



# Juvenile Justice and Tribes

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# Adult Justice System

## Community Safety and Punishment

### Theories of Punishment:

- Utilitarianism
  - General and specific deterrence
  - Incapacitation
  - Rehabilitation
- Retributivism
  - Societal retaliation/vengeance
  - Protective/moral retribution (“owes a debt to society”)
  - Victim vindication
- Denunciation
  - Educative; channels community anger away from personal vengeance; and maintains social cohesion

# Juvenile Delinquency

Community safety, but rejects punishment

Instead, help young people avoid future delinquency

- Anomie Theory – Juveniles do not have the means to make themselves happy
- Subculture Theory – Juveniles who do not “fit” may seek validation from a subculture
- Differential Association Theory – delinquency is a learned behavior
- Control Theories – extent of direct and indirect control of parents on juvenile behavior
- Strain Theories – lack of socially approved opportunities
- Sociological Theories – sociological influences caused by the structure of society and social processes that influence behavior

Yet, still so many youth end up incarcerated/detained





## But, Tribes

- *Brackeen v. Haaland* – Tribes are sovereigns
- ICWA as an expression of the sovereign-to-sovereign dynamic
  - Notice, § 1912(a)
  - Intervention, § 1911(c)
- Expand ICWA to juvenile justice!

# The Other Half of ICWA – Shift the System

A move to reconceptualize the obligations

- Active efforts, § 1912(d)

A move to reconceptualize the community

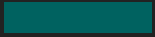
- Placement preferences, § 1915(a)-(b)

Role of community, victim, and family

Role of culture

Role of intergenerational traumas





# Funding Streams Must Account for Tribes

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- Tribes are separate sovereigns, with Western legal norms imposed at them
- Indian Self-Determination and Education Assistance Act Section 638 funding is the recognized best-practice
- But the current funding streams reject 638 in place of federally-dictated strategies and infrastructures
  - HHS Child Welfare: Title IV-E and Title IV-B
  - DOJ Coordinated Tribal Assistance Solicitation