

Justice as Healing

A Newsletter on Aboriginal Concepts of Justice

• 2014 • Vol.19, No.3 • Native Law Centre

1
Walking the Traditional Paths:
Uncovering the Gateway to
Indigenous Healing in the
Justice System

2
The Justice System
and Aboriginal People.
The Aboriginal Justice
Implementation Commission

•••••

Justice as Healing is published by the Native Law Centre, University of Saskatchewan. We welcome and invite your submissions, comments and ideas. Newsletter submissions can be made via email sent to:

Justice as Healing Newsletter
Native Law Centre
University of Saskatchewan
160 Law Building
15 Campus Drive
Saskatoon SK S7N 5A6
Canada

<http://www.usask.ca/nativelaw/publications/jah.php>

Telephone: (306) 966-6196

Fax: (306) 966-6207

Email: nlc.publications@usask.ca

•••••

The *Justice as Healing* Newsletter (ISSN 1203-8393) is published quarterly. The 2014 subscription fee is \$30.00 (Cdn) price includes shipping and handling. Please add 5% GST (where applicable) to the subscription price. Prepayment is required. Please ensure that cheques are made payable to the University of Saskatchewan and mailed to the Native Law Centre.

To order by Visa or MasterCard call (306) 966-6196

Our GST # is R119279313

Walking the Traditional Paths: Uncovering the Gateway to Indigenous Healing in the Justice System

Editor's Note: Rupert Ross retired in April 2011 after serving 26 years as an Assistant Crown Attorney with the Ontario Ministry of the Attorney General. His profession led him to over 20 fly-in First Nation communities in northwestern Ontario to conduct criminal prosecutions. During his career, Mr. Ross searched for ways to make the criminal justice system more responsive to the existing needs and cultural traditions of aboriginal peoples. His interest in law and aboriginal communities has continued into his retirement, and in May of 2014, Mr. Ross released his third book, *Indigenous Healing: Exploring Traditional Paths*, which explores indigenous healing from colonization.

The following is an excerpt from *Indigenous Healing: Exploring Traditional Paths*.*

Introduction

Some time ago, I attended a justice conference with a large group of Crown attorneys, police officers and aboriginal people. I remember an Anishinaabe (Ojibway) Elder telling us a story before he opened the conference with a traditional prayer. He told us that before the white man came to Turtle Island, his people had their own way of praying. It involved turning their heads skyward, searching the heavens with eyes wide open and raising their arms in a gesture of greeting and friendship. He told us that they had prayed that way for centuries and it seemed to work, because everybody has pretty good life here on Mother Earth.

Then the white man came, and he had a different way of praying. Instead of turning his head skywards, he turned his head down. Instead of holding his arms out, he pulled them in tight and clasped his hands in a tipi shape below his chin. And instead of keeping his eyes open, he held

them firmly closed for the whole prayer.

When the Indians saw that, they decided to give it a try. So that's what they did – they prayed, head down, hands clasped and eyes closed.

When they finished their prayer and looked up, however, all their land was gone! So that's why, he told us, they went back to praying in their own way. When the Elder told us that story, he changed everything in the room. We had been three groups of people with a history of not getting along all that well together. Police often hold Crown attorneys in rather low regard, either because we tell them they don't have enough evidence or because we simply fail to prove their charges in court. Sometimes, Crown attorneys can come down on police for things like breaches of Charter rights that make the evidence they brought us inadmissible in court. And it's fair to say that aboriginal people have many good reasons to be wary of both groups. At any rate, you could feel the polite tension in that room – until, that is, the Elder told us that story.

We all laughed, and we all laughed together. It was just such a beautiful, respectful way to break the ice at the very start of the conference. It set a common-ground tone that took all of us through the next two days in relative comfort with one another. We all became better listeners because of it, and better able to work together on the serious topics we were there to discuss.

I tell this story now with the same hope: that it will help to set a tone of being together in a state of mutual respect. If we can all laugh at the same thing, then anything is possible.

It's been a long time since the publication of my first two books, *Dancing with a Ghost: Exploring Aboriginal Reality* in 1992 and *Returning to the Teachings: Exploring Aboriginal Justice* in 1995. I have been largely silent since then, with the exception of several unpublished papers I've written that have been making the rounds. My attention and energies have, instead, been focused on my wife, Val; on our three growing children; and on the pressing demands of northwestern Ontario. Now, after twenty-six years, I've finally said goodbye to the courts and the formal justice system, and our children have grown and moved away. This is supposed to be my quiet time, when my focus rests on Val, on our travels together (especially back into the bush) and on our children and (at the moment) one grandson.

So why am I writing this book?

In fact, there are many reasons, but I want to share two in particular at the outset. Both came from a Calgary conference that was called some years ago to discuss the creation of the Truth and Reconciliation Commission (TRC), a body established as a result of aboriginal lawsuits against churches and governments for their operation of the residential schools. Much discussion took place at the conference of the commission's determination to investigate that system and chronicle the impact across the decades. At the end of those discussions, the microphone was offered to people who had attended residential schools and wanted to comment on how they saw the reconciliation process unfolding. Two aboriginal people, a

woman and a man, said things that have stayed with me ever since.

The first speaker was an aboriginal Grandmother. She said that she wished the TRC every success in helping to tell the full story of residential schools. Then she surprised me, because she didn't mention the need to educate non-aboriginal Canadians about that system. Instead, she focused on aboriginal children. Specifically, she said she felt they needed to understand how their parents and grandparents had been changed by those schools. "Maybe then," she said softly, "they can learn to forgive us for failing them so badly."

I have heard the same sentiment many times since then, and from many different people. The most recent was an aboriginal woman who spoke on the radio about a weekend gathering of female Elders and youth, and how surprised the Elders were to learn how little the youngest generation knew of residential schools. She too made a plea for that kind of education to begin.

So that is one reason for writing: to help tell the story of residential schools to the people who need to hear it if they are ever going to forge healthy relations with their own parents, grandparents and communities. I know I'm not the only one to tell that story, or even the best one to do it, but I've been told, and I believe, that every voice counts. My hope is that aboriginal and non-aboriginal people will find value in what I write here.

The second person who came to that TRC microphone was an older aboriginal man, an obvious "graduate" of residential school (now known as a "survivor" to distinguish the experience of imprisonment within residential schools from simply being a student in the country's regular schools). He told the assembly that he had just one question he needed the TRC to answer for him: "Why can't I cry?" he explained that even when he knew things were sad, he could not cry. At that time, I had just begun my exploration of what western psychology calls *emotional intelligence*. Much of the discussion centres on what a child needs to be able to develop the emotional skill sets necessary to become an emotionally mature adult. I was

particularly interested in learning about what happened to children who grow up in states of emotional numbness, with no one wanting to hear how they feel and no one able to guide them into nuanced awareness of the many feelings that course through them. That, as I was beginning to understand, was what children experienced in residential schools. When that man asked, "why can't I cry?" he seemed to be speaking on behalf of generations of aboriginal children who had no choice but to grow up intentionally numbing themselves, those emotional skill sets as adults, many do not know how to respond to frustrations of life except by continuing that numbness or, particularly when alcohol or drugs are involved exploding into anger and violence.

That story of intentional numbing also needs to be told because the combination of childhood trauma and emotional numbing is, in my view, one of the most important legacies of residential school. As I have come to understand it, this explains why the destructive forces begun within residential schools still plague so many aboriginal families today, even when the last school shut its doors forty years ago. Parents cannot teach what they never learned and they cannot demonstrate what they have never experienced. The numbness and later difficulties in life may, in fact, be even more intense today than they were originally, if only because the stockpile of traumatic experiences has been building in generations since.

So that is the second reason I am writing: once we gain some understanding of how psychologically damaging the residential school system was to those who attended, we must then explore why it remains such a powerfully destructive force today. Aboriginal children need to know about the history of their families, and non-aboriginal Canadians need to know about the true history of our country. I don't think Canada understands, and I think we ought to.

That being said, I also want to write about the hugely inspiring things I have encountered within traditional culture, and about the determination of so many leading aboriginal people to restore traditional visions to prominence in the

modern world. Non-aboriginal Canada needs to see this determination as well, and to gain some understanding of how those visions can play an important role in Canada today. This cultural revival is being promoted as not only the best way to restore health within aboriginal families and communities, but also as simply a better way to live. As much as I have been saddened by the extraordinary violence and despair I have witnessed in so many aboriginal communities, I have also been blessed to meet some of the most inspiring and powerful teachers within the larger aboriginal community. All of them focus on learning about, and sharing, traditional visions of humankind and our best way to live on Mother Earth. I have seen first-hand their determination to bring their original histories to full flower in the modern world. I have been told that there are now over a thousand aboriginal people holding Ph.D.s in Canada, and I know something of what they've been taught and where they want to go. I want to share some of those stories, too.

In the last two years before my retirement in 2011, I was lucky enough to be given a temporary placement with the First Nations and Inuit Health Branch of Health Canada, working on community healing programs. Our primary task was to supply the TRC with health support workers to take care of the often elderly people who came forward at the hearings to share their stories of life within residential school. I spent time with some of the four hundred-odd people who filled the role of healer, most of them aboriginal, and I learned a great deal about how they saw healing in the modern context. After years of working with lawyers and judges, seeing the pain brought out by the courts, the time that I spent with the healers was very special; I will always be grateful to them for sharing so readily with me. I also witnessed the renewal of the National Native Alcohol and Drug Addiction Program (NNADAP) and travelled across Canada to hear how aboriginal people understood the high degree of substance abuse in their communities, as well as to work with them on redefining the kinds of healing processes that might be most effective. In this role, I met one Mohawk

woman who is determined to restore emotional skill sets to her people, and I experienced her excitement as I sat in on her training sessions.

The more I learned about those kinds of healing activities, the more I saw that they shared a larger goal: they all wanted to anchor aboriginal life in traditional cultural visions once again. That experience affected me deeply. I believe that the rest of Canada needs to learn about these visions, about how aboriginal people see them as being a part of the modern world, and about the determination of so many people to bring them back to life. For this reason, I have included many quotations from other authors as I go along. I think it is important for non-aboriginal Canadians to understand how many aboriginal people have become well educated in the western world yet remain determined to restore traditional visions. I have also quoted many non-aboriginal psychologists, academics and other researchers, primarily to demonstrate the degree to which they have come to agreement on such realities as the devastating impact of residential schools. Many of the authors whose work I have quoted are listed at the back of the book, with brief descriptions of their careers and writings. I encourage everyone to begin looking at work such as theirs. The body of literature that speaks to aboriginal life and history in Canada is growing rapidly, and I suspect it will change Canada's sense of its own history as time goes on.

Most of this book will focus on how aboriginal people see a healthy future, not the sadness of their colonized past. I acknowledge that I like what I have learned about traditional visions. To me they are sane, exhilarating and productive. My only concern lies in how well I can give voice to them in English, because they come out of a different paradigm, a different way of understanding how humankind fits into the life of Mother Earth. I suspect that many of the ways of articulating that vision simply cannot be replicated in English, but that's all I've got to work with. I'll have to fall back on something I was told by a Mohawk woman who recently invited me to make

a presentation at her community's annual Justice Day: "I think you have a very positive way of relating and talking to both First Nations and non-First Nations, which is a rare gift indeed." I hope she is right, and that I can convey even a small sense of my appreciation of the beautiful balances struck within traditional visions.

In that regard, I want to pass along something I heard from a Cree Grandmother, Maria Linklater, who was speaking to a group of aboriginal youngsters from across Canada, telling them stories about the ups and downs in her life. We were all sitting outside in a circle under a tree, with warm prairie sunshine dappling through the leaves. She spoke of the times in her life when the sadness was so engulfing that it seemed as if there were only darkness all around her, but then something bright or cheerful always came along to bring her back into balance. She spoke of times when the unfairness of situations was so hurtful that she wanted to strike out in anger, but something generous or compassionate always came along to bring her back into balance once more. Then she paused, as if an idea had just occurred to her. She slapped her thigh, chuckled out loud and said something I've never forgotten: "You know, I think I finally figured out what it means to live a good life." That declaration really caught my attention, because "a good life" is a serious concept within aboriginal traditions, and because Elders seldom tell others what they should think, say or do. "Maybe," Maria told us, "you know you're living a good life when you get to my age, and you look back maybe five years or so, and you find yourself saying, 'Boy, I sure didn't know too much ... way back then!'"

As the years go by, I will continue to unravel what she told us, finding new significance in her words. For one thing, I love the idea that "a good life" does not demand amassing a stockpile of answers, but rather encountering deeper questions as your struggle along. As a result, I no longer worry about finding myself saying "I don't know" far more frequently than I used to.

But her Teaching suggested something else, as well: if I acknowledge

that every five years or so I'll probably change my advice to myself, why would I try to give anyone else advice along the way? Instead, all I can do is tell my stories as best I can. If they happen to touch someone in a positive way, that's wonderful. If they don't, well, they don't, but it's all I can offer.

And that's the spirit in which I write, as a co-explorer, knowing that I'll probably see things differently as time passes and my questions get deeper still. I must be patient and remember the fragility of what I think I know. We have a duty to offer our own stories, however, just in case something we say does touch someone else in a positive way. Stories of struggle can be especially important, because we all struggle. In the same way, stories of how we have overcome our challenges might help inspire others to believe that they too can overcome. I have witnessed the extremes of aboriginal life, from the most awful to the most awe-inspiring. I have been told that the uniqueness of my experiences within the aboriginal world imposes a special duty to share my stories as best I can.

I should also mention that I have capitalized three words throughout the book: Grandmother, Teachings and (with a couple of exceptions) Elder. All three words prompt deep feelings of respect and appreciation in me, feelings I want to honour whenever I write about them.

Finally, I remember what I was told at the end of a week-long session with some of the most highly educated aboriginal people in North America. One man turned toward me and said, "Okay, get out there and write about what you've learned." When I looked a little puzzled by the responsibility he was giving me, his amused response was this: "You don't think you were invited here just for your own good, do you?"

CHAPTER 1: Learning to See Relationally

In the eighteen years since *Returning to the Teachings* was first published, my learning has never ended. Each new experience has given old experiences a new shape and my sense of exploration has never diminished. While much of my learning has been conscious work, perhaps

the most important parts just emerged over time, showing up first as "that's an interesting thought" and then gradually revealing much wider application than I'd ever imagined.

For that, I have to thank Murdena Marshall, an Elder from the Eskasoni First Nation on Cape Breton Island, who invested much of her time in me during my first visit to her community in 1992. I had just been seconded to the Aboriginal Justice Directorate, a new division of the federal Department of Justice, and my job was to explore the aboriginal assertion that, for them, justice was primarily a healing activity, not one of vengeance or retribution. My plan at the time was to go to the various First Nations engaged in healing to try to understand what their version of counselling looked like, whether it was working and, if so, why. Her response took me a little by surprise. Over the course of several conversations, she made it clear that gaining an understanding of aboriginal healing programs required much more than just visiting them and examining what they did.

In her view, I first had to gain a deeper appreciation of how aboriginal people saw Creation and the position of humankind within it. For those kinds of explorations, she suggested I would be wise to seek out Elders, philosophers and teachers and spend time learning from them. If I felt comfortable with the idea, it would also be good to participate in traditions such as the sweat lodge and letting-go ceremonies. I will be forever grateful for that guidance. As I sat with aboriginal philosophers and teachers, it became clear that the aboriginal preference for healing is not a preference at all, but rather a necessary manifestation of a world view that is fundamentally at odds with the Cartesian, Newtonian and Darwinian world view in which I grew up.

World views are hard to talk about. You have to substantially escape your own to even begin to hear what is being said about another. For instance, I remember being told at an aboriginal justice conference that western and aboriginal scientists might approach the study of a plant in very different ways. The western

scientist, we were told, would probably focus primarily on understanding and naming all the parts and properties of the plant; figuring out its root, stem and leaf patterns; examining how it takes in water, sunlight and nutrients; determining how it reproduces and its life expectancy; and so forth. The aboriginal scientist, by contrast, would likely focus on understanding what role that plant plays in the meadow. She would examine how it holds soil when the rains come; what plants flourish close to it; what birds, animals and insects are attracted to it; how it is useful to them; what kinds of conditions it needs to remain healthy – that sort of thing. It's not that the two scientists would pay no attention to the concerns of the other, just that their emphases would be different; they would see the plant in different ways.

Remember that I was told this story at an aboriginal justice conference. Afterwards, I was asked how aboriginal people could possibly accept my justice system, given such different ways of seeing. I was confused. I honestly saw no connection between that story and justice, but I recalled Murdena's encouragement to keep my horizons wide and open. I had already opened a special shelf in my memory and labelled it "Indian puzzles," using it to store the many things I had seen or experienced but couldn't understand. So, I stuffed that plant-in-the-meadow story up there as well, hoping that one day I might figure out the connection. I'd already decided that I had no choice but to wait, eyes and ears open, to see if understanding came to me further down the road.

I discovered the same phenomenon virtually everywhere I went. There were dozens of times when I was left in confusion by responses that seemed disconnected from what had prompted them, but I'll mention just a few other instances at this point.

One of them took place during a coffee break at a cross-cultural conference with Anishinaabe people on the shores of Lake of the Woods, just outside Kenora, Ontario. An Elder, Alex Skead, came up to me and, out of the blue, said, "You're a lawyer, so maybe you can answer a question for me. I knew that Alex had done

a pipe ceremony for Pierre Trudeau when he was prime minister, and that he didn't ask frivolous questions, so I was all ears.

“Why is it that all of your people seem to think that law comes from books?” ... “That’s not the way my people understand it,” he continued.

He then turned toward a window and pointed out at the water, rocks and dense bush surrounding us. *“That’s where law comes from!”* he announced grandly. Now I was totally lost. All I could think of was Charles Darwin’s law of the jungle, which describes us as living in dog-eat-dog anarchy. Wasn’t that exactly what our laws were designed to control? I didn’t say that, of course, because I’d often heard Alex giving his Teachings, and he always spoke of values like respect, love, caring, sharing and humility. How did he get those values from the bush? Which one of us was missing something, and why did I think it was me? Without hesitation, I stored that conversation with my other Indian puzzles, right beside the plant-in-the-meadow story.

But there were even more confusing conversations. At the opening of an aboriginal justice conference in the mountains of Alberta, a large shell filled with smouldering sweetgrass was brought around. Each of us wafted the fragrant smoke over his head, eyes, ears, mouth, chest and thighs, asking for its assistance to think, see, hear, speak, and feel only in healthy and respectful ways during our time together. This smudging is a common way for serious discussions or events to begin. The discussion leader then spoke about language differences, explaining that aboriginal languages were not so much noun-centred as they were verb-centred, trying to emphasize not the *thing* aspect of Creation but rather the pattern, flow and function aspect. Once again I felt lost, wondering what this had to do with justice systems. He then held

out the shell and told us that in aboriginal languages it would be “called” differently at various times. It could be a sacred vessel at one point in time, a vessel holding candy at another, or a vessel receiving cigarette butts at some other time. It all depended on its relationship to the speaker and to the occasion. To call it, as European languages did, by one name for all occasions was seen as a “poorer” way to speak of the world. When Indian eyes look upon Creation, he told us, they see a much more fluid, transforming and interconnecting reality than Newton ever did, with his linear, billiard-ball chains of cause and effect.

Then he asked the question directly: Given those differences, how could I expect aboriginal people to happily join in all the things done by the western justice system? Once again, I had no answer, because I couldn’t see how the story connected to such a question. Up it went onto the Indian puzzles shelf.

The final event I’ll mention here was a time when I was told that western and aboriginal cultures hold opposite views about the importance of human beings in Creation. The Bible puts humans right at the top, set on earth to rule all the fish in the sea and everything else out there. Aboriginal Teachings present an opposite hierarchy. Mother Earth, with her lifeblood, the waters, plays the most important role in Creation. Without the soil and water, there would be no plant realm. Without the plants, there would be no animal realm, and without all of them, there would be no us. Within this reverse hierarchy, human creatures are understood to be the least essential and the most dependent. No longer masters of Creation, we are its humble servants instead.

In fact, I was given that Teaching many times, and for years I failed to see why it was important enough that I be told about it. Why, I silently asked myself, should seeing Creation in a way that puts broccoli on a higher plane than my best buddies lead to different visions of justice? I felt that my Indian puzzles shelf was starting to creak and groan under the load.

Then, one beautiful August day several years later, a very small event hit

me in a very large way. I encountered an Anishinaabe Grandmother hitchhiking in northwestern Ontario and I gave her a lift. Knowing that a lot of the old people gathered blueberries at that time of year to raise a little cash, I asked her how the blueberry crop was that summer. She immediately replied, “Oh, I was at the garbage dump last night, and there were sixteen bears out there!” That’s all she said, apparently satisfied that it was a complete answer to my question. Fortunately, I had lived in the North long enough to understand her answer: bears thrive on blueberries, and a bumper crop means all the bears are back in the blueberry patches sporting huge purple grins. A failed crop, however, causes hungry bears to converge on the nearest dumps in search of food.

But it was the automatic way she answered that stuck out to me. I could feel all the Teachings I had jammed onto my Indian puzzles shelf doing little two-steps around each other, as if they were finally organizing around a theme. I had asked about one thing, but I receive an answer that seemed to refer to something separate instead.

It started coming: things weren’t separate to her at all, not the way there were to me. Instead, all things acted within complex webs of relationships. Whatever happened with one rippled out to touch and affect all others. If you talked about one, you were talking about all, and any point in their relationship would do. To her, the real essence of Creation lay in what was going on *between* things. That’s where her attention went, to all the relationships that bind things together so strongly that a question about blueberries gets an answer about bears.

Relationships. Why had I not seen it before? After all, every sweat lodge I had ever attended was called to a close by everyone declaring, “All my relations!” – referring not just to aunts and grandfathers but to all the rocks, trees, animals and waters that are known as “relations” to aboriginal people.

As time went by, Teachings started sliding down off my Indian puzzles shelf and fitting together in ways I hadn’t seen before. The plant-in-the-meadow

Teaching, for instance, told me that the well-educated aboriginal eye sees not the plant in isolation, but, instead, the vast web of relationships connecting it with everything else that makes up the meadow. If you look at it that way, the meadow is, in its essence, less a collection of things than a complex web of ever-modifying relationships. When I applied this eye to justice, I suddenly saw the aboriginal people's complaint: you could not deal with offenders alone. They were the product of all their relationships, and a true justice system would have to bring in the other parties to those many relationships if there were to be any hope of turning him around. Victims were part of a similar circle; once touched by a crime, they brought new dynamics into all their relationships as well. To return to the plant-in-the-meadow story it is clear that if the plant becomes ill, that is because the other contributors to the meadow must have changed their relationships with it in some way. You can't simply heal the plant and send it back into an unchanged meadow.

Relationships. They are what make, direct, unmake, damage and reward us.

You can't know me without knowing something of my relationships. The naming of the shell showed the same emphasis. You don't simply look at something and put a name on it. Instead, the relationship between it, the person using it and the occasion of its use shapes the way it must be named at any point in time. Change any part of the dynamic and you must also change how it is known – if, that is, your eye has been trained to look between, among and around, not simply at.

I also began to see how Alex Skead could find values like respect and sharing when he looked out the window. When he pointed to the bush as the source of law, he was not directing me toward individual things, but to relationships. What he saw, and what his Teachings helped me see, was a totality defined primarily by healthy,

sustaining and symbiotic relationships between all the things out there. Bears live off fish, who need frogs, who eat insects, who need algae that live in water and so forth. But these are not so much linear chains of dependency as they are interwoven, beneficial relationships of such complexity that no one can truly know what will happen if one element changes its contribution to – its relationships with – the mix. All we can say is that all elements are necessary to one another, to us, and to the relationships that sustain us. In the language of the Elders, they are all sacred. This fundamental law, taken from seeing the symbiotic dynamism of the natural order, was not Darwin's thing-centred law of violent competition, but the law of respect. Each entity makes essential and unique contributions to every other thing, and in that way to the maintenance of a healthy whole. Every contribution, whether it seems positive or negative to us, touches all and plays a role within the whole. It is patterned forces, not the matter they push around, that are the true essence of Creation. Aboriginal Teachings suggest we direct the bulk of our attention toward those patterned forces if we wish to maintain ourselves – and our world – in health.

Alex's message about the justice system was wholly aligned with the plant-in-the-meadow story but took it a step further.

The eye cannot focus simply on the single acts of the offender. Instead, it must look at all the relationships that engaged him, and the values upon which those relationships were built.

In committing his crimes, the offender saw himself as a solitary being and felt indifferent to his impact on others. Didn't he need to be shown his connection with

others, his reliance on them and his duty to create respectful relationships with them instead? A system that fails to teach such things to people cannot, in the aboriginal view, be appropriately called a justice system at all.

Finally, the reverse hierarchy of Creation came tumbling off the Indian puzzles shelf. If your way of knowing focuses on separate things, you will likely turn your attention to their individual properties and powers. If you do that, it is likely that humans will naturally stand out as deserving the top ranking, given our unique powers of communication, movement, toolmaking and the like. From that lofty vantage point, it would be only natural for us to maintain our separation from everything else, and to look down on everything else as well. After all, what lessons could the natural world have for us except those that Darwin saw, the lessons of dog eat dog and survival of the fittest? If, by contrast, your way of knowing focuses on relationships rather than individual people, it will be natural to see that the relationships between human, animal, plant and earth/water aspects of Creation are fundamentally those of dependency. Once you do that, everything changes. We become, in our own eyes, dependent on the health of everything else. Our obligation then must be to promote accommodation with, rather than to seek dominance over, all things. A justice system must work to restore accommodation where relationships have been broken, not promote further alienation between people.

Once I saw the importance of relationships, many other memories came back to me. I remembered one long day at court in a remote First Nation where we were assisted by an Elder who was giving us a community perspective. One of our last cases involved a spousal assault. The accused pleaded guilty, and when it came time for sentencing, the Elder asked the judge where the man's wife was, advising us that she should be in the courtroom. I recall jumping all over him, insisting that the court was definitely not looking at her behaviour, that it was only the husband's behaviour that we were dealing with, and that putting an obligation on her to attend

was a further act of violence toward her. The judge did the same, and the Elder sat down, looking confused and perplexed. Once I began to see the aboriginal focus on relationships and on the obligation of a justice system to bring accommodation and respect back into them, I began to feel very embarrassed. The Elder had thought we were all there for the same reason – to assist the couple in bringing health back into their relationship – while we were there only to punish the man for his use of violence toward his spouse. In our system, the focus was entirely on the offender; in the Elder’s system, both parties to the relationship would receive the benefit of our counselling. He had obviously not learned that our justice system seldom takes a counselling role of any sort, except to warn an offender that if he continues in the same behaviour, we’ll be even harsher the next time.

I also recall one of my first encounters with an aboriginal Elder. Her name was Mary Anne Anderson, and she lived in the remote First Nation of Big Trout Lake in northwestern Ontario. She was a member of the band council, and she began the meeting by asking me, through the interpreter, why it was that all my justice system did was take away her people’s money, or take her people out to jail, leaving her community with “the problem.” I answered that it was our hope that punishing people through either fines or jail time would cause them to think twice about repeating that behaviour in the future. She thought about that, then responded, “So your system is built on terror, then.” I answered that we called our approach general and specific deterrence but that, yes, it was meant to scare people away from committing crimes. She responded by declaring that almost all the crimes in her community were committed by people who were drunk at the time and that “you can’t scare an ill person into becoming healthy.” Sensing that I was running out of answers, I turned the tables and asked her what her community used to do to people who had caused injury of some sort. She snorted then, and stated in a tone that suggested it was almost beneath her to have to reply to such a silly question, “We didn’t do anything to them.

We counselled them instead!”

I was given a similar response many years later while speaking to a Cree Grandmother from northern Quebec . We were talking about family violence, and she told me about the first time the community had asked the judge to adjourn a family violence case so they could begin trying to bring the couple into healthier ways of relating. The judge agreed, and they began their work. Because they were new at healing, however, they didn’t watch the husband closely enough. He went back to his wife and assaulted her again. When the court returned and saw the new charge, the judge declared that the community had been given their chance to heal and it hadn’t worked, so both cases were now back in the court system. The Cree Grandmother asked me about how that could happen. “After all,” she told me, “your jail system hasn’t worked after four hundred years, but you never think about shutting it down!” She went on to tell me how she saw the dynamics: “We know you put them in jail to protect the women and children, but to protect us in your way, you would have to keep them there forever. Since you don’t, we’d like to try our way instead.”

When I asked what their way was, she told me that in their understanding anyone who can act in these ways toward others has somehow learned, perhaps while growing up, that relationships are based on values like anger, power, fear, jealousy and so on. She asked me what values people built relationships upon “inside those jails of yours.” I took it as a rhetorical question and just nodded. She then expressed her fear that going to jail might make it even harder for her community to teach those men when they came back how to live in relationships built on values like trust, openness, respect and sharing instead.

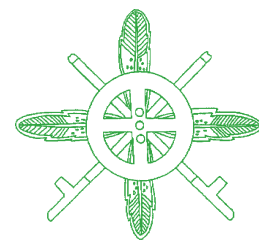
For the first time, I had an explanation for why so many people who were abused as children grow up to abuse children themselves. I had always wondered, since they knew first-hand the pain of being a helpless victim, how they could later inflict exactly the same pain on others. Under the relational lens, my perspective changed: they were simply operating

within the same kind of relationship they knew from their childhood, the only kind they knew of, a relationship based on manipulation, fear, lies and using others for self-gratification. The only difference was that, as adults, they now held the position of power in that relationship.

The Grandmother’s words also helped me understand why so many who had been exposed to powerful healing programs were ultimately moved into a stage of explosive remorse: they had never forgotten the pain of their own victimization. In fact, it seems that a part of them recalled that childhood pain even as they victimized others, giving rise to intense guilt and self-loathing. Not knowing how to relate in any other way, however, meant that they’d abuse again, and that their guilt and self-loathing would grow exponentially.

WRITING ABOUT THESE EVENTS in this way may give the impression that suddenly a light came on and everything became clear to me. That was certainly not the case. Bit by bit and case by case, I found myself asking more frequently what things might look like if I viewed them relationally. My first real use of the relational lens was, naturally, in my work as a prosecutor. Frankly, what I found surprised me, because it slowly became evident that this ancient traditional vision of who we are as human beings showed the way to a much more enlightened justice system than the one we currently rely upon.

* *Indigenous Healing: Exploring Traditional Paths*, is available at all major bookstores and can be ordered online at www.amazon.com



The Justice System and Aboriginal People The Aboriginal Justice Implementation Commission

*Editor's Note: In 1988 the Manitoba Government created the Aboriginal Justice Inquiry – a Public Inquiry into the Administration of Justice and Aboriginal people. In the fall of 1999 the Inquiry released its report and by the end of that same year the Aboriginal Justice Implementation Commission was established to develop an action plan centred on the Inquiry recommendations. With the assistance of Elder advisers Eva McKay and Doris Young, Commissioners Paul Chartrand and Wendy Whitecloud prepared the final report. The following are selected excerpts of Chapter 2 highlighting traditional Aboriginal Concepts of Justice and how those concepts translate within Canada's judicial system.**

Chapter 2 - Aboriginal Concepts of Justice

Understanding Legal Concepts

There are really two types of misunderstandings that arise from the translation of terms from one language into another. The first is easier to understand: some words simply do not translate directly into an Aboriginal language. Much more difficult and, therefore, more prone to misunderstandings, is the attempt to convey the concepts implied by technical legal words.

Take the word "truth," for example. "Truth" is a key concept in the Canadian legal system and, as such, is considered definite and definable. One swears "to tell the truth, the whole truth and nothing but the truth." There are well-defined sanctions for people whom the court determines are not telling the "truth" or are committing perjury.

On the other hand, the Ojibway understanding of "truth" incorporates the concept that "absolute truth" is unknowable.

When an Ojibway says "niwii-debwe", that means he is going to tell "what is right as he knows it". A standard expression is "I don't know if what I tell you is the truth. I can only tell you what I know."

...

... Culturally ingrained habits of respect for others and for other people's opinions, of doubt concerning one's own rightness and righteousness, of willingness to be corrected, and of unwillingness to set oneself up as an authority or expert, account for the readiness with which Aboriginal witnesses appear to change

their testimony.

An Aboriginal person challenged by someone perceived to be wiser, more powerful or more knowledgeable may agree readily that perhaps the other person is right. The Aboriginal person, in certain circumstances, is open to suggestions that he or she may have misunderstood, misperceived or misheard the events that are under examination.

The proceedings of the Royal Commission on the Donald Marshall, Jr., Prosecution contain an example of the Aboriginal understanding of the relativity of truth.

Q What about the questioning process, the questioning of a witness in the Courtroom, of a Micmac witness?

Francis: That was another area in which I found to be just devastating towards Native people who attempted to defend themselves in that—in almost all cases a Native person who was not that familiar with the English language would work so hard to try to satisfy the person who was asking the questions. If for instance, either a lawyer or a prosecuting lawyer was asking the questions to a native person on the witness stand and was not satisfied with the answer that he or she received, would continue to ask the question by checking a word here or there and asking the same question and the native person would change the answer from, let's say a "no" to a "yes" or a "yes" to a "no" ... simply because he felt that whatever he was doing, he wasn't doing it right and he would attempt to satisfy the person asking the questions.

Q Regardless of the truth?

Francis: Regardless of the truth.

The exchange, odd though it sounds

to anglophone ears, illustrates the point that the lawyer or prosecuting lawyer was searching for "absolute truth," a concept the witness' culture does not accept.

...

Other concepts embedded in Aboriginal culture and expressed through Aboriginal languages would be interpreted somewhat differently in English. Concepts of time and space, for example, are much less precise in Aboriginal languages, while they are exactly measured and divided into uniform units in English. More specifically, words describing time or distance in Aboriginal languages would tend to be vague, such as "near," "too heavy" or "after sundown," as compared to "three feet," "110 pounds" and "a quarter after 11" in English.

The inability to name an exact time, or estimate a distance or a weight with precision, is due in large part to the irrelevance of these concepts to Aboriginal life. In a courtroom, the persistence of a lawyer in trying to elicit a precise response results in the witness becoming convinced that the lawyer is asking for verification of his or her own point of view.

The Aboriginal witness, when confronted by a question whether the distance was 10, 20 or one foot, is stumped. The information is of no interest to the witness but appears to be of considerable importance to the lawyer. The lawyer is in a position of authority and, therefore, is to be honoured by concurrence with his or her point of view, whatever it might be. So the Aboriginal witness will try to reassure the lawyer that the information is correct. Many Aboriginal people are just as vague when it comes to such things as house numbers. An individual knows where home is in terms of how to get there, but may not bother to remember the house number. This very circumstance has resulted in many people being recorded mistakenly by the police as having "no fixed address," thus affecting their prospects for bail or consideration during sentencing.

(Endnotes Omitted)

*The complete report is available online at www.ajic.mb.ca or telephone (204) 945-3101.