



# Restorative Legal Approaches: *What is Justice In Your Language?*

Sheldon Spotted Elk

# SAFE STRONG SUPPORTIVE

casey family programs

SAFE CHILDREN STRONG FAMILIES SUPPORTIVE COMMUNITIES SAFE CHILDREN STRONG FAMILIES SUPPORTIVE COMMUNITIES SAFE CHILDREN STRONG FAMILIES SUPPORTIVE COMMUNITIES SAFE CHILDREN STRONG FAMILIES SUPPORTIVE COMMUNITIES SAFE CHILDREN STRONG FAMILIES SUPPORTIVE COMMUNITIES SAFE CHILDREN STRONG FAMILIES SUPPORTIVE COMMUNITIES

safe children | strong families | supportive communities

# 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.*













# Tribal Child Welfare - *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)







# 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.





# *“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



<b><u>Differences</u></b> American Justice Systems	<b><u>in Approach</u></b> Tribal Justice Systems
<b>Top-down Power Dynamic</b>	<b>Holistic Participation and Importance</b>
<b>Communication is Rehearsed and Argumentative</b>	<b>Communication is Fluid and Essential: 'Words from the Heart, Enter the Heart'</b>
<b>Attorneys and Non-Resident Voices are Primary</b>	<b>Local Community Voices are Primary</b>
<b>Adversarial and Conflict Oriented; 'Winners and Losers'</b>	<b>Oriented Toward Resolution and Healing of Broken Relationships</b>
<b>Separation of Religion and Spirituality</b>	<b>Spiritual Realm is Invoked in Ceremonies and Prayer</b>
<b>Freeze-Frame Isolation on Addressing Particular Incidents</b>	<b>Review of Problems and Contributing Factors in Entirety, Seeking Comprehensive Resolution</b>
<b>Strict Time Constraints</b>	<b>Taking Time is Necessary; Long Silences and Patience are Valued</b>
<b>Focus on Individual Rights</b>	<b>Focus on Community</b>
<b>Punitive / Removal of Offenders</b>	<b>Corrective / Offenders are Held Accountable, Responsible for Change, and Reintegrated</b>
<b>Penalties Issued By and For the State with Vindication to Society</b>	<b>Customary Sanctions Used to Repair Victim, Offender, and Community Relationship – Forgiveness</b>

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

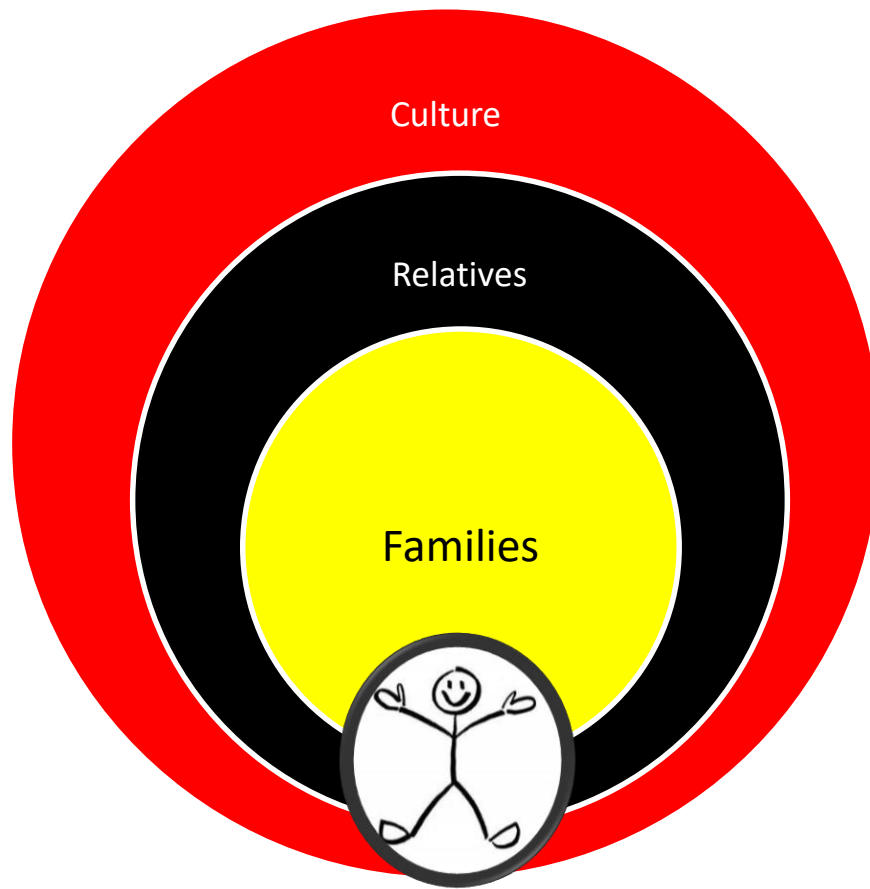








# Why the *Gold Standard* of child welfare?



**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 (P.L. 280) (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

