by states has been inconsistent:
 - Different interpretations from state to state
 - Different interpretation even from court to court within states

WHERE WE ARE TODAY...

Foster care caseload by race/ethnicity⁶



CONTEMPORARY ISSUES

- Native American children:
 - Are twice as likely as non-Native children to be substantiated for abuse or neglect
 - Are more likely than children of other races/ethnicities to be identified as victims of neglect (65.5%) and least likely to be identified as victim of physical abuse (7.3%)₁
- 6,500 of the 405,000 Native American children who live on or near reservations are placed in substitute care each year₂

1. Pew Charitable Trusts, 2007

2. Children's Bureau, 2012

HISTORICAL LOSS

- Loss of land
- Loss of language
- Losing traditional spiritual ways
- Loss of family ties because of Boarding Schools
- The loss of families from the reservation to government relocation
- The loss of self respect from poor treatment by government officials
- The loss of trust in governmental representatives from broken treaties
- Loss of culture
- The losses from the effects of addiction issues on our people
- Loss of respect by younger generations for elders
- Loss of people through early death
- Loss of respect for traditional ways

IMPACT OF REMOVAL AND HISTORICAL LOSS

- Separation from family (at a minimum) contributed(es) to poor health impacts as adults
- Adult attendees of boarding schools show increased risk for PTSD, depression, substance use issues and unresolved grief
- Many adult adoptees report continued struggle with identity and feelings of loneliness and isolation

IMPACT OF REMOVAL AND HISTORICAL LOSS

- 20.5% of Indigenous adolescents report thinking of historical loss DAILY
 - Historical loss Includes loss of land, culture, language, spiritual ways
 - Adolescents were more likely than adults to think of loss daily (Whitbeck et al., 2009)
- Perceived historical loss contributes to high rates of depression among indigenous adolescents
 - American Indian youth report the highest rate of daily alcohol use (Wallace et al., 2002)
 - Suicide rate of AI/AN youth ages 15-24 is more than double the national rate (14.1 and 5.8 respectively) (Gallegos & Fort, 2018)
 - Of 349 youth tribal members, approximately 41% of the sample met criteria for a psychiatric disorder (Costello, Erkanli, Copeland & Angola, 2010)

DISCUSSION

- Do you notice the impact of historical loss on the youth in your care? In what ways?
- What have you found helpful in supporting identity development/cultural connection?

WHY ICWA IS STILL IMPORTANT TODAY

- Ensures that states consider tribal values
- Empowers tribes to serve their children and families
- Counterbalances bias in people and the system
- Expands resources available
- Protects the best interest and unique rights of American Indian and Alaska Native children as tribal members

NEW BIA REGULATIONS: ACTIVE EFFORTS

- Begin when the possibility arises that the Indian child may be removed at some point.
- Requires engaging the Indian child, the Indian child's parents, the Indian child's extended family members, and the Indian child's custodian(s);
- Encourages that the State take steps necessary to keep siblings together;
- State should identify appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services; and
- State should identify, notify, and invite representatives of the Indian child's tribe to participate

NEW BIA REGULATIONS: ACTIVE EFFORTS

1. Engaging the Indian child, the Indian child's parents, the Indian child's extended family members, and the Indian child's custodian(s);
2. Taking steps necessary to keep siblings together;
3. **Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services;**
4. Identifying, notifying, and inviting representatives of the Indian child's tribe to participate;
5. Conducting or causing to be conducted a diligent search for the Indian child's extended family members for assistance and possible placement;
6. **Taking into account the Indian child's tribe's prevailing social and cultural conditions and way of life, and requesting the assistance of representatives designated by the Indian child's tribe with substantial knowledge of the prevailing social and cultural standards**

NEW BIA REGULATIONS: ACTIVE EFFORTS

1. **Offering and employing all available and culturally appropriate family preservation strategies;**
2. Completing a comprehensive assessment of the circumstances of the Indian child's family, with a focus on **safe reunification as the most desirable goal;**
3. Notifying and consulting with extended family members of the Indian child to provide family structure and support for the Indian child, **to assure cultural connections,** and to serve as placement resources for the Indian child;
4. Identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and **actively assisting the Indian child's parents or extended family in utilizing and accessing those resources;**
5. Providing **post-reunification** services and monitoring.

BOARDING SCHOOL HEALING PROJECT

- <https://www.youtube.com/watch?v=8HZgmJmdpf8>

CULTURAL CONNECTEDNESS

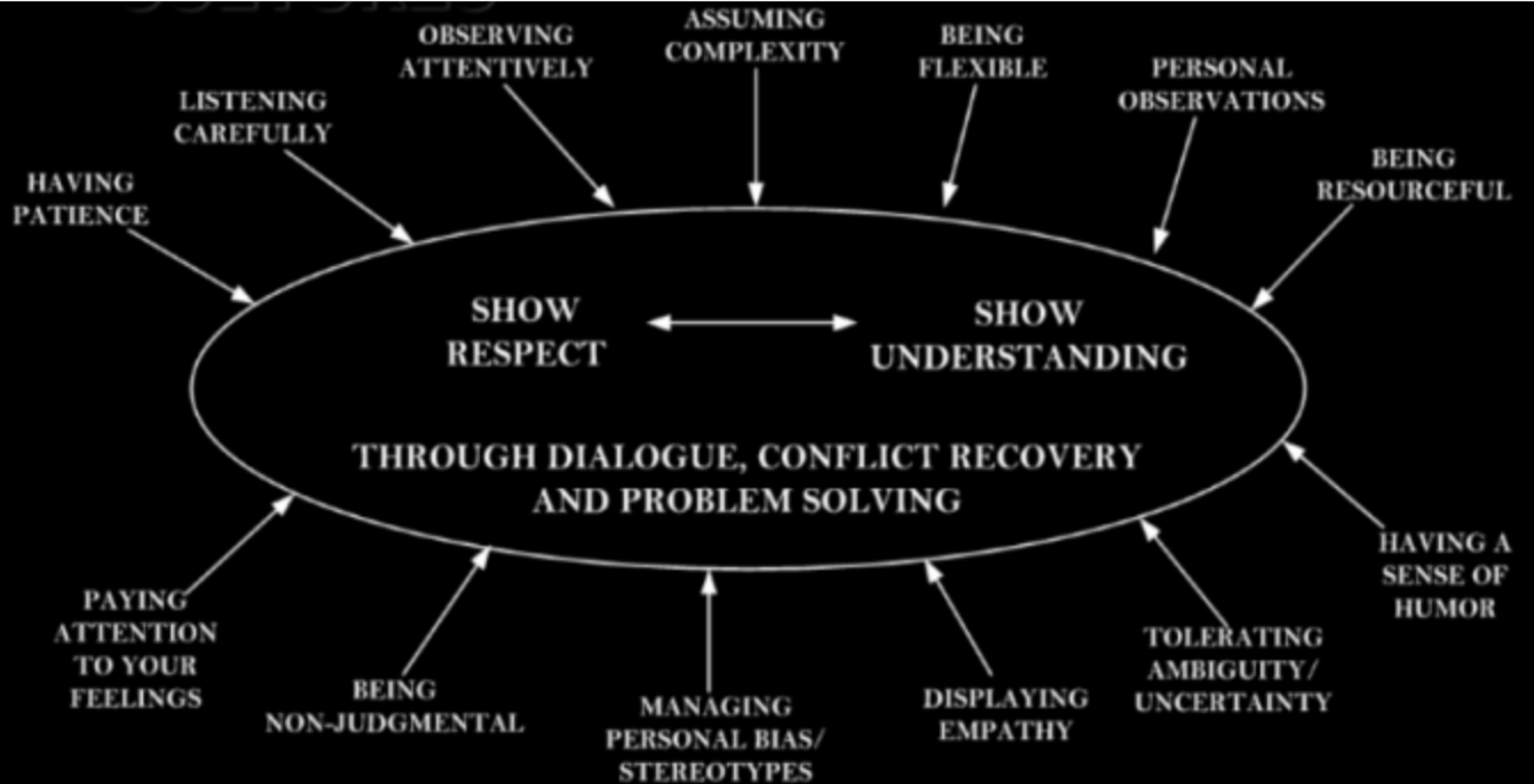
- Positive mental health outcomes for Indigenous youth are consistently related to feelings of being connected to culture (Snowshoe et al., 2017).
- Cultural connectedness is more than participation in cultural events, it means fostering feelings of being connected to culture
 - Peer mentoring programs- discuss family and community
 - Family tree
 - Accessing tribal resources online
 - For youth who are able to access cultural events, talk to them about the deeper meaning and how they connect youth to their ancestors, community, land

KEY PRINCIPLES AND CULTURAL VALUES

- Extended v. immediate family concepts
- Child's best interest involves contact with extended family & culture
- Concepts of parenting may differ significantly from dominant society
- Recognize the uniqueness of each child's tribal culture

WORKING ACROSS DIFFERENCE

- Become aware of cultural differences and how they affect the helping process
- Recognize the influence of your own culture
- Both may misjudge the other's actions based on learned expectations
 - Unique history
 - Influence of current political relations
 - Stereotypes
 - Underlying feelings



THANK YOU

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