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From Triangles to Stars: How Indigenous Adoptions Expand the Adoption Triad

MARGARET D. JACOBS

ABSTRACT: The adoption triangle is an inadequate model for understanding Indigenous adoptions. The triangle ignores the interests of extended family members and Indigenous communities and elides the role of the state in facilitating adoption. An alternative model, more akin to a star, better represents the complexity of Indigenous, and other, adoptions.

KEYWORDS: Indigenous, adoption, Indian Child Welfare Act, Mormon

I NEVER SET out to study adoption, and I came to the subject in a circuitous way. I began my academic career by examining cross-cultural relationships between white and Native American women in history. My research then expanded into a project on white women's role in the removal of Indigenous children to boarding schools and other institutions in the United States and Australia up to 1940. When I finished that book, I felt compelled to follow the story of what happened to Indigenous children in the United States, Australia, and Canada after World War II. That brought me inexorably to the topic of adoption, because large numbers of Indigenous children were adopted by non-Indigenous families from the late 1950s up until the late 1970s.¹

I soon discovered the rich multidisciplinary literature on adoption that scholars have been producing for the last several decades. I quickly learned that many adoption analysts use an adoption triad or triangle to signify three primary par-

ties that are involved in adoption: the birth mother, the child, and the adoptive parents.² Before long, I encountered vehement critiques of this concept, primarily that it relies on a false equivalence and downplays the power differentials between these three positions.³ Nevertheless, the adoption triad or triangle has remained a powerful metaphor. Since 2010, for example, the Children's Bureau of the US government has distributed a free monthly e-brief for adoption professionals called *The Adoption Triad*.

In my own recent book, I tried to reconcile this persistent paradigm with what I knew about the history of Indigenous child removal and adoption. I have come to the conclusion that the triad is a wholly inadequate model for understanding the origins and effects of Indigenous adoption. A triangle exemplifies a *liberal* conceptualization of adoption. I use "liberal" here not as a contemporary political perspective but in its classical sense as a philosophy that extols individual rights and liberties and the free market. The liberal triangular conception of adoption recognizes only the interests of the individual child, the child's birth mother, and the child's adoptive parents. In the case of Indigenous adoptions, it ignores the interests of extended family members and Indigenous communities and tribal entities themselves. If we factor these interests into adoption decisions, the adoption triangle soon expands into a many-pointed star.

In 1978, after decades of unwarranted Indian child removal and a sustained campaign by tribal activists and their allies, Congress passed the Indian Child Welfare Act, or ICWA. ICWA inherently recognizes these additional interests beyond the traditional adoption triad. While almost universally popular among Indian peoples, the law has been a source of controversy among many non-Indians since its enactment, in part because it challenges liberal individualistic conceptions of rights. In this article, I examine the battle over the adoption of Jeremiah Hallaway, a Navajo child whose mother initially relinquished him for adoption to a white Mormon couple, to illustrate the ways in which Indigenous adoption, and the ICWA, have challenged and enlarged the adoption triad. I argue that ultimately, Indigenous peoples' experiences and conceptions of adoption have much to teach us about the limitations of a liberal paradigm of adoption, the triangle. Indeed, Indigenous child-welfare workers have developed an alternative model, more akin to a star, that may be more suitable for all adoptions.

Jeremiah/Michael's Story, Part I

In early 1980, Patricia and Dan Carter, a white couple from Spanish Fork, Utah, took in a three-year-old Navajo boy named Jeremiah Hallaway. After two months of fostering Jeremiah, they applied to formally adopt him by filing a petition in the Fourth District Court for Utah County. His Navajo mother, Cecelia Saunders, was present that day in court, and she signed an adoption consent form. The Carters

FIGURE 1. Star Quilt design © by Maria Scott (Winnebago/Muskogee), used with permission. For more information, please contact Maria Scott.

changed Jeremiah's name to Michael Chad Carter (*Supreme*). Here would seem to be the classic adoption triangle.

But on closer inspection, the triangle's fixed points and solid lines evaporate. As was common among the Navajos and other Indigenous groups, extended family members had been primary caregivers to Jeremiah, and they, too, had an interest in his upbringing. Cecelia had been just sixteen years old and unwed when she bore Jeremiah on May 4, 1977. She had kept Jeremiah with her for the first six months of his life. Then Cecelia started a relationship with Arthur Saunders, and Cecelia's mother, Bessie Begay, took Jeremiah into her home. Cecelia and many of her sisters lived near their mother, and, as was customary in Navajo society, they all helped to care for Jeremiah. One of Cecelia's sisters, Polly Ann Dick, lived in Utah, where she had become a devout member of the Church of Latter Day

Saints, or the Mormon Church. Polly Ann came to her mother's home on the Navajo reservation on March 19, 1980, and took Jeremiah, without asking Cecelia or Bessie Begay for permission. Polly Ann offered little explanation; she simply told her sister Rosita that she was taking Jeremiah back to Utah for three weeks. But within twenty-four hours of taking Jeremiah, Polly Ann had placed him with Dan and Patricia Carter, a Mormon couple she had befriended. The Carters paid for Cecelia's transportation to come to Utah in May 1980 so she could sign the consent form for the adoption (Motion; Blanchard). Jeremiah's adoption triangle now looks much more like a square, with members of his extended family occupying another point of interest.

But even a square could not contain all the interests involved in Jeremiah's adoption. ICWA had recognized that tribes also had a stake in the welfare of tribal children, and the law required that a state court must notify a tribal nation of child welfare proceedings involving an Indian child (Indian). To comply with ICWA, the Carters' attorney informed the Navajo Nation of the pending adoption about five months after they first applied to adopt Jeremiah (*Supreme*; Motion).

ICWA recognized the tribe's interest in adoption, too, by enacting placement preferences for Indian children. State courts were to make every effort to place an Indian child who had been removed from his or her parents with his or her own extended family first. If this could not be arranged, the child would ideally be placed with another tribal family or, barring that, with another Indian family. If these placement preferences could not be met, the state court could place the child with a non-Indian family. Once informed of the adoption proceedings regarding Jeremiah, the Navajo Nation took steps to find a home for him that would comply with ICWA. In November of 1980, the Navajo Nation told the Carters that "the matter was being investigated and a Navajo adoptive home was being sought" (Motion).

The adoption triangle by this time could not contain all of the contending interests in Jeremiah's adoption, and even a square failed to represent the multiple parties to the child's upbringing. The Navajo Nation contacted the Carters again in April 1982 on behalf of Cecilia Saunders, who "formally revoked her consent to adoption and requested the return of her son" (Motion). ICWA stipulated that a biological mother could withdraw her consent "at any time prior to the entry of a final decree of termination or adoption," and the Carters had not yet finalized Jeremiah/Michael's adoption. Now the little boy was nearly five years old. The Navajo Nation petitioned the Utah state court to transfer the case to the Navajo tribal court (*Supreme*; Motion). This, too, was a central specification of ICWA: tribal courts held exclusive jurisdiction in cases involving Indian children domiciled on the reservation. When Indian children lived off reservation, tribes could request that cases be transferred to tribal courts, and state courts were required to comply absent "good cause." ICWA, then, acknowledged tribal nations as major stake-

holders in the adoption of tribal children, further expanding the bulging adoption square into a five-pointed star.

Many state courts, however, resisted this expansion of the adoption triad through ICWA. In fact, in July 1982, the Utah trial court refused to transfer Jeremiah/Michael's case to the Navajo Nation on the grounds that Jeremiah/Michael was actually domiciled in Utah, not on the Navajo reservation. The judge then ruled that Cecelia had abandoned her son, and he granted temporary custody of Jeremiah/Michael to the Carters. To the Utah state court, this case should properly involve only the birth mother, the child, and the adoptive parents, not extended family members or the tribe. The Navajo Nation continued to assert its stake in the matter and contest the Utah court ruling, but the Utah court insisted that it had proper jurisdiction over the matter. Matters came to a head in late 1984 when the Utah court rejected another motion by the Navajo Nation to move the case to their tribal court. In January 1985, the Utah court ruled that Cecelia had "knowingly and voluntarily abandoned the child," terminated her parental rights, and granted the Carters' adoption petition (*Supreme*; Motion). Citing ICWA, the Navajo Nation continued to assert the rights and interests of the extended family and the tribe. It filed an appeal with the Utah Supreme Court.

Jeremiah/Michael was now nearly eight years old, and a higher court would consider his fate. Would they adhere to the liberal conception of the adoption triad that prioritizes only three positions: the individual choice of the birth mother, the wishes of the adoptive parents, and the supposed best interests of the individual child? Or would they expand the triad to consider the interests of extended family members and the tribe itself?

Indigenous Adoption in the Post–World War II World

Jeremiah/Michael's adoption by a non-Indian family was not an uncommon occurrence in the post–World War II era. It had roots in the so-called termination and relocation policy of that period. Policymakers had become concerned after the war with the persistence of Indian poverty; they believed that it was the failure of Indian people to fully assimilate that had kept them back. To accelerate assimilation, in the 1950s Congress, led by Utah senator Arthur V. Watkins, passed bills that terminated many Indian tribes and turned their communal property into commercial assets. Congress also funded programs to entice Indians to move to urban areas and mandated that many responsibilities for Indian affairs, including Indian child welfare, should be shifted from the federal government to the states.⁴

As part of this assimilation effort, states and the federal government engaged in the widespread removal of Indian children from their families, just as they had in an earlier era. From the late nineteenth century, the Office of Indian Affairs

(later the Bureau of Indian Affairs, or BIA) had removed thousands of Indian children from their families and tribal communities, often forcibly, to attend boarding schools, with the aim of assimilating them.⁵ After World War II, the boarding schools fell out of favor. Many legislators and administrators now saw them as institutions that perpetuated Indian identities and even fostered new pan-Indian alliances. Authorities now believed that the schools were preventing rather than furthering assimilation and hoped to shutter most of the boarding schools for good (US Department, *Annual*, 1954, 241; Brownlee 59).⁶ Even though many boarding schools closed, however, Indian children continued to experience high rates of removal from their families and communities. Now, however, authorities promoted the placement of Indian children in non-Indian families rather than institutions (Jacobs, *Generation* 5–32).

In 1958, the BIA and the Child Welfare League of America partnered to establish the Indian Adoption Project (or IAP), which placed Indian children who “required adoption” from western states in non-Indian adoptive homes in eastern states. During its ten years of operation, the IAP placed 395 Indian children for adoption across state lines (US Department, *Annual*, 1958, 208; Lyslo, “Indian,” *Child*; Brownlee). In 1968, the Child Welfare League took over the project and incorporated it into the Adoption Resource Exchange of North America (or ARENA) for “hard-to-place” children. Until 1978, when Congress passed ICWA, the league placed several hundred more Indian children with non-Indian adoptive families through advertising children in *ARENA News* (Roberts). With the encouragement of the BIA and the Child Welfare League, states promoted the adoption of thousands more Indian children by non-Indian families within their own states (Lyslo, “Indian . . . 1958–1967” 7). Through these federal, private, and state efforts, by the late 1960s an estimated 25 to 35 percent of Indian children were living apart from their natal families: in foster care, adoptive placements, or institutional care (US Senate, Select Committee, “Indian”).

To Congress and BIA administrators, who were concerned with both assimilating Indians into the mainstream and cutting costs, adoption seemed the ideal solution. Adopted Indian children would have little to no contact with other Indian children, and they would imbibe white, middle-class social and cultural norms from their non-Indian families. As a bonus, adoptive families, not the federal or state governments, would bear the cost of raising the children. One BIA official reported in 1958, “This could in future years reduce the expenditures of the Bureau for foster home care since we are now paying for care for a number of children for whom adoption should be possible” (Rovin). Promoters of adoption usually did not share such economic concerns publicly. Instead, in the many articles that IAP and ARENA published to gain support for the project, they emphasized that adoptive families were engaged in a benevolent project of rescuing so-called “forgotten children” (Lyslo, “Indian,” April 1960, 3).

In the conventional conceptualization of the adoption triad, the state and its legal apparatus often occupies an understated role as a neutral mediator between the three interests on the triangle. But the federal government and states' roles in promoting Indian adoption suggests that the state should properly be seen as another point of interest on an adoption star.

Religious groups, too, have often occupied a point on the star. Mormon families from the Church of Latter Day Saints (or LDS), for example, were some of the most likely families to adopt Indian, particularly Navajo, children. The church had established the Indian Student Placement Program (ISPP), which from 1947 to 1996 placed an estimated 30,000 to 50,000 Indian children with LDS families for at least nine months of each year while the children attended local schools in Mormon communities. A large majority of these children were Navajos.⁷ In fact, Cecelia Saunders and her sisters all participated in the ISPP. Cecelia lived with the same foster family from age 8 until she was a teenager and still to this day stays in contact with some of her foster siblings (Saunders). The LDS Church ran the ISPP as an educational foster-care project, but the program sometimes facilitated the adoptive placement of Indian children in non-Indian Mormon families, in part because LDS Social Services oversaw both the placement program and adoptions (Allen; Dorsay).

The popularity of fostering and adopting Indian children among LDS families derived to some extent from Mormon theological beliefs that regarded American Indians as "Lamanites," lost Israelites who had fallen from grace and whom God had cursed through marking them with dark skin. From the nineteenth century, the LDS church leadership exhorted its congregants to convert Lamanites to the Mormon faith and to help them overcome their stigma through industry and the adoption of Mormon moral codes (Reeve 55–56; Garrett 11–35). Theologically, then, Mormons had an interest in Indian fostering and adoption. Proponents of the ISPP also claimed that it provided much needed educational options and social mobility to American Indian children (Garrett 55–56).

As they confronted poverty, unemployment, lack of educational opportunities, and an aggressive campaign of assimilation from both state and religious authorities, the Navajos and other tribes had mixed reactions to the ISPP. Ostensibly, only Navajo children from families that had converted to Mormonism were eligible for the program. Some Navajo families wanted their children to participate in the program because they were devout Mormons. Other Navajos claimed to have converted to Mormonism so that they could gain an education for their children through the placement program. Otherwise, Navajo families had no choice but to send their children to distant boarding schools (Garrett 36–57; Mauss 88).

Many Navajo tribal leaders had grave concerns with the placement program and unauthorized adoptions of Navajo children by Mormon families. Navajo leaders believed that some LDS missionaries were removing Navajo children for adop-

tion without their parents' or the tribe's knowledge and consent. The Navajo Tribal Council established a Tribal Welfare Committee in 1957 and passed a "Tribal Policy on Adoption of Navajo Orphans or Neglected and Abandoned Children" in 1960 to address these concerns. The policy stipulated that no Navajo child could be removed from the reservation "without prior approval of . . . the Navajo Tribal Council, except for the purpose of attending school under a non-sectarian program approved by the Bureau of Indian Affairs" (Navajo Tribal, "Regulations" and "Tribal Policy"). The Navajos formalized this policy in their legal code and deemed their tribal court as the only proper venue to decide Indian child welfare cases ("Welfare"). The Navajos suspected LDS missionaries of evading their laws in the 1960s, however. The *Navajo Times* cautioned Navajo parents in 1964 and 1966 never to sign forms that they did not understand after several instances of unauthorized child removals from the reservation ("Navajo Children"; "Placement").

The Road to ICWA

The Navajos were not the only Indian tribe that experienced or became deeply concerned with removal of children from their tribal community. Indian people such as Cheryl Spider De Coteau of the Sisseton-Wahpeton Sioux nation in South Dakota charged that authorities were coercing young unwed Indian mothers to relinquish their children for adoption or removing older children without evidence of true neglect or abuse (US Senate, Committee on Interior 71–73). They claimed that authorities took Indian children into care if they lived in poverty or with an extended family member. Many Indian leaders believed that the government, church groups, and other child welfare agencies were using child removal and adoptive placement as a way to undermine Indian families and destroy Indian peoples (Jacobs, *Generation* 69–96). Tribes found an ally in the Association on American Indian Affairs, which helped to organize a series of Congressional hearings in 1974, 1977, and 1978 and helped to draft ICWA (Jacobs, *Generation* 97–161).

The debate over ICWA revealed two very different conceptions of adoption. The Mormon Church vehemently objected to ICWA at the 1977 hearings, claiming that it would prevent Indian parents from freely placing their children where they wished (US Senate, Select Committee, *Indian* 192–216). Their position represents the quintessential liberal characterization of adoption. Other adoption proponents routinely claimed that Indian children were denied racial equality because they had "been deprived of adoption opportunities" available to other children (J. Reid). In this liberal rhetoric, it was individual Indian children who were the victims of discrimination and the bearers of rights, not the Indian groups with which they were affiliated. Supporters of Indian adoption ignored how Indian communities, as a collective, still suffered from colonial policies on the part of the US government

(including termination and relocation) and economic exploitation by individuals and corporations that had deepened poverty and inequality. They assumed that individual Indians would, of course, want to assimilate into mainstream society and leave Indian reservations behind. They believed Indian mothers would naturally want to relinquish their children for adoption so that they could have a better life. These adoption proponents rarely could conceive that many Indian people wanted to maintain their cultures, keep their children, and assert their sovereignty, even as they wished to escape poverty, discrimination, and inequality.

At the ICWA hearings, Indian people sought to assert that adoption involved more than just a triad of individual interests. They argued for the primacy of extended Indian families and tribes themselves. Calvin Isaac, chair of the Mississippi Band of Choctaws, explained, "Culturally, the chances of Indian survival are significantly reduced if our children, the only real means for the transmission of the tribal heritage, are to be raised in non-Indian homes and denied exposure to the ways of their People. Furthermore, these practices seriously undercut the tribes' ability to continue as self-governing communities. Probably in no area is it more important that tribal sovereignty be respected than in an area as socially and culturally determinative as family relationships" (US House 193). Advocates for ICWA argued that ongoing removal of Indian children undermined the group rights and sovereignty of Indian people.

Many Indian witnesses at the ICWA congressional hearings also questioned the very premise of choice upon which the liberal conception of adoption was built. For example, Faye La Pointe, Coordinator of Social Services for Child Welfare for the Puyallup Tribe in Washington, contended, "Every Indian person should, indeed, have the right to choose what is best for their child. A choice that is uninhibited by such conditions as poverty, illiteracy, physical, emotional, or mental handicaps. When these conditions become rare rather than commonplace in Indian country, we will believe that Indian people truly have the right of free choice" (US House 79).

American Indian testimony at the congressional hearings and dogged activism overcame opposition to the proposed act, and ICWA became law in 1978. Congress passed other measures in the 1970s that also extended greater self-determination to Indian tribes. Thus in 1980, just as the Jeremiah Halloway/Michael Chad Carter adoption controversy erupted, the Navajo Nation had just taken over its own social services from the BIA, hired an ICWA worker, and established a department of justice. The Navajos hired an attorney, the non-Indian Craig Dorsay, to work on the Indian child welfare cases that had accumulated since the tribe had taken over these government functions. Dorsay remembers, "When I showed up, none of the child welfare cases had been worked on for six months or more. There was a room piled with about 500 Indian child welfare cases." The Halloway file had been lost, and some office workers claimed "they found the . . . file behind a filing cabinet" (Dorsay).

Jeremiah/Michael's Story, Part II

Such was the backdrop for the Halloway case when it moved to the Utah Supreme Court. The case came to represent a showdown between a liberal conceptualization of adoption, as argued by the Carters and their lawyer, and an Indigenous understanding of adoption, as argued by the Navajo Nation and Dorsay. The Carters' attorneys sought to confine the conversation to the three positions on the liberal adoption triad. First they focused on Cecelia. They depicted her as an unfit mother who had abandoned her son by leaving him with her mother, and they contended that she had willingly agreed to the adoption. They claimed, too, that because she had never visited Jeremiah/Michael in Utah, she was clearly uninterested in her son (*Supreme*).

Dorsay and the Navajo Nation contested these charges first by arguing that Cecelia had not freely made the choice to give up her son for adoption. They provided evidence that Cecelia's sister Polly Ann had deliberately deceived her family about her real intentions. She told her family that she was taking Jeremiah for a few weeks, but Dan Carter testified that the Carters knew that Polly Ann was bringing Jeremiah to Utah for adoptive placement with them (*Supreme*; Motion; Rosenstiel, "Whites"). The Navajo Nation claimed that Cecelia had been intensely pressured by Polly Ann, the Carters, and LDS social workers to sign a consent-to-adoption in the Utah trial court in 1980. They argued that she had not understood her legal rights ("Navajo Wants"; Navajo Nation). Dorsay argued that Cecelia immediately regretted Jeremiah's adoption but did not have enough money to go through the legal system to challenge it, so she consulted a Navajo medicine man instead (Dorsay). Dorsay also contested the Carters' contention that Cecelia was indifferent to her son because she had not visited him. Dorsay claimed that the Carter family had "refused all contact with the natural family" (*Supreme*; Motion). So far, in making a case against the adoption, Dorsay had stayed within the bounds of the adoption triad.

Soon, however, Dorsay moved to challenge the triad's liberal shape altogether. He denied the Carters' charge that Cecelia had abandoned Jeremiah by leaving him in the care of her mother and sisters. He asserted that it was not only normal but also desirable in Navajo culture for extended family members to play a major role in raising a child (*Supreme*; Motion). Moreover, these family members had a stake in the outcome of the adoptive placement.

The Carters fought back by asserting the primacy of the nuclear family against the Navajo Nation's vision of the extended family. Their attorney, in fact, portrayed customary Navajo extended family life as deviant. While living with his grandparents, the Carters' attorney asserted, Jeremiah was "constantly on the go with both grandparents on their sheep herding job," and fifteen family members were living in the same household. The child "had been passed to different people since the time he had been born" (Rosenstiel, "Whites"). The Carters and their legal team

did not explicitly charge Cecelia's family with neglect or abuse, but they implicitly condemned the Navajo extended family with such statements. By contrast, asserting their rightful place on the adoption triangle, the Carters argued that they had become Jeremiah/Michael's "psychological parents" and that "to return [him] to his Indian custodians would result in serious emotional or physical damage to him" (*Supreme*).

The trial soon moved to focus on another point on the triad: the child. Here the Carters invoked a universalist liberal conception—the best interest of the child—to argue that Jeremiah/Michael should remain in their care. The Carters championed the notion that the best interest of a child was common sense and self-evident and that all children, no matter their background or history, shared the same needs. Dan Carter declared, for example, "I don't care whether you're red white, blue or yellow. We're all people first. . . . It's the love of a family that matters" (Howell). This liberal color-blind ideal denied any need to consider culture or heritage in placing a child for adoption. In the Carters' view, the child on the adoption triad was unmoored from any larger social, cultural, or historical context.

Dorsay and the Navajo Nation sought to expand this view of Navajo children's best interests by acknowledging the role of culture and heritage in their wellbeing. The Navajo Nation hired Dr. Samuel Roll, a clinical psychologist, to provide a psychological evaluation of Jeremiah/Michael. Roll reported that Jeremiah/Michael "sees Indians as bad, ugly, and frighten[ing]. . . . He . . . generally represents Indians as being destructive and damaged." Roll predicted that given this "very negative" view of Indians, Jeremiah/Michael "will hate himself" when he becomes a teenager and would likely go through an intense crisis. "Only if Jeremiah can grow up to love specific Navajo people can he then be able to incorporate some of that love as love of self," Roll argued, and he recommended that Jeremiah/Michael be returned to his Navajo family "after a proper period of visitation and preparation" (Motion). To the Navajo Nation, the maintenance of a child's tribal heritage was critical to the best interest of a Navajo child. Navajo children could not thrive if they were suspended within a shrunken triangle of interests. They needed the full support of a many-pointed star to fully actualize themselves.

The Carters sought to contain the debate over Jeremiah/Michael's proper placement within the bounds of the adoption triad. They minimized the Navajos' concerns about cultural heritage by asserting that they could adequately educate Michael about his Navajo background. Mr. Carter "describe[d] himself as 'into the mountain man movement' and personally interested in the Navajo culture" to a journalist (Wilson). A psychologist for the Carters offered further proof that the Carters and their community could properly immerse Jeremiah/Michael in Indian culture: Jeremiah's kindergarten teacher had cast him as an Indian in a Thanksgiving play (Howell). One observer who was sympathetic to the Carters expressed the common view that "as for culture, [Jeremiah/Michael] can learn that out of books" (Gomez). To the Carters and many Americans, the maintenance of

Jeremiah/Michael's connection to his Navajo heritage was more like a hobby than a crucial part of his identity and wellbeing, as the Navajos argued.

Moreover, the Carters, like most Americans, believed Indian communities were so dysfunctional that their interests should not be considered in adoption placements. Pat Carter, in fact, told a reporter, "To be honest, I don't think it's good for *any* [Indian children] to live on the reservation. You've got drug abuse, alcoholism, teen-age suicide down there" (Rosenstiel, "Whites"). Since World War II, media coverage of Indian people had emphasized only the "plight" of Indians, not the full range of Indian experiences and perspectives, and many non-Indians shared Pat Carter's reductive view of Indian communities (Jacobs, *Generation* 40–41). Such representations denied that tribal communities had any rightful interest in the adoption of their children. Thus the LDS and Navajo families held two starkly opposed views of adoption, one resting on the liberal triad of adoption interests, the other embedded within an Indigenous conception of a many-pointed star. Would the Utah Supreme Court uphold the adoption triad or recognize the additional points of interest that the Navajos had asserted?

Ultimately, the case hinged on a technical legal issue: where Jeremiah/Michael was domiciled. If he was domiciled in Utah, the Utah state court held jurisdiction; if he was domiciled on the Navajo reservation, the Navajo court would be the proper arbiter of the child's fate under ICWA. Dorsay argued that since Jeremiah/Michael had lived his first three years on the Navajo Reservation, he was domiciled on the reservation. Moreover, he asserted that if fostering a Navajo child in a Mormon family meant that the child was no longer domiciled on the reservation, the Navajo Nation "could suddenly find itself having lost any authority over hundreds of its children" who were enrolled in the ISPP (*Supreme*; Motion). By arguing that the Navajo Nation held jurisdiction, Dorsay claimed that the Navajo, not the Utah state court, was the proper mediator of the many interests in this adoption case.

The Utah State Supreme Court Ruling

In December of 1986, the Utah Supreme Court made its ruling. Their shocking decision upended the adoption triad. First it diminished the role of one point on the triad that usually occupied the most powerful position: the adoptive family. The court refused the Carters' argument that Jeremiah should remain in their custody because he had become psychologically attached to them, because "such a standard would reward those who obtain custody, whether lawfully or otherwise, and maintain it during any ensuing (and protracted) litigation." Second, the Utah Supreme Court acknowledged a new point of interest outside the triad. It "recognize[d] that the tribe has an interest in the child which is distinct from but on a parity with the interest of the parents" (*Supreme*). Stunningly, a state supreme

court, itself embedded in the liberal legal tradition, had upheld ICWA and its insistence on multiple interests beyond the adoption triad.

Moreover, the Utah Supreme Court acknowledged the Navajo Tribal Court, not the state of Utah, as the rightful arbiter of the dispute over Jeremiah's placement. The court ruled, "We agree [with the Navajo Nation] that the [Utah] trial court lacked jurisdiction and vacate its orders granting the petition for adoption and terminating the parental rights of Cecelia Saunders" (*Supreme*). The decision concluded, "We must defer to the experience, wisdom, and compassion of the Navajo tribal courts to fashion an appropriate remedy" and mandated that "any further proceedings relating to the adoption must be presented to the courts of the Navajo Nation" (*Supreme*). The ruling fully upheld the newly minted Indian Child Welfare Act. And it profoundly challenged the liberal adoption triad while recognizing the star-like interests in placement of an Indian child. The case was deeply controversial, however, and provoked a national debate. *60 Minutes* aired a segment on it in October 1987. Most commenters on the case sided with the Carters. Pat Carter, in fact, told a reporter that "Everywhere we go, people come up and recognize us and to talk to us" (B. Reid). Most Americans were unwilling to imagine adoption beyond the triad.

The Navajo Tribal Court and Jeremiah/Michael

The Carters now had to plead their case to keep Jeremiah/Michael, now nine and a half years old, to the Children's Court of the Navajo Nation Judicial District of Window Rock, Arizona. They assumed, like most Americans, that the court would side with Cecelia Saunders and return Jeremiah/Michael to his Navajo family. The Navajo Court, however, did not make a perfunctory or predictable decision; they conducted a careful evaluation of the case. The Navajo judge first required that social workers from the Eastern Navajo Agency Division of Social Welfare carry out home studies with both the Saunders and the Carters. The Navajo social workers reported that both the Carters' and Saunders' homes were "fit, suitable homes in which to raise children." However, they contrasted the Navajo home, with only two bedrooms, no running water, and an outhouse, with the Carters' more comfortable home, where Michael had a private bedroom, bathroom, and living room to himself. The Navajo social work team also criticized Cecelia's household because she was the primary breadwinner rather than her husband (Navajo Nation).

Prior to the passage of ICWA (and even after its enactment), social workers often deemed Indian homes inadequate based on material conditions or Indian women's nonconformity to white American middle-class gender ideals. Many Indian witnesses at the congressional hearings on ICWA had criticized such ethnocentric criteria as the basis for removing Indian children or placing them in non-Indian homes (Jacobs, *Generation 77-83*, 145-46). So it was ironic that the Navajo social

workers seemed to recommend placement of Jeremiah/Michael in the Carters' home based on the material disparities between the two homes and adherence to American gender norms. What was more important to the Navajo Nation, however, than the particular recommendations of the social workers was that it was the tribe itself, not the state of Utah, that would determine Jeremiah's best interests.

On the surface, too, the Navajo social workers seemed to lay greater emphasis on the three interests of the triad and to minimize the extended family and tribal stake in the adoption. They believed that it was essential to consider Jeremiah/Michael's wishes, since "he [was] no longer an infant that can more easily be moved from home to home" (Navajo Nation). And what Jeremiah/Michael wanted was for both families to "get along and not fight over him." Unsurprisingly, since he had lived with the Carters since he was three, he also preferred to remain with the Carters. At a subtler level, however, the Navajo social work team promoted a different, Navajo-centric way of resolving the dispute. They advised that the judge talk with Jeremiah/Michael privately. They also encouraged the Carter and the Saunders families to meet to work out an agreement rather than continue in an adversarial court battle (Navajo Nation).

The Navajo Tribal Court Ruling

The Navajo Nation Children's Court judge issued his final decision in October 1987 in a novel solution that rested on the adoption star rather than the triad. The judge gave the Carters permanent guardianship of Jeremiah/Michael but did not terminate Cecelia Saunders's parental rights. He gave Cecelia visitation rights: two weeks in the summer of 1988, four weeks in the summer of 1989, and six weeks every summer thereafter. She was also allowed visits on Thanksgiving and spring vacation. Jeremiah/Michael, now ten, would stay with the family he knew best, the Carters, but he would not permanently break ties with his Navajo family or tribe (Sitts). Five years of bitter legal wrangling had finally ended.

The Navajo court promoted a different kind of adoption, one that rested on carefully balancing multiple interests and maintaining ongoing communication between them. This contrasted sharply not only with the adoption triad but with its virtual erasure of the lines between adopted children and their birth mothers as well as the birth and adoptive families. The Carters were relieved, if perhaps a little unsettled, by the outcome. Their lawyer declared, "We really wanted to win legal adoption, but this is really no different the way we structured it" (Rosenstiel, "Utah"). Cecelia may have been disappointed that she could not have Jeremiah/Michael returned permanently to her family, but she told a reporter, "I'm still his legal mother. . . . at least he won't be out of my life and I won't be out of his" (Sitts). Before he got into the Carters' car to return to Spanish Fork, Cecelia hugged her son and told him she loved him and wanted the best for him. The Navajo

court's novel solution allowed Jeremiah/Michael's two mothers to recognize each other and their mutual interest in their son's welfare. Cecilia and Pat embraced twice, "both wiping away tears," before the Carters took Jeremiah/Michael back to their Utah home (Rotstein). According to Cecelia, the Carter and the Saunders families kept the lines of communication open during Jeremiah/Michael's childhood. Jeremiah/Michael also visited the Navajo reservation and his extended family frequently (Saunders). Although it must have been challenging, they carefully balanced the multiple interests at play in this Navajo boy's adoption.

The case had ramifications far beyond the principal players. It led to greater recognition of the Navajos' tribal interests and sovereignty, and it set a precedent for other tribes in their own efforts to implement ICWA. At the close of the trial, Dorsay declared, "This shows that our [tribal] courts can take care of [Indian child welfare] and handle it as well as any other state or federal court" (Sitts). The Utah Supreme Court had, indeed, upheld tribal sovereignty over child welfare when it ruled, "If tribal sovereignty is to have any meaning at all . . . it must necessarily include the right, within its own boundaries and membership, to provide for the care and upbringing of its young, a *sine qua non* to the preservation of its identity" (*Supreme*). This ruling was cited in the Holyfield case that was decided before the US Supreme Court in 1989. In that case, the Mississippi band of Choctaws successfully gained jurisdiction over the adoption of twins born to tribal members. The Choctaw tribal court made a similar decision to the Navajo court; it awarded custody to the white adoptive family but established visitation rights for the Choctaw family (*Mississippi*). In these and other ICWA cases, Indian nations gained recognition that tribal interests, as well as those of extended family members, must be considered in adoption decisions.

Conclusion

This case and others like it have relevance not only to the specific parties to the case or to American Indians generally but to all who study adoption. Indigenous conceptions of adoption, and their codification within ICWA, have much applicability beyond the Indian child welfare custody cases that periodically come before courts and provoke media outrage. Most child-welfare specialists and advocates today consider ICWA to be the gold standard of child welfare, an act that provides greater protections for birth parents, acknowledges the importance of extended family members, and recognizes the importance of culture and community to a child's best interests. These child-welfare experts believe its protections should be extended to all birth parents and children who come into state care, not just Indian children (*Amici*). ICWA's vaunted status among many social work practitioners gives the lie to liberal conceptualizations that have for too long considered children as independent entities for whom the law can easily determine their best interests

based on a universal liberal ideal. Indigenous conceptions acknowledge that all children are embedded in familial, cultural, political, and historical contexts—in a complex constellation of interests rather than a simple triad—that should not be ignored in determining the best long-term placements.

Another important way in which ICWA challenges the liberal paradigm of adoption is that it recognizes the interest that political entities—in this case, the tribe—have in the outcome of adoption cases. The liberal state, too, has long had an interest in the transfer of children from some families to others through adoption, but it has usually disguised its interest as one of an even-handed mediator. It is impossible to see the state in this neutral guise, however, when studying the history behind ICWA. The federal government promoted the adoption of Indian children by non-Indian families in the postwar era as a means to eliminate Indianness and to resolve the longstanding so-called Indian problem. The states, too, became involved in this project. Although the role of the state in the adoption of non-Indian children may be less obvious, the federal government and state child-welfare agencies have also been interested in promoting some families at the expense of others. Attention to Indigenous adoption helps us to see the role of the state in *all* adoption cases more clearly.

When we attend to the challenges Indigenous adoption makes to the liberal adoption triad, it becomes apparent that its recognition of adoption as a many-pointed star offers a better model for understanding *all* adoption. Birth mothers, adoptees, and adoptive parents are not just free-floating individuals on the adoption triad but are each part of larger collectivities of interests, some of which enjoy much greater power than others. The adoption triad obscures not only the multiplicity of interests involved in adoptive placements but also the inequalities and disparities that exist between these interests and the role of the state in favoring some interests over others. It may be time to replace the triad with a more appropriate metaphor.

Notes

1. There is no ideal term or agreed-upon terminology for the original inhabitants of North America. I use tribal nation designations when possible and “American Indian,” “Native American,” and “Indigenous” interchangeably when making more general references. Even though I fully realize that “white” is an invented racial term and a fluid categorization, I use the term to refer to descendants of Europeans living in the US. I sometimes refer to “non-Indian” or “non-Indigenous” people when I wish to include more than just “whites.”
2. See Javier; Freundlich and Lierberthal; and Sorosky, Baran, and Pannor.
3. See Briggs; Joyce; McLeod; Seligmann; and Yngvesson.
4. See Fixico; Ulrich; and Wilkinson.
5. See Adams; and Jacobs, *White*.

6. Congress and the BIA continued boarding schools for most Navajo and Native Alaskan children because states refused to invest in sufficient day schools in their sparsely populated communities (US Senate, Committee on Labor). The 1975 Indian Self-Determination and Education Assistance Act enabled many tribes to run their own schools.
7. See Garrett; Boxer; and Riggs.

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