

Justice as Healing

A Newsletter on Aboriginal Concepts of Justice

Justice as Healing: Thinking About Change

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In 1967, Canada began to recognize that there exists a problem in the drastic over-representation of Aboriginal people in the criminal justice system. This over-representation did not begin in 1967, it was just finally noticed by those with authority in Canada. The relationship between Aboriginal people and Canadian criminal law sanction is in actuality a historic one. A wing of Stoney Mountain Penitentiary was built to house the “rebels” of the “Metis Uprising” of 1885. The trials of Big Bear and Poundmaker are also notable. In 1897, five people from my partner’s community, the Thunderchild First Nation here in Saskatchewan, were convicted of dancing offences contrary to the *Indian Act*. The relationship between Aboriginal Peoples and Canadian justice is as old as the country.

Since the 1967 “discovery” of the problem of over-representation of Aboriginal people in the Canadian criminal justice system, more than 20 major justice reports have been compiled by Canadian governments (federal, territorial and provincial). Recent statistics demonstrate that despite exhaustive study and numerous recommendations for reform, the problem of Aboriginal over-representation has not been solved. In fact, the over-representation of Aboriginal people in the criminal justice system continues to steadily increase every year. A number of reports note that the over-representation of Aboriginal youth in the justice system is even greater than the adult rate of incarceration. This provides a clear warning that Aboriginal rates of over-representation will continue to increase in the immediate future as offenders tend to “graduate” from youth facilities, to provincial institutions, to federal prisons.

The well documented fact of Aboriginal over-representation within Canadian criminal justice leads to some dramatic conclusions. Aboriginal offenders are the commodities on which Canada’s justice system relies. If all Aboriginal offenders were released from custody tomorrow, prisons would be empty and forced to close. Justice personnel from parole officers to correctional workers to police officers would be laid off. The grave majority of any such fantasized layoffs would not affect employment in the Aboriginal community. As dramatic as the figures of over-representation of Aboriginal people in the criminal justice system as clients, the under-representation of Aboriginal people as employees within any component of the justice system is equally notable.

An important realization must follow. Aboriginal people cannot respect a justice system that ensures that the resources flow out of our communities. Our men (fathers, sons, uncles and nephews) are taken from us. At the same time the money paid in fines or to hire lawyers supports a system that is foreign to us. And the jobs created by the loss of our men to jails are rarely available to Aboriginal people nor do many Aboriginal people want those kinds of jobs. Many Aboriginal people continue to refuse to work in a system that they view as manifestly unjust. It is overly obvious that Aboriginal people cannot (and should not) respect a system of criminal law that entrenches our oppression under a pretense of justice and fairness.

Reforms to the existing justice system have not impacted significantly on Aboriginal over or under-representation in the justice system. Many of the multitude of justice reports recognize this fact. The Law Reform Commission of Canada in December of 1991 noted that the energy to reform the experience of Aboriginal people in the justice system must be directed in two ways. Reforms to the existing criminal justice must occur. These reforms will focus on an effort to “accommodate” Aboriginal culture, experience, and tradition within the existing justice system. Whether we like it or not, that system has custody over many of the citizens of our nations and we must not forget them. At the same time, an equal amount of Aboriginal energy must be devoted to the re-creation of Aboriginal justice systems.

[Sample Article]

The re-creation of “Aboriginal justice systems” (and as they were never formal systems in the way that we know justice systems today, I hesitate to use this phrase) is an idea that must be left with the people of Aboriginal communities. The state has only one job and that is to fully respect the dreams of Aboriginal people. The state cannot interfere in the development of Aboriginal justice aspirations. It is going to be a difficult journey for both Aboriginal communities and the Canadian state. Aboriginal communities must be allowed and encouraged to develop justice initiatives at their own pace in a way that is relevant to their communities. Justice in Aboriginal communities is an Aboriginal responsibility and must be fully respected as such. The wisdom does already exist in our communities to see our dreams fulfilled.

People in Aboriginal communities have always known that the Canadian criminal justice system does not reflect our desires or our ways of being. This knowledge is older than the 1967 Canadian recognition of our over-representation and the concern that recognition caused. Justice is a concept which does not easily translate into Aboriginal languages. As the attention paid to Aboriginal justice dreams has increased, Aboriginal people have been determined to find ways of expressing our ideas and views in the English language. This is one of the reasons that “justice as healing” conversations have increased. Healing expresses Aboriginal views on justice more clearly and accurately than any legal or justice words. Even the word justice has a negative connotation because the Canadian system of justice focuses on control, coercion and punishment. These are values that are very much contrary to traditional teachings. Healing more accurately describes a process that will return us to the place where we can recover Aboriginal methods of social control and social order. These methods are very much family based.

There is another important reason why the healing focus is important. In negotiations with federal and provincial justice officials, Aboriginal desires in the justice are becoming increasingly frustrated. Two road blocks are erected around Aboriginal dreams - jurisdiction and fiscal restraint. Fiscal restraint requires little explanation, everyone understands that Canada faces a debt crisis. However, the fiscal restraint excuse infuriates me. Just as Aboriginal people are standing up and re-claiming our rightful places in society, Canada runs out of money to assist us in reaching our potential. Canada has fully benefited from the resource base that belonged solely to Aboriginal Peoples. Canada has not taken either their treaty responsibilities or their care taking role of this land very seriously. If Canada is bankrupt, it is not Aboriginal Peoples responsibility. Canada’s fiscal difficulties do not end their treaty responsibilities. Yet, the fiscal restraint argument requires Aboriginal people accept that responsibility. Fiscal restraint is a 1990’s phenomenon that is built on racist thought.

Jurisdiction issues are not always as well understood. Government officials still have a difficult time accepting that Aboriginal people have an inherent right to govern our own affairs and that this right includes “criminal” justice. Jurisdiction is a legal word that means the power or authority to act. Jurisdictional roadblocks indicate a fear on the part of Canadian officials to move toward different solutions to problems of crime and order.

Unfortunately, Aboriginal people often feel trapped by the provinces, territories and federal governments ability to erect these two barricades. This is why I think healing is so important for us to talk about. Money can help us heal by providing treatment programs. However, these programs have not proved completely successfully. Healing does not require money. Healing is really about being able to care for yourself, your family and all your relations. Healing also avoids the jurisdictional barricade, no one can stop us from caring!

Healing is also about taking responsibility. It is about re-learning how we are supposed to be. Without knowing what traditional responsibilities are, then the right to self-determination really means nothing. Healing is about learning to act in a good way.

There are many things Aboriginal people need to heal about. There’s foster care and residential schools. Many women and children have been physically and sexually abused. This has also happened to some of our men too. Some of us have accepted *Indian Act* rules. We need to heal from abuse, oppression, and colonization. In my mind these things are more important than worrying about how we write down our rights in Canada’s constitution.

Healing is the solution. Healing means that we are able to “turn off the tap”. We will be able to stop our young people from running into conflict with the law. When we have healed, we will also begin to

understand how to accept back and forgive those individuals who are currently serving sentences in Canada's prisons. That is the biggest challenge ahead. Many of our people know how to do "time" Jail "junkies" like myself know how to get them out. What we do not know is how to stop the revolving door of justice from recapturing them. We need to know how to keep our people out of institutions. That step requires healing our communities as well as providing healing opportunities for those who now fill Canada's criminal justice system.