

# Using Culture and Natural Law To Strengthen a Modern Justice System

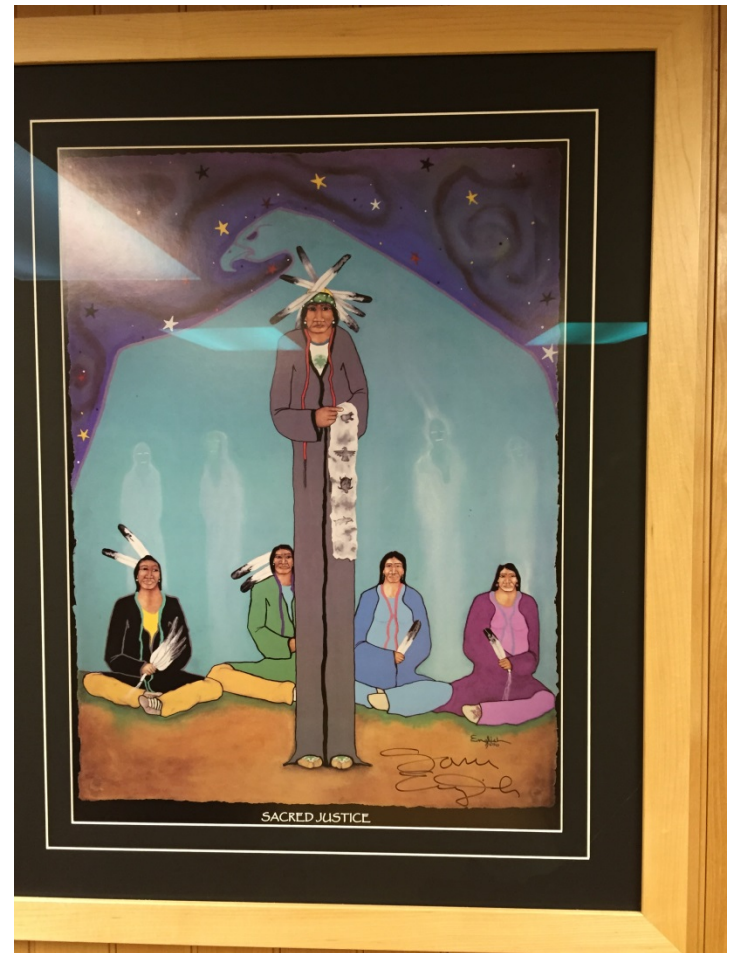
Native American Rights Fund

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# Indigenous Peacemaking Initiative

- Priorities:
  1. Models from other tribes
  2. Training
  3. Technical Assistance
  4. Advocacy



# American justice is in crises:



- Interestingly America is looking at traditional Native American processes such as Peacemaking, Sentencing Circles and other dispute resolution processes
- The Native American lens—the traditional dispute resolution process is not “alternative”.
- It has been a way of life for indigenous communities for millenia

# *Tribal Sovereignty, the Impact of Federal Policy:*

- Pre-contact: tribal sovereign governments intact, Treaty making period
- Movement to the reservation - 1850-1887
- Allotment/Assimilation - 1887-1934
- Indian Reorganization Act - 1934-1953
- Termination and Relocation - 1953-1968
- Tribal Self-Determination and Tribal Governance 1968 to present



# Understanding the impact of failed federal policies:

designed to:

- assimilate
- terminate

# Fairbanks: 5 guiding principles:

- 1. We have been facing the wrong way
- 2. Understanding the impact of federal policies and the impact on Native America
- 3. Understanding the significance of oral tradition and Native American language as the common law of Tribes
- 4. Re-educate the educated
- 5. A call for consensus, cooperation, comity and unity

– Cheryl Fairbanks, UNM Law School



# Turn around.....

- Placing value on our ways, our traditions, culture and way of life
- We have been looking to the outside for answers ...
- It's time to **turn around**
- And look within our respective tribal communities for the answers
- **Draw upon tribal values, traditions and law in a contemporary context**

# We have been facing the wrong way....

- A replication society
  - Adoption of federal and state court models
- A “be-like” mentality
- Our courts have been strongly criticized for this:

“A pale replication of American justice-in both conception and operation some of the tribal courts are little more than pale copies of the white system. All remedies to their operational problems are directed toward making them better copies.” ~ Samuel J. Brakel

- modern court assessments?



# Re-educate the educated

- Education has always been valued in Indian country.
- We must pause and rethink our education and systems... due to the western education model, many of our indigenous concepts were deliberately destroyed and forbidden
- Education was the way to assimilation and termination; now it is the greatest tool for the protection and strengthening of tribal sovereignty.
- Elders-keepers of the wisdom
- Understanding the significance of oral tradition
- Never to replicate past termination and assimilation policies

# New/Old Spirit of :

## Unity, consensus, cooperation and comity

- **Universal law of respect.**
- **Consensus:** A process of [decision-making](#) that seeks widespread agreement among group members; [general](#) agreement among the members of a given group or community, each of which exercises some [discretion](#) in decision-making and follow-up action.
- **Comity:** In law, specifically refers to legal [reciprocity](#)—the principle that one jurisdiction will extend certain courtesies to other nations (or other jurisdictions within the same nation), particularly by recognizing the validity and effect of their [executive](#), [legislative](#), and judicial acts.
- **Unity:** is the state of being undivided or unbroken.



# Indigenous concepts related to peacemaking:

- Using **custom** is essential for the cultural survival of Indian people and nations;
- **Indian common law** comes directly from the native language and our cultural viewpoint—it becomes the distinct unique law of each Tribe;
- The **elders** are valued for their knowledge and wisdom and serve as a resource for the process;
- The **oral tradition**—has been the glue that has kept our people together in the face of severe termination policies of the federal government







# Peacemaking? Why?

- Whenever you have a **continuing relationship**
- **No anonymity** in Indian country;
- **Process** is critical and lends itself to healing
- The **law evolves** from the process
- **Language** is key
- **Consensus** is necessary
- Brings a **spiritual element** to difficult situations



**“Tribal Courts are important to  
community and to nation building.  
They’re the mechanisms to promote  
peace.”**

**~ Judge Joseph Flies-Away  
Hulapai**



The peacemaking  
process is related to the  
concept of k'e, or  
respect. K'e means to  
restore my dignity, to  
restore my worthiness.”

~ Robert Yazzie, Chief Justice  
Navajo Nation



“The tribal courts and  
our indigenous concepts  
of justice shall be the  
guardians of our people,  
our communities and  
our tribal sovereignty”

~ Rae Nell Vaughn  
Former Chief Justice  
Mississippi Band of Choctaw Indians



# Holyfield:

“...we must defer to the experience, wisdom, and compassion of the tribal courts to fashion an appropriate remedy.”

~ *Holyfield*, 490 U.S. at 54.



# A paradigm shift for the future: indigenous justice for our youth:

- “...working with youth in crises is challenging---we, as judges, have options to use a therapeutic model, such as peacemaking, to ensure an effective process. Our Native youth will be our upcoming leaders. .. they will be the ones to carry the torch for us... to protect our tribal sovereignty in future years. Our Choctaw values and traditional laws continue to pave the way for our Tribe’s future.”

~ Hon. Kevin Briscoe

Mississippi Band of Choctaw Indians

Chief Justice







# Why Does it Work?

- Sense of belonging
- Self Esteem/Dignity
- Support from group, family
- Mutually derived/consented outcomes
- Focus on the problem, healing, not labelling the person as bad.
- Reflects who we are

# Success in Many Kinds of Disputes:

- Domestic-family disputes-restitution
- Probate-simple; tribal law precedent
- Trespass, Property disputes
- Commercial transactions
- Employee-employer disputes
- IDR-“Inter” dispute resolution [within companies/organizations/tribes, etc.]
- Criminal
- Repatriation case
- Child custody-Abused/Neglected (per children’s code)
- Domestic violence-forgiveness case
- Tribal, state, national and international



# Thank You! - Wopila



- [www.narf.org/peacemaking](http://www.narf.org/peacemaking)

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