

A Case for Restorative Justice

The city of Winnipeg has the largest urban indigenous population in Canada, and this is a population that is rapidly growing (Northern Affairs Canada, 2016). Also quickly growing is the indigenous population within Manitoba's prison system (Grabish & Monkman, 2018). These facts necessitate a deeper look at the system which we are using today, and potentially a look at possible alternatives. Retributive and rehabilitative models are two of the most common around the world, while some societies have utilized a restorative method.

There is a significant problem with the way that Indigenous people are treated by the criminal justice system in Canada, and especially in Manitoba. Indigenous people are stopped by police, charged with crimes, and incarcerated at much higher rates than other populations. The statistics are even worse in the more vulnerable sectors of this population. Indigenous youth are incarcerated at a rate of 64.5 per 10,000, significantly higher than the non-Indigenous youth rate of 8.2 per 10,000 (Latimer & Foss, 2004). The impact that detention of this nature has on young children should be very concerning to anyone interested in social justice. The incarceration rate of indigenous women is also extremely high: 34.6 percent of the total female incarcerated population is indigenous (Wesley, 2012). This is far higher than the Indigenous five percent share in Canada's general population (Northern Affairs Canada, 2016). Two more factors were of considerable concern to Wesley: the incarceration rate of Indigenous women has increased by nearly ninety percent in the past ten years, and many of these women had young children (2012).

There is no one clear reason why Indigenous people are so overrepresented in the Canadian, and especially Manitoban prison systems. What is clear is that something must be done. This system which has so disproportionately affected Indigenous people needs to be changed to benefit them. In contemporary Canadian society we often pay lip service to the idea of reconciliation, but the overrepresentation of Indigenous people in Canadian jails would suggest that we have a long way to go. In my humble opinion, Indigenous crime is a matter best left to Indigenous law.

There is an incredible depth in Indigenous law in this area which has been left relatively untapped by the Canadian justice system. Penitentiaries and imprisonment were something essentially unknown in pre-contact Indigenous societies. Other methods were used to deal with offenders who had broken the morals or norms of their societies.

Although it is irresponsible to suggest that all Indigenous legal traditions are the same, or even similar, there are some common practices throughout different groups which can be contrasted to the Canadian system. This can be used to show the flaws within the current system, and potentially chart a path to some positive changes. These common practices across different cultures can generally be summed up as a greater theory of restorative justice.

Restorative justice is a concept of justice mostly foreign to European systems. Western systems have mostly focused on retributive justice in the past. Retributive justice is the idea that if someone has done a wrong, they should be punished for it. We can see conceptual undertones of this dating back to the Old Testament and beyond. Phrases such as "an eye for an eye" have been interpreted to justify punishing wrongdoers. The bible even goes so far as to endorse the murder and genocide of Amalek and his people for the crimes that he had committed in the past (1 Samuel 15:3). This idea of justice states that wrongdoers need to be punished to restore order, and restore

theological balance to the world. In modern times this has morphed into other forms. North American Quakers used their religious background to justify penitentiaries, or imprisonment for the purpose of penitence. In some jurisdictions this evolved into more extreme measures of retribution such as capital punishment.

Restorative methods take a completely different way of looking at justice. Instead of asking what needs to be done to satisfy punitive notions of retribution towards the offender, restorative justice views crime as a damage to all of society. It then goes further to question what can be done by the offender to rectify the wrong that has been done to the community. This can have a number of benefits. Firstly, it is often a more culturally appropriate response to Indigenous crime and allows for these groups to have more autonomy. Secondly, restorative justice is often directly benefits the community as a whole in its responses. It can have a variety of creative reactions to crime. Someone arrested for doing property crime may be set to fixing the damage that he has done. A drunk driver may find themselves speaking publicly about the dangers of drinking and driving. Not only do these solutions work on restoring the damage that was done by the original crime, but they also avoid doing more damage to society. Additionally, this approach avoids long incarcerations, which are expensive. Warehousing criminals through tax dollars is only creating a greater net loss to society.

It has also been speculated that prisons actually do damage; both to those who are kept there and to the community around them when they are released. Not only is our justice system not fixing the problems which it was created to address, but in some circumstances it may actually be making them worse. When comparing recidivism rates across the world, Canada is far from a leader. Although we outperform the United States on this metric, we fall far behind other comparable countries.

Some countries have made reducing recidivism the primary goal of their prison systems. Although this is an approach which I don't necessarily suggest for the Canadian context, it is worth investigating as it illuminates areas where our system is lacking. It also serves to contextualize the variety among approaches to crime, and proves that other systems can be as effective, or even more effective than our own.

A large reason for our relatively high recidivism rate is the structure of our system. Prisoners are treated differently in Canada than they are elsewhere. Nordic countries, such as Sweden and Norway have a very different approach to prisons than Canada. Although not based on a restorative justice model, these systems have had much more success in terms of promotion of societal wellbeing than ours have. The reason for this is a decreased recidivism rate and lower crime rates in general. It is easy to see where these statistics have come from. Prisons in these countries are equipped with excellent programming and encourage prisoners to learn life skills which will help them once they are released. Some of these facilities would not even be recognizable as prisons to a Canadian observer. These are not the panopticonal concrete and steel facilities we are used to. Low security Nordic facilities look much more like small country cottages. Inside these quaint little structures is a much less structured life than a Canadian inmate would experience. Although there are still strict rules on certain things like substance abuse, the general rules are much more relaxed. There are fewer walls and steel bars to limit movement. Fewer guards to demand submission from the inmates. Instead of a tight and rigid schedule, Nordic inmates have significant input into how the day will run. This strategy arises from the underlying philosophy surrounding these institutions. On

release, inmates will be thrown into a world which does not have a rigid structure. They will have complete input into how their life is run. Mirroring the lifestyle that inmates will experience once they are released while inside is done purposefully. It is thought that if they can learn skills while imprisoned but be kept in a situation as similar to free life as possible, the adjustment back to society will be easier. Many of those who reoffend in all systems do it within a short period after release. Often this is because of a struggle to adjust to the challenges of the outside world. In Canada, we do comparatively little to help inmates with this adjustment period. In Nordic countries, much of the structure of prisons is to avoid this very problem. If there is less to adjust to, then there is less stress during the adjustment period. The less stress that occurs during this period, the easier it will be, and the less likely prisoners are to reoffend. That at least is the theory, and whether or not it is responsible, these countries have had massive success at reducing their recidivism rates.

Another difference between these two systems is the differing approach to what are the necessary skills for an inmate. Learning discipline and submission seem to be key in North America. In other countries inmates learn important skills such as sewing on buttons, money management, and cooking meals. Here again we can see the fundamental difference in the approach of the two systems. North American prisons teach inmates how to be good prisoners. Nordic prisons teach inmates how to be good citizens. This second approach seems to be the one that is working better. Norway is leading the world at a recidivism rate of just twenty percent. This is significantly better than some countries, especially the U.S., with a rate of seventy percent. Although not as bad as the United States, Canada still has a lot to learn from northern Europe. With our rate of thirty five percent, there is a long way to go (Zoukis, 2017; "Statistics").

Although different from restorative justice, this approach highlights some significant flaws in the Canadian prison system. Inmates will respond to the conditions they are put in on the inside. Currently, the conditions are designed to teach them to be good prisoners. In certain countries, such as those in Northern Europe, they are trained to be law abiding citizens. There is a third option, that of restorative justice. In this case, people in the system would be taught to be active participants in society, and streamlined into programs which would make it easy for them to give back to the people who they have harmed. A system of reward for and encouragement for righting the wrongs caused by one's actions could have radical effects on our society. Those that would be most effected are those who are most effected by crime, and those who commit the most crime. Both of these groups are in general ones that come from marginalized communities. These communities are the ones which need the most help, the ones which suffer the most from crime, and the ones which suffer from punishment of crime by the judicial system. These are all issues which could be properly addressed by a shift in focus by the criminal justice system. There is clear proof that the way we structure our system has significant impacts on its outcome. If we want a system that is going to make positive changes in the communities that need it the most, a shift toward restorative justice is a simple change which could have drastic results.

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