A Better “Best Interests”: Immigration Policy in a Comparative Context

In Children’s Best Interests Symposium
American University
13 February 2020

Michele Statz, PhD
University of Minnesota Medical School
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MICHELE STATZ and LAUREN HEIDBRINK
Best Interests Standard in Context

• UNDRC
• CRC
• International refugee law
• US immigration law
• SIJ
Best Interests in Practice

• Pathologizing global youth
• “Ideal victims”
• Individual need over family unity
• Cultural and social contexts
Application of BIS in Other Settings

• Family law
• Indian Child Welfare Act (ICWA)
• Medical Context
• Abortion
Family Law

• Defining “participation”
• Diverse parties and values
• State by state differences

“While in theory [the best interests standard] appears enlightened, in practice custody decisions focus on parents rather than children and are marred by personal and cultural bias.”

Andrea Charlow
Indian Child Welfare Act (ICWA)

• Best interests defined via relationality
• “Microcosms of anxiety” and the rights of parents of color

“To protect the best interests of Indian children *and to promote the stability and security of Indian tribes and families*…”
“Within the context of family decisions…”

Age and experience

“If a parent’s decision is judged to be contrary to the child’s best interest, seeking state intervention to interfere with that decision is justified. As a result, the best interest standard has also become the standard by which physicians judge parental decisions…”

- Douglas Diekema
Abortion

• Technology
• Competence and support
A New Path Forward

A Best Interests Standard that:

- Underscores children’s unique age and experience-specific expertise
- Welcomes collaborative decision-making premised on the diverse competencies of all parties
- Does not defer to professional titles
- Recognizes the consequences of autonomous, decontextualized, and rushed readings of “best interests”
Youth as Experts of Their Own Lives
Cultural Experts / Cultural Mediators

- “The dignity of participation”
- Accountability
- Trust
Inclusive Best Interests Determinations