An Agenda for Addressing Health-Harming Legal Needs in Indigenous Communities

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In the United States, unmet civil legal needs are increasingly characterized as "health-harming legal needs."[1] There is a good reason for this: when unresolved, common civil issues such as evictions, domestic violence, child custody, and access to medical benefits have devastating health consequences for individuals and families.[2] Also, research shows that low-income people and communities of color disproportionately experience civil legal problems and their concomitant health and mental health impacts, a reality that both reflects and sustains deep structural inequities in the United States.[3]

Although we might presume that low-income Indigenous people also experience high rates of civil legal needs, data on the civil issues of American Indians and Alaska Natives (AI/ANs) remain problematically limited. For instance, the Legal Services Corporation's Justice Gap report,[4] arguably the most referenced and comprehensive source of data on civil legal needs, fails to mention—let alone collect meaningful data on—AI/ANs. Other familiar sources of data, among them the Pew Charitable Trusts Civil Legal Survey[5] and the 2021 Justice Needs Report,[6] also entirely neglect Indigenous people. This is despite the undisputed correlation between income and legal problems and the fact that the poverty rate among US AI/AN populations (24%) is higher than that of all other racial or ethnic groups.

Although there are smaller entities that collect data on the civil legal needs of Indigenous people, these data are often state specific or pertain to discrete topic areas such as child welfare. As a result, we continue to lack robust, comprehensive data about how Indigenous people in the United States experience health-harming legal needs and, correspondingly, what barriers and opportunities exist to meaningfully address them.

Yet there is still more to this story: even if the aforementioned studies did collect data on Indigenous communities, the methods and structures of prevailing legal needs assessments are overwhelmingly designed by non-Native people with Anglo-adversarial systems in mind. As a result, the typical data collection tools likely do not, and cannot, make visible what is meaningful and logical in Indigenous understandings of justice and health.[7] This reality reflects broader structural inequities, among them the limited Indigenous presence in access to justice (A2J) scholarship and decision making, the "quantitative avoidance"[8] of Indigenous communities by colonizing methodologies, and, crucially, the many missed opportunities to innovate prevailing civil justice delivery models via the expertise and perspectives of Indigenous people.

This editorial emerges from the urgent recognition of the public health implications of continuing to neglect Indigenous A2J in the United States. In what follows, we describe the social and structural determinants of health that are widely associated with Indigenous communities and discuss how these phenomena reflect specific legal needs and research frameworks. Recognizing the consequential interplay of absent data, irrelevant measures, and insufficient A2J support, we look largely outside the United States to highlight Indigenous-driven A2J interventions that reflect the necessary synergy of emergent data, policy, and practice. Also, we put forth recommendations for implementing both system-level and local change to meaningfully expand A2J and address health inequities in AI/AN communities.

THE ACCESS TO JUSTICE CRISIS AND OTHER HEALTH DETERMINANTS

According to the recent Justice Gap report, 74% of all low-income US households experience at least one civil legal need per year, with individuals not receiving any or enough legal help for 92% of these problems. This A2J crisis (i.e., the inability of individuals to obtain the knowledge, tools, and advocacy needed to enforce their rights) is caused

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by a variety of complex factors. Among them are the cost of legal representation, the limited capacity of free legal aid, negative perceptions of the legal system, and the absence of a right to counsel in civil matters. As a result of these factors, a host of legal issues not only remain unaddressed but are often compounded, further jeopardizing access to shelter, food, safety, family stability, and critical services.

The A2J crisis arguably affects the health of all low-income Americans in some way, including Indigenous people. Yet in Indigenous communities, additional sociospatial and structural determinants of health must be acknowledged. Notably, AI/AN people are disproportionately rural: approximately 29% of Indigenous people in the United States live in rural areas, as compared with 15% of the US population overall. Poverty rates are persistently higher in rural areas than in nonmetropolitan areas (19% and 15%, respectively), and there are increasingly few, if any, rural attorneys. These rural "legal deserts" are now formally recognized as a critical health determinant,[9] and their impacts on A2J are far-reaching in rural Tribal and state courts alike.[10]

Indigenous access to health and justice is also more broadly shaped by the pervasive effects of settler colonialism, or the ongoing exclusion, assimilation, and dehumanization of Indigenous people to legitimize non-Indigenous control over Native land and resources. Although we cannot sufficiently explore the extent of settler colonialism—including how it is differently navigated and resisted across diverse Sovereign nations—its impacts on health and legal outcomes are self-evident.

We know, for instance, that the persistent socioeconomic and political marginalization of Indigenous peoples has resulted in disproportionately high rates of racial and gendered violence, historical and transgenerational trauma, and postcolonial distress.[11] Indigenous people are overrepresented at every stage of the criminal legal system, from victimization to imprisonment.[12] And more broadly, federal Indian law actively undermines Indigenous political and cultural sovereignty by limiting access to land and water, cultural practices, and community safety. All of these factors, including heightened exposure to the criminal legal system and federal Indian law itself, are recognized as structural determinants of health.[13,14]

DOMINANT METHODOLOGIES AND WISE METHODOLOGIES

Even as scholars increasingly acknowledge the complex interplay of health and justice and how settler colonialism shapes Indigenous experiences within these systems, there remains a profound dearth of data around Indigenous A2J. Moreover, when data are collected, the methodologies employed typically prioritize Western institutions and research frameworks.

In the United States, for instance, prevailing legal needs assessments are largely designed with Anglo-adversarial justice systems in mind, thereby sustaining what Wanda D. McCaslin and Denise C. Breton describe as "'norms' that were never ours and do not fit us."[15] The positivist emphasis on "fair" or "objective" proves largely incompatible with Indigenous methodologies that prioritize context, relationality, and lived reality,[16] and we are left with data, measures, and A2J initiatives that fail to reflect the diverse values of Indigenous people and perpetuate alienating policies and funding priorities.

We ask the following in response: how might the health-harming legal needs of Indigenous people be meaningfully documented and addressed, acknowledging critical differences across Sovereign nations as well as shared experiences of colonization and marginalization? Critically, answers to this question exist, both within the robust body of literature on Indigenous research methods[17,18] and in A2J programs in the settler colonial nations of Canada, Australia, Aotearoa–New Zealand, and the United States. As we demonstrate subsequently, these models are upheld by Indigenous people and values and are actively informed by sound, community-relevant data collection and evaluation. Reflecting the turn from "best practices" to "wise practices,"[19] these models reassert and integrate locally situated belief systems, teachings, and healing practices into diverse legal settings.

These models include the Indigenous Legal Needs Project in Australia, in which research is conducted alongside community-based legal services to foster a more contextualized approach to Indigenous A2J. This approach has led to robust interprofessional partnerships between Aboriginal-controlled health services and legal service providers and to the training of First Nations community health workers to provide trusted legal advocacy.[20] Another example is Te Ao Mārama, an Aotearoa district court model that advances A2J and Māori self-determination via *Kaupapa Māori*, or the incorporation of Māori cultural protocols, knowledge, and participation.[21] Notably, the Te Ao Mārama model is expected to differ somewhat from place to place, ensuring that it accurately incorporates and reflects the different strengths of local communities.

Other models include the Community Justice Worker program in Alaska, which trains individuals already embedded within Tribal agencies to provide targeted civil legal assistance and direct representation in court.[22] The development and advancement of this program have occurred in tandem with collaborative research that employs Indigenous methodologies and data sovereignty to identify the values, needs, and expectations of clients and other community members.

Finally, the Aboriginal Healing Foundation in Canada represented an Indigenous-led initiative to address intergenerational trauma through community-engaged research and resource development. Although no longer in existence, we include the Foundation because it directly involved Aboriginal people in the design, implementation, and assessment of programs that prevented or addressed health-harming legal needs, including culturally appropriate mental health services, 24-hour safe houses for survivors of abuse, and protocols for intervening in family violence situations.[23]

Taken together, these models demonstrate that expanding Indigenous A2J is fundamental in addressing health inequities among Indigenous peoples. They further evidence that this can be done, and evaluated, in a deeply relevant way. (Additional information about these models is provided in the Appendix, available as a supplement to the online version of this article at http://www.ajph.org.)

CONCRETE RECOMMENDATIONS FOR CHANGE

Health and justice are inextricably connected: unresolved civil issues compound medical problems, and vice versa. Yet even as there is increasing recognition of health-harming legal needs in the United States, we know considerably less about what issues are experienced in Indigenous communities, why, and how or whether these needs are resolved in a way that matters to Indigenous people themselves.

As we have shown here, Indigenous people in the United States experience complicated and distinct health determinants, many of which are rooted in the ongoing legacies of settler colonialism and uniquely implicate place, law, and justice. Although social science and medicine, and particularly Indigenous scholars within these fields, continue to rigorously demonstrate these complexities, Indigenous experiences are consistently neglected in A2J scholarship and policy.

This editorial serves as a modest starting point, challenging prevailing A2J metrics, outcomes, and conventional forms of assistance and acknowledging the multiple justice systems with which Indigenous people in the United States and other nations such as Canada, Australia, and Aotearoa–New Zealand regularly interact. We further recognize that there are approximately 400 Tribal courts in the United States, each a unique manifestation of Tribal sovereignty, addressing issues ranging from traditional dispute resolution to Anglo-adversarial models. The A2J programs and practices discussed here reflect these complex and locally situated realities. Drawing inspiration from these models, we offer several recommendations.

Address Marginalization in Data Collection

At best, dominant A2J data collection paradigms, policies, and funding priorities in the United States largely neglect the experiences and health contexts of Indigenous people within the civil justice system. At worst, they wholly undermine Indigenous A2J, perpetuating the marginalization and disenfranchisement of Indigenous communities. In response, we have highlighted Kaupapa Māori and the principles of ownership, control, access, and possession as examples of A2J data collection that are consistently informed by the diverse values, priorities, and expertise of Indigenous people and places. Adjusting research in this way will necessarily impact what—or whose—research questions are prioritized, what methods are chosen, whose experiences count, how data are managed and analyzed, and what policy and funding decisions are made.

Promote Community-Driven and Sovereign Initiatives

As evidenced in Australia and Aotearoa–New Zealand, community-driven and collaborative approaches must be central to A2J initiatives in Indigenous communities. Active participation from Tribal leaders, legal organizations, courts, community health centers, and other Tribal stakeholders ensures that Indigenous values and priorities inform nascent and long-term efforts. This approach is fundamental to decolonizing prevailing A2J norms and models.[24]

In addition, a tailored approach respecting the diverse backgrounds and circumstances of AI/AN communities is crucial. As in the mindful design of Te Ao Mārama, A2J initiatives should exhibit flexibility and acknowledge the distinct legal needs, cultural practices, challenges, and available resources within each Indigenous context. This increases the potential to address the

unique health-harming legal needs of diverse Indigenous groups. Moreover, this attention facilitates trust and rapport with Indigenous communities, rendering legal and health services more accessible and effective by aligning them with the expectations of the individuals they serve.

Advance Interprofessional Approaches

A collaborative approach to Indigenous A2J must also involve diverse professionals, including community health workers, traditional healers, paralegals, social service providers, and so on. As demonstrated by the community justice worker model, the knowledge held by diverse individuals embedded in local institutions can provide salient advocacy, issue spotting, and practice insights. These individuals observe daily the urgent intersections of health and justice and are often most prepared, trusted, and willing to provide targeted assistance. By employing a comprehensive approach that encompasses both legal and nonlegal services, these initiatives recognize the complex nature of health-harming legal needs and address the underlying causes of health disparities faced by Indigenous individuals.

Move Beyond "Needs" and "Outcomes"

Although the models we have profiled offer compelling and replicable insights, many of these programs operate with inadequate resources or were shuttered owing to funding and policy changes. This significantly impacts the communities involved and poses a major obstacle to gathering comprehensive evaluative data, leaving our understanding of a program's potential incomplete. Therefore, we call for robust and sustained financial and policy backing from legal institutions, research entities, governmental bodies, and professional associations. Diverse stakeholder buy-in is essential.

We also recognize that prevailing A2J metrics are themselves limiting, often focusing narrowly on legal problems, costs, and case outcomes within Anglo-adversarial justice systems. Accordingly, we advocate for wise practices and evaluative measures of success that reflect the values and dimensions of access, health, and justice that matter to the community at hand. Indigenous methodologies remind us that these evaluative metrics must be expansive enough to honor an A2J initiative's ability to reveal knowledge, build relationships, rebalance power, honor sovereignty, and provide healing. This requires deep trust and concordance between everyone involved. And it is precisely why data collection, analysis, and evaluation must be driven by Indigenous experts in all contexts—local, scholarly, legal, and so on—and enacted in close, often interprofessional collaboration with Indigenous and non-Indigenous stakeholders. These steps are fundamental to self-determination.

Honor Indigenous Access to Justice as Health and Healing

As evidenced here, any A2J initiative undertaken in an Indigenous community must meaningfully recognize historical injustices and their continued impact on the health and legal needs of AI/AN people, particularly the intergenerational trauma resulting from forced assimilation policies, land dispossession, and systemic discrimination. This is precisely why Te Ao Mārama holistically acknowledges litigants' legal needs as well as their well-being within the court context. By actively working to address intergenerational trauma, Indigenous A2J models promote healing, prevent future health-harming legal needs, and empower Indigenous communities to advance their rights and well-being. We also recognize that providing training and resources to elevate Indigenous community members as community justice workers or legal advocates exemplifies a commitment to capacity building and self-determination.

As we have demonstrated here, understanding and addressing civil legal needs in Indigenous communities has profound impacts on community health. But it has to be done well. Drawing on the Anishinaabe concept of *Mino Bimaadiziwin*, we end this article by calling for Indigenous A2J research, analysis, and innovation done in a good way, one that reveals knowledge, decolonizes and rebalances power, creates relationships, and provides healing through culturally safe, relevant, and collaborative modalities as defined by Indigenous people themselves.[25] AJPH

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CONFLICTS OF INTEREST

The authors disclose no conflicts of interest.

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