

Aboriginal Perspectives on Justice, Law, and Self-Determination

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Read the following quotations and write a reflection in which you consider

- the priorities of Aboriginal peoples
- legal and cultural factors in self-determination
- responsibilities of Canada's justice system with respect to Aboriginal self-determination

"Indigenous peoples, as a specific form of exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, including culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resources management, environment and entry by non-members, as well as ways and means for financing these autonomous functions."

— Article 31 of the *UN Draft Declaration on the Rights of Indigenous Peoples*, 1993

The Meaning of Justice: At the most basic level of understanding, justice is understood differently by Aboriginal people. The dominant society tries to control actions it considers potentially or actually harmful to society as a whole, to individuals or to the wrongdoers themselves by interdiction, enforcement or apprehension, in order to prevent or punish harmful or deviant behaviour. The emphasis is on the punishment of the deviant as a means of making that person conform, or as a means of protecting other members of society.

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

Aboriginal Concepts of Law: There were and are Aboriginal laws. There were and continue to be Aboriginal governments with lawmaking powers and with provisions to enforce those laws. There were and are Aboriginal constitutions that are the supreme "law of laws" for some Aboriginal peoples and their nations.... Laws grow from the customs, traditions and rules of a society of people. They exist to inform people what that particular society considers to be acceptable and unacceptable.

— *Aboriginal Concepts of Justice, Report of the Aboriginal Justice Inquiry Commission of Manitoba* (1999): www.ajic.mb.ca/volume.html

Ojibway and Cree decision making involved the participation and consent of the community at large. Behaviour was regulated by ostracism, shame and compensation for the victim's loss, even if only symbolic compensation were possible. Elders undertook the regular teaching of community values and warned offenders on behalf of the community. They publicly banished individuals who persisted in disturbing the peace. Elders might undertake to mediate dangerous disputes and to reconcile offenders with victims. In cases of grave threats or such serious offences as murder, physical punishment and even execution of the offender might be undertaken either by the community or by those who had been wronged. In all instances the sanction of tribal elders was necessary.

— "The Justice System and Aboriginal People," *Report of the Aboriginal Justice Inquiry Commission* (1999): www.ajic.mb.ca/volume1/chapter3.html#2

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9.2.3
g

The Assembly of First Nations

Historically the First Nations have a unique and special relationship with the Crown and the people of Canada, as manifested in treaties and other historical documents. In essence, the special relationship is one of peaceful coexistence based on equitable sharing of lands and resources, and ultimately on respect, recognition, and enforcement of our respective right to govern ourselves. The Assembly of First Nations exists to promote the "restoration and enhancement" of this relationship and to ensure that it is mutually beneficial to the First Nations people.

The Assembly of First Nations (AFN) is the national representative organization of the First Nations in Canada. There are over 630 First Nations communities in Canada. The AFN Secretariat is designed to present the views of the various First Nations through their leaders in areas such as: Aboriginal and Treaty Rights, Economic Development, Education, Languages and Literacy, Health, Housing, Social Development, Justice, Taxation, Land Claims, Environment, and a whole array of issues that are of common concern which arise from time to time.

The Chiefs meet annually to set national policy and direction through resolution. The National Chief is elected every three years by the Chiefs-in-Assembly. The Chiefs meet between the annual assemblies every 3 to 4 months in a forum called the "Confederacy of Nations" to set ongoing direction. The membership of the Confederacy consists of Chiefs and other Regional Leaders chosen according to a formula based on the population of each region.

What does the Assembly of First Nations (AFN) mean when using the term self-determination? Self-determination refers to the right of a people to freely determine their political status and freely pursue their economic, social, and cultural development, and to dispose of and benefit from their wealth and natural resources.



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9.2.3
g

WE THE CHIEFS OF THE INDIAN FIRST NATION IN CANADA HAVING DECLARED:

- THAT** our peoples are the original peoples of this land having been put here by the Creator;
- THAT** the Creator gave us laws that govern all our relationships for us to live in harmony with nature AND MANKIND;
- THAT** the laws of the Creator defined our rights and responsibilities;
- THAT** the Creator gave us our spiritual beliefs, our languages, our cultures, and a place on Mother Earth which provided us with all our needs;
- THAT** we have maintained our freedom, our languages, and our traditions from time immemorial;
- THAT** we continue to exercise the rights and fulfill the responsibilities and obligations given to us by the Creator for the land upon which we were placed;
- THAT** the Creator has given us the right to govern ourselves and the right to self determination;
- THAT** the rights and responsibilities given to us by the Creator cannot be altered or taken away by any other nation;
- THAT** our aboriginal title, aboriginal rights and international treaty rights exist and are recognized by international law;
- THAT** the Royal Proclamation of 7 October 1763 is binding on both the Crowns of the United Kingdom and of Canada;
- THAT** the Constitution of Canada protects our aboriginal title, aboriginal rights (both collective and individual) and international treaty rights;
- THAT** our governmental powers and responsibilities exist; and
- THAT** our nations are part of the international community.



~Preamble to the Charter of the Assembly of First Nations (2003):
Source: <www.afn.ca/Assembly_of_First_Nations.htm>

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9.2.3
g

Highlights from the Royal Commission on Aboriginal Peoples:

In the late 1980s and 1990s Canada addressed Aboriginal issues and attempted to settle the many concerns that were being raised. The RCAP was given a mandate to "deal with an accumulation of literally centuries of injustice"...

Canada enjoys a reputation as a special place—a place where human rights and dignity are guaranteed, where the rules of liberal democracy are respected, where diversity among peoples is celebrated. However, this reputation represents, at best, a half-truth.

A careful reading of history shows that Canada was founded on a series of bargains with Aboriginal peoples—bargains this country has never fully honored. Treaties between Aboriginal and non-Aboriginal governments were agreements to share the land. They were replaced by policies intended to:

- remove Aboriginal people from their homelands
- suppress Aboriginal nations and their governments
- undermine Aboriginal cultures
- stifle Aboriginal identity

It is now time to acknowledge the truth and begin to rebuild the relationship among peoples based on honesty, mutual respect and fair sharing. The image of Canada in the world and at home demands no less...

- In international law, which Canada respects, all peoples have a right of self-determination. Self-determination includes governance, so indigenous peoples are entitled to choose their own forms of government, within existing states.
- In Canadian history, the colonial powers won no "rights of conquest," for there was no conquest. Nor was North America terra nullius, free for the taking, as was claimed later. In most of their early dealings with Indigenous peoples in what is now Canada, the colonial powers recognized them as self-governing nations—codifying their recognition in treaties and in the Royal Proclamation of 1763.
- Aboriginal peoples' right of self-government within Canada is acknowledged and protected by the constitution. It recognizes that Aboriginal rights are older than Canada itself and that their continuity was part of the bargain between Aboriginal and non-Aboriginal people that made Canada possible.

Source: <www.ainc-inac.gc.ca/ch/rcap/rpt/index_e.html>

