



When Reunification is Not an Option

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Permanency matters...



What is permanency?

“In a fundamental sense, a child’s very definition as a human being is in the context of the family in which he or she is born.”

Terry Cross & Kathleen Fox (2005)



Tribal Perspectives

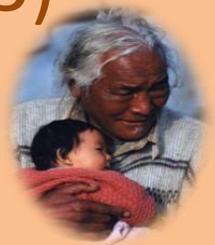
- *Suspensions* of parental rights
- Permanent guardianships & kinship care
- Open adoptions with residual parental rights
- Customary adoptions



Cultural dissonance of TPR

“The Navajo Common Law is not concerned with the termination of parental rights or creating a legalistic parent and child relationship because those concepts are irrelevant in a system which has obligation to children that extends beyond the parents.”

Judge Tom Tso, *In re J.J.S.* (Navajo D.C. 1983)





and...

“The Ho-Chunk Nation does not recognize termination of parental rights within its jurisdiction as it is not culturally appropriate. Therefore, attaining permanency may include temporary/permanent guardianships or sustaining care.”

HO-CHUNK NATION CODE





Guardianships & foster care

It is the policy of the Siletz Tribe that children should be adopted only as a matter of last resort, and that alternative long-term placements that maintain the connection between the minor and his or her parent(s) and family, such as guardianship and long-term foster care, should be considered first.

SILETZ JUVENILE CODE



Open adoption

“Adoptions under this subchapter shall be in the nature of ‘open adoptions.’ The purpose of such open adoptions is not to permanently deprive the child of connections to, or knowledge of, the child’s natural family. The purpose of adoptions shall be to give the adoptive child a permanent home.”

Pascua Yaqui Tribal Code



Post-adoption contact

- **The Choctaw Tribal Court's order after the Supreme Court's ICWA holding:**
 - Adoption of Choctaw twins by Holyfields
 - Continued contact with tribal relatives
- **Three Affiliated Tribes of Berthold Reservation Settlement:**
 - Adoption of Christian Good Bird by white couple
 - “Cultural Connectedness Agreement”



Customary adoption

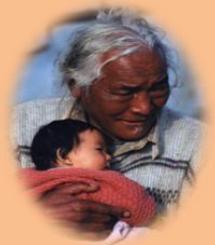
“Ecagwaya or ‘traditional adoption’ means according to Tribal custom, the placement of a child by his natural parents . . . with another family but without any court involvement. . . . [T]he adoptive parents in . . . traditional adoption have certain rights over a child even though parental rights of the natural parents have never been terminated.”

Sisseton-Wahpeton Sioux Juv. Code



Permanency under federal law

- ASFA's preference for severance & adoption
- The Fostering Connections to Success and Increasing Adoptions Act of 2008 (FCSIAA)
 - Kinship guardianship subsidies
 - Mandatory consideration of siblings
 - Family group decision-making
 - Direct Title IV-E funding for tribes



State courts and the goal of permanency for Indian children

- Traditional preference for severance & adoption
- Growing acceptance of permanent guardianships
- Uncertain legal status of open adoption and post-adoption contact agreements
- Uncertain legal status of customary adoption



Changing attitudes

- National Indian Child Welfare Association project
- Availability of customary adoption as reason for transfer to tribal court: *In re Welfare of Children of B.W.* (Minn. Ct. App. 2007)
- Recognition of customary adoption under state law: CAL. WELF. & INST. CODE § 366.24 (2011)

