

# MA'AT AMERICAN ABORIGINE TRIBAL NATION

## Tribal Court Justice System

Established May, 2022

### MAAT Family Council (MFC)

MFC's are really family forums, such as family gatherings and talking circles, and are facilitated by family elders or community leaders. Matters usually involve family problems, marital conflicts, juvenile misconduct, violent or abusive behavior, parental misconduct, or property disputes. Customary laws, sanctions, and practices are used. In our case, we focus on the 7 Principles of Ma'at in addition to the Universal Laws. Individuals are summoned to these gatherings following traditional protocols initiated by our chosen elder(s). In most cases, the gathering is convened by the aggrieved person's family. It is up to the family elder to personally notify the accused and his or her family of the time and place of the gathering. If the gathering is online, the family elder can opt to allow a member of Ma'at American Aborigine Tribal Nation to set up the meeting and notify those involved.

The elders are selected as spokespersons responsible for opening and closing the meetings with prayers. During the meeting, each side has an opportunity to speak. The victim may speak on his or her own behalf, and the family may assist in conveying the victim's issues. Extended family members often serve as spokespersons if the victim is very young or vulnerable. Similarly, a spokesperson may be designated to speak on behalf of the accused, especially if the accused is a juvenile or if other circumstances prevent the accused from speaking. When the family forum cannot resolve a conflict, the matter may be pursued at any one of the other courts. Offender compliance is mandatory and monitored by the families involved. It is discretionary for decisions and agreements to be recorded by family. In the case of an online meeting, the family can request that the meeting be recorded.

### MAAT General Community Council (MGCC)

MGCC, which are really community forums, require more formal protocols than the family forums. However, they draw on the families' willingness to discuss the issues, events, or accusations. These courts are mediated by tribal officials or representatives. A citizen board serves as peacemakers or facilitators. As in the MFC, customary laws, sanctions, and practices are used such as the 7 Principles of Ma'at and The Universal Laws. Personal notice is given by tribal representatives to the individuals, and families involved as to the date, time, and location. If the meeting is online, zoom information will be provided to those involved either via email or by mail, if needed.

In the community forum, the tribal representative acts as facilitator and participates in the resolution process along with the offender and victim and their families. As with the family forum, prayers are said at the beginning and at closure. An unresolved matter may be taken to the next level, however, we will offer an appeal process for the community forum. Members involved always have the option to file formal charges in the MAAT Tribal Court or if desired, the matter can be pursued through the traditional court. Offender compliance is mandatory and monitored by the families involved and tribal officials.

## MAAT Special Community Council (MSCC)

The MSCC acts as an appeals for problems/conflicts from the MGCC. Victims or offenders not satisfied with the resolution can appeal and have their matters heard. However, all decisions made by the MSCC are final and binding.

## MAAT Tribal Court (MTC)

MTC is our traditional court that incorporates some modern judicial practices to handle criminal, civil, traffic, and juvenile matters, but the process is similar to the community forums. Court matters are initiated through written criminal or civil complaints or petitions. Defendants can be accompanied by relatives to the hearings. If the hearing is online, relatives can attend, in addition to anyone with a legitimate interest in the matter will be allowed to participate from arraignment through sentencing. Our heads of tribal government preside and are guided by customary laws and sanctions, in addition to the 7 Principles of Ma'at and The Universal Laws. The Court will, if needed, institute written criminal codes with prescribed sanctions to be used. Offender compliance is mandated and monitored by the tribal officials with assistance from the families. Noncompliance by offenders may result in more punitive sanctions such as arrest and confinement. Defendants will be notified in writing. Only in specific cases can the matter be appealed before the tribal council. The MTC records proceedings and issues written judgment orders.

Our MFC incorporates indigenous justice methods as an alternative resolution process for juvenile delinquency, child custody, victim-offender cases, and civil matters. It is recommended to use the family and community forums for matters that are highly interpersonal, either as a diversion alternative, as part of sentencing, or for victim-offender mediation.

## Our Court Methodology

We use an indigenous paradigm, not the American paradigm in the current courts.

Our Indigenous Justice paradigm vs. The American Justice paradigm

(From article: Melton, Ada Pecos (2005). Indigenous Justice Systems and Tribal Society. In Wanda D. McCaslin, ed., *Justice as Healing: Indigenous Ways*. Writings on Community Peacemaking and Restorative Justice from the Native Law Centre. St. Paul, MN: Living Justice Press. Pp. 108-120)

## **The American Court paradigm**

The American paradigm has its roots in the world view of Europeans and is based on a retributive philosophy that is hierarchical, adversarial, punitive, and guided by codified laws and written rules, procedures, and guidelines. The vertical power structure is upward, with decision making limited to a few. The retributive philosophy holds that because the victim has suffered, the criminal should suffer as well. It is premised on the notion that criminals are wicked people who are responsible for their actions and deserve to be punished. Punishment is used to appease the victim, to satisfy society's desire for revenge, and to reconcile the offender to the community by paying a debt to society. It does not offer a reduction future crime or reparation to victims.

In the American paradigm, the law is applied through an adversarial system that places two offering parties in the courtroom to determine a defendant's guilt or innocence, or to declare the

winner or loser in a civil case. It focuses on one aspect of a problem, the act involved, which is discussed through adversarial fact finding. The court provides the forum for testing the evidence presented from the differing perspectives and objectives of the parties. Interaction between parties is minimized and remains hostile throughout. In criminal cases, punitive sanctions limit accountability of the offender to the state, instead of to those he or she has harmed or to the community.

In the American justice paradigm, separation of powers and separation of church and state are essential doctrines to ensure that justice occurs uncontaminated by politics and religion. For many tribes, law and justice are part of a whole that prescribes a way of life. Invoking the spiritual realm through prayers is essential throughout the indigenous process. Restoring spirituality and cleansing one's soul are essential to the healing process for everyone involved in a conflict. Therefore, separation doctrines are difficult for tribes to embrace; many find it impossible to make such distinctions. Whether this is good or bad is not the point. It is, however, an example of the resistance of indigenous people to accept doctrines or paradigms that contradict their holistic philosophy of life.

### **The Indigenous Justice Paradigm**

The indigenous justice paradigm is based on a holistic philosophy and the world view of the aboriginal inhabitants of North America. These systems are guided by the unwritten customary laws, traditions, and practices that are learned primarily by example and through the oral teachings of tribal elders. The holistic philosophy is a circle of justice that connects everyone involved with a problem or conflict on a continuum, with everyone focused on the same center. The center of the circle represents the underlying issues that need to be resolved to attain peace and harmony for the individuals and the community. The continuum represents the entire process, from disclosure of problems, to discussion, and resolution, to making amends and restoring relationships. The methods used are based on concepts of restorative and reparative justice and the principles of healing and living in harmony with all beings and with nature.

Restorative principles refer to the mending process for renewal of damaged personal and communal relationships. The victim is the focal point, and the goal is to heal and renew the victim's physical, emotional, mental, and spiritual well-being. It also involves deliberate acts by the offender to regain dignity and trust, and to return to a healthy physical, emotional, mental, and spiritual state. These are necessary for the offender and victim to save face and to restore personal and communal harmony.

Reparative principles refer to the process of making things right for oneself and those affected by the offender's behavior. To repair relationships, it is essential for the offender to make amends through apology, asking forgiveness, making restitution, and engage in acts that demonstrate a sincerity to make things right. The communal aspect allows for crime to be viewed as a natural human error that requires corrective intervention by families and elders or tribal leaders. Thus, offenders remain an integral part of the community because of their important role in defining the boundaries of appropriate and inappropriate behavior and the consequences associated with misconduct.

## Key Points of Our Court Process

1. Instead of cases or causes, the courts have Problem/Conflict (PC) numbers. They start with the letters of the court to which they are assigned or requested;
2. Resolution and restoration is the goal for victim and offender;
3. The courts institute a pro-action/remedy process;
4. Issue/s must be presented in writing by victim, victim's family or representative, or person wishing to resolve a problem/conflict;
5. No one is turned away;
6. Monetary damages, if applicable, only when restitution must occur;
7. After resolution of each PC, determinations should be made as to what changes can be put in place or recommended in tribal life, the individuals' lives (victim and offender), or community, to prevent recurrences;
8. Jurisdiction implies members of tribe, not regional or territory;
9. Instead of judges, the courts use Law and Justice Tribal Leaders (LJTL);
10. All LJTLs receive a monthly stipend for their volunteer service;
11. Administrative office received 5% of court fees;
12. Court fees are temporarily imposed to cover time and resources used;
13. Part of offender's restitution is to cover victim's court filing fees.

## Tribal Concepts To Remember (applies to all utilizing Ma'at Tribal Courts)

(From article: Melton, Ada Pecos (2005). Indigenous Justice Systems and Tribal Society. In Wanda D. McCaslin, ed., Justice as Healing: Indigenous Ways. Writings on Community Peacemaking and Restorative Justice from the Native Law Centre. St. Paul, MN: Living Justice Press. Pp. 108-120)

### **Law As A Way of Life**

The concept of law as a way of life makes law a living concept that one comes to know and understand through experience. Law, as life, is linked to the elaborate relationships in many tribal communities. In some tribes it is exemplified by tribal divisions that represent legal systems prescribing the individual and kin relationships of members and the responsibilities individual and group members have to one another and to the community. For example, in several Pueblo tribes, one is born into one of two moieties, or tribal divisions, decided by patrilineal lines. A woman can change membership only through marriage, when she joins her husband's moiety. Males generally cannot change their moiety, unless it is done during childhood through adoption or if their mother remarries into the opposite moiety. This illustrates how tribal law becomes a way of life that is set in motion at birth, and continues through an individual's life and death.

The indigenous approach requires problems to be handled in their entirety. Conflicts are not fragmented, nor is the process compartmentalized into pre-adjudication, pretrial, adjudication, and sentencing stages. These hinder the resolution process for victims and offenders and delay the restoration of relationships and communal harmony. All contributing factors are examined to address the underlying issues that precipitated the problem, and everyone affected by a problem participates in the process. This distributive aspect generalizes individual misconduct or criminal behavior to the offender's wider kin group, hence there is a wider sharing of blame and guilt.

The offender, along with his or her kinsmen, are held accountable and responsible for correcting behavior and repairing relationships.

### **Differences in Justice Paradigms**

American Justice Paradigm	Indigenous Justice Paradigm
Vertical	Holistic
Communication is rehearsed	Communication is fluid
English language is used	Native language is used
Written statutory law derived from rules and procedure, written record	Oral customary law learned as a way of life by example
Separation of powers	Law and justice are part of a whole
Separation of church and state	The spiritual realm is invoked in ceremonies and prayer
Adversarial and conflict oriented	Builds trusting relationships to promote resolution and healing
Argumentative	Talk and discussion is essential
Isolated behavior, freeze-frame acts	Reviews problem in its entirety, contributing factors are examined
Fragmented approach to process	Comprehensive problem solving and solutions
Time-oriented process	No time limits on the process, long silences and patience are valued
Limits participants in the process and solutions	Inclusive of all affected individuals in the process and solving problem
Represented by strangers	Representation by extended family members
Focus on individual rights	Focus on victim and communal rights
Punitive and removes offender	Corrective, offenders are accountable and responsible for change
Prescribes penalties by and for the state	Customary sanctions used to restore victim-offender relationship
Right of accused, especially against self-incrimination	Obligation of accused to verbalize accountability
Vindication to society	Reparative obligation to victims and community, apology and forgiveness

## **Characteristics of Indigenous Law**

Common terms or references to the law of indigenous societies include customary law, indigenous law, native law, and tribal or native law ways. All refer to the same concept.

Customary law is generally derived from custom. Custom in this sense means a long-established practice that has acquired the force of law by common adoption or acquiescence; it does not vary.

Tribal common law is based on the values, mores, and norms of a tribe and expressed in its customs, traditions, and practices. In some tribes, the tribal common law has been set out in different court decisions and written opinions over time and has become case law. <sup>12</sup> Among several Pueblo communities, the matrilineal system holds that property belongs to the female. In a divorce or separation, property is divided according to the matrilineal definitions of property ownership and is written into the decision of the traditional or tribal court. Similarly, Navajo courts incorporate Navajo common law in decisions in probate, criminal, and child custody cases, and marital conflicts.

For many tribes along the Northwest coast such as the Yurok, customary laws dictate the areas where families can conduct their fishing, hunting, and gathering. These areas are passed down from one generation to the next. When someone fishes in another family's area, it is considered an affront to the entire family. By custom, the wronged family convenes a family forum as the proper way to handle the matter and to request compensation. Compensation may be with fish, fishing gear, feathers, hides, beadwork, traditional clothing, or other forms of payment.

Among several Pueblo communities, it is customary for discipline to be administered by the fiscal, who is responsible for maintain the peace and overseeing the welfare of children and youth. It is a general practice for parents to summon the fiscal when their children are unruly or misbehaving. The fiscal advises the children about the consequences of their misconduct and may reprimand them or refer them and their parents to services such as counseling.

In many tribes, information, beliefs, and customs are handed down orally or by example from one generation to another. <sup>14</sup> For example, in the Minto Tribal Court of Alaska the resolution process involves a segment dedicated to "traditional counseling" by the facilitator or presiding judge. There is a general practice of "advising giving" in the traditional courts of the Pueblos and the "talking to" in the Navajo peace making system. This segment is traditionally set aside for the spokespersons or tribal officials to speak of community values, mores, and the consequences of misbehavior or misconduct. Often these are conveyed in parables or creation narratives and beliefs. Advice is given about harboring vengeful feelings, and everyone is encouraged to renew relationships.

## **The Indigenous Justice Process**

Indigenous methods of conflict resolution include traditional dispute resolution, peace-making, talking circles, family or community gatherings, and traditional mediation, described only by the language of the tribal community. All these refer to the methods of resolving problems and to the methods of restorative and reparative justice.

The structure of relationships in many tribal communities is paramount to a legal system exemplified by the clan system. Tribal law determines clan identification, which is often matrilineal. Among Pueblo communities, moiety and clan affiliations determine for which group an individual will dance, sing, or hunt in social activities, which religious or medicine groups one may join, which political positions one may hold, whom one may court or marry, or what property one may own. The clan system regulates the behavior of its members. The interlocking relationships in tribal communities often determines the flow of how problems are handled.

For example, in many tribal communities, parents and the extended family are expected to nurture, supervise, and discipline their children. When parental misconduct occurs, such as with physical or sexual abuse or neglect, the parents and extended family convene through the leadership of an elder to address the matter. In a minor case of physical abuse or neglect, the family forum is used. The distributive aspect is invoked extensively to ensure protection of the children and to monitor and enforce proper parental behavior and responsibility, which is regulated by the family. More serious cases may involve tribal officials.

In the family and community forums and the traditional courts, those accused of wrongdoing are required to give a verbal account of their involvement in an incident, whether or not they admit to the accusations. <sup>15</sup> This verbal account is key in discovering the underlying factors precipitating the problem. It requires participation by the offender's family and relatives who may have to explain the offender's misconduct, especially when some type of victimization has occurred. For example, parents may be admonished for not providing proper discipline and supervision for their children who vandalized or destroyed property. Relatives may be criticized for allowing a son or brother to abuse his wife or children.

Verbal accountability by the offender and the offender's family is essential to express remorse to the victim and the victim's family. Face-to-face exchange or apology and forgiveness empowers victims to confront their offenders and convey their pain and anguish. Offenders are forced to be accountable for their behavior, to face the people whom they have hurt, to explain themselves, to ask forgiveness, and to take full responsibility for making amends. Observing and hearing the apology enables the victim and family to discern its sincerity and move forward with forgiveness and healing. Forgiveness is strongly suggested, but not essential for the victim to begin healing.

The restorative aspect frequently involves the use of ritual for the offender to cleanse the spirit and soul of the bad forces that caused the offender to behave offensively. Ceremonial sweats, fastings, purifications, and other methods are used to begin the healing and cleansing process necessary for the victim, the offender, and their families to regain mental, spiritual, and emotional well-being and to restore family and communal harmony.

The agreements reached in family and community forums are binding. Participants are compelled to comply through the same interlocking obligations established in individual and community relationships. Compliance and enforcement are important aspects of indigenous systems because there is little coercion. Accepting punishment does not guarantee that an offender will be accountable. Therefore, it is essential that offenders perform outward acts to demonstrate their responsibility for correcting behavior. Offender accountability is essential to ensure compliance with decisions and to prevent further criminality or relapse into deviant behavior. Equally important is for punitive sanctions to be decided and applied by individuals who were affected by the offender's behavior.

Historically, there is little evidence of penal systems in tribal communities. This fact remains today, although there are many who express the need for secure confinement facilities to address serious and violent crimes. Many customary sanctions to appease victims and to safeguard against vengeance are still in use. These include public ridicule, public shaming, whippings, temporary and permanent banishment, withdrawal of citizenship rights, financial and labor restitution, and community service. Some tribes still temporarily or permanently banish individuals who commit serious or violent crimes. Among the Warm Springs Tribes in Oregon, it is customary to refer lawbreakers to the “whipman,” who may whip a person for misconduct. In the Laguna Alternatives for First Time Youth Offenders Program, community service is used extensively.

The indigenous process is also used in offenses where there are no victims, such as problems between parents and children, individual misconduct, or alcohol consumption. Family members affected by the offender’s behavior or who are concerned with the offender’s welfare may participate. Many tribal people view crime, delinquency, and other deviant behaviors as symptoms of bigger family problems. Widening the affected target group to include the offender, parents, siblings, and other extended family members enlists help from those most familiar with the situation to assist in correcting and preventing more serious crime.

The indigenous process can often be extremely uncomfortable and emotional because it involves participation by everyone affected, but great care is taken to provide a safe environment for matters to be discussed. The distributive nature of this process uses the extended family as a resource for the offender, the victim, and the community to resolve problems, to ensure compliance, to provide protection, and to retain ownership of the problems.

### **Preserving Indigenous Systems**

Tribes are faced with the inevitable conflict created by two justice paradigms competing for existence in one community. Many Americans believe the law is something to be applied and justice is something to be administered. In contrast, tribes traditionally believe law is a way of life and justice is a part of the life process. For one paradigm to exist, it must convert people to follow it. Although it appears that tribal courts follow the Anglo-American legal system, many adhere to the traditional values of the tribal justice system. This is largely because tribes have been wary of the ethnocentric view of the Western colonizers who devalued their legal structures and wanted to replace them with an imported Western system. 18 Tribes were also required to participate in the Anglo-American legal system in order to protect their lands and people, but they did so without trusting or believing it. This foreign system was imposed by the federal government, thereby thwarting their efforts to convert the tribes.

Attempts to strengthen and re-traditionalize tribal justice systems stem from discontent with the efforts of modern tribal courts to address the crime, delinquency, social, and economic problems in tribal communities. It is joined by the dominant culture’s current disillusionment with justice in this county, which causes doubt about retributive justice and a move forward a more restorative framework. 19 This emerging restorative perspective for the American justice system is illustrated by the following values:

All parties should be included in the response to crime—offenders, victims, and the community. Government and local communities should play complementary roles in that response. Accountability is based on offenders’ understanding the harm caused by their offense, accepting



responsibility for that harm, and repairing it... [R]estorative justice guides professionals in the appropriate and equitable use of sanctions to ensure that offenders make amends to victims and the community.

Conversion to the American justice paradigm is a difficult choice for tribes, particularly those with a functional indigenous justice system. For many, full conversion is not possible because the indigenous justice paradigm is too powerful to abandon. The strong adversarial features of the American justice paradigm will always conflict with the communal nature of most tribes. For this reason, the inherent restorative and reparative features of the indigenous justice paradigm will continue to be more appealing to the majority of tribal people.

Nonetheless, it is important for tribes to identify their community strengths and views on justice, law, and order. The role of non-Indians is to assist and support the tribes in strengthening their justice systems and to suppress the urge to take over or replace them. It is the sovereign and cultural right of tribes to explain, interpret, change, enact, and apply their own laws, oral and written, through whatever mechanisms they choose. It is their responsibility to teach the knowledge and skills embedded in their indigenous paradigm to their young. American Indian and Alaskan Native people have the clearest understanding of their indigenous law ways because they live them. They must be the messengers of this law to preserve its integrity, authority, power, and meaning to the people.

The many intrusions to the tribal way of life have interfered with the natural evolution of the indigenous justice paradigm, but while slowed, it has never stopped. The tribal resurgence to strengthen and re-traditionalize their judiciaries has rejuvenated the evolutionary process. While mainstream society is in the midst of shifting from a retributive justice model to a restorative one, many tribes are strengthening their indigenous paradigm. In doing so, they are empowering themselves to provide a justice system that has meaning to the people they serve and the power to perpetuate what was preserved by the ancestors and passed on by the elders as testimony of their commitment to the future of tribes. Contemporary American Indian and Alaskan Native people are now faced with making the same commitment to preserve the indigenous justice system the elders maintained and find ways to perpetuate it.

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