

Justice as Healing

A Newsletter on Aboriginal Concepts of Justice

Exploring justice as healing

James [sákéj] Youngblood Henderson Research Director Native Law Centre of Canada

In Eurocentric thought, there are many theories about justice and punishment.¹ The biblical approach of equivalence (*lex taltionis*) and nineteenth century British theories of intolerable wrongs, deterrence and retribution (*vergeltung*) establish the dominant theories of punishment in Canadian society. They seek to ensure that certain individuals physically suffer for their human weakness, conduct and mistakes big and small. These approaches have not been adequate at curtailing crime or even expressing solidarity with the victim.

In March 1994, the federal/provincial Justice ministers' reached a consensus on the problems of Aboriginal Peoples in the Canadian criminal justice system. They agreed that the Canadian Criminal justice system had failed and is failing the Aboriginal people. They agreed that a new holistic approach to criminal justice, based on Aboriginal values, practices and traditions, is essential in Aboriginal justice reform. In addition, they agreed that the Aboriginal of justice as healing be reflected in the general justice system. This statement is a good beginning for a renewed Canadian criminal justice system.

From my experiences, most Aboriginal peoples have never understood the exotic passion of Eurocentric society for labeling people criminals and making them suffer. The modern Canadian criminal justice system displays the Eurocentric elite's intolerance of human frailties, and justifies a theory of social control by violence. In the past, Aboriginal peoples have argued that the failure of a contrived cold of conduct of another time could not be the measure of all societies, that the cultural remedies of certain societies cannot be reconciled with the idea that justice is to be reasoned about and not merely felt. Now others are sharing these thoughts. Many scholars and practitioners are questioning why they have not thought much about why the Criminal Code sentencing provisions aim at punishing people instead of attempts to heal them.²

Emerging out of our past struggles with deterrence, sentencing, punishment, and preventive strategies in the Canadian criminal justice system is the evidence that the most successful programs have been built on empowering Aboriginal languages, ceremonies, traditions, and values. Now these are being seen as theories that could inform a sustainable transformation in justice from punishment to healing.

While we must not allow other to appropriate our cultural values and processes, Aboriginal peoples must aid the transformation by articulating, renewing and living their vision of justice as healing. It will not be easy. Canadian society seems to want their world-view. This is not an objective standard, since such standard is the ultimate in subjectivity.

Justice as healing is an old tradition in Aboriginal thought and society. Yet, after our experiences with colonialism, racism, domination and oppression, we have returned to this tradition as a foundation for contemporary remedies. Systematic deprivation of the Aboriginal ownership of land and resources, wealth, income, as well as our culture, human dignity and social position has placed difficult demands on the traditional values and rituals. We need to explore in their totality our visions of justice as healing. We need to evaluate whether existing therapeutic treatments are tools of assimilation or cultural integrity. We need to ponder why the justice system refuses to treat our people as fully human, choosing instead to dehumanize us as deviant organisms or sick minds that need rehabilitation. We have to consider the relationship of punishment to human rights. We need to thing seriously about replacing criminal law with tort and restitutionary remedies familiar to Aboriginal values. We need to rethink justice from our traditions.

The current theories of social justice which focus on the distribution of material resources, income, or position of reward and prestige are applicable to part of our situation. To focus on distributive justice

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continues to hide and reinforce systemic domination of Aboriginal peoples. Often such focus is the source of our problems with administration of justice.³ While the proper distribution of benefits and burdens is important to Aboriginal peoples, they should not be used to validate the continuation of colonial structures and contexts that determine modern distributive patterns and decision making.

Our holistic approaches to justice as healing are crucial to resolving our experience with colonial oppression, domination, and racism. This requires us to begin the complex task of decolonizing Canadian law, which means the elimination of systemic dominion by the colonialists and their oppression of Aboriginal peoples. To undertake such an inquiry we have to understand the six explicate processes of systemic oppression: violence, exploitation, marginalization, powerlessness, cognitive imperialism, and terror. Additionally, we have to confront the more complex implicate context of colonial oppression and domination. At the centre of the implicate context is the denial of these cognitive differences that created group oppression. For example, in 1989, a U.N. Seminar on the effects of racism and racial discrimination on the social and economic relations between the Aboriginal peoples and States concluded that racism towards Indigenous people was a new form of global racism: racism in the guise of state theories of cultural, in addition to biological, superiority that results in the rejection of the legitimacy or viability of Indigenous people's own values and institutions.⁴

In articulating justice as a form of healing, Aboriginal peoples are not seeking to construct an abstract or universal theory of justice in the Eurocentric traditions. We are not obsessed with constructing any universal normative theory of justice or adopting a Eurocentric theory of the rational ideas of the good and the just. We are attempting to grasp the wisdom of our elders, to define ourselves, and to articulate a certain way of healing and apply it to our traumatic experiences. Many Aboriginal people are attempting to construct many forms of healing themselves based on their awareness of their knowledge, traditions and values. This will create many methods of healing and views of justice. This reflects our cultural diversity. While there is no single theory of Aboriginal justice, the common theme remains the necessity of our knowledge our people and ourselves. The goal of healing is not to assimilate to the other, but rather to allow ourselves to live in a world as Aboriginal people who feel connected with our unique shared culture. We do not desire to be healed in a manner that we feel disconnected from our identities or feel that our identities are better suited to other societies.

I feel it is important that our visions of justice as healing be founded upon our knowledge and language, and rooted in our experiences and feelings upon our knowledge and language, and rooted in our experiences and feelings of wrongs and indignation. These emotions cannot be avoided in constructing our vision of justice. Our vision of justice are to be based on Aboriginal knowledge about the nature of humans, their society, and our linguistic mode of understanding the ecology. We cannot simply borrow the Eurocentric versions of human nature or psychology or society, since they are not based on our wisdom, knowledge, or language. They have never known who we are.

Our visions of justice as healing are concerned more with equitable processes or ceremonies to resolve conflicts rather than with substantive rules. When Aboriginals say a certain behavior or rule is wrong, they are constructing a cultural vision of justice. Our vision of justice as healing recognize that when an appropriate healing process is clear and is not taken, expressions of abhorrence at the wrong and a demand for justice are often subtle ways of tolerating wrongs. When we look for visions of justice, we should look at the best in our traditions of raising children, rather than Eurocentric books on justice. While we should be willing to dialogue about these grand systematic European theories of justice in the modern society, we should also clarify their failures and how they are different from our visions.

When we begin to formulate a view of our true identity, we are inevitably forced to understand our past oppression as well as decolonize the criminal justice system. We need to acknowledge and affirm our world-view, language, consciousness and order. Our vision of justice as healing require us to understand the importance of world-views or landscapes rather than validate a social ontology of individualism. Our traditions and values emphasize the beauty of distinct consciousness and orders. We should not repress them for formal equality with our oppressor's values. We must acknowledge that equal treatment under the law arose from the idea of fairness, and idea that presupposes differences. If every thing was the same, fairness would be a moot point. Contemporary notions of equality have a difficult time acknowledging and

affirming the right of Aboriginal people to be different, since it attempts to suppress all differences for universal pretence of equality. Pretence is no substitute for knowing who we are; only the value of having an authentic identity and learning how our traditional values can begin the process of healing us is more important than validating alien ideas of justice.

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1. Baird and Rosenbaud, *Philosophy of Punishment* (1988).
 2. See, Gosse, Henderson, Carter, *Continuing Poundmaker and Riel's Quest: Presentations Made at a Conference on Aboriginal Peoples and Justice* (1994)
 3. *Royal Commission on the Donald Marshall Jr. Prosecution* (1989); *Report of the Aboriginal Justice Inquiry of Manitoba* (1991); *Justice on Trail: Report of the Task Force on the Criminal Justice System and Its Impact on Indian and Metis People of Alberta* (1991); *Report of the Saskatchewan Indian Justice Review Committee* (1992).
 4. *Report of the United Nations Seminar on the Effects of Racism and Racial Discrimination on the Social and Economic Relations between Indigenous Peoples and the States*, Commission on Human Rights, 45th Sess., U.N. Doc E/CN.4/1989/22 (1989). See Barsh, "United Nations Seminar on Indigenous Peoples and States" (1989) 83 (3) *American Journal of International Law* 599.