

Justice as Healing

A Newsletter on Aboriginal Concepts of Justice

Defining Traditional Healing

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Defining traditional healing¹

The four elements of the person are the Spiritual, Emotional, Physical and Mental. The physical manifestations of a weakness are seen as disease or bodily ailment. The disease is traditionally seen as a symptom of the weakness. The weakness may be derived within the spiritual, emotional or psychological aspects of the person. When a person is inflicted with a disease, the traditional view is that it is an offering of a teaching to the individual. The teaching will ultimately be of oneself but the person may choose to deal only with the symptom of physical manifestation of the weakness and not address the root of the disease itself. If the person chooses to treat only the disease and ignores the teaching which it is offered, then the disease will return. Physical manifestations may continue to appear until the individual accepts the teaching.

The weaknesses are caused by being out of balance or out of centre. There are many reasons why an individual is out of balance. The reasons range from working too much in one area or over-working at a job, being too greedy, wanting too much, and not paying attention to the other parts of ones' self or ones' life and family. If we do not pay attention to all of our parts then we will become unbalanced and an illness may come forward to remind us of the fact that we have not paid attention to other parts of ourselves. Being out of balance may also be caused by not receiving the appropriate teachings from our Elders because First Nations' culture was hidden to protect it from total loss.

There are traditional ways of dealing with illnesses. With the support of Elders and the assistance of Healers and Elder Apprentices we can find the right healing for the illness and an explanation for why the illness happened in the first place. If we ignore this explanation and continue with the same behaviour or activity which is said to have caused the illness, the illness will return because the person is out of balance. Being out of balance happens because one has not lived a "careful" life.

When speaking to a traditional Healer, one will discover that much of what they do is sorting out the jumble of disorder found in and around the patient. The disorder has many causes, but primarily is caused by not living life in a good way. The job of the Healer, simply put, is to help reorder the elements of the person and to explain why and how disorder was achieved. The Healer then explains how to ensure that the illness does not return.

Traditional healing by a Healer was utilized when a family determined that there was an "Indian" illness:

(w)hen people discuss a particular case of illness, identifying the probable cause was often a central topic. Indeed, when the cause of a particular illness was not readily apparent, individuals would commonly note that the illness 'just didn't occur for no reason'. In conversations about serious or complex cases, several different explanations may be discussed.²

Understanding the cause of the illness or observable behaviour was important in finding the appropriate treatment for the illness or behaviour:

'Indian' illnesses are those which can be explained by reference to a potentially observable event. These include such things as colds, fevers, and respiratory infections, like bronchitis, attributed to exposure to excessive cold, or to being overheated and catching a chill; and stomach aches or diarrhea that come from overeating.³

These are physical manifestations of a problem. A Healer can determine if the physical manifestation is due to spiritual or emotional imbalance, this is part of the diagnosis.

Understanding begins with the Elders and what they have to teach which comes from the Creator. Because traditional healing is within each of us, we are all capable of healing ourselves, sometimes with the assistance or support of others such as Elders, Healers, and Helpers. Healing begins at one's own centre, this is the ultimate responsibility for one's own well being.⁴ This traditional approach to healing is found in discussions on the meaning of justice. For example, the meaning of 'justice' found in the *Report of the Aboriginal Justice Inquiry of Manitoba* states:

... The dominant society tries to control actions it considers potentially or actually harmful to society as a whole, to individuals or to the wrongdoers themselves by interdiction, enforcement or apprehension, ... The emphasis is on the punishment of the deviant as a means of making that person conform, or as a means of protecting other members of society.

The purpose of a justice system in an Aboriginal society is to restore the peace and equilibrium within the community, and to reconcile the accused with his or her own conscience and with the individual or family who has been wronged. This is a primary difference. It is a difference that significantly challenges the appropriateness of the present legal system for Aboriginal people in the resolution of conflict, the reconciliation and the maintenance of community harmony and good orders.⁵

From the First Nations' understanding, the Euro-Canadian concept of justice is too narrow and too confining for a complete appreciation of all the elements involved in a Wholistic perspective of justice. The Euro-Canadian justice model is primarily delivering punishment for wrongdoing. Justice is the maintenance or administration of what is righteous by determining awards or punishment. It is also the quality of being just, impartial, or fair.

The First Nations' philosophy of justice is really an expanded understanding which in the end does not even mean 'justice' anymore. There is not an English word for the First Nations' Wholistic meaning. Aboriginal people have inherently a higher standard or a fuller concept of what is required to make things right. This understanding is guided by the spiritual realm and the teachings of the Creator. These teachings are sometimes referred to as Natural Laws. The following is an excerpt from the Federation of Saskatchewan Indian Nations' Justice Unit *Historical/Customary First Nations Law Practices – The Natural Law*, and is respectfully included:

The teachings of our culture tell us that we as Aboriginal people were placed here by our Creator, the same Creator who is responsible for all of Creation. This of course includes all nations, regardless of race. Each nation was provided with a means of communication to the Creator, or as some would call it, a faith or religion for which to follow. These various religions are considered gifts to mankind and are to be treated with respect by all. Therefore, for one nation to denounce or show disrespect to another faith is in essence, committing an act of disrespect to the Creator even though it is done unintentionally. Once we, as a Nation of people, begin to acknowledge the existence of one Creator, a teaching of respect for mankind emerges.

If one chooses to accept or acknowledge this concept, one can easily see that our culture, customs and traditions were also provided to us by the Creator. We are told that our culture is based on the natural law and that the natural law is connected to the natural universe. Long ago our ancestors had a clear understanding of the natural law and they understood how all things were interconnected. It was understood by our ancestors that when one walked with disrespect, their own spirit paid with retribution. Even by insulting the smallest child, one insulted their own spirit. Such acts were considered an abuse or violation of the natural law and the individual was obligated to correct the wrong doing through service to mankind. We have been told that such teachings have not been a part of our people, as a nation, for several hundred years. This is not to suggest that natural law has diminished for the natural law is constant and does not change. Rather, our own understanding and practice of the natural law as a whole nation has diminished. This is not intended to discourage First Nations people as we are told that we as a nation, are entering a new cycle of life which will bring increased harmony and balance. As we learn more about our traditional past, we will be challenged to the degree that we will doubt our own ability to learn. We are to have faith in our Creator and the power of the Spirit and to continue no matter how it is perceived.

The natural law as we know it, is connected to the natural universe which is comprised of positive and negative energy forces. Our white brothers and sisters understand this concept to a certain degree, however, they have chosen to acknowledge it in a different manner, namely in scientific terms. At times, they have chosen to direct these energies in a negative fashion, i.e., splitting of the atom, thus allowing the creation of atomic weapons. We have, on the other hand, chosen to acknowledge and respect these energy forces in accordance with our traditions, for even the negative energy that is present in the universe can show us the beauty of love. The negative energy is used as a balance to maintain harmony within and by doing so, can provide a greater understanding of love. We are told that as humans, we have to maintain that balance.⁶

This is only a brief introduction to natural law, it is not a complete explanation, but it provides a sense that natural law encompasses the workings of the universe (physics) and emotions such as love which are all guided by the power of the Creator. The Euro- Canadian understanding of justice does not consider neither physics nor love.

Cultural and religious contexts

The way in which an Individual chooses to relate to the Creator and to all of Creation will determine how justice is perceived and how restorative justice is viewed. This is attributed to fundamental beliefs and values which are inherently different and are in a state of ongoing conflict between Aboriginal and non-Aboriginal peoples' laws.

Hollow Water also has a discussion on the meaning of justice and how different cultural perspectives define justice. The following is a discussion on the cultural bias for the First Nation's perspective in justice. It helps us to understand that culture and values are important in determining what a society or community will accept and develop as justice. Although extensive, this quote is included because of its usefulness and clarity on the issue of cultural and spiritual contexts:

A community's justice system reflects its culture and values, which are often entrenched in its religion. In comparing the Hollow Water notions of justice with those of the Euro- Canadian system, it is easy to perceive the religious roots.

The overriding rationale for the use of traditional teachings for Community Holistic Circle Healing (CHCH) is found in the importance of healing, which has an important spiritual significance due to the need to unite all aspects of a person's being: the physical, the spiritual, the mental and the emotional elements. For CHCH the act of sexual abuse clearly indicates a lack of balance in all aspects of a person's being.

Because the spiritual being is integrally interwoven into the relationship with the Creator, a lack of balance in the spiritual being has an impact on the relationship with the Creator.

While it can perhaps be oversimplifying a very complex process, it can be said that justice for CHCH is restoring the balance.

This implies, for the 'justice process' of CHCH, not only a consideration of the imbalance that led to the wrongful act, but also the external forces that caused the imbalance, as well as the consequences of the act. One would be foolish to think, for example, that an act of sexual abuse would not affect the spiritual balance of the victim. Justice then would include righting that imbalance as well.

One can easily see the role of Christianity in the concepts of the Canadian justice system. Christianity is a 'top down' system with God at the top. In the Old Testament at least, God smote those who offended him. Christians pay for their sins with God doling out the punishment.

In our justice system, the role of God is played by the judge. Christianity is founded on the notion of free will. People choose to sin and are held accountable for that choice. Sinners are punished.

This context, translated into the Canadian system, makes justice focus on very simple issues. Free will in the justice system is translated into *mens rea* (guilty mind). It forms the most important concept in our justice system. It allows us to focus our attention on a single act.

We never need to ask 'Why?' because that answer is always supplied to us through the precepts. The presence of *mens rea* means the accused chose to commit the act, and that's all we need to know. The offender is then held blameworthy, ready to be punished.

The result of the fact finding approach in a justice system which seeks to lay blame on an individual is to pit the offender and the victim against one another, thus further exacerbating the harm that has come between them.

Having established guilt we then invoke the wisdom of experts, i.e., complete strangers to the protagonists, to advise us as to the implications of the wrong doing.

The only time we look beyond the offender is in the punishment stage. But this is only to determine what caused the offender to go wrong. (We already know this because of our free will concept.)

It arises in a concept called general deterrence. Simply put, this amounts to punishing the offender for an offence someone else might commit in the future. No doubt the rationale for this can be traced back to the concept of 'original sin' which in essence makes us responsible for the sins of others.

In Christianity the ultimate punishment is Hell. In our justice system it is jail, a place similar to Hell where we organized the gathering of wrongdoers to cohabit with one another. It is not a place designed to make the offender a better person, but simply to punish him for his wrongful acts, just like Hell.

It is not far removed from the eye for an eye concept of justice, about which Ghandi once said, if we practice an eye for an eye as justice, soon we will all end up blind. "Recent trends would not lead one to the conclusion that popular notions of justice are moving away from the notion that offenders deserve to have great amounts of suffering inflicted upon them in the name of justice.

When one considers the two systems from this perspective, it is easier to understand the underlying causes of the tensions between them. If one accepts that the respective views of justice, and the systems that have evolved around those views, are founded on the underlying belief structure of the culture, then it follows that each culture will have difficulty perceiving the merits of the other's approach to justice. It is difficult to accept as valid that which does not conform to one's fundamental beliefs. Even more problematic is the effort to inflict on one culture the justice system, and thus the underlying belief structure, of the other culture. Where the underlying belief structures are fundamentally inconsistent, the justice system of the one cannot work for the other, for in their eyes, what is being delivered is not justice.⁷

Relationship between healing and Canadian justice

James Dumont, in his article, *Justice and Aboriginal People*, attempts to describe the Aboriginal concept of justice in the following passage:

The Anishinabe way of expressing the concept of justice is gwaik/minodjiwi/dibaakonagwin (literally, 'right, and respectful/judgement'). On the one side hovers the forever, unchanging and always-truth of the Creator, governed by the guardian of the Creator's law – who is strict and unbending. On the other side is the ever-changing, moving and unfolding truth of the human reality within the Creation, which is governed by a guardian who is kind, compassionate and forgiving. In between these two is the law of balance and harmony toward which humankind must strive: this quest is governed by integrity, humility and respect. Justice is the pursuit of a true judgement required to re-establish equilibrium and harmony in relationship, family and society – a judgement which is gwaik: straight and honest, while at the same time being minidjiwin: respectful of the integrity of all persons, both the wronged and the wrong-doer.⁸

The quality of justice in Dumont's article is of a very high degree of expectation, primarily because Aboriginal justice is guided by the Creator's Natural Law. That humans must abide by the order of things according to the way in which it was originally laid out. In many First Nations, the Elders speak of the retribution paid by the spirit in the spirit world and retribution which must be paid by the human in this physical world. The concept of punishment or retribution is present, the difference is that the punishment is determined by Natural Law and the Creator not by human beings. Human beings only abide by what is allowed of them. Dumont goes on to state that:

The Anishinabe justice system is one that leans toward wise counsel, compensation, restitution, rehabilitation, reconciliation and balance, rather than obligatory correction, retribution, punishment, penance and confinement. As a people whose spirit and psyche revolves around a core of vision and wholeness that is

governed by respect, it is natural that a system of justice be evolved that, in desiring to promote and effect right behaviour, not only attends to balance and reconciliation of the whole, but does so by honouring and respecting the inherent dignity of the individual.⁹

For a better understanding of the First Nations' value system and world view which influences the meaning of words and phrases, read the discussion by Judge Murray Sinclair in his article "Aboriginal Peoples, Justice and the Law", in *Continuing Poundmaker's and Riel's Quest, ...*¹⁰

... The process of traditional healing is similar to the process called restorative justice because they share some common goals: to reconcile and restore balance and harmony through understanding of traditional teachings and ceremonies. It is for these similarities that it is useful to glean knowledge about traditional healing.

The previous discussions on traditional healing and justice describe the relationship between healing and Canadian justice as estranged. There is a great deal of hope that these two ways of understanding and doing things might be reconciled, or at the very least, acknowledge some common goals. As with any reconciliation that brings understanding, respect and acceptance, we will look towards common ground as the exploration continues into these two paradigms from a First Nations' perspective. ...

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- 1 The information in this section was obtained through the oral tradition from Elders Mary Lee, Danny Musqua, Henry Ross and others, except where otherwise noted.
 - 2 Linda C. Garro, "Ways of Talking About Illness in a Manitoba Anishinabe (Ojibway) Community", in *Circumpolar Health* 90, p. 226.
 - 3 *Ibid.* p. 226.
 - 4 These concepts and others are discussed further by Edward A. Connors, Registered Mohawk Psychologist, in "How Well We Can See The Whole Will Determine How Well We Are and How Well We Can Become" found in Sue Deranger, *Culturally Specific Helping with First Nations People*, 1996.
 - 5 A.C. Hamilton & C.M. Sinclair, *Report of the Manitoba Justice Inquiry*, (Winnipeg, Manitoba: Queen's Printer, 1990), p. 22.
 - 6 F.S.I.N. – Justice Unit, *Historical/Customary Law, First Nations Law Practices: The Natural Law*, (December 1995), pp. 3-4.
 - 7 This section is respectfully included from the Hollow Water Community Holistic Circle Healing C.H.C.H. Discussion Paper.
 - 8 James Dumont, "Justice and Aboriginal People", in the Royal Commission on Aboriginal Peoples, *Bridging the Cultural Divide: A Report on Aboriginal Peoples and the Criminal Justice System in Canada* (Ottawa: Queen's Printer, 1996), p. 69.
 - 9 *Ibid.* p. 69.
 - 10 Judge M. Sinclair, "Aboriginal Peoples, Justice and the Law", in Gosse, Henderson & Carter, *Continuing Poundmaker's and Riel's Quest: Presentations made at a Conference on Aboriginal Peoples and Justice* (Saskatoon: Purich, 1994), pp. 173-184.