Restorative Legal Approaches: What is Justice In Your Language?

Sheldon Spotted Elk

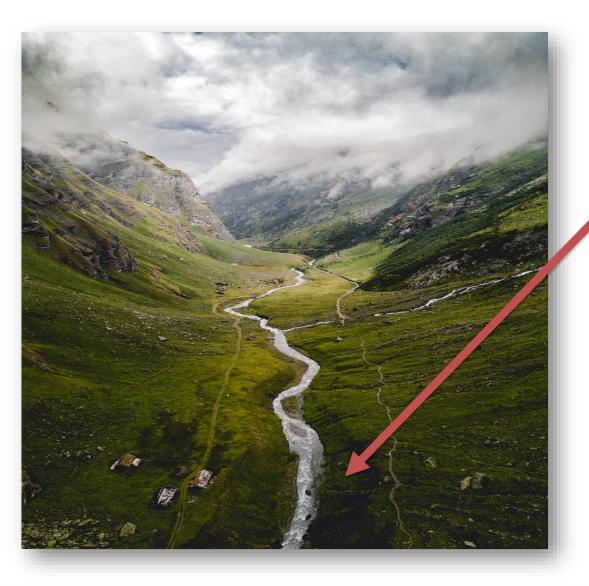
casey family programs

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Foster Care Alumni:

26,000 children age out of foster care annually.....

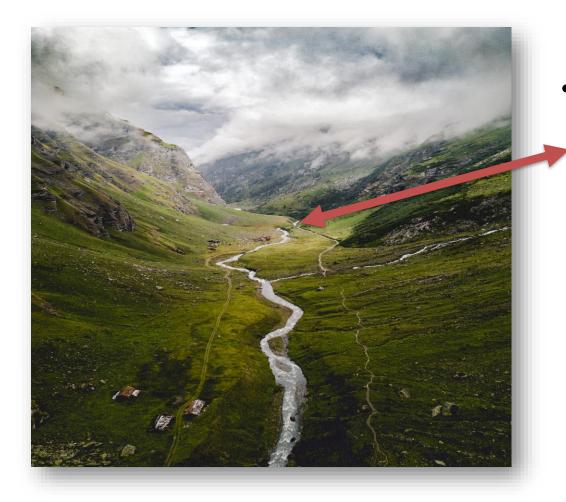
- 1 of 5 will become homeless after age 18
- ONLY 1 of 2 will be employed at age 24
- Less 3% will earn a college degree
- 71% of young women will become pregnant by age 21.



Public Health Child Welfare Systems

- <u>Downstream</u>
 <u>Results</u>:
 - Parenting;
 - Intra/Inter-personal conflict;
 - Family/cultural disconnection;
 - Drug/Alcohol use and abuse;
 - Child Abuse/Neglect;
 - Family disruption

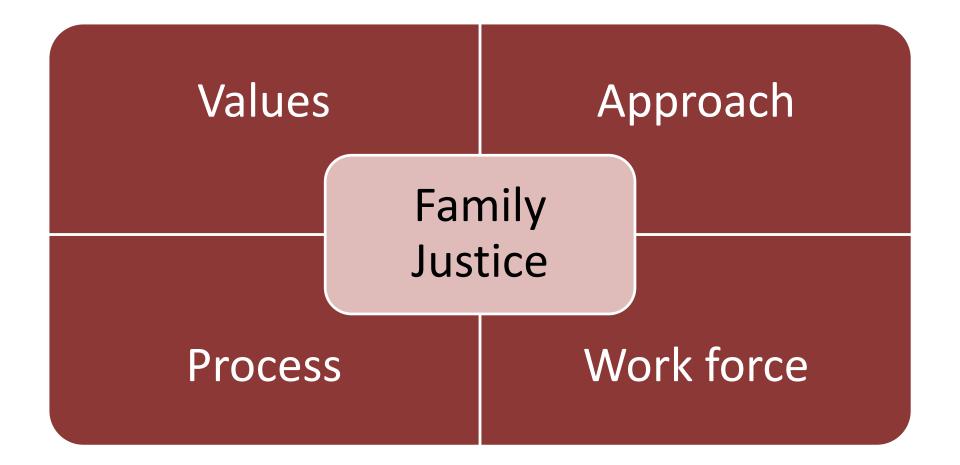
Public Health Child Welfare Systems



Upstream Factors:

- Income;
- Jobs;
- Food insecurity;
- Housing insecurity;
- Utilities (LIHEAP, TANF, Truancy);
- Access to health care;
- Family Planning;
- Access to early childhood education;
- Family/Community/Cultural Connection

Culturally Relevant Design



Menti meter

<u>Tribal Child Welfare -</u> Decolonizing

- Tribal children supported in community, culture, language and love.
- Impact of colonization, genocide, starvation, and forced reservations systems.
- Assimilation Boarding Schools. Adoption Placement. Relocation.
- Compounded trauma (Separation + trauma of loss of identity, culture, and language)



Decolonize - Indigenize

"Let us put our minds together and see what life we can make for our children." Sitting Bull, Hunkpapa Lakota

"In the colonial countries, ...the policeman and the soldier, by their immediate presencemaintain contact with the native ... It is obvious here that the agents of government speak the language of pure force" - Frantz Fanon



THE WRETCHED OF THE EARTH By Frantz Fanon A NEGRO PSYCHOANALYSTS STUDY OF THE PROBLEMS OF RACISM & COLONIALISM IN THE WORLD TODAY

American Exceptionalism – White Supremacy

- More than half (53 percent) of Americans say that the world would be much better off if more countries adopted American values and the American way of life.
- Nearly three-quarters (73 percent) of Americans agree that the US has been consistently virtuous in its actions abroad.



Historical Development of

Children's law



The best care for kids is community

| Status | Quality/Quantity of legal services | |
|--------------------------------------|---|--|
| Children as property | Property do NOT receive legal services | |
| Children as welfare recipients | Services only as the bureaucracy interests, or as the child's best interest. | |
| Children as rights based citizens | Benefit of independent legal counsel as a child demands. | |

M. Ventrell, Child Welfare Law and Practice: Representing Children, Parents, and State Agencies in Abuse, Neglect, and Dependency Cases, 3rd Ed., 193, 2016

"Examining the Legal Rep of Youth in Foster Care: Perspectives of Attorney and Attorney GALs" (2020)

| Child's Representation |
|--|
| 1) Communication with child client |
| 2) Contact |
| 3) Attorney attitude about foster care |
| 4) Relationship |
| 5) Foster Care knowledge |
| 6) Legal skills |

Differences American Justice Systems

in Approach Tribal Justice Systems

Top-down Power Dynamic

Communication is Rehearsed and Argumentative

Attorneys and Non-Resident Voices are Primary

Adversarial and Conflict Oriented; 'Winners and Losers'

Separation of Religion and Spirituality

Freeze-Frame Isolation on Addressing Particular Incidents

Strict Time Constraints

Focus on Individual Rights

Punitive / Removal of Offenders

Penalties Issued By and For the State with Vindication to Society **Holistic Participation and Importance**

Communication is Fluid and Essential: 'Words from the Heart, Enter the Heart'

Local Community Voices are Primary

Oriented Toward Resolution and Healing of Broken Relationships

> Spiritual Realm is Invoked in Ceremonies and Prayer

Review of Problems and Contributing Factors in Entirety, Seeking Comprehensive Resolution

Taking Time is Necessary; Long Silences and Patience are Valued

Focus on Community

Corrective / Offenders are Held Accountable, Responsible for Change, and Reintegrated

Customary Sanctions Used to Repair Victim, Offender, and Community Relationship – Forgiveness

Ada Pecos Melton, Indigenous Justice Systems and Tribal Society 79 Judicature 126 (1995)

Cultural Based Law



Circle of Friends, Escalante, Utah

Legal systems.

What are Indigenous children's Rs

- -Rights
- -Reciprocity
- -Responsibilities

Children as Medicine



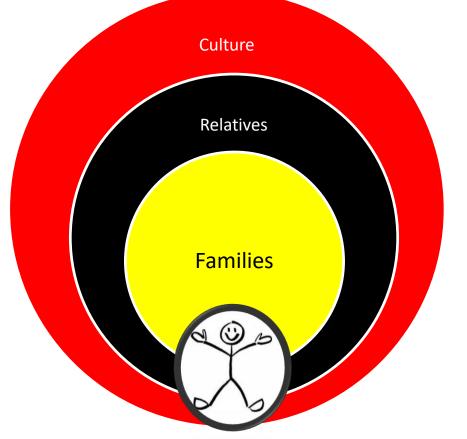
Richard West, Senior (*Southern Cheyenne*) – The 3rd Day



Sources of Law:

- Values
- Story
- Ceremony
- Song
- Elders

Why the **Gold Standard** of child welfare?



Active efforts to keep children safely with their families or to reunify them with their families. **Placement Preferences** to keep them connected to identity and culture. All within a community context (Transfer).

Tribal Child Dependency Types of

Jurisdiction

| | Child Protection Services (CPS) | Court Adjudication | Case Management |
|--------------------|---|---|--|
| 574 Tribal Nations | TRIBAL CPS/ Tribal Police (P.L. 638) | Tribal Courts (~ 400 Tribal Courts) | Tribal Social Services/Family Services |
| State Government | State CPS / State Police (<i>P.L. 280</i>) (e.g. Tribal-State MOUs, sec. 1919, Title IV-E "pass- thru") | State Courts (ICWA cases) | State DCFS (ICWA Cases) Co-manage with Tribal worker |
| Federal Government | BIA Social Services/BIA Police Enforcement | CFR Courts (Southern Plains (6 tribes), Western Region (2 Tribes), Eastern Oklahoma (5 Tribes)) ~15 Tribes | BIA Social Services |

Tribal Code- Best Interest of the Child

- 78% No definition of best interest of the child
- 15% includes culture considerations in the best interest of the child

Placement Preferences

- 30% Tribal specific placement preferences
- 70% No placement preferences or adopt ICWAs placement preferences.
 Efforts to prevent removal:
- 67% Tribal Codes have no efforts specified

