

At Issue

ICWA and MEPA/IEPA: Injustice Guaranteed

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The concept of race has no biological or genetic legitimacy. Yet, it remains a powerfully destructive social construct with a legacy of exploitation, degradation, and obdurate inhumanity. To a lesser degree today, racism and other destructive ethnocentric dynamics are part of interpersonal and systemic dynamics within our country. Race doesn't exist, but racism does. This has significant implications for adoptive placements of minority children within child welfare practice.

The children of most minority cultures can be expected to be frequently and morbidly subjected to both systemic and interpersonal prejudice and discrimination during their lifetimes. Such powerful psychological and emotional assaults can be destructive at any time but are especially so during the formative years of latency and adolescence. Minority children must be fortified with the cognitive and emotional competence necessary to develop resilience to the harmful dynamics of racism and other ethnocentric assaults. This should be considered a presumptive developmental need of all minority children, who can reasonably be expected to be subjected to systemic and systematic racism during their lifetimes.

The implication for public child welfare adoption policy and practice is that professionals have a moral responsibility to assure that potential adoptive placements have the capacity to educate minority adoptees about the reality of racism and to develop strategies to fortify them against its destructive dynamics. If we accept psychological and emotional fortification from racism as a presumptive developmental need of many minority children in our society, then this would appear to support strategies to assure that prospective adoptive homes have the willingness and capacity to meet these developmental needs of minority children in need of adoption.

For Native American children, cultural identity and the developmental need to cultivate resilience to racism are considered essential and codified in the Indian Child Welfare Act (ICWA). Major ICWA requirements specify preference for adoptive placement of Native American children with Native American adoptive families and within Native American communities (ICWA, 1978). There is no mention in ICWA of the potential for such cultural matching of children with prospective adoptive families and communities as a

potential violation of prospective adoptive parents' or children's civil rights. In fact, such matching is encouraged, ethically justified, and in most cases, required. In many cases, this applies to children who are only a small percentage Indian by blood (ICWA, 1978).

For many other minority children within the child welfare system, including African American and Hispanic children, cultural identity and the developmental need for resilience to racism are *not* recognized as essential and codified in law to the same degree and with the same effect as ICWA does for Native American children. In fact, many contend that the Multi-Ethnic Placement Act, as amended by the Inter-Ethnic Placement Act (MEPA/IEPA, 1996), implies that for most minority children, cultural identity and developmental resilience are not essential and that MEPA/IEPA essentially prevents social workers from appropriately attending to important developmental needs of many minority children. MEPA/IEPA has provisions that prohibit discrimination on the basis of race or culture in the evaluation and selection of adoptive families for specific children (MEPA/IEPA, 1996).

The Indian Child Welfare Act, however, *requires such discrimination*. If one believes that either cultural identity or psychological resilience to racism is an important developmental need for minority children, it would appear to be essential to evaluate and select adoptive families to assure that prospective parents either have the capacity to facilitate and provide for these needs or are able and willing to develop these competencies. It would be important to differentiate among families who have the capacity to provide such cultural identity and psychological resilience for children and those who do not. For ICWA, that's the whole idea. Additionally, ICWA makes the commonsense presumption that same-culture parents are likely to have special competence in meeting these important developmental needs, and same-culture becomes a proxy for possession of this special competence. This is not the case for other minority children and MEPA/IEPA. MEPA/IEPA prohibits such discrimination, seeing it not only as bad social work but also a violation of civil rights (MEPA/IEPA, 1996). ICWA requires such discrimination, lauding it as developmentally essential and a triumph of not only individual civil rights but communal rights as well (ICWA, 1978).

At issue is the injustice inherent in the application of these conflicting legislative mandates. One set of rules for one group of minority children requires "placement in ... adoptive homes which will reflect the unique values of [that] culture" (Indian Child Welfare Act, 1978), while another set of rules for other minority cultures prohibits such directed placement.

Justice is a foundational ethic of our society. Its essential character is reflected in the ethical norms of most helping professions. Social work and law identify justice as a moral foundation of their respective professions. The Harvard philosopher John Rawls (1971, p. 76) conceptualized justice as fairness, suggesting that social inequities (such as, I suggest, the difference between ICWA and IEPA) should be instituted only if it can reasonably be expected to be to everyone's advantage to do so. That is clearly not the case here.





Aristotle, in the *Nicomachean Ethics*, stated that justice requires that we treat equals the same and unequals differently in proportion to their differences (Aristotle, n.d., Book V, Chapter III). In other words, if we as a society are going to treat large numbers of minority children in need of adoptive families differently from Native American children in need of adoptive families, then we must show clearly what differences between the two groups justify such unequal treatment.

Let's first consider the similarities among minorities in our country; they are many and clear. For example, let's compare the similarities between children from African American and Native American subcultures. Both groups of children are from cultures with a history of oppression, subjugation, displacement, family and cultural destruction, and more recently, institutional racism and economic marginalization. Both have the same developmental needs for care, nurturance, opportunity, and protection. Both can be expected to benefit from their subculture's adaptive and resiliency strategies, if they have the opportunity to learn and assimilate them. Both groups live in a country where the rule of law and the concept of justice are paramount. The similarities argue strongly for equal treatment, and I believe a comparison with Hispanic culture and many other minorities would reveal the same strong similarities and produce the same strong argument for equal treatment.

What are the differences that could justify the dichotomous approaches to same-culture adoptive placement between the laws guiding Native American and other minority groups? No significant differences seem readily apparent. I suggest that the biggest difference is in the degree of legal and political autonomy that has evolved for Native Americans. Native Americans are in a better position to promote and negotiate their interests than are most other minorities. This may explain some major differences between ICWA and MEPA/IEPA, but it doesn't justify them.

In conclusion, I would argue that there are no differences between the needs and circumstances of Native American and other minority children in need of adoption that justify the remarkably different laws and rules that guide our public social workers in their efforts to identify and develop adoptive homes for minority children.

I would argue that minority children who will grow up in our society need minority-specific cultural and adaptive competencies and resiliency strategies.

In addition, children services agencies in the public sector should recognize these as presumptive developmental needs of minority children in need of adoption. We need to look to research to prove or disprove the commonsense assumptions of ICWA that minority culture adaptive strengths and resilience are highly likely to exist in same-culture adoptive placements, and moreover, that prospective adoptive parents from different cultures must be evaluated on their willingness and capacity to meet these developmental needs. Further, we should require and enable social workers to identify, assess, and prepare the best available prospective homes to meet the developmental needs of minority children. Same-culture adoptive homes and transculture adoptive homes with the capacity and willingness to develop these competencies should be considered strong and preferred resources, although all need to be involved in thorough adoptive family assessment.

Finally, standard-setting social work organizations, such as the National Association of Social Workers (NASW), the Council on Social Work Education (CSWE), and the National Association of Public Child Welfare Agencies (NAPCWA), must redouble their efforts to work through the complex issues and moral dilemmas that have perpetuated the dichotomous placement rules promulgated by ICWA and MEPA/IEPA, including children's rights versus parents' rights, protective services worker responsibilities versus adoptive parents' civil rights, individual interests versus group interests, and federal authority versus tribal authority. These organizations need to advocate for clear, consistent, and universally applicable guidelines for adoptive placement of minority children that are in their best interests and that are just for all.

References

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