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Circle Justice in Canada: *Building*

Introduction

The following article is based on research presented in a Master of Arts thesis from the University of Lethbridge in southern Alberta, Canada. I conducted the research on a Blackfoot Indian reservation[1] observing a small sample of "circles" for young people who admitted their guilt to charges or complaints brought forward by the justice system. As well, I collected data from indepth interviews with key players in the circle and justice experiences. The thesis describes the roles, format and procedure of justice circles (specifically those employed within the culture of the Blackfoot people), and examines the history of Canadian mediation and victim-offender practises for alternative justice generally. According to interview data, the work also defines "Elder" and "respect", key components of circle justice. In defining "community", this project is able to determine the presence and degree of community within the observed justice circles. An exploration the meaning of community also facilitates a critique on the Aboriginal community and its vulnerability to the pressures of the dominant legal system in circle justice.

Background

Circle justice is most popular in the Northern and Western areas of Canada, but is used in various forms for Aboriginal youth cases involving the RCMP throughout the land. Why circles. Several recent provincial inquiries in Canada into justice and indigenous peoples have reported a failure, on the part of the system, to administer justice to the First Nations people (Cawsey, 1991; Hamilton and Sinclair, 1991). Aboriginal people are a small percentage of the population yet make up the majority of inmates in prisons and penitentiaries especially in the western provinces. Going to indigenous people to learn about their methods of conflict resolution was an attempt on the part of some prosecutors and judges to address this problem. The idea of a supportive community present at the circle and agreeing to assist an offender after the circle, was likely seen by the dominant people as a viable alternative to long term incarceration in serious cases and a way of avoiding harmful effects of prison for young offenders.

Definitions

The term "Sentencing Circle", which has been used in the Canadian media since the early 1990's, must be differentiated from other circles used on the reserve, both with and without involvement from the justice system. The presence of a judge, and often a crown prosecutor and defence attorney are necessary to sentence someone in adult court. For the purposes of this article, a judge is present in a sentencing circle and the judge takes responsibility for the sentence and decision (though the decision may be made through discussion and agreement with others present) handed down to the guilty party. Should there be an appeal, this sentence can be overturned.

and Breaking Community

Youth Justice Circles are held without the presence of a judge, but transcripts are kept and conditions similar to a sentence are determined for the young offender. A crown prosecutor working with the case shares responsibility with members of the First Nation for closure on the sentence. In cases where the conditions are not met, the youth involved will go through the regular court system.

I also observed a less formal justice circle triggered by a formal complaint to police regarding wrongdoing by a youth. There is no transcript of the proceedings, but a report; the seating arrangements are less formal and there are no time constraints on the decisions made. Only local authorities are involved. I describe these gatherings as "Healing *Justice* Circles", modifying the term "healing circle" used by the facilitator on the reserve.

In addition to defining circles used for justice, justice circles can be distinguished from "healing circles". Healing circle is a term used loosely by both the dominant society and Aboriginal peoples to refer to justice circles, but for the purposes at hand, a "healing circle" describes a gathering which does not involve the justice system. Although healing may take place at a justice circle, the motive and design of a justice circle differs from a healing circle. In the words of one interviewee who had experienced both healing circles and justice circles:

A difference is, I think, the healing circle that we work on, everybody individually works on themselves. Or I see the difference where the

justice circle, there's one individual that everybody's trying to help. And, but, the people they also have to talk about themselves, but I don't know if they do. In some cases they do; in some cases they don't (FL, 28/08/97) (Hanlon, 1999: 219).

The healing circle then is a shared exercise, open to what individuals need to address that day. The justice circle pinpoints a certain issue of wrongdoing to address that day. Some of the prominant differences between the two gatherings can be generalized this way. Justice circles are:

1) goal oriented -a decision regarding the outcome of a charge or complaint is the end result-; 2) instigated by a formal complaint or a charge by police; 3) specifically focussed on the problems of one or two individuals; 4) recorded in some way.

In contrast, healing circles are: 1) process oriented; 2) instigated by a common need to be with and share with others; 3) addressing everyone present as someone who can give as well as receive; 4) confidential and oral.

The following discussion is not an examination of the healing circle, but the justice circle.

The Nature of a Justice Circle

A small community hall is set up with fifteen to thirty chairs in a circle. People who are sitting around the room range in age from young to old, male and female. The mood in the room seems serious, and is not without occasional tearful

expressions of sorrow, but the air may also ripple with unexpected laughter.

Initiated by an older person's prayer and a formal statement regarding the situation at hand, the people in the room are speaking one at a time, one after the other, in order around the circle. Sometimes the contribution is only a sentence or two, often the person speaking goes on for five minutes and occasionally an older person may provide the group with an extensive narrative of fifteen to twenty uninterrupted minutes finishing with the words: "That is all I have to say."

When the meeting is over (from one to several hours later), most participants shake hands with each other and/or briefly exchange greetings and good wishes. Tea, coffee, or a light meal may be served if the gathering was not offered hospitality earlier (ibid.: 1).

This scenario depicts the essence of a justice circle experience as I observed it. The atmosphere in the room is more difficult to describe. The two aspects of the initiation of the circle, "prayer and a formal statement" represent the spiritual roots of the people and the formal dominant system which presently rules their lives. In regard to the spiritual aspect of the circle, a corporateness can be sensed by some of the participants. The "good guy-bad guy" sentiment is softened by a sense that "we are all in this together". One of the Elders I interviewed describes the feeling below.

But this is the circle. In the circle, within the circle, the best thing that could happen to our community is by working in circles. Because that way you've got support, you've got anything you want is there in that circle. And you go out of there and you come back and you feel warm, you feel all people are there for you. You're not there only for yourself. There's other people that are there for you in that circle (FL, 28/08/97) (ibid.:218).

Although the speaker feels that "all people are there for you" in a circle, within the justice circles there is a somewhat hidden presence which undermines and threatens this feeling. That presence is expressed in the formal statement read or presented orally at the circle after the prayer. The police report indicates the participation of the Canadian legal system. Although the actions of the wrongdoer lead to the charges or complaint, prosecution and the paperwork indicative of that prosecution propel the circle into action. As such, Aboriginal people are presented with a problem which is defined by the western system and, as the offender's community, are asked to create a solution which can be approved by the western system within a certain period of time. It is this power to charge and overturn decisions which undermines the building of community and threatens to break apart the trust and cooperation built in the circle.

Theoretical Position on Community

¿In what way can the dominant power undermine Aboriginal community in the justice circle? The answer to this question begins with a delineation of power within a community. John

McKnight in his book *A Careless Society: Community and Its Counterfeits* draws on De Tocqueville's observations of communities in the USA in 1831 to describe three areas of power in regard communities and problem-solving.

First, they were groups of citizens who decided they had *the power to decide what was a problem.* Second, they decided they had *the power to decide how to solve the problem.* Third, they often decided that *they would themselves become the key actors in implementing the solution* (McKnight, 1995: 117, emphasis added).

It is possible to analyze the justice circle using De Tocqueville's insights. In a justice circle, the problem is decided first by the justice system. Blackfoot people present this written problem to participants in the circle asking the perpetrator or host to speak first. The comments from each circle member are verbal interpretations of that problem and effectively redefine the situation from a Blackfoot perspective. In other words, ownership of the problem is assumed by the justice circle as everyone considers and speaks to the matter. Before the next step, there is an opportunity for the victim to reveal yet another side of the situation. In the second round of participation, solutions are brought forward to solve the problem as it has been discussed and redefined. Blackfoot people are "themselves ... key actors in implementing the solution" as McKnight describes above. It appears from this brief analysis that community has been achieved in the process of problem solving. When all are in agreement with the decisions the plan is recorded and implemented within a time line set by the dominant system. The community which has developed in the above scenario, however, is in the eye of a hurricane.

From the outset, the problem was defined and written up by the justice system according to the Canadian code of law. Although the two cultures may share some values in regard to wrongdoing, the opportunity to assess a certain action as wrongdoing is not in the hands of the Blackfoot people, but rests with the Canadian justice system. The groundwork is done by policing staff in accordance with a protocol set up by the dominant culture. When the solutions to these problems do not work, the power to reassess and revise the plan is taken from the Aboriginal group and the matter returns to the justice system which oversees the process. The community work has been undermined and the people of the justice circle left powerless.

Menno Boldt (1993) describes this phenomenon of usurping power as synthetic morality. The authority of the circle is relinquished by stipulations and rules set down by the powers of the dominant culture. When the power to see the problem, devise a solution and implement a plan remain with a group, the morality which develops is what Boldt calls authentic. Difficulties with the solution can then be tackled by the original designers of the plan, retaining the integrity of the process and solution as shaped by the circle. To move the problem or its solution to the outside of this cultural way of seeing back into the dominant society which first defined the

problem is to come out from the protection of the hurricane eye and into the storm of confusion and helplessness. (A similar sweep of power forcing the abandonment of the collective circle decision in favour of a dominant system process occurs when a sentence from a lower court judge's sentencing circle is appealed and overturned - a further example of synthetic morality).

A major difficulty with circle justice according to my research, then, is that agreements made in good faith among Blackfoot people can and do fall prey to the jaws of the outside system. Just as the system has the first say in determining which problems will be brought the circle, that justice system has the last word on whether the solution was successful or not. The Blackfoot nations assume, I believe, that values shared with western culture in regard to wrongdoing open a pathway for accepting problems handed over to them by that system. This a leap of trust and hope which threatens to falter on a shakey foundation of synthetic morality. By a refusal to relinquish full power, the dominant system does not ultimately live up to the same degree of trust in their gesture to share the problem. Even when the individuals involved on both sides come together in good faith, the system in place as law undermines the creativity of personal relationships and solutions.

Conclusion

¿Is a workable circle experience under an authentic morality possible? Yes. Is it possible under the current conditions of cooperation with the Canadian justice system? My answer is no. The future for Aboriginal people is in building true community which is not threatened by an imbalance of power. The work of Joan Ryan in northern Canada describes hope for change in a northern village. In *Doing Things the Right Way: Dene Traditional Justice in Lac La Martre, N.W.T.*, Ryan, (1995) documents the formation and implementation of a justice committee which, after some research and lengthy preparation take on some test cases with youth. In person, Ryan has mentioned situations in the north in which all youth cases (except for some most serious) are referred by police to a justice committee. Charges are not pending with the Canadian justice system and the issue stays within the local area from beginning to end.

Self-government is an issue for Aboriginal people in Canada which has yet to be resolved with provincial and federal governments. At a grassroots level, the possibility exists for seeds of self-government to be sown. By identifying and dealing with problems of wrongdoing without involving the justice system, synthetic morality can be avoided. The challenge is tremendous given the dependence of people on the system as it now exists. Especially in cases of youth and family reconciliation, circle mediation outside of the justice system is a viable place to begin with

De Tocquville's standards for building community. The healing circle is an example of authentic morality at work now on the reserve I visited.

Trained in circle dynamics with common sense, forgiveness and a healthy understanding of responsibility, groups of people may eventually feel confidant in taking on the responsibility for justice with their own people. Interest based mediation coupled with ancient structures of problem solving like the circle suggest a model of authentic morality and a foundation for building community in contemporary indigenous settlements.

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1 The Blackfoot Confederacy, a formerly nomadic people who subsisted for the most part on the bison or American buffalo, are comprised of several nations sharing one language with several dialects. Many of their ceremonies for decision making exist still.