

Illustrative Review of Case-Studies of Practices of Healing Justice around the World

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Abstract

More and more groups are using the terminology of healing justice to describe local ways of responding to harms which point away from western models of state justice, while at the same time as point toward collective notions of a justice that heals. Often these groups extend this healing justice not just to “victims” and “offenders” or to disputants but also to the wider community, socio-economic structures, the land and sometimes even into the Spirit world.

This paper will provide an illustrative overview of case studies from around the world of groups using such a justice. Two kinds of sources will be used; anthropological and other participatory studies carried out by academics who have been in long-term respectful collaboration with the local community and first-hand accounts from those within particular communities. These sources will keep this analysis rooted in the lives and context of the communities examined. The goal is to get a glimpse of the practice and to enter into the imaginations of healing justice. To that end, local practices are sometimes contrasted with mainline Western approaches to highlight the differences. The conclusion summarizes some of the tendencies and characteristics of healing justice illustrated by the case-studies.

Mediation has sometimes presented itself as a one-size-fits-all process which is not bound by any particular assumptions or culture. This is of course quite misleading. A focus on cases of healing justice from around the world will challenge the notion that mediation is not entangled with all sort of cultural assumptions while at the same time drawing readers into diverse manners of engaging conflict in ways that meet and transform the typical goals of mediation.

1. Introduction

More and more groups are using the terminology of healing justice to describe local ways of responding to harms which point away from western models of state justice, while at the same time as point toward collective notions of a justice that heals. Often these groups extend this healing justice not just to “victims” and “offenders” or to disputants but also to the wider community, socio-economic structures, the land and sometimes even into the Spirit world.

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Before we delve into the heart of this paper it is necessary to clarify the nature of healing justice. Healing justice, and the communities that use such a justice, is the focus of my ongoing doctoral research. In previously published research I have outlined some of the groups that use language to describe their justice practice (Sawatsky, 2005). In summary the language of healing justice (including “healing justice”, “a justice that healing”, “justice as healing”) is used mainly by five groups:

- Christians interested in Christian approaches to crime
- Some Aboriginal or indigenous people interested in living traditional ways of justice
- Restorative justice advocates describing the heart of justice and interacting with “serious” harm
- Governments responding to Aboriginal people and restorative justice advocates
- Various other academic fields

Out of my survey of the literature I highlighted eight points regarding how healing justice is used by these groups.

First, it is only very recently (1988) that such terms have come into academic literature. Those who use these terms tend to see them not as a new movement but as pointing toward ancient wisdom of traditional community.

Second, particular segments of spiritually-centred communities – Christian and Aboriginal, but also Buddhist and Quaker – have been at the forefront in articulating visions and practices of their own best sense of justice as healing justice.

Third, most of those who use this terminology do so to point away from state justice - which is characterized as colonializing, oppressing, violent, based on fear. At the same time this points toward ancient wisdom of traditional communities – which is characterized more as learning, growing, loving, and respecting. Moreover, healing justice, understood from its own context, is seen as something that may be able to decolonialize state justice.

Fourth, those groups who originally used this term were drawing on metaphors and wisdom from their own traditional communities. From within those traditional imaginations, the terminology of healing justice does not link two distant and conflicting fields, health or healing with justice. This is unlike the modern, which specializes and fragments and makes healing something different from justice.

Fifth, even though many of those who use the term healing justice are pointing towards a community's way of life, much of the discussion of healing justice occurs in what we may call the "geography of crime". Such a narrow focus is a problematic lens, if one really wants to understand a holistic vision of justice that is embedded in a way of life. A broader interpretative lens is needed if we desire to understand healing justice without corrupting it or doing violence to it.

Sixth, none of the people who use this term suggest that their own traditions were purely restorative, if that means lacking in all punishment, coercion, and retribution. All argue, among other things, that healing, not pain, is the interpretive framework of justice. In other words, the healing justice described here does contain elements of pain and coercion, but these are small parts of a larger framework of healing.

Seventh, this terminology is becoming more common across a wide set of academic disciplines.

Eighth, while there is growing interest in healing justice, there have been no comparative studies to see what similarities and differences exist between communities that use this terminology (Sawatsky, 2005).

At this point in my research I've developed a very loose definition in order not to impose my conceptualization on traditional communities. I have tentatively defined healing justice as:

A collective paradigm or imagination, usually drawing on an ancient wisdom tradition, that seeks to find ways of surviving together

- *by structuring life where means reflect the ends of respect for life and;*
- *by treating harms as opportunity to transform suffering, and root causes of harm, and at the same time cultivate conditions of respectful living within the interrelated aspects of self, other, community(ies), social structures, environment and Spirit*

The goal of my doctoral research is to present a comparative study of three traditional communities that use healing justice. I will present how they describe the vision and practices of healing justice but also focus on what conditions and factors they see as necessary to sustain healing justice. It is my suspicion that many of us in conflict resolution and restorative justice have been too quick to extract processes from traditional communities without understanding how those practices function within the large life of the community. Therefore my research is focused on trying to understand from the communities' perspective what is needed to sustain a view of healing justice.

The goal of this paper is more limited. Here, I will not attempt to present a comprehensive listing of communities practicing healing justice. A whole volume could easily be filled by looking just at North American aboriginal communities' practices, insights, and debates concerning healing justice. Much work is already taking place on this front (Ross, 1996, McCaslin, 2005, Dickson-Gilmore and La Prairie, 2005). Here we take an illustrative view of communities from around the world who practice various forms of healing justice. In this paper I am not focusing on what sustains healing justice. Rather the task is to demonstrate that notions of healing justice exist in practice, that is, in the life of communities from around the world. By showing a variety of examples from around the world I am trying to demonstrate that healing justice is not the realm of one particular ethnic or identity group but that is a way of conceiving of justice which is shared by many communities around the world. Our survey of cases will take us to communities in Canada, Columbia, South Africa, Fiji, and

Tibet. Each community focuses in different ways on the elements described in the working definition of healing justice.

2.0 CASE STUDIES

2.1 Case 1: Dene – Dogrib Justice, North-West Territories, Canada

People of Lac La Martre are part the Dogrib tribe within the Dene Nation. They have lived in the territories they call Denendeh since the beginning. This territory is within Canada's Northwest Territories and is not far south of the Arctic Circle. They are a hunter-gatherer community living on the land and following the seasonal activities of survival. While contact with Europeans dates back to the late 1700s, this community is quite remote and have consequently maintained their traditional ways of life less interrupted until relatively recently.

From 1991-1994 Joan Ryan, professor emeritus of anthropology at the University of Calgary, conducted participatory action research in the local Dogrib language with the Lac La Martre people at the invitation of the community. They set up the Dene Traditional Justice Project (DJP) and published their final report, *Doing Things the Right Way* (Ryan, 1995). From the beginning their goal was not to adapt the Canadian system but to re-establish their own justice system. Ryan's research aimed to help the community remember together their systems of justice.

“[The]Dene legal system was not punitive. Rather it was based on concepts of reconciliation, restitution, and the restoration of harmony – all concepts lacking force in the non-Dene legal system” (Ryan, 1995).

While Ryan does not offer a linguistic analysis of Dogrib concepts of justice, it seems that healing justice was not a terminology used by this community. However, the basic elements of healing justice do seem to be present in the community's life. Throughout her report, Ryan returns to these three interrelated concepts of reconciliation, restitution, and the restoration of harmony. She concludes that, “Emphasis was placed on restoration of harmony since in small-scale societies it is important that people be able to live and work together without major conflict” (Ryan, 1995). In a harsh climate survival is not assumed. Each member of the community, including children, is needed for the community to survive. Therefore a community could not afford to have winners and losers which might create ongoing social tension, and was loath to banish people from the community. This did happen in extreme cases, but only when the community's survival was perceived to be less threatened by the person's removal than by his or her remaining without living by the proper rules.

In dealing with disputes they “stressed the importance of restoring harmony within the community, reconciliation with the person he had offended, and compensation... Once that was done, no further action was taken and no further mention of the offence was made” (Ryan, 1995). In other words the Dogrib concept of justice was one which focused on creating a healthy community. Punishment was not seen as a necessary component when a person understood the rules and was willing to accept responsibility for bad behaviour. Physical punishment was not used in major conflicts where a person was taking responsibility.

For a major conflict the offender was put in the circle of the whole community. Senior male and female elders would speak “harsh words” to the offender. This was an experience of shaming. Ryan reports that community members feared being put in the circle. And yet often before the circle concluded there were clear steps by the same elders and community to embrace the offender so that they did not feel like they needed to fear the community, so that they knew they still belonged and had a place. Judgement and reconciliation co-mingle in Dogrib justice. They are not separate stages but realities that exist within the same space and with the same actors.

Dogrib responses to harms are embedded in processes that seek to restore social, political and spiritual harmony. “Once guilt was admitted and appropriate remedial actions were defined by the group, the

individual had to restore harmony and reconcile with the person(s) he or she had offended” (Ryan, 1995). The offender had to face the victim and face the community.

As the community economy was one based on subsistence, their survival was based on various forms of sharing and partnerships, both within the community and with the animal world. A conflict reconciled left room for such sharing and partnership to continue. A conflict ignored or dealt with in such a way as to create other ripples of division threatened the very basis of the community’s survival. The harshest punishment, banishment, was reserved for mistreatment of game and for rape and adultery. These were rare occurrences but were treated harshly because of how seriously the offences disrupted the social and ecological balance that was needed to maintain life. The Dogrib believed that animals allowed themselves to be taken by humans, but only when the whole community acted in respect. Various traditions and rituals were developed to demonstrate to the animal world that the community was trying to act in respect.

Some members of the community had special gifts that led to their being given particular roles in the community: the *yabahti* (the “big chief”), the *k’àoωω* (the chief’s helper), the medicine man (the spiritual jester, the prophet). Each of the special roles were “based on belief and behaviours that fit into the general understanding of how the natural and human worlds interacted, and how those relationships had to be maintained in harmony for the benefit of the community” (Ryan, 1995).

In her report Ryan summarizes the Dogrib rules for stewardship (“resource” rules), rules for living together (family rules) and rules for living politically according to the Dene ways (rules of governance). She recognizes that the Dene make no such distinction in their origination as all rules for life are woven together in a holistic context.

Ryan’s description of what happened when the rules were broken in political context will be quoted at length here as it gives a very helpful summary of harm-response practices of Dogrib justice.

Minor offences often were dealt with by ridicule, that is, by laughing and making fun of the individual’s behaviour. Or people might shun a person for a while, that is, no one would speak to him or her, to get the message across that he or she had behaved in an offensive way.

All offences were considered within a specific context. For example, it was not theft if a person took someone’s axe without asking, provided he needed it, and as long as it was returned within a reasonable time and in good condition. Nor was it theft to take food from a trapper’s cache if one were on the trail and hungry. Again, the food had to be replaced by the borrower, then the matter was settled. Some issues required more ingenious solutions. One dog story shows this: Two men claimed the same dog as their own. The *k’àoωω* talked at length with the men, each of whom continued to claim ownership. Finally the *k’àoωω* said he could not decide who the owner was, so he would shoot the dog. One man then said, “Don’t shoot the dog. It is a good dog.” The *k’àoωω* then declared him the owner of the dog since he clearly cared about it and didn’t want it shot (FZ, Fall 1991).

When the *k’àoωω* felt an offence was too serious to deal with himself, he would raise it at the next gathering, and the *yabahti* and senior men and women would put the offender in the circle. This process included the whole community. The offender was kept there until he or she admitted guilt, at which point the senior people and leadership would give the person “harsh words.” These words usually restated the rules and how the person should have behaved. They also make reference to the harm done to individuals and/or the group. Once the harsh words were spoken, the gathering shifted to discussing how the individual might make things better. People arrived at consensus about what the person might do to restore harmony, compensate the victim and end the matter.

When a solution was proposed, the offender agreed to do what the elders had indicated would make things right. If the person did not agree, then the gathering had to decide what the outcome of the refusal would be. For example, if a man had impregnated a woman, he was ordered to marry her and to do work for her father. If he had refused, the gathering might have decided that she could stay at her parents and he with his, but he still had to work for her father in order to provide for the woman and their child. If he agreed, then the matter was settled. If he refused, the general decision was that he must leave the community since he would not follow the rules. Banishment was rare because few young people had the courage, or lack of respect, to “break the words” of the elders (Ryan, 1995).

Dogrib justice is woven into a worldview of maintaining a particular kind of balance between the human world, animal world, land world and spirit world. It is critical to understand the essential starting point for Dogrib justice: balancing the vast interconnectedness of life. That which harms healing justice is that which disrupts the balance within and between these worlds. Accountability for imbalance comes from the inability to survive (e.g. if animals are not respected, they will not allow themselves to be taken and the group will suffer). When suffering comes then the goal is to find the root of the imbalance and to find some way of correcting the balance. One person has only a limited ability to see these connections on his or her own – even for a gifted leader. Therefore group consensus and listening to the wisdom of the elders becomes very important.

All of life, including work activities, is connected to the survival of the community. Middle class Westerners might pity this perspective as success in the upper and middle class has everything to do with distancing oneself from the dynamics of survival. For the Dogrib staying close to the land and working together in labour intensive ways for the survival of all is one of the key sources of justice that heals. A community that needs everyone to survive offers a positive sense of identity, place, belonging and significance to each member. These seem desperately lacking in both Western cultures and many post-contact aboriginal communities. It is not an accident that several aboriginal restorative justice programs are designed to take offenders “out on the land”, often with elders, as a means of helping those who have offended others remember who they are. Wrong actions were those that disrupted the people’s ability to survive. In this context, punishment or “harsh words” are directly and concretely connected to caring for the needs of the group. This is quite different from understanding harm in relationship to breaking of rules and the administration of justice by strangers. Dogrib justice was about learning how to survive together. The introduction of the cash economy and later of a labour force that is not directly connected to survival seems to be a major undermining factor of healing justice in Lac La Martre.

Dogrib spirituality is completely intertwined with the everyday practices of life. This seems to be part of the sustaining dynamics of healing justice in the Dogrib context. We see this in part because as this begins to diminish in the Lac La Martre community, healthy living also diminishes. Western approaches to justice tend to create a clear separation between secular and religious, at least in rhetoric. However, Dogrib justice has no ability to make this distinction. The balancing of relationships is a “sacred” balancing in the sense that everything is in relationship with everything else and with the Creator.

Traditional Dogrib justice is rooted creativity. It does not use case precedent but rather sees each situation as unique in that each situation has its own complex mesh of relationships which needs to be understood. Being “put into the circle” did seem to follow a regular pattern of response, but there is no sense that clear rules of procedure needed to be followed and that certain protections of fairness needed to be put in place. Those who behaved in such a way as to harm the community needed wise and gifted leaders, elders, extended family members and peers. It was the role of this community to find ways of making life balance again.

Leadership within Dogrib communities does not follow liberal notions of a good leadership. Dogrib communities were not a democracy. In fact democracy – or at least elected leaders – is associated with a significant decline in Dogrib justice. Leaders had power. Special leaders were chosen on the basis of giftedness. Elders' opinions were weighted more heavily than others'. The *k'áowoo*, who was responsible for the first round of formal harm response, was not impartial, unbiased or objective. This is at odds with much conflict resolution theory and Western justice practice which tends to focus on third party professionals to deliver its justice. None of that terminology made any sense within Dogrib justice. The *k'áowoo* was related to many in the camp and known to all. It is this relatedness when combined with giftedness, care and wisdom which provided the ability to participate in healing justice.

Dogrib justice is not primarily about punishment. Punishment, even harsh punishment, coexisted in the Dogrib context alongside reconciliation and healing. These processes were carried out in the same space, by the same actors and sometimes at the same time. Shame and fear were part of the reconciling, not the evidence of its failure. The goal of Dogrib justice was to bring the community back into healthy balance so that everyone could work together for the survival of all.

Relationship with the land seemed to be the major determining factor in sustaining the Dogrib way of life. All of life in the far north is a negotiation with the land. A hunter-gatherer culture is one which is not removed from its connection with the wilderness. This connection is deep and mysterious. Some have argued that even a farmer's connection to land is vastly different because it is a connection to a land that gets manipulated to produce rather than a wilderness which must allow itself to be taken and replenished. In any case, living in the land and with the land is a profound part of the cultural dynamics of Dogrib justice. The connection to land and to living in wilderness is a major part of the worldview which sustains the Dogrib vision and practice of life.

The size of community is a key dynamic in sustaining the Dogrib practice of justice. The community had to be large enough that there would be enough people to do the common work of survival but small enough to be move together to where food might be. A small size meant that everyone knew everyone else. This accounts, in part, for the lack of concern with people being “not guilty”. In fact Ryan points out a number of times that the Dogrib have no language to express “not-guilty”. This size of group meant that relationships within the community were multilayered and crosscutting. They were multilayered in that each relationship had many roles such as relative, hunting partner, elder. Presumably, they were crosscutting in that alliances that included some and excluded others one day or on one issue were different on the next day or issue. This is a sign of health in a community.

“Respect is probably the primary value from which all others flowed because without respect, the balance between people, the land, plants, animals and spirits could not have been maintained” (p. 127). For the Dogrib respect was important at every stage. Respect was not only extended to elders and leaders but also to victims, to offenders, to animals and to the spiritual world. This did not mean that people were treated in a very gentle way. The north is harsh and in some ways so are its people. One could speak “harsh words” and still respect the person. This is partly how reconciliation co- existed so closely with some forms of punishment. This is the way people both feared and respected the circle, the leaders and the elders.

2.2 Case 2: Traditional Indigenous Fijian Healing

Richard Katz is a Harvard-trained clinical psychologist and anthropologist. He taught for twenty years at Harvard before going to a remote island community in Fiji to learn to become a traditional Fiji healer. The experience changed his life. While learning about Fijian healing, Katz became an apprentice healer and was later commissioned by traditional Fijian healers to tell their story. *The Straight Path of the Spirit: Ancestral Wisdom and Healing Traditions in Fiji* (Katz, 1999) is a wonderful telling of that story.

In Fiji, traditional indigenous healers speak of the straight path. The straight path is the way of healing. It is a way of living in the world which is available to all, not just the realm of healers. Those in the process of discovering the straight path are said to exhibit certain characteristics:

- vakadinadina (telling and living the truth)...
- loloma (love for all)...
- I tovo vinaka (proper or correct behavior)...
- sega na I vukivuki (humility)...
- vakarooroko (respect)...
- sega ni lomaloma rua (single-mindedness)...
- veiqaravi (service)... (Katz, 1999)

Indigenous Fijian healers, work within what some would call the spiritual realm. Traditional indigenous Fijians reject dualist thinking that might separate spiritual and physical realms. Healers are connected to various vus or gods. The vus vary in power but the straight character of the healer according to the virtues above, also influences the healing power of a particular healer. So Fijian healing is a spirit-filled activity and is rooted in character and compassion development. Western liberalisation has privatized and individualized spiritual matters. Yet in Fiji spiritual matters are the source of healing and community peacebuilding practices.

In Fiji this means that the healer is not an expert or the main source of healing. Healing comes from the spirits. Straight healers therefore cannot charge for services as they cannot rightly take credit for this work. Healing powers, called mana, only come when treated as a gift. When commoditized the powers disappear.

Healing in Fiji is a gift and a discerning mystery. “The straight path unfolds as one travels it... The straight path implies a concept of healing which is a search for meaning, balance, connectedness and wholeness: in short, a process of transformation” (Katz, 1999). Healing is not a straightforward process. It involves searching, discerning, listening and trying. A healer goes to look for herbs. For some of the plants he was taught what they are and how to use them (taught knowledge). But a healer might also be “given wisdom” as to which flower to pick for this particular situation. Such given wisdom has been largely discarded from Western systems but remains a key part of the mystery of healing harm and disputes in traditional indigenous communities in Fiji.

When people approach a healer for healing they will bring a gift of yaquona, a root. This is ground into a powder and mixed with water to make a drink. This drink is used as a cheap alternative to alcohol but, used in healing, it is said not to have the mind-altering effect. A healer may use massage, herbal medicines, consultation of spirits and other forms of investigation. The goal is to find the root of the problem. Healers work with physical ailments, especially when it is suspected that the cause is not directly physical but spiritual. But they also work with community conflicts which Westerners might categorize as crime. The goal is to reveal the originating causes and to bring the community back into the straight path.

It is believed that some healing in the community stimulates other healing. Healing in this sense is an abundant, expanding resource, not a scarce one which shrinks as it is used. The goal of healing in Fiji is to get the whole community to use this expanding resource.

2.3 Case 3: Buddhist Tibet

French, a Law Professor at SUNY Buffalo, explores what she calls the Legal cosmology of Buddhist Tibet by uncovering the pre-1959, pre-colonial law of Tibet. Tibet, prior to the invasion of 1959, had a functional pre-modern, literate, legal system. David Loy’s essay, “Healing Justice: A Buddhist Perspective”, points toward Tibet (and toward French’s research) as a functioning Buddhist example of healing justice (Loy, 2001). French spent three years in the 1980’s doing field research in Tibetan

communities of Nepal, India and Tibet. She interviewed hundreds of past participants in the Tibet legal system and worked with a Tibetan legal scholar to understand and translate the Tibetan legal codes.

Tibet had two legal codes, one was for monks and nuns, the other was for everyone else. Both were deeply Buddhist in philosophy, structure and imagination. French's research focused on the later.

The Tibetan approach to law had a number of distinguishing characteristics:

- There was no distinct set of professional legal actors, and specific crimes did not lead to specific punishments, with the exception of murder where payment was given to the victim's family and to other persons or agencies affected by the crime;
- The control of the state and its sanctioning ability was minimal and, therefore, punishment was not the central discourse on crime;
- The parties themselves defined the issues, the facts to be proven and the evidence to be submitted;
- Legal processes and decisions needed to take Karma into account;
- The stories of the Buddha were a legitimate source of moral reasoning;
- The court tried to produce a solution agreeable to all;
- Parties could re-open cases if they changed their minds later;
- Legal codes identified the way of "factoring" various conditions leading to harms (see point three below for more details on factoring).

French summarizes the Tibetan legal cosmology and brings it into tension with American approaches to law. She highlights eight points which are summarized here.

1. "Buddhism has both radical particularity and cosmological integration as the basis of its world-view. This means that the Tibetan legal system treated individuals both as entirely unique - not comparable to one another - and as entirely integrated, part of the same cosmic system" (French, 2002). This combination of particularity and interconnectedness has been recognized as part of the moral imagination of others in restorative justice and peacebuilding (Sawatsky, 2000). French recognized that this tension leads to the necessary rejection of dualistic thinking which is so omnipresent in most Western modes of thinking. The Tibetans did not divide between good/bad, nature/culture, religious/secular, faith/reason. This tendency to divide leads to tendencies to separate, to categorize and then to judge good or bad. The Tibetan imagination worked differently.
2. "Tibetans believed that their legal system was permeated with the moral requirements of the Buddha and that self-regulation of each individual's mind was the key to all social systems" (French, 2002). Tibetans did not separate law and morality. Law was seen as an aid to help people return to inner morality, not just to follow external behavioural requirements. The Tibetans were story-formed people where the stories of Buddha provided the standard of right behaviour.
3. "From the Tibetan example it is apparent that some legal systems and decision-making processes result in *neither* general rule formation and application *nor* the regular use of case precedent" (French, 2002). Authority and legitimacy came through the Buddha's life and path rather than through the universal application of a rule. The Tibetan community did not try to set up systems that could be universally applied. They had an integrity particular to themselves. The legal procedure in Tibet involved factoring, weighing of several interrelated factors which combine in unique ways with the situation being explored. Factoring requires flexibility, moral imagination and the possibility for creativity. A rules-and-precedent orientation does not give space for this kind of discerning.

4. “Tibetans followed not rules but factors in the law; they used sets of factors related to each circumstance to determine the unique situation of the individual involved” (French, 2002). Law in Tibet was more about discernment than about the administration of rules. This kind of legal factoring was an attempt to find the Buddha’s path. While the focus of factoring was particular and unique the purpose was to transcend the individual perspective and move towards an enlightened view which is compassionate and interconnected with all beings. This challenges a number of assumptions in Western legal traditions and within restorative justice. Tibetans might argue that to be offender-oriented or victim-oriented (the new push in restorative justice) is to miss the point of restoring a compassionate interrelationship with all beings.
5. Lack of finality and closure – Tibetans could re-open cases even after they had agreed to a particular decision. As deep agreement is important, they were free to disagree and to reopen their case until they felt that the dispute had been decided correctly. This led to flexibility to choose various kinds and levels of forums within legal procedure. Disputes weren’t closed because an official said so; they were closed when the mind was calm and harmony was reached, however that happened.
6. A state bureaucracy without significant ability to punish – Tibetans had too few bureaucrats and too little policy to base their system on punishment. French reports that they did have a variety of local sanctions: ostracism, shaming, loss of prestige due to fighting, loss of religious merit, loss of social prestige, financial loss and the discomfort of delay. Tibet was not free of harsh punishment. It was used on occasion but according to French such punishment played a minor role in Tibetan life and law. Local sanction rather than state sanction was largely what held the country together. Tibetan society worked with consensual processes where every person involved had to consent to every part of the process – “from the choice of forum, authority and procedure to the decision and penalties imposed” (French, 2002), even in criminal cases.
7. Religion and law – In Tibet there were two type of law: religious law for religious practitioners and religious law for laypersons. Religion permeated both.
8. “Fairness in Tibet meant using Buddhist moral tenets and logic, legal factoring and the law codes to investigate every aspect that was presented in a case.” The goal was to find a solution which everyone could agree with. Fairness here is not sameness but the ability to be compassionate, ad hoc and transformative. French notes that in this context establishing the truth was more about people coming together to a common perspective than about the clashing of opposite sides.

2.4 Case 4: The Community Peacemaking Programme (CPP) – South Africa

In 1997 the Community Peacemaking Programme, the predecessor of the Community Peace Foundation, started a pilot project in Worcester. This project came to be known as the Zwelethemba Peacemaker Committee or the Zwelethemba Peacemaker Model, and as of 2004 includes the Zwelethemba Community Peacebuilding Center. According to a February, 2005 report there were twenty Peace Committees in South Africa which, in the preceding four years, had facilitated over 11,000 Peace Gatherings, involving well over 40,000 people (Cartwright and Jenneker, 2005). It is reported that 96% of Peacemaker Gatherings develop and agree on a Plan of Action to reduce the likelihood of a particular conflict resurfacing and 75% of gatherings developed some symbolic gesture to mark the end of the conflict (Froestad and Shearing, 2005). Peace Committees are now in the beginning stages in Argentina (Rosario), Canada (Montreal and Trois Rivieres) and Australia (Bendigo, in Victoria). So what are they and why are they growing so quickly?

The Zwelethemba initiative builds on prior work by the Community Peace Foundation in 1992 and the peace committee structure was set up to help sustain the creation of a constitution and the movement to elected government in South Africa. Those first peace committees were transitory structures to help in the transition out of apartheid. The story of these early roots is told well by Susan

Collin Marks who calls it the world largest conflict resolution initiative (Marks, 2000). The Zwelethemba Peace Committees come later and develop in different ways but draw on some of the imagination of those early peace committees.

The Peace Committee comes as a response for communities to take responsibility for their own security without waiting for initiatives or permission from the state and without breaking the laws of the state. The goal, according to the Community Peacemaking Programme, is to enable poor people to:

- Control and direct what happens in their communities,
- Rely on their own knowledge and capacity in their planning and in putting their plans into action, and
- Access money to support their planning and actions (Cartwright and Jenneker, 2005).

The pilot project sought innovative ways mobilise local knowledge and local capacity in the process of enhancing self-governance and self-direction within the bounds of state law.

This was done by creating local Peace Committees of 5-20 people who were trained in the vision of the Peace Committee and committed to following the code of good practice. The Code of Good Practice formed the imagination of the Committees. The code includes:

- We help to create a safe and secure environment in our community
- We respect the South African Constitution
- We work within the law
- We do not use force or violence
- We do not take sides in disputes
- We work in the community as a co-operative team, not as individuals
- We follow procedures which are open for the community to see
- We do not gossip about our work or about other people
- We are committed in what we do
- Our aim is to heal, not to hurt (Shearing, 2001)

As the Code builds on local and collective ways of knowing, rejects the use of force or violence and works toward healing rather than hurting, we can see this is a form of healing justice. The model does not draw on traditional communities as we have seen them, but it does draw on collectives, usually in poor areas.

The overriding principle is that collectivities have a right to undertake PeaceMaking and PeaceBuilding as long as what they do is within the law and is undertaken in a transparent manner so that the legality of their actions can be assessed (Froestad and Shearing, 2005).

The Peace Committees engage issues of harm but do not take the role of judge. In fact the model transforms most of the usual criminal roles. Victims and offenders are considered participants or parties. Rather than a single judge there is a team of facilitators. Their job is to facilitate an engagement of discovering what can be done to reduce or eliminate such harm in the future. Two kinds of gatherings are used in the process, Peacemaking Gatherings, for engaging a particular dispute and Peacebuilding Gatherings for trying to address more system and preventative issues. In both gatherings they try to identify and address the root causes of the problem through a community process.

There are a number of unique aspects to this work. First, for the most part, they don't take cases from the police or justice system but, rather, rely on victims and the community to ask them for help before police are involved. Shearing notes that this early stage of involvement has a number of advantages. Participants define their own problems rather than the state framing and naming the problem.

Frequently this self-defining happens in ways quite unlike the language of crimes. Peace Committees tend to have a broader view, moving from the incident to examining what might bring an end to the cycle of conflicts that has produced the dispute. Peace Committees deal with issues of sex, money and nuisance at an earlier stage than state systems, thereby resolving conflicts before they escalate. Early intervention by the community tends to have a broader time perspective, looking both at past patterns and cycles but also at issues of a shared future.

Second, while they do outline steps to peacemaking, they do not have a single process or kind of outcome that they are looking for, thus creating meaningful space for the community to determine their own response as long as it fits the Code of Good Practice. This is similar to the New Zealand conception of the Family Group Conference as a principal vessel into which the justice work needs add the appropriate players and contexts in the process of co-create an appropriate forum (MacRae and Zehr, 2004). A key difference between the FGC and the Peace Committee model is that the Peace Committee gatherings are not used for state-determined goals whereas the FGC are used as part of state crime control.

Third, there are multiple facilitators at each Peacemaking Gatherings. This can range from 2-10 as all available Peace Committee members are encouraged to attend. It averages at over five facilitators per gathering (Cartwright and Jenneker, 2005). Others community members are invited to attend if they are “regarded as being in a position to be helpful in an instrumental sense, not simply to be there as 'supporters' of the conflicting parties” (Froestad and Shearing, 2005).

Fourth, Peace Committees have rejected the paid expert model, opting for a volunteer model where the Committee is paid for Gatherings that were conducted according to the Code of Good Practice, regardless of outcome. The payment goes to two funds: an administrative fund which covers the costs of hosting Gatherings and a Growth Fund used to create income-generating opportunities and for poverty relief grants for Peace Committee members and local community applicants.

Fifth, while most restorative justice initiatives address harm, and some try to address the underlying causes, few go further towards peacebuilding at a more macro level as is done in the Peacebuilding Gatherings (Roche Declan., 2002, Roche, 2003). These Peacebuilding Gatherings take many meetings as participants need to time for cycles of analysis, experimentation, reflection, innovation and education. Issues for Peacebuilding Forums sometimes come through reviewing past Peacemaking Forums, as we saw in some areas of New Zealand Family Group Conferencing. Another way that issues arise is through surveys of victims regarding the sorts of security issues they face and exit interviews of principal participants at Peacemaking Forums. Shearing reports this second kind is more difficult to sustain, requiring a longer time commitment and it works best when an affected corporate player is involved (Shearing, 2001).

Sixth, because these gatherings are legal and do not rely on the state system, there is no approval that is needed to start such an enterprise. In restorative justice, most programs operate by agreements with the state justice system or by acts of government. The Peace Committee model is a folk model which does not get its authority through the state. The community provides the direction and the energy behind these initiatives at social change (Froestad and Shearing, 2005).

Seventh, expanding the time horizon – “The key question guiding the PeaceMaking process is, 'how do we make a better tomorrow?’”(Froestad and Shearing, 2005). Here the focus is more on a common future than a conflicted past. Proponents of this model see this as a key distinguishing factor.

The uniqueness of the Zwelethemba model, compared to both retributive and restorative justice arrangements, is that the matters of dispute are not addressed through a backward-looking process that seeks to balance wrongs with burdens, but through a forward-looking one that seeks to guarantee that the disputants’ moral good will be respected in the future (Johnston and Shearing, 2005).

A second pilot project was started in 2002 in Nkqubela which provided a partnership between police and the new Nkqubela Peace Committee. “The Peace Committee would provide a conflict-resolution and community-building service, while the police would provide a contact point for reports and enquiries, and an emergency response service. The former police station would be refurbished and extended and would reopen as a Community Peace Centre (Cartwright and Jenneker, 2005).” So far two other such Peace Centres have opened in South Africa: Zwelethemba Community Peace Centre (February 2004), and the Mbekweni Community Peace Centre (April 2004).

2.5 Case 5: Justapaz, Columbian Mennonite Church, Bogotá, Columbia¹

In our survey of healing justice Mennonites have been one of the groups which have kept reappearing. JUSTAPAZ is a Mennonite organization working in the violent and violatile setting of the ongoing armed conflict in Columbia. It is presented here as one example of Anabaptist-style healing justice.

Justapaz: The Christian Center for Justice, Peace and Nonviolent Action began in 1990 as an initiative of the Columbian Mennonite Church but as of Sept 2005 it began steps to become a related but separate legal entity. The organization states its vision in these terms:

Justapaz envisions a society that knows and is committed to the values of the Kingdom of God, in which peace exists within a framework of justice, and is built with nonviolence and respect for human dignity (JUSTAPAZ, 2003b).

Here we see many elements of our working definition of healing justice: they are clearly drawing on their faith tradition, they have an engaged sense where relationships are characterized by a kind of respectful healing, here outlined by peace within justice, non-violence, respect and human dignity. Their mission statement further builds on these elements:

Justapaz takes as its point of departure the example and calling of Jesus Christ. Its mission is to strengthen the initiatives of individuals, churches and communities in their practice of non-violence for the constructive transformation of conflicts and the formation of structures and life styles that lead to a just and sustainable peace (JUSTAPAZ, 2003b).

The task of the church is to be the church. To be the church is to embody the Kingdom of God. The Kingdom of God is the body politic that incarnates and engages the world with the way of Jesus: non-violence, love, compassion, attention to the marginalized, willingness to lay down one’s life. The church is to be today what the world will become eventually. In other words the special identity of the church is not for the exclusion of all that is not church but is for the world becoming whole again. This theology is shared by many (but not all) Mennonite theologians, John Howard Yoder being the most prominent among them (Yoder, 1972, Yoder, 1992). Mennonite ministry is to communicate the Good News from the Gospel of Peace, in that way contributing to a life of non-violence, human dignity, justice and sustainable peace for Colombia.

To advocate for non-violence and relationship building in violent situations is often a dangerous task. Over 45 Mennonite pastors have been killed in Columbia since 1995 (Circle Vision, 2005). Justapaz workers have been threatened by all sides of the conflict but continue to try to keep open lines of contact with all sides.

There are a number of different facets to the work of Justapaz. Some of the major areas of their work will be outlined briefly here.

¹ Most of the information in this section comes from Justapaz’s website: <http://www.justapaz.org/>, accessed 15 Jan. 2006.

Conscientious Objection. This has historically been an area of concern for Mennonites who historically have rejected the practice of violence including state all forms of state violence. In Colombia the issue goes beyond getting permission for Mennonite not to engage in war. Rather, conscientious objector status is seen as an instrument to stop cycles of violence by providing young people with an alternative to being recruited by the illegal armed groups or by the Armed Forces or both. Justapaz works to change legislation to provide room for conscientious objectors.

Permanent Course. Frustrated by offering years of peace and conflict training but without much effect, Justapaz workers realized that relying on one-off training courses would unlikely provide fruitful ground for transformation. They have worked to build a Permanent Course which builds capacity and networks by delivering the course over multiple years with numerous training events each year (Lederach, 2002). This course links unlike groups across conflict lines in a setting of learning, experimenting and training. The long-term commitment builds relationships and allows collaboration space to develop.

Sanctuaries of Peace – This program is run together with the Quaker through their Friends Peace Teams. It calls congregations to express justice in all aspects of daily life. As they see peace within the framework of justice, this as a strategic plan to bring peace. Justapaz works by linking groups together, sometimes within Columbia and sometimes internationally. Sanctuaries of Peace are often linked with a sister church. JUSTAPAZ sees the sanctuaries movement as a model for initiating social and political peace strategies in Columbia.

Conflict Mediation Center and Community Justice. Through offices in different locations Justapaz offers consultation, mediation and arbitration services to the community. They also assist churches who want to become or to support church-based community Peacebuilding Centres. Similar to the Zwelethemba Peacemaker Model, Justapaz views mediation as more than a resolution of issues and places it within the framework of “advancing economic justice and wellbeing” (JUSTAPAZ, 2003a).

Permanent Assembly of Civil Society for Peace. For Justapaz restorative justice means victims’ involvement and in Columbia this means civil society participation in peace agreements. Justapaz tries to create room for this even if the official “track one” players don’t participate. Justapaz says that “a process of justice must include practical and concrete aspects, such as restoration of lands, basic services in education, health and job opportunities, as well as the necessary conditions for the normal development of the communities, in this way mitigating the psychological impact” (JUSTAPAZ, 2005b). One way of trying to work at the process is through the Permanent Assembly of Civil Society for Peace. The Assembly was started in 1998. Since then three national assemblies have been held where between 2000-4000 members of Columbia civil society have come together to work at creating peace together in Columbia. Justapaz helps to host these Assemblies, but this work is done in collaboration with many others in Columbia.

Local Experiences of Peace. Started in April 2004, this project links the successes of Sanctuaries of Peace to promote a national and international voice. It is a political advocacy project which is trying to influence the Colombian Government to choose non-violent mechanisms to respond to conflict in Colombia.

School for Peace. “The general objective of this project is to capacitate persons to promote, through community processes, a peaceful way of life, as well as sustainable development within their local contexts” (Justapaz, 2005a). This school is a partnership between three Columbian Mennonite Church projects: Justapaz, the Biblical Seminary and Mencoldes, a development organization. Started in July 2005, the school mixes biblical and theological studies with current affairs and conflict transformation studies.

Justapaz is a bold organization which operates by an “engaged” Anabaptist ethic. This ethic could be described as healing justice or as they but it “peace within the framework of justice”.

3. CONCLUSION –REFLECTIONS ON THE HEALING JUSTICE IMAGINATIONS

The paper has reviewed five stories from around the world. The cases are a diverse collection of communities engaging interpersonal harms in very different ways and settings but each sharing a concern for what I have been calling healing justice. I have demonstrated that healing justice is not the domain of one community, culture, religion or ethnicity. It is practiced around the world, in diverse ways by diverse groups.

In this conclusion I will highlight several factors which many of these cases seem to share. Each of these factors, proponents of mediation would do well to study and reflect on. I believe they contain insights which could transform the ways we approach mediation. Froestad and Sheering identified four dimensions to assess the restorative capacity of particular practices which they argue are more fruitful and practical than other forms commonly used in evaluating restorative justice (Froestad and Sheering, 2005). I would like to use those four dimensions as a starting point.

First, broadening the circle was a constant feature. Froestad and Sheering argued that practices which were more inclusive of different people would be more restorative than practices which dealt more narrowly with victim and offender. In the Dene example we saw clearly this broadening of the circle in the movement toward discernment and reconciliation. One of the scripture passages characteristically cited to describe Mennonites is a section of Matthew 18 which also follows this broadening of the circle of discernment. This passage calls for conflict to be responded to by first going to the person who has wronged you and speaking with them. If that is unsatisfactory the net of discernment and engagement is widened by taking another person with you. If that is still unsatisfactory the net is widened still to include the whole church. If it is clear the one who is accused is acting in a harmful way and that they are unwilling to change, then they are to be treated as a tax-collector. The implication is often interpreted as a form of banishment. However, Jesus who is reported to be giving this teaching, treated tax collectors quite well by feasting with them and sharing his teachings with them. In Tibet there was a strong reluctance to engage the legal system with its selected professionals. Instead, again, there were many levels of broadening the circle that happened prior to and within legal disputes. In the South African CPP we saw this broader circle was the first and only place that disputes were sent for problem-solving. In different ways, Justapaz demonstrates this same imagination by linking unlike participants in ongoing learning, discernment, debate and action.

Second, across the spectrum efforts were made to extend beyond the narrow repairing of harm and toward transforming structural problems and social inequality, thus aiming to re-empower communities. Froestad and Sheering argued that practices which stayed within the realm of the incident would be less restorative than those which worked to strengthen communities and transform structural injustices. The case-studies seem to support this view. The CPP does this structurally by having two types of forums, Peacemaking Forums which tend to focus on disputes and Peacebuilding Forums which tend to focus on structural issues. In all of the case studies there is a strong underlying purpose to build the local community. The local community is understood as being both a source of brokenness and a source of healing. In all cases it becomes a central player. Some might argue that this decreases the role and influence of the victim. Indeed, this can be the case. A community will tend not only to respond to the incident but also to the patterns that develop over time. A community is not only interested in what happened in the past but also what the future will be like. There is a possibility that the community's concerns can drown out the victim's voice, especially where the community is still in the early stages of healing. However, the case-studies here present interesting ways of responding to the victim while at the same time responding to the larger structural issues. In Tibet and CPP there was a clear attempt to understand root causes. This is an area that needs much more work and development but indications are visible in the case-studies.

Third, all the case-studies show that "Restorative Justice is about restoring balance between state and civil society to the advantage of the latter" (Froestad and Sheering, 2005). Restorative practice which

is locally-based and NGO driven will be more restorative than practices that are state-based and state-driven, so argue Forestad and Shearing. The five examples illustrate many different relationships to the state but all move towards a locally-based, locally-driven system. Justapaz Peace Sanctuaries, Permanent Course and Permanent Assembly are all attempts of communities to engage in bringing peace without waiting for the permission of government. CPP try to stay within the state laws, but do so in such a way as to strengthen their ability to act locally, without interruption from government. The Dene case is an example of an attempt to stop trying to change state laws and to return to their own ways. The Tibetan example is perhaps the weakest on this front but when seen as developing within a society with a government that does not have the physical presence to enforce its laws, one begins to see the Tibetan example as one that encourages local communities to take responsibility for themselves.

Fourth, all the case-studies reveal priority decision-making on a local level rather than on a professional level. Froestad and Shearing argued with Christie (Christie, 1977) that “specialization in conflict solution is the worst enemy.” In Fiji and in CPP we see systems where those involved in responding to harms and injustices cannot get paid for their role. In the Dene case it was the circle of the community and the words of the elders which seem to have priority in decision-making.

Froestad and Shearing’s four dimensions seem to fit well for these case-studies. However, they don’t tell the whole story. There are a few more dimensions of healing justice as evidenced in these case-studies that deserve attention here.

For many of these healing justice case-studies life was imagined in the vast interconnected relationship between and within these worlds. This imagination of interconnected relationship, Lederach calls a core discipline of peacebuilding (Lederach, 2005). The growing field of indigenous science gives an insight into the nature of their worldview (Dei et al., 2000). Even many aboriginal languages tend to focus on verbs, that is, explaining the changing interactions within the world (Ross, 1996). We see this beginning point in other communities that practice healing justice. French argued that Tibetan Buddhist legal cosmology begins with just this point, “Buddhism has both radical particularity and cosmological integration as the basis of its world view” (French, 2002). In the Dene case we saw this in terms of bringing all elements back into balance. Seeing the world as interconnected relationship is not only a vision of the world but also a way of being in the world. Healing justice practices are such ways of being.

Another dimension that most of these cases highlight is the importance of Spirit – not just for personal growth but as the very source of healing. In Justapaz Mennonites see their work coming from their understanding of Jesus and the Kingdom of God. In Tibet good practice comes from the teachings and life of the Buddha. In Fiji healing comes not from healers but from the gods. Some would argue that in so far as we discard spiritual or faith practice from the realm of public disputes, we cut ourselves off from the very source of healing.

Related to the dimensions that have come before these communities seem to have more expansive ideas of time, space and connection to land. Staying close to the land seemed vitally important in the Dene, and Fijian case-studies. The land becomes like a teacher. In turn, including even the land in ones discernment surely widens to the concept of time as it draws on issues of sustainability. An individualistic orientation to time might only extend as far one’s one life time (what I have done, what I will get out of this). Discernment which considers that implications on and teaching from the land have a much longer timeframe, concerning oneself not just with the action and implications for oneself or even just for one’s extended family but for the benefit of the earth. This time frame extends many generations. It is not only concerned with impact on direct victims but also with ways of structuring life with damages the earth.

What would it mean to apply these learnings to the practice of mediation? A full response to that question is not the task of this paper. I would like to several questions which mediators might ask themselves in light of this paper:

- How could mediation develop the capacity to know when/how to widen the circle of participants?
- How could mediation nurture the capacity to see and address the structural-political-spiritual problems and resources in which any particular dispute is embedded?
- How do we nurture independent local peace centers rather than relying on state systems
- Is mediation still too dependent on the neutral, professional mediator thereby displacing locals?
- What would it mean to move from an issues-solutions frame to a relational frame?
- What would mediation look like if it was open to the possibility that the Spirit was the source of healing?
- What if mediation had to consider seven generations?

It is the task of local groups of peacebuilders to seek after these questions within their own cultural context. Hopefully they will come up with diverse responses reflecting the diversity of culture and locality.

As the survey of cases in this paper is very brief overview, I am not making the suggestion at each of these cases are good, holistic examples of communities fully based on healing justice. Simply having some healing justice practices does not mean that all their practices are based on healing ways. The Fijian example demonstrates some very interesting approaches to healing justice, even as Fiji experience significant conflicts between ethnic groups and between genders. We need therefore to study communities which have based their whole community on healing justice but that is a task larger than this paper.

In this paper we have suggested that healing justice is a particular way of being justice in the world. It is a paradigm, an imagination, a way of thinking and being. Healing justice is practiced by communities from around the world. By listening to their insights and wisdom, it is possible to deepen our approaching to mediation, conflict transformation and restorative justice.

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