



# TRADITION & TRANSITION:

MICHAEL ELLER



*For many American Indian nations, law is a way of life taught through oral traditions to pass on the knowledge, skills, and abilities to maintain communal life. Indian people consider youth to be their greatest resource, in need of nurturing and rearing in a loving fashion by all tribal members. After centuries of painful loss of traditional ways that supported the strength and wisdom of young people—even those who may have broken the laws of their community—tribes are bringing these healing customs back to life. Ada Pecos Melton shines light on how tribes are critically examining their justice systems, and working to make them more reflective of who they are as Indian people.*



# Healing Justice for American Indian Youth

**I**NDIGENOUS JUSTICE SYSTEMS existed well before European contact, and many still remain intact today. Through warfare and political might, however, conquering nations such as Spain, France, and later the United States coerced widespread changes in the legal systems of American Indian/Alaskan Native (AI/AN) tribes. Some tribes have replaced their indigenous law systems with those based on American legal codes. Others have tried to maintain traditional ways by developing hybrid legal systems that blend modern and indigenous approaches to fostering the healing of youth and the community as a whole.

It is important to understand that fundamental cultural differences exist between the US legal system and that of tribal courts. For example, the “separation of powers” articulated in the US Constitution doesn’t tolerate a governor serving as judge, which can occur in traditional Pueblo courts in New Mexico. Tribes with multiple

justice systems may have judges who don’t have law degrees, but who do have extensive knowledge about tribal culture, customary laws, and traditions. Modern tribal courts allow attorneys to practice, but in traditional courts, attorneys aren’t present; tribal customs allow only those with a continuing interest in the well-being of the individuals involved to attend and participate, which effectively rules out those who expect monetary compensation.

## FAMILY AND COMMUNITY

For many AI/AN tribes, the preferred process for handling youth misconduct is to settle matters in a traditional manner. For example, most pueblos in the Southwest continue to rely on their traditional governing officials to mediate cases involving minors. These officials provide support to the youth’s family and relatives. Extended family members often accompany youth to hearings and engage in the



## Principles of Indigenous Justice Systems

- **THESE ARE HOLISTIC SYSTEMS.** with law and justice being a part of the whole society. Law is learned as a way of life. Communal rights are foremost in this system to maintain peace, harmony, and balance in the community.
- **COMMUNICATION IS FLUID.** Talk and discussion in the native language is essential to build trusting relationships that will promote resolution and healing for victims and their families, community members, and offenders and their families. Therefore, problems are viewed in their entirety, and all the contributing factors are examined.
- **PROCESS IS BASED ON DISTRIBUTIVE JUSTICE.** The process is inclusive and engages family and community members to participate in problem-solving and serve as resources for the victim and/or offender and to the system. The spiritual realm is invoked through ceremony and prayer to provide guidance, open-mindedness, and strength to all participants.
- **REPARATIVE PRINCIPLES ARE USED,** which require corrective action to be taken by the offender. This makes the offender accountable and responsible for change and making amends.
- **RESTORATIVE PRINCIPLES ARE USED,** which require offenders to acknowledge the hurt they have caused and to apologize and ask for forgiveness from victims, affected family members, and the community.
- **THE PROCESS IS NOT LIMITED BY TIME.** Long silences are accepted, and patience is valued. Focus is placed on the right of offenders and victims to be heard, to heal, or to make things right again.

problem-solving and resolution process. Much of this process is led by adults whose primary purposes are to guide discussions that inform decision-making, and to help the young person take responsibility for his or her wrongdoing through apology and agreement to make reparative measures.

Most tribal and specialty courts thus involve parents, family, and community more than mainstream court programs do. This includes “Healing to Wellness” forums—a variation of drug courts that uses holistic indigenous philosophies to address the physical, mental, emotional, and spiritual aspects of offenders’ lives. Community involvement of this kind is vital for tribes: The very nature of being a tribe defines it as a cohesive community with each member having shared responsibility for raising young people. The structure of tribal courts thus supports greater inclusion of the community, especially in using distributive justice principles that hold each member equally accountable for accepting blame, problem-solving, designing solutions, accountability for compliance, and enforcement of decisions.

In some instances, tribal councils may call in parents to explain reasons for their child’s or their own non-compliance with court decisions. Others conduct a series of circles over several weeks to keep a pulse on the process and to monitor progress. These programs are more family-focused than focused on the juvenile offenders themselves, which allows for broader review of all family factors that may be contributing to difficulties in meeting agreements.

### YOUTH TAKING THE LEAD

The Tanana Chiefs Conference is assisting fourteen Alaska Native villages to establish youth courts that usually follow two forms: Circle Style or Panel Style. The circle approach allows the accused and victims to come together with community members to discuss the presenting problem and all other contributing factors not directly identified in a written petition or referral. This process encourages the youth, family, relatives, and/or other community members to participate in discussions and formulate plans. The Panel Style involves three to four youth plus one regular tribal court judge to sit together in hearing cases. After everyone has had a chance to speak, they are excused so the youth judges can make their decisions. This is done through private deliberations until consensus is reached.

# Prison Reform – Not an Oxymoron

THE UNITED STATES LOCKS UP a higher percentage of its citizens than any country in the world; its prison system has grown from 200,000 in 1970 to nearly two million today. The latest figures from the Bureau of Justice Statistics (June 2002) show that 67.5 percent of the 272,111 inmates released from state prisons in 1994 were rearrested within three years, compared to 62.5 percent in 1983. More than 80 percent of them ended up back behind bars. Historically, and now in an increasingly conservative political climate, the philosophy of incarceration in this country has been punitive (and economic for those who build the prisons).

Few other options exist, but one that does is revealing the potential for turning violent offenders into law-abiding citizens and perhaps even emissaries for spiritual growth.

In the San Francisco County jail system, an innovative program called **RSVP—Resolve to Stop the Violence Project**—is thumbing its nose at the dominant model of retributive justice in this country. The core of the project has three components:

1. **Offender Restoration**, a program designed to hold offenders accountable.
2. **Survivor Restoration**, providing direct services to survivors of violent offenders.
3. **Community Restoration**, a pioneering effort in community education and mobilization.

The use of the word “restoration” (as opposed to rehabilitation) is not by accident, reflecting the holistic intent of RSVP. The “Manalive” curriculum, for example, guides offenders through a cognitive process to help them understand the roots and dynamics of their violent behavior and to shift their attitudes. “Loss of Innocence” group therapy sessions allow inmates to explore their personal history of violence and victimization and gain better self-understanding. RSVP also offers victim-offender mediation, a mentoring program, community theater, a gardening program, poetry writing, acupuncture, yoga, and guided meditation (staff are also encouraged to participate). Available as well to inmates through RSVP are substance abuse treatment services, general education, post-release services, and job training programs.

Harvard University completed a three-year study of RSVP, and found that the re-arrest rates of “graduates” who were in the program for at least four months dropped a remarkable 80 percent. The program just won a coveted Innovation in American Government Award from the Ash Institute for Democratic Governance and Innovation at Harvard. It may be the breakthrough such programs need to establish credibility in our “eye for an eye” justice system.

— Editors

*(Portions of this piece were drawn from “The Yoga of Redemption” by Matthew Gilbert, in the April 2005 issue of Spirituality & Health magazine.)*

Another application of indigenous legal principles is the Gila River Teen Court in Arizona. This diversion program is for first-time, nonviolent offenders, ages twelve to seventeen. Through specially designed consequences, the program allows youth offenders to repair the harm they have caused and to be held accountable for their actions, without being incarcerated.

Since many Gila River youth are unaware of the tribe’s background or cultural values, youth in the program, as part of teen court requirements, must attend or participate in a tribal cultural event. The premise is to make them aware of the sacred history of their community.

The Gila River Teen Court is not just for youth offenders. The program has also attracted numerous young people from the general community who participate as volunteers in order to model appropriate behavior. All youth offenders are also given an invitation to stay with the teen court as volunteers once they’ve completed all of the justice requirements that were assigned to them.

## STRENGTHENING CULTURE

Indian tribes have the utmost responsibility for ensuring that young people have access to culturally relevant services. In record numbers, Indian youth themselves are asking tribal governments and justice systems to revitalize indigenous approaches to help those who are troubled. Many youth want their own tribe’s cultural beliefs and traditions to enable them to succeed at home, school, communities, and in mainstream society. With dedicated support from governments and private and nonprofit organizations, Indian nations are actively seeking to ensure a safer community where children, youth, and families live peaceably with one another.



**ADA PECOS MELTON, MPA**, is an enrolled member of the Pueblo of Jemez. She has served as a juvenile probation officer and director of tribal justice programs. She is President of American Indian Development Associates, a research, training, and technical assistance firm in Albuquerque, New Mexico.