

# Employee Rights: Balancing the Advocate and Enforcer

---

2023 CTER Legal Update  
Las Vegas, Nevada

What are the **two**  
**reasons** why people **do**  
**things**, like work, go to  
school, rodeo, play  
sports, etc.?

# MOTIVATION & ABILITY



# HUMAN BEHAVIOR

3 Areas of Influence:

- Personal
  - Social
  - Environment
-

# HUMAN RESOURCES

IMPORTANCE:

- Touches all areas of an organization
  - Critical for productive work environments
  - Critical for ensuring fair and consistent treatment
-

# HUMAN RESOURCES

ROLE:

- Develops, implements & enforces policies, procedures, regulations & ordinances
-

# POLICY HANDBOOK

## PURPOSE:

- Provides employee expectations
  - Promotes communication & cooperation
-

# POLICY HANDBOOK

## IMPORTANCE:

- Provides guidelines
  - Protects both employee and employer
  - Provides a safe and lawful work environment
-



# POLICY HANDBOOK

ROLE:

- Is NOT intended to cover or anticipate EVERY circumstance
  - IS intended to cover the most often used day to day activities of ALL employees
-

CONFIDENTIALITY

—

Keeping what you  
hear or see  
private...

INTEGRITY



Doing what you  
say you will do  
especially when  
no one is  
watching...

# RESPONSIBILITY



Owning up to  
your mistakes...

# ACCOUNTABILITY

—



Apologizing and  
correcting the  
mistake if you  
can...

# DIRECTORS, COMPLIANCE OFFICERS, OR LEADERS

HATS YOU WEAR:

- ENFORCER
  - ADVOCATE
-

You must  
constantly &  
carefully balance  
the two hats...

# EMPLOYERS SHOULD:

Refuse to tolerate intimidation, threats  
and harassment from any employee

—

# EMPLOYERS SHOULD NOT:

Allow cost to stand in the way of providing training and trauma informed programs to ALL employees

# HUMANS NEED TO BE WELL:

PHYSICALLY

MENTALLY

EMOTIONALLY

SPIRITUALLY

You must  
constantly &  
carefully balance  
the two hats...

# DIRECTORS, COMPLIANCE OFFICERS, OR LEADERS

HATS YOU WEAR:

- ENFORCER
  - ADVOCATE
-



# EMPLOYERS SHOULD:

Ensure that they and their employees know that **SEXUAL HARASSMENT** is ~~not~~ a matter of sex or sexual gratification but is more about an assertion of power.

# EMPLOYERS SHOULD:

Know that sexual harassment often goes unreported due to fear of retaliation, lack of understanding of what sexual harassment is, not understanding the complaint process or

EMPLOYERS SHOULD:

REALIZE THERE MAY BE  
ABSENCE OF CONFIDENCE IN  
THE SYSTEM TO RESPOND.

# EMPLOYERS SHOULD:

KNOW harassment on the basis of sex is a violation of the law.

—

The applicable law that governs a dispute between the parties which would be enforced by Tribal Court, some may include Federal or State laws depending on the waiving of sovereignty rights.

The definition of sexual harassment is found in Volume 29 of the Code of Federal Regulations (CFR) 1604.11(a).

Sexual harassment is a request, advance or demand for sexual favors accompanied by a threat concerning an individual's employment status or a promise of preferential treatment.

Sexual harassment comes in many forms and occurs in a variety of circumstances including but not limited to verbal, visual and physical actions.



It is unnecessary and unwelcome touching of an individual, for example, patting, pinching, hugging or repeatedly brushing against another individual's body.

The mindset of most harassers includes wanting to have power, having sexual interest or resentment. It is offensive jokes, degrading comments, slurs, emails, texts, snaps, posts, memos, faxes, posters, cartoon or gestures.

Quid pro quo harassment literally means something that is given or taken in return for something else.

This form of sexual harassment must involve tangible employee benefits, which can include bonuses, raiser, overtime, promotions, favorable performance appraisals, travel, breaks, time off, etc., in exchange for sexual favors.

A demand for sexual favors is made either explicitly or implicitly to a term of condition based on an employee's employment.

**EXPLICIT** means there is a clear understanding of the harasser's statements and conduct.

**IMPLICIT** means there is a suggestive nature to the harasser's statements and conduct. It's understood but not specifically stated.

Preventing sexual harassment in the workplace should be a high priority of employers.

Employers need to inform all employees of their policy and procedures and keep employees updated on all changes to those policy and procedures.



Employers need to be prepared to act immediately and consistently on every claim that comes to their attention.

It is crucial to follow through with disciplinary action and documentation. If there is not enough evidence for a claim, a plan needs to be developed so as to monitor the work atmosphere and relationship between the parties going forward.

Develop a sexual harassment policy and procedures which includes:

- Clear definition of sexual harassment.
- Strong disapproval among all levels of employees
- Clear consequences
- State complaint procedures

Develop a grievance procedures which includes:

- Requiring employee to inform their direct supervisor by filing a written complaint on appropriate form and take immediately to HR.

Develop a grievance procedures which includes:

- Requiring employee to inform their direct supervisor by filing a written complaint on appropriate form and take immediately to HR.

Develop a grievance procedures which includes:

- Committing to upholding confidentiality but not promising absolute confidentiality with all parties involved.

Develop a grievance procedures which includes:

- Reviewing the sexual harassment policy with the employee
- Conducting an investigation, gathering facts, details and documenting every step of the investigation.

Develop a grievance procedures which includes:

- If necessary, allowing an outside entity to investigate
- Making written determination of its conclusion
- Preparing a plan of action to correct the problem and prevent recurrence.



Develop a grievance procedures which includes:

- Informing victim of determination
- Banning retaliation against any employee who make a good faith complaint of harassment
- Taking disciplinary action against any employee who in bad faith makes a false or dishonest claim of harassment.

Develop a grievance procedures which includes:

- Taking disciplinary actions against any supervisor or director who has knowledge of such behavior yet fails to take appropriate action.

Develop & implement training which includes:

- Making orientation training mandatory for all employees
- Conducting periodic trainings
- Treating every employee with dignity & respect
- Knowing the difference between gender views.

Develop & implement training which includes:

- Documenting the date, attendance log and materials used in training
- Documenting the receipt of training materials from all employees
- Periodically reviewing policy & procedures and updating them

Q & A

**TRIBAL BALANCE**

**discovered!**

**There is a FUNCTION and  
STRUCTURE of not ONE tribal  
culture but THREE competing  
cultures operating under the  
banner of the "TRIBAL  
CULTURE."**

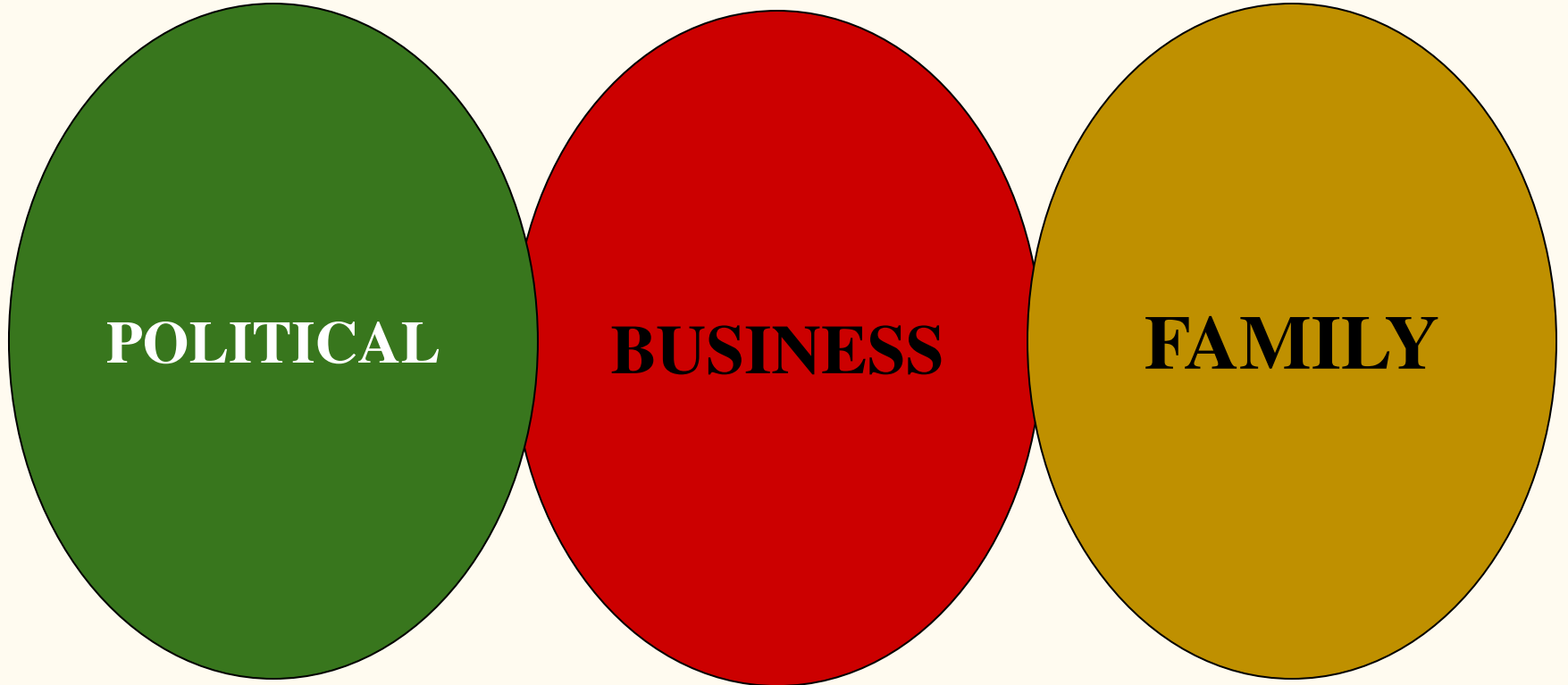
**Each culture has CONFLICTING  
or DIFFERENT purposes for  
their existence, values, beliefs,  
and even behaviors.**



Out of this insight the  
**TRIBAL BALANCE**  
**MODEL** was developed.

**The tribe's tribal structure  
is the political structure,  
business structure, and  
family structure.**

# Tribal Balance



In a tribal structure you  
will always have these  
**THREE STRUCTURES**  
that make up the whole  
**NATION.**

When we understand this model we can predict the future **SUCCESS** and **FAILURE** of our tribes and tribal organizations & businesses.




**The TRIBAL COUNCIL**  
**is the**  
**POLITICAL**  
**STRUCTURE**

**The TRIBES' BUSINESS  
& ORGANIZATIONS  
is the  
BUSINESS  
STRUCTURE**

**The TRIBAL FAMILY**  
**is the**  
**FAMILY**  
**INFLUENCE**

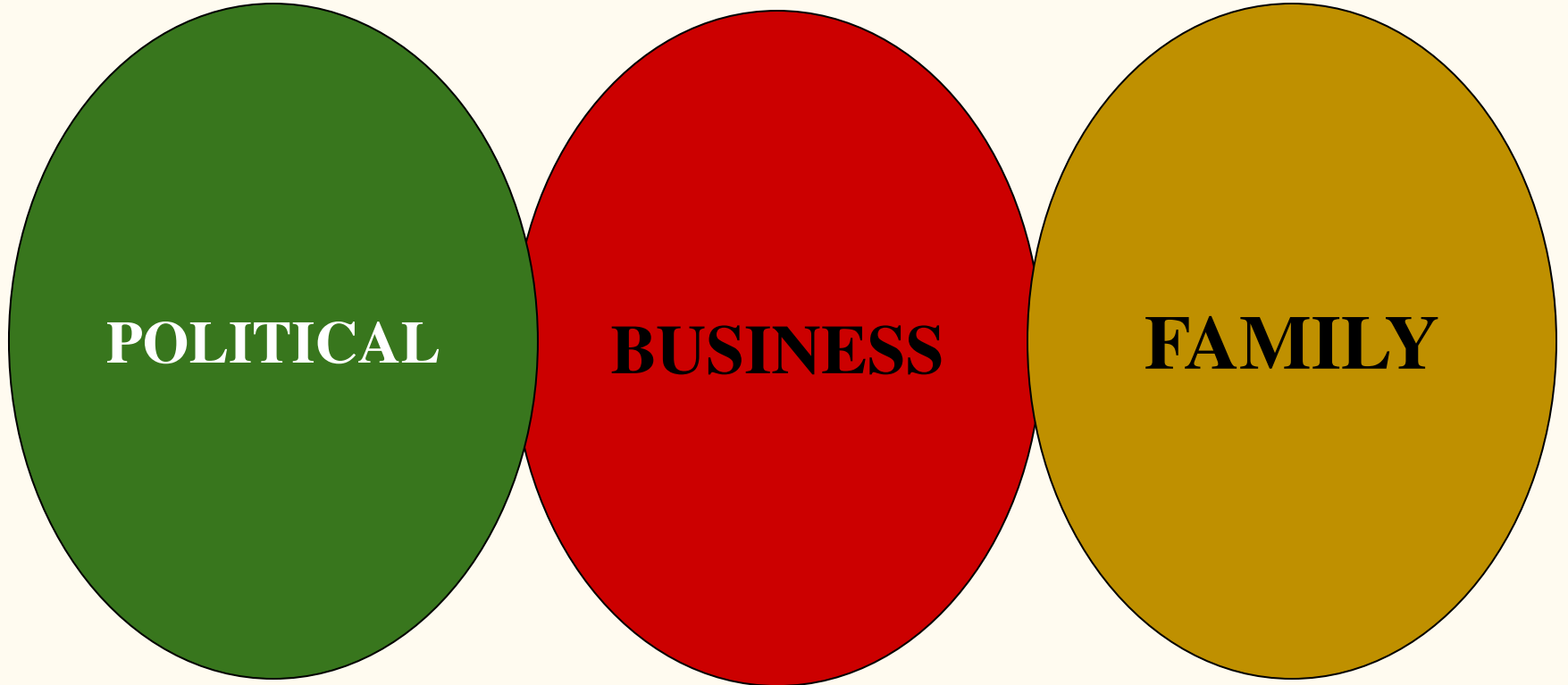


# HOW DOES YOUR TRIBE FIND THE TRIBAL BALANCE?

POLITICAL STRUCTURE	BUSINESS STRUCTURE	FAMILY INFLUENCE
Majority rules	Minority rules	Parents and elders rule
Spends profits	Makes profits	Benefit from tribal profits
Keep the voters happy	Keep customers happy	Keep the family happy
Based on popularity	Based on profitability	Based on traditions
Motivated by social needs	Motivated by business needs	Motivated by family needs
Do what voters want	Do what is effective/profitable	Do what is best for family
Powered by control of info	Powered by flow of info	Powered by interpretation of info
Fame	Reputation	Culture
Open checkbook	Balanced checkbook	Limited checkbook
Voter driven	Money driven	Family/tradition driven
Control power/info/time	Calculated access to power/info/time	Needs and uses access to power structure
Take care of people	Take care of business	Take care of family
Be charitable – reactive	Be profitable – selective	Be happy
		

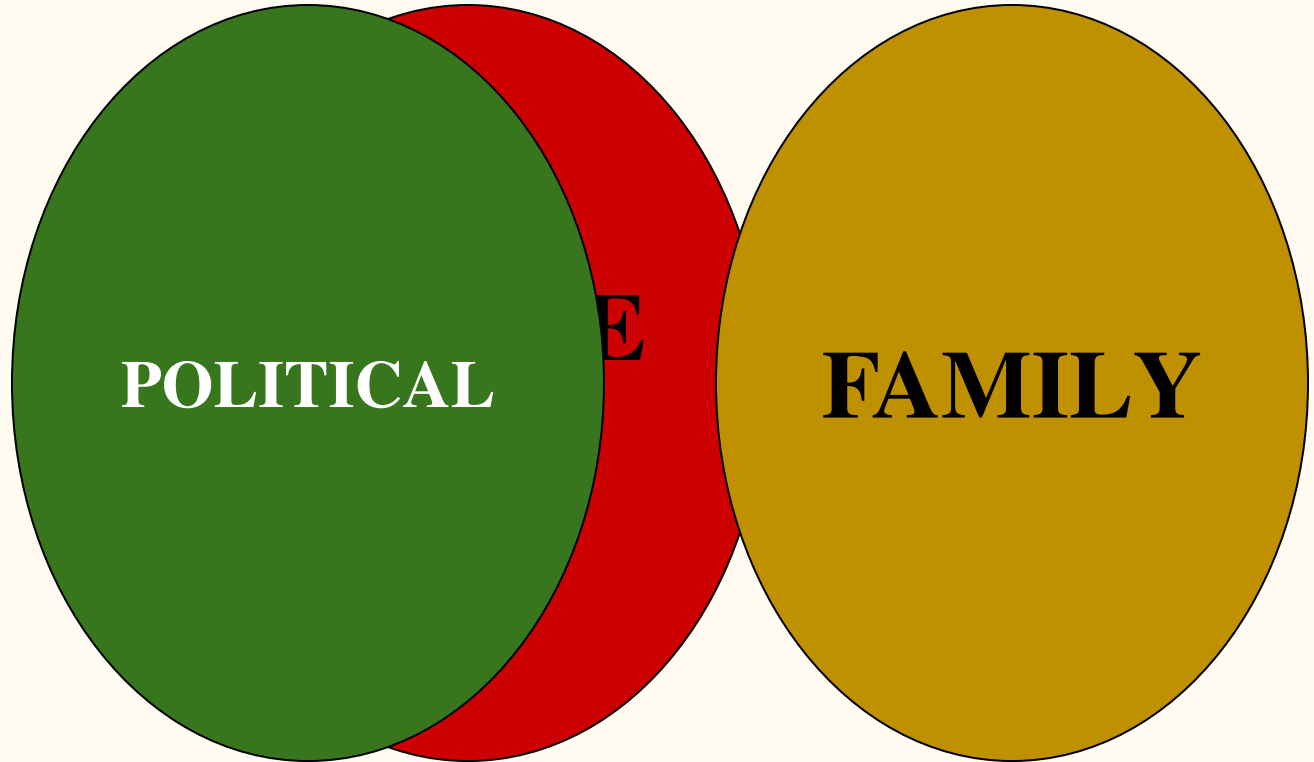
**In SUCCESSFUL**  
**tribal nations these**  
**THREE parts are**  
**BALANCED.**

# Tribal Balance



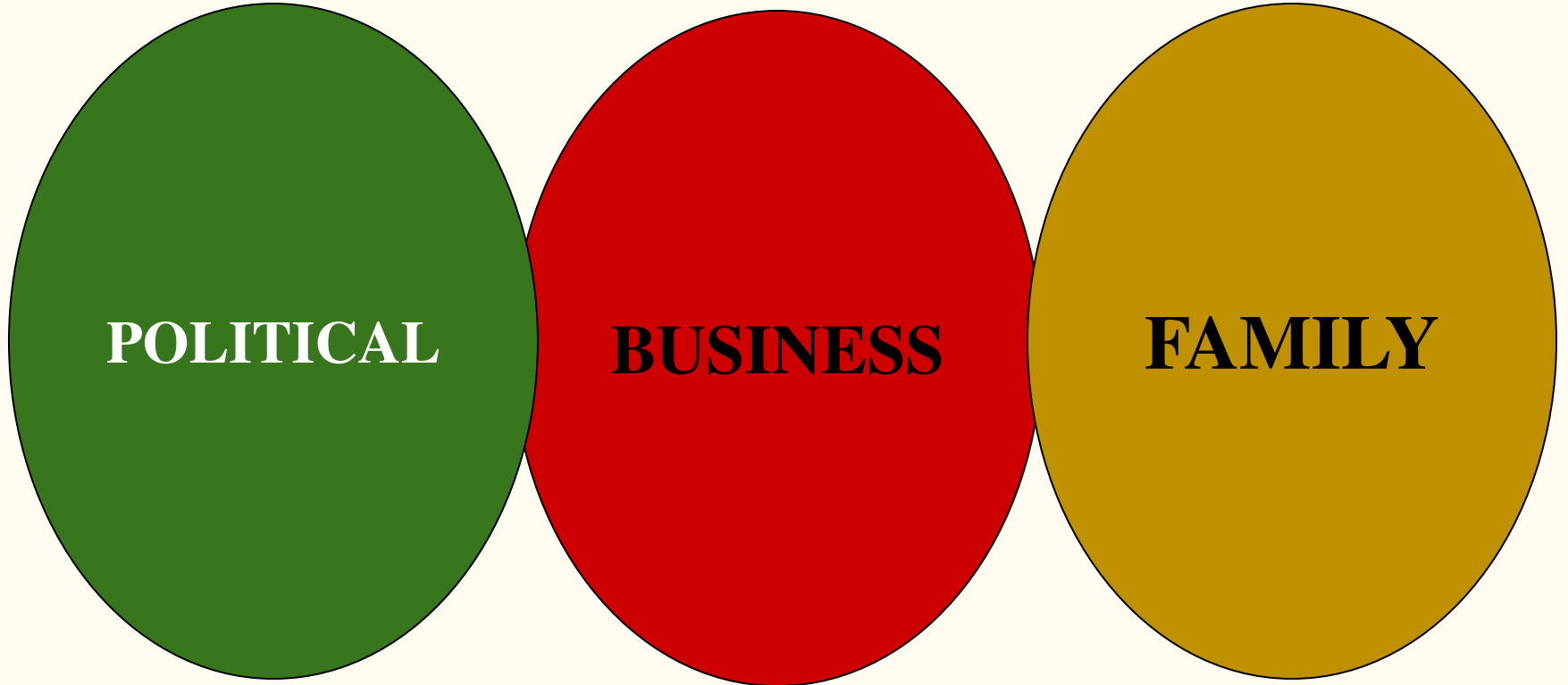
**Tribal government runs  
MORE effectively and  
there is LESS politicking.**

# TRIBAL BALANCE



**Tribal government runs  
LESS effective and there  
is MORE politicking.**

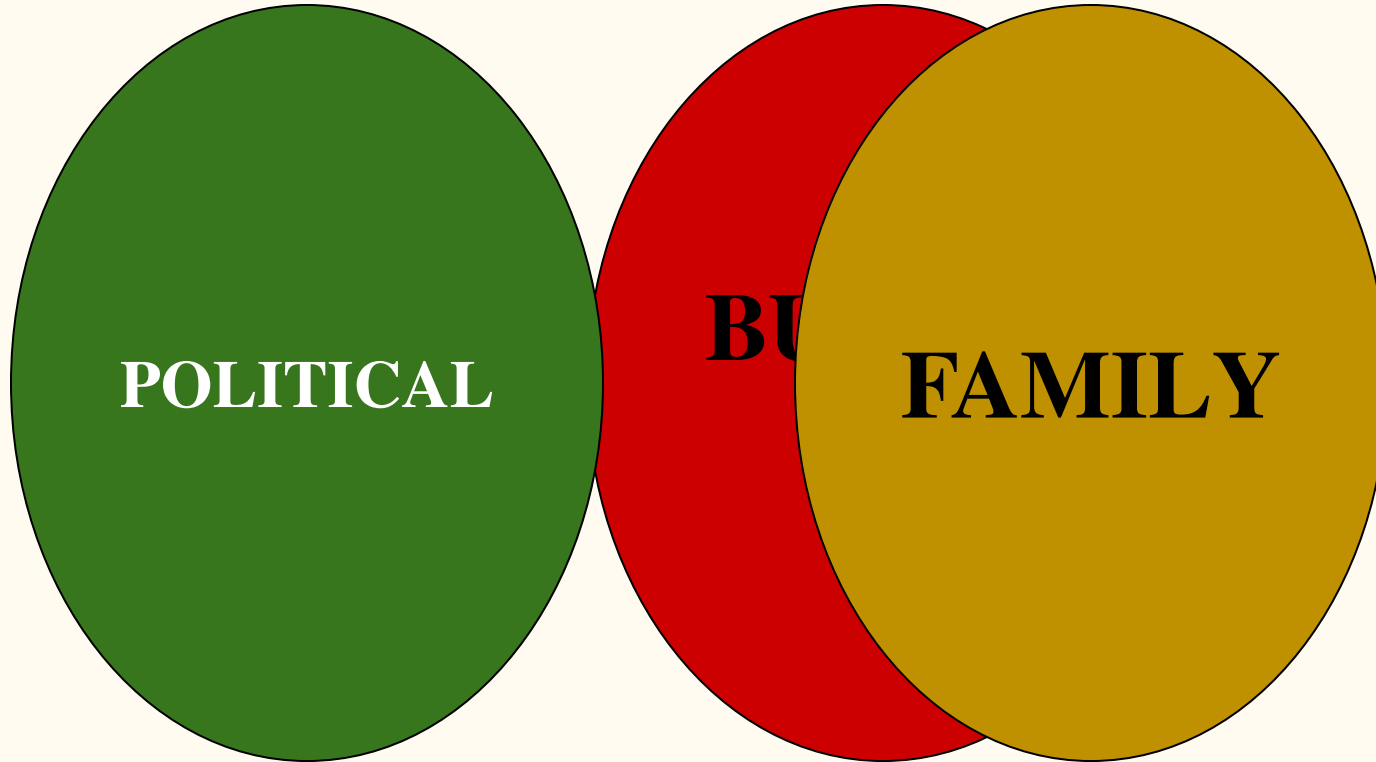
# Tribal Balance



Families take **MORE**  
responsibility for the  
nurturing and put **LESS**  
demands on tribal  
council or the businesses  
& organizations.

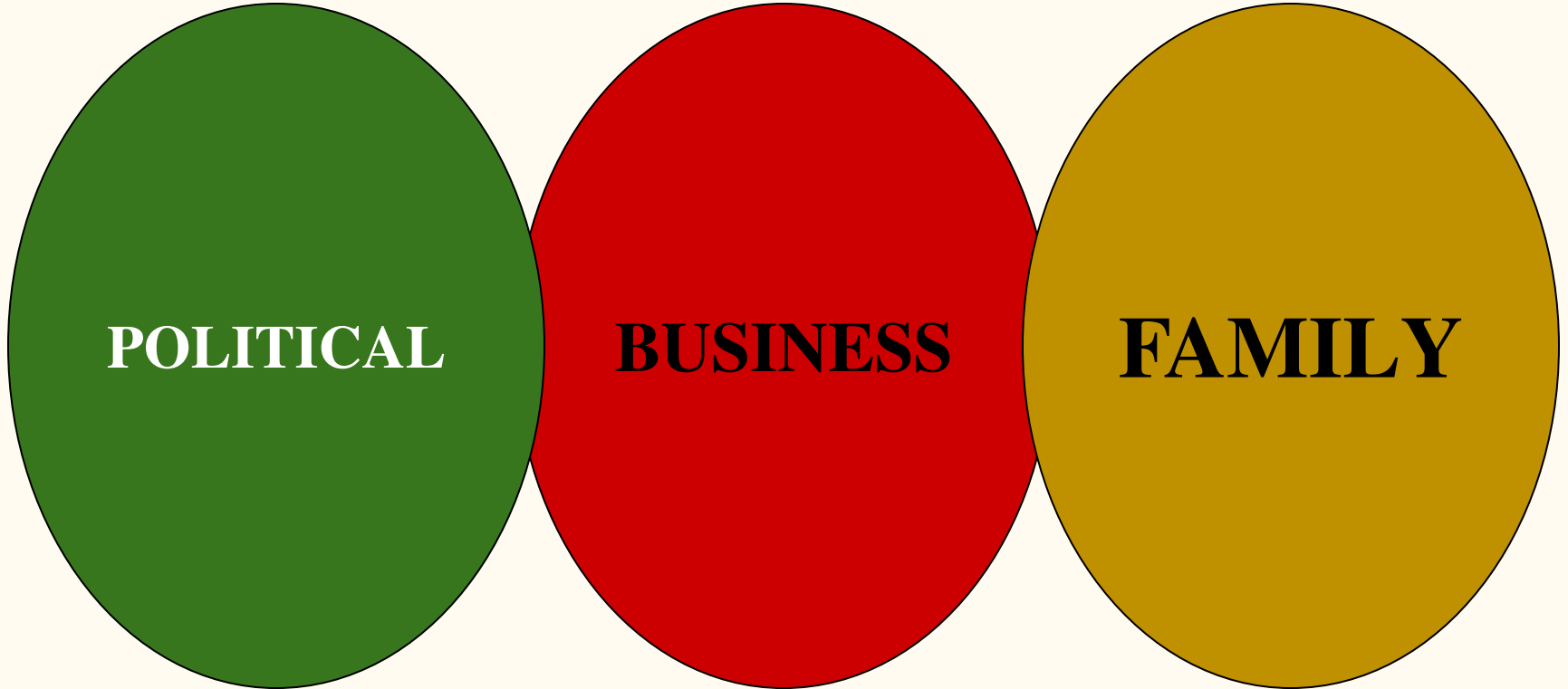


# TRIBAL BALANCE



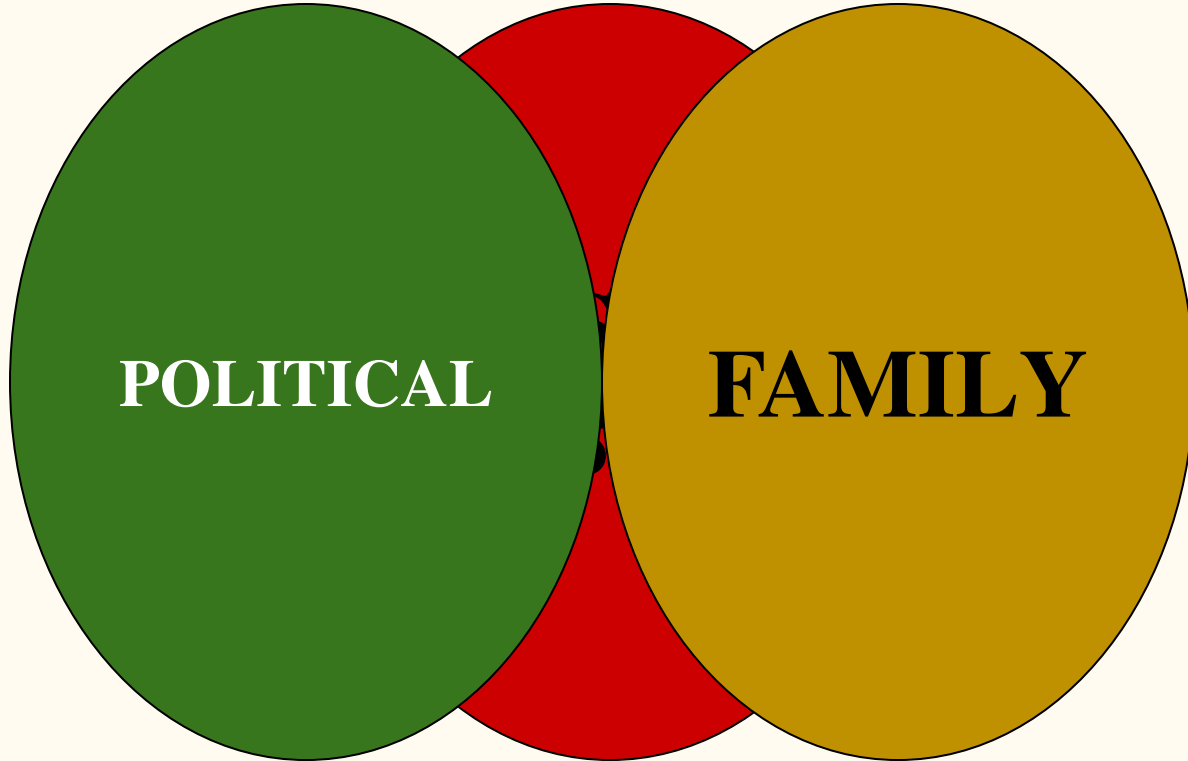
Families take **LESS**  
responsibility for the  
nurturing and put **MORE**  
demands on tribal  
council or the  
organization or business.

# TRIBAL BALANCE



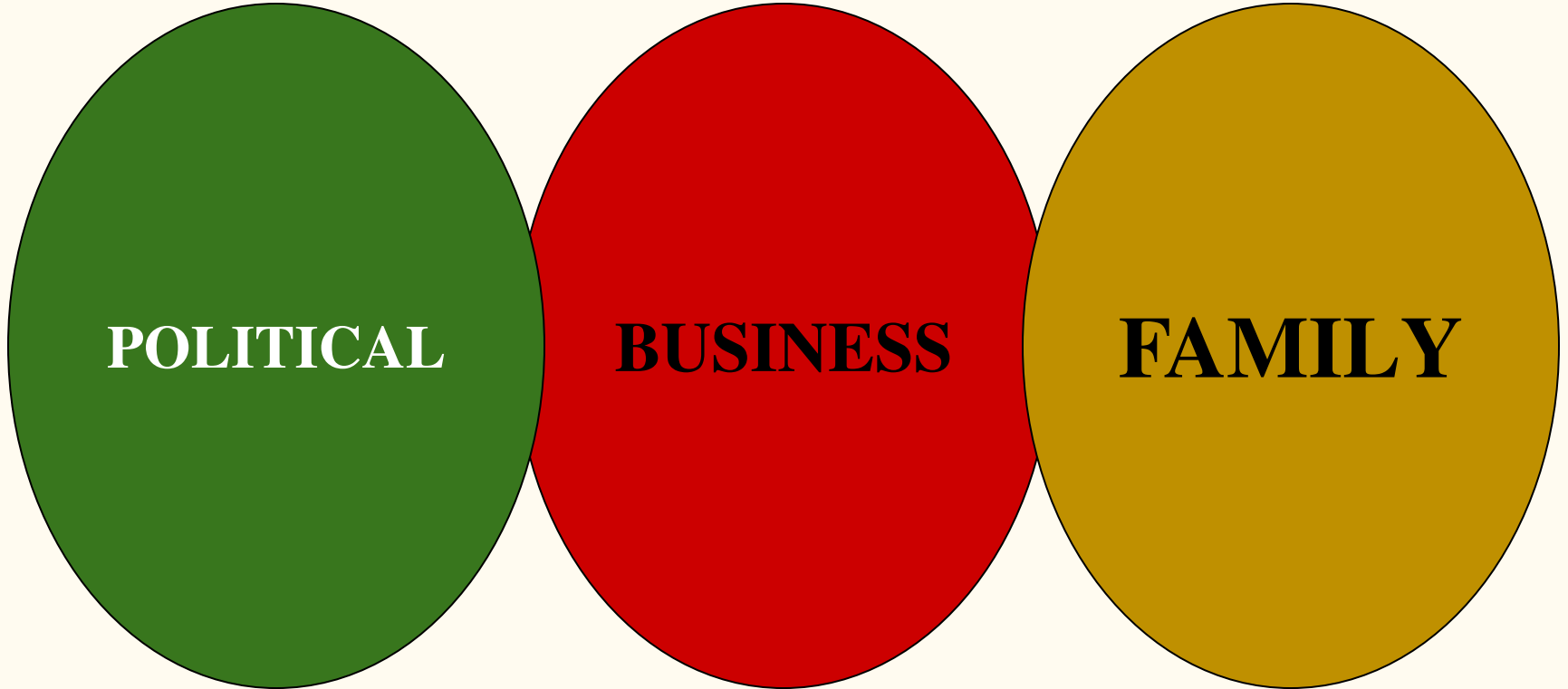
The tribes that are most  
successful with  
**ORGANIZATIONS** have  
**LESS** conflicts within the  
three cultures.

# TRIBAL BALANCE



The tribes that are  
unsuccessful in  
**ORGANIZATIONS** have  
**MORE** conflicts within  
the three cultures.

# TRIBAL BALANCE



**A culture of  
accountability done  
right helps to separate  
the three cultures under  
the umbrella of our  
tribe's tribal structure.**



**When TRIBAL BALANCE  
is achieved there is  
MORE support for tribal  
LEADERSHIP.**

Having the “RIGHT” Tribal  
Balance within a tribal  
organization will  
**INCREASE** success.

**The business runs well  
and produces MORE  
proficient learners that  
benefits ALL tribal  
members.**

Having the “**RIGHT**” Tribal  
Balance within a tribal  
organization will **INCREASE**  
the purpose of tribal  
organizations.

**Having the “RIGHT”  
Tribal Balance within a  
tribal organization will  
create FAIR and SAFER  
environments for all  
employees.**

**Maintaining the “RIGHT”  
Tribal Balance requires  
establishing mutual  
respect in these three  
structures.**

**Maintaining the “RIGHT”  
Tribal Balance requires  
establishing mutual  
purpose in this tribal  
structure.**

**Maintaining the “RIGHT”  
Tribal Balance requires  
establishing mutual  
meaning in these three  
structures.**



**Crucial Conversations  
must be held and held  
well to maintain Tribal  
Balance.**

**Crucial Moments must  
be identified and  
assessed to help  
maintain Tribal Balance.**

**We must MASTER OUR  
STORIES to maintain  
Tribal Balance.**

**Victim, Villain &  
Helpless Stories must  
be identified and  
acknowledged to help  
maintain Tribal Balance.**

**We must BALANCE the  
two hats of ENFORCER  
and ADVOCATE to  
maintain Tribal Balance.**

**How does our  
tribes find its**

**TRIBAL  
BALANCE?**

# CONTACT INFO:

(307) 349-6703

[aclifford72@gmail.com](mailto:aclifford72@gmail.com)

FB: Andi LeBeau