Restorative Visions in Aboriginal Australia

Aboriginal Australians are dramatically over-represented in the country's criminal justice system. **Harry Blagg** describes some reforming initiatives.

Aboriginal people in Australia are amongst the most imprisoned people in the world. The state of Western Australia has the dubious distinction of having the highest rate of Indigenous youth incarceration of all Australia's states. Today, roughly ten years after the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) brought down its 339 recommendations intended to reduce the shocking levels of Indigenous over-representation in the criminal justice system, little has changed and, on a number of fronts, things have clearly gotten worse. The position of Aboriginal youth, in particular, continues to cause particular concern to the Aboriginal community.

Indigenous youth represent less than four per cent of the youth population of Western Australia. Yet, Aboriginal youth between the ages of 10-14 are 25 times more likely to be arrested by the police than non-Aboriginal youths of the same age. Between 15-17 they are about 9.3 times more likely to be arrested. They represent 19 per cent of offenders and 32 per cent of all offences heard in the state's Children's Court and of those convicted 35 per cent received a custodial order as opposed to 27 per cent of non-Aborigines. At 38 to 3, Western Australia has the highest Aboriginal to non-Aboriginal imprisonment ratio in Australia. At any one time, anywhere between 50 and a 60 per cent of children and young people in custody in Western Australia will be Aboriginal (Aboriginal Justice Council, 1999).

Appropriating Indigenous peace-making

Much has been made of the links between new reforming initiatives such as restorative justice and traditional Indigenous ways of resolving conflict. The image of the Indigene enjoys wide circulation within the discourse of restorative justice. What restorative justice text would be complete without reference to 'sentencing circles', 'peace-making' or Maori style 'conferencing'? Paradoxically, in many parts of Australia at least, the 'traditional way' is being appropriated for use on non-Indigenous young offenders – who are the key beneficiaries of diversionary 'family group conference' style initiatives – while Indigenous youth are left to face the full weight of law and order strategies – such as 'three strikes' mandatory sentencing and 'zero tolerance' policing. This is a vivid example of the kinds of 'unequal commodity exchange' that have typified colonial relationships over the last century or so – only in the post-modern era it is Indigenous people's culture that is also the object of colonial desire. 'Tough on crime' mandatory sentencing for 'home invasion' style offences was introduced into Western Australia in 1999 - around 80 per cent of juveniles caught up in the legislation have been Aboriginal.

The introduction of police cautioning in the mid 1990s for first and/or minor offenders has had only a slight impact on the rates of over-representation in the system. Indigenous youth accounted for around 20 per cent of cautions in Western Australia in 1997. The rate of referral of Aboriginal youth to diversionary family conferencing programs (adapted from the schemes in New Zealand) is around 16 per cent — small in comparison to their rate of involvement in the system as a whole.

Aboriginal critiques

The lack of progress by government in implementing key recommendations of the RCIADIC particularly in relation to police contact with Indigenous youth, imprisonment as a last resort and the introduction of culturally appropriate diversionary programs has been criticised by Indigenous people (Aboriginal Justice Council, 1999). For many Aboriginal people, restorative justice suffers from a legitimacy problem because it is closely linked to an alien and oppressive criminal justice system. This is exacerbated by the early leadership role taken by the police as gatekeepers, coordinators and conveners of family group conferences in many Australian states (Blagg, 1997).

Historically, Australian Aboriginal people have been *a priori* criminal in dealings with the non-Aboriginal system. The over-policing of Indigenous communities has been a considerable barrier to the legitimisation of non-Aboriginal legal processes by Aboriginal people. The RCIADIC drew attention to the discriminatory nature of policing in Indigenous communities (including acts of violence, harassment and intimidation) and the criminalisation of Indigenous youth. (Cunneen and McDonald, 1997).

Making restorative justice relevant

To have relevance for Indigenous people, restorative justice may need to think outside the criminal justice paradigm and engage with a range of justice issues of concern to Indigenous people – developing a 'restorative vision'. A central dimension of this would

entail coming to terms with traditional, or 'tribal', law, still practiced by many Indigenous communities despite its lack of formal status or recognition (Australian Law Reform Commission, 1986). Aboriginal people increasingly talk of the need to incorporate elements of Aboriginal law into the criminal justice system or develop a parallel system.

Many Indigenous communities currently lack basic law, order and governance. The non-Indigenous justice system is failing to protect Indigenous people – particularly women and children – who are the most routinely and repeatedly victimised section of Australian society. An Aboriginal woman in Western Australia is about 45 times more likely to be the victim of serious domestic violence than a non-Aboriginal woman. (Ferrante *et al*, 1996). Yet, few victims want men to be gaoled. Indigenous communities see prison as part of the cycle of violence – stripping communities of their young men and returning them more damaged than when they left. They want intervention strategies that stop violence but leave families intact and promote family and community 'healing' (Blagg, 2000).

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Aboriginal law encompasses a diversity of practices. In terms of punishment it extends from public 'growling' of offenders, through temporary or – in some instances – permanent banishment from communities, to physical punishments such as 'spearing' in the thigh. The latter, in particular, affronts European sensibilities, yet many Indigenous people consider the alternative pain of long-term confinement in 'white-fella' gaol, far from country and family, to be a more cruel and inhuman practice. In some areas, where 'women's law' is still respected, Aboriginal women are protecting themselves from violent men by, for example, building refuges on sacred women's ground, or placing sacred artefacts (that men are prohibited from looking at) in women's safe houses. Women are also taking the leadership role in policing their own communities – many successful Night Patrols (Aboriginal self-policing initiatives) are run by women.

There are signs that, albeit in a fragmented and embryonic form, specifically identifiable Indigenous justice processes are developing in the post-RCIADC era in Western Australia. Although poorly funded, capacity building initiatives such as Aboriginal Night Patrols and community wardens schemes, sobering-up shelters and family healing centres continue to gain the support and backing of Indigenous communities. To be relevant, restorative justice should be adding value to these initiatives, rather than being imposed from above by powerful state agencies.

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