

The Historical Reckoning that Revokes an Irreducible Minimum of the Youth Justice System in Ending Incarceration of Indigenous/Chicanx/Latinx/Afro-Latinx Two-spirit Youth

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To end incarceration of Indigenous/Chicanx/Latinx/Afro-Latinx Two-spirit youth in the youth justice system, one begins with placing cedar smoke to honor the ancestors of Abyanahuac -- the decolonized term for this continent -- who universally welcomed and protected children as sacred beings. Our ancestors taught us that children were brought to our mother earth to be connected to all of creation through guidance, and that that guidance instills a sense of self-discipline and a responsibility to community. By and large, this guidance provided by original peoples relied on restorative practices in response to youth and adults who caused harm. There is no evidence that the Tonga-Gabrielino communities in now Los Angeles, or anecdotally among the original peoples across the US used cages to hold youth or adults for causing harm until the Spanish arrived.¹ Disagreements and/or misbehavior was dealt with by councils of elders or matriarchs among other responses..

When we honor the values of our ancestors and reckon with the history of oppression and domination over them, we find the tools and the just reasons to stop caging young Indigenous people.

When we honor the ancestors and the land, we reconnect to generations of resistance, resilience, and dignity. We end erasure and invisibility, we remember their defiance, and importantly, and we acknowledge their defense for self-determination and the teachings that generations could live interconnected and in relationship to creation.

As the Executive Director of Alianza for Youth Justice, I pair healing-centered practices and racial equity work to strengthen youth justice systems transformation to end incarceration of youth of color. During virtual sessions of a leadership development course, we conduct *conocimiento* -- a process to know someone and build relations -- during which directly impacted brown youth introduce themselves. They name where they were born and where their parents are from. Some youth name New Mexico, Arizona, Illinois, California, Mexico, El Salvador, and Honduras. Others with perplexed, anguished faces state that they are not being sure where exactly they were born, that they never met their grandparents or their dad, or that they have never visited their homeland.

The disconnectedness presented by the youth resonates equally, whether they are first generation immigrants or fourth and fifth generation born in the US. At the heart of this disconnectedness is not knowing who they are and where they come from. Not being connected to the land of their ancestors. Not knowing their families. Not living with their traditions and teachings. Not being connected to their sacredness. Research states that being connected to one's culture provides protective factors and fortitude for youth.² Youth are disconnected to the historical legacy of their Indigeneity, their Afro roots, and the resilience and resistance their ancestors left them.

¹ Hernandez, Kelly Lytle (2017). *City of Inmates, Conquest, Rebellion and The Rise of Human Caging in Los Angeles 1771-1965*.

² Scott, Deena. (2018). *Latina Fortitude in the Face of Disadvantage: Exploring the Conditioning Effects of Ethnic Identity and Gendered Ethnic Identity on Latina Offending*. *Critical Criminology*. 26. 10.1007/s10612-017-9380-9.

More importantly, there is a lack of historical reckoning of settler colonialism, genocide, the other slavery,³ and state sanctioned violence. Since Spaniards arrived in Anahuac -- historical and geographical region that encompasses what was called Meso-America -- in the sixteenth century, there has been an uninterrupted legacy of harm, violence, brutality, coerced non-paid labor, trauma, and fear. This is the historical foundation of institutions whose social control of Indigenous brown and black youth unabashedly intended to “kill the indian and save the man.”⁴

Youth injustice on this continent started during the 1500s. These systems of social control enacted by the Spaniards dictated and demanded that indigenous youth and their families convert to Christianity. It demanded they give up their land, their language, and their way of life, and be separated from parents and siblings. Their culture was destroyed and burned, and they were obligated to give up their creation stories and their self-determination. They were killed, maimed, imprisoned, and sold into complex Spanish-sanctioned and non-sanctioned systems of slavery.⁵

Internalized oppression, shame, fear, anger, trauma, and depletion of resources from families to maintain and sustain structurally racist social systems of control alongside unfathomable budget misalignments continued to take a toll on mostly communities of color, including Indigenous and brown youth.

There was violence at a scale not seen inflicted on the peoples of this land, with the use of weapons and torture introduced to force a deep fear of brutality among the people to get them to acquiesce. Indigenous youth and adults, convicted of transgressions as “barbarous” or “errant”, were sold to miners and others to serve their sentences.⁶ The presidios -- places that hold *presos* or convicted individuals -- were the first facilities on this continent to detain youth and their families. At its core, the formal youth justice system continues to be unjust, built as a structurally racist institution.

Youth and their families were coerced to a structure that included white over color ascendancy, introducing a pernicious and oppressive form of colorism from a caste system that was transported to Anahuac from the Spaniards. Alfredo Mirande describes the mobilization of bias against Mexicans as well as the expropriation of their land in *Gringo Justice* (1987), highlighting the Guadalupe Hidalgo Treaty of 1848 in which Mexicans living on what became Texas and thus, US territory, were labeled “Indian”. During this time in the US, there was the Indian Removal Act of 1830 and the Indians Appropriation Act of 1851, which forced Indians onto reservations and off their homelands, unable to be official owners of land. After 1848, unable to prove their “whiteness” or European caste, Mexicans were forced off their land. Once coerced off their lands, into non-paid Indigenous labor, non-north American Indigenous peoples involuntarily assimilated into the various labels of race and ethnicity politically thrust upon them by the US, such as Hispanic or Latino and white, without the privileges exacted to white non-Hispanics.

³ The “other slavery” or Indian enslavement as in *The Other Slavery: The Uncovered Story of Indian Enslavement in America* by Andrés Reséndez (2016).

⁴ This was the motto of Army officer Richard H. Pratt who The Carlisle Indian School in 1879. The goal of the school was to assimilate Indigenous children into American society.

⁵ Reséndez, Andrés (2016). *The Other Slavery: The Uncovered Story of Indian Enslavement in America*.

⁶ Ibid.

The historical injustices promulgated against Indigenous, Chicana, Latinx, Afro-Latinx Two-spirit youth and their families is evident in the compulsory assimilation, acculturation, and most importantly, erasure of their indigeneity. Between taking the land, enslaving Indigenous peoples into coerced non-paid labor, and Christianizing people, youth learned to hate and negate their Indigeneity, to take in colorism, and to fear brutality.

From history, we know that indigenous, and Mexican American youth were not sent to the institutions meant for white youth. Instead, North American Indian youth were sent to boarding schools. Mexican youth were sent to segregated Mexican schools and if caught by law enforcement, they were sent to deep end reformatory schools. A. Mirande, in *Gringo Justice*, states the US Civil Rights Commission has isolated several areas that seem especially problematic for Chicanos.⁷ The commission received a large number of complaints of discriminatory treatment of juveniles. Anglo juveniles were often released to their parents without being charged, whereas Chicanos who committed the same or similar offenses were jailed or placed in reform school. Yet, Indigenous, Chicana youth are often lost and rarely mentioned in national, state and/or local historical and current research of disproportionality and disparities of youth in the youth justice systems in the US.

The early social contracts were created for the members of society in the US to cooperate for social benefits. The origins of governmental institutions were constructed from values of the settler colonizer where “we the people” did not include consultation with Indigenous communities.

However, there are important values of Indigenous peoples to be considered for policy development.

1. A belief that we the people are born sacred, with a sacred purpose, that we are connected and interconnected to all things, having a relationship with all of life’s creation.
2. Honor the virtues of honesty, humbleness, and integrity.
3. Work to benefit a society, where success, wealth, and a rich life is not measured by money.
4. Recognize that women and a mother’s perspectives are pivotal as life givers they have great influence in the well-being of the people.
5. Respect of natural power that comes from wisdom, knowledge of elders, living by honoring the earth, the people, and all beings.
6. Honor natural laws such as a relationship to a creator or higher being.
7. Appreciate humility.
8. Uplift love and live the true meaning of life with the sacredness of life and intention, rites of passage, ceremonies marking milestones in one’s life, in the families, and community.
9. Generosity and self-denial are for the general good; give what is most prized.
10. Recognize that happiness in giving is of great value as a human being.

Without these values, we have Indigenous and brown youth in youth justice systems because the structures and policies of justice and public safety aligns institutions of justice with better outcomes to white communities. For brown youth and their families, distributive justice has woefully been nonexistent. To make matters worse, there is a common practice of counting of brown youth as white, which means no resources, no representation in policy decisions, and a one size fits all entrenched approach.

⁷ Mirande, Alfredo Mirande (1994). *Gringo Justice: Catholicism in American Culture*.

The response from systems players as to why brown youth recycle back and forth through the system is that Brown youth are just criminal and violent in nature with generationally dysfunctional families. When in fact, research bares that cultural and healing-centered approaches are more effective and efficient for brown youth. Data on procedural justice states that among brown youth there are significant disparities along decision points across the spectrum, from arrest to disposition for Indigenous/brown youth in the youth justice system across the country. The research shows that retributive justice based on punishment for wrongdoing is harsher for brown youth than white youth and that these deep disparities for the exact same crime reveal that brown youth will do more time.

What has been uncovered after thirty years of harm reduction “system reform” to decrease youth in detention and have youth exit the system successfully is that the approaches of detention and probation are not effective in adjudicating incidents of danger or harm. Yet, while these approaches have been shown to cause more harm than good, the practices persist in sending youth of color farther into the system. These practices meted out disparately take the largest toll on poor communities of color, including Indigenous, Chicanx, Afro-Latinx Two-spirit youth.

During the COVID pandemic, racial-ethnic disparities have worsened while the youth detention population dropped considerably. Among survey sites that provided data disaggregated by race and ethnicity, the population fell by about 30% across all groups from March to May of 2020, and then leveled off. From July to December of 2020, the population of white youth in detention was almost unchanged while the population of Black youth rose 9% and Latino youth rose 12%.⁸ Far too often Indigenous and brown youth are overlooked, remaining invisible. To effectively end incarceration, policymakers and advocates need accurate data on Indigenous youth to craft viable solutions based on facts as we reopen our economy and transform failed systems.

Thirty years of youth justice reform with limited benefit to brown youth, and a legacy of evidence of harm towards Indigenous youth revokes that there can be an irreducible minimum while ending incarceration of Indigenous youth. Conversely, a robust approach that leads with data-driven policy development of community-based cultural and healing-centered approaches, while centering the voices and participation of directly impacted youth and their families, is what is most needed to build justice with *comunidad, cultura*, and healing.