

Crime in systemic
aboriginal oppression
criminology essay



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The over representation of Aboriginal people within the Canadian Criminal Justice system is a clear indication of how the justice system has failed aboriginal people in Canada. The plethora of Aboriginal individuals who populate the penitentiaries and jails in Canada shows that there must be changes made within the Canadian Justice system. By bringing in the Aboriginal peoples traditional ways of life and incorporating it within the Canadian justice systems integration will prove to establish equity and fair treatment within the justice system. According to A. C. Hamilton, “ at the most basic level of understanding, justice is understood differently by aboriginal people and these perceptions of justice must be accounted for when dealing with aboriginal individuals in the Canadian justice system” (1991: 23).

In Canadian society, justice is equated with punishment for deviant individuals which cause them to reform and abide by societal rules. However aboriginal people view justice as a means of restoration of peace which bring equity and equilibrium to the Aboriginal community. Justice is seen as a way of bringing about major changes for the individual who is accused and for the victims themselves. This shift of focus from the traditional justice system is achieved in Aboriginal sentencing circles. In the sentencing circle there is a major shift from the practice of the formal justice system to a way that reflects Aboriginal concepts and methods of healing, the latter being proven to be an effective means of healing for Aboriginal people. The goal of the sentencing circle is to rehabilitate the offender so that they can be accepted into the Aboriginal community again. This paper will explain exactly why the culture-based approaches are important, as well as how the approaches

could be implemented. Upon conclusion of this paper, a greater understanding of this pivotal issue will be gained.

Firstly, Aboriginal people are drastically over-represented as those charged and convicted of criminal offences and in Canada's correctional facilities, both provincial and federal. As of April 10, 2011, Aboriginal offenders "represented 18.5% of the total federal offender population while Aboriginal adults represented approximately 3% of the Canadian adult population". (Public Safety Canada Portfolio Corrections Statistics Committee : 43) With the Aboriginal population much younger than the overall Canadian population and experiencing a higher growth rate, the problem of Aboriginal over-representation in the justice system continues to worsen rather than improve. The offending circumstances of Aboriginal offenders are often related to substance abuse, inter-generational abuse, residential schools, low levels of education, employment, and income and family issues, among other factors. For many of these criminal factors, community breakdown related to the impacts of colonialism and assimilation attempts may also play a pivotal role. To some degree, this was recognized by the Canadian government in the enactment of section 718.2(e) of the Criminal Code effective in 1996, and by the Supreme Court of Canada in the seminal R. v. Gladue decision, both seeking to address Aboriginal over-representation in the criminal justice system via sentencing reform.

The last two decades in Canada have been marked by controversy and public anxiety over the over-representation of Aboriginal people in the Criminal justice system, especially in its prisons, and what measures may be appropriate to respond to this situation. A host of public inquiries, committee
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hearings and academic writings have been devoted to analyses of this problem, and it has been commonly asserted that the mere fact of Aboriginal over-representation in the criminal justice system indicates that the system has failed Aboriginal people, and has led to Aboriginal people having no confidence in it. Not surprisingly, such conclusions have led to proposals for radical reform, including advocacy of an entirely separate justice system for Aboriginal people, with its own distinctive Aboriginal police, court, and correctional institutions. Such reform proposals, voiced primarily by Aboriginal leaders and non-Aboriginal academics, have been endorsed in the reports of some of the official inquiries set up to examine these issues notably the self-styled “ Aboriginal Justice Inquiry” in Manitoba (Manitoba, 1991), and the subsequent Royal Commission on Aboriginal Peoples (RCAP), which issued a report on this topic in 1996. Even official government policies in response to the problem of Aboriginal over-representation in the criminal justice system, which typically have not adopted the more radical reform proposals, have nevertheless been based on similar assumptions and conclusions about the nature of this problem. Specifically, official criminal justice policies with respect to Aboriginal people appear to have been based on the assumption that the over-representation of Aboriginal people in the criminal justice system has been due to a combination of “ culturally insensitive” and discriminatory policing (over-policing as well as under-policing) and criminal justice processing (e. g., sentencing), and a high rate of offending (and victimization) in Aboriginal communities, which itself is the result of historical colonization, exploitation, and consequent social, economic, and cultural deterioration of such communities. Not surprisingly, these underlying assumptions have led to the view that the problem of

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Aboriginal over-involvement can best be addressed by replacing mainstream policing of Aboriginal communities with policing by more culturally sensitive autonomous Aboriginal police services, more directly sensitive and accountable to these communities; the establishment of separate Aboriginal justice institutions which will better reflect the cultural traditions and current social needs of Aboriginal people; and/or special provisions in mainstream criminal justice processing (such as Criminal Code s. 718. 2(e), R. v. Gladue and R. Wells), whereby cases involving Aboriginal offenders will be treated differently from those involving non-Aboriginal offenders. Implicit in most, if not all, of these proposals are assumptions that the problem of Aboriginal over-involvement in the criminal justice system arises from circumstances which are unique to Aboriginal people, and “ Aboriginal communities” are identifiable as discrete social entities, in which separate Aboriginal criminal justice institutions can be established and operated more or less independently of the mainstream criminal justice institutions which function in non-Aboriginal communities. These responses reflect an understanding of Aboriginal over-involvement in the criminal justice system as being attributable mainly, if not exclusively, to cultural differences between Aboriginal and non-Aboriginal people, and the particularly damaging effects of the historical “ Aboriginal experience” in Canada.

Secondly, the problem of Aboriginal over-involvement with the criminal justice system is thus viewed as directly linked to Aboriginality itself, and the conclusion is that the white criminal justice system is, and will always be, inherently incapable of responding appropriately, effectively, and acceptably to these Aboriginal realities. The circumstances of Aboriginal offenders and

victims are thus regarded, by the Supreme Court of Canada and others, as unique. However, recent research on the characteristics of Aboriginal offending and victimization, and on the particulars of Aboriginal over-incarceration, as well as on Aboriginal perceptions of the criminal justice system, raise serious questions about the validity of many of these assumptions and the appropriateness of this conceptual framework for understanding and responding to the problem. We address each assumption in turn, beginning with some recent data on Aboriginal perceptions of the criminal justice system, then turning our attention to data on the characteristics of prison populations, the demographics of the Aboriginal population in Canada and, finally, looking at some of the characteristics of Aboriginal crime and victimization, particularly in the urban context.

Aboriginal Perceptions of the Criminal Justice System a recent publication of the Canadian Center for Justice Statistics (CCJS) titled Aboriginal Peoples in Canada (2001a) provided some new and interesting data on perceptions of Aboriginal people about the criminal justice system. Of particular interest in this respect are the somewhat conflicting opinions held by Aboriginal people about different components of the criminal justice system. When asked about the work of local police officers Aboriginal respondents were somewhat less satisfied with the way police are doing their jobs than were non-Aboriginal Canadians. However, when assessing courts and their ability to ensure the guilt or innocence of accused and ensure fair trials, there were no differences between the Aboriginal and non-Aboriginal respondents.

Aboriginal respondents were slightly more likely than non-Aboriginal respondents to assess courts as doing a good job in providing justice quickly and helping victims (CCJS, 2001a:). These findings are important because <https://assignbuster.com/crime-in-systemic-aboriginal-oppression-criminology-essay/>

they suggest that there is not a general Aboriginal dissatisfaction with the criminal justice system, but mainly with police. This may have something to do with the fact that, as a group, Aboriginal people have considerably more contact with police. “ The fact that those who have more frequent contact with police whether Aboriginal or not tend to have less favourable views about them is well documented in the research literature” (Hagan and McCarthy, 1998). As we shall discuss further below, there is now ample research that indicates that Aboriginal people in Canada are more likely to come to the attention of police both because they are more likely to be victims of a violent offence and because they do in fact occasionally commit violent and public order offences. Even Aboriginal perceptions of the police are by no means uniform, however. They vary regionally and between urban and rural communities. In a 1994 study of Aboriginal people living in four major urban centres in Canada (two in the Prairies and two in Eastern Canada) important regional and city vs. reserve or home community differences were found. In cities, courts were viewed most favourably and police worse in respondent’s perceptions of fairness of treatment. In home communities or reserves, police fared much better, and respondents viewed treatment by police, courts, and the criminal justice system generally more favourably than did respondents in cities. Furthermore, “ perceptions of fairness of treatment by police were also more favourable among Aboriginal people in the Eastern than in the Prairie cities”(La Prairie, 1994). Recent inquiries and accusations in Prairie urban areas involving city police and Aboriginal people have no doubt contributed to these negative perceptions and strained relations. In Saskatoon, two officers were found guilty of transporting Darrell Knight to the outskirts of the city and dropping him off in <https://assignbuster.com/crime-in-systemic-aboriginal-oppression-criminology-essay/>

freezing weather. In Winnipeg, the police department has been accused of racism in its slow response to urgent calls that resulted in the stabbing deaths of two Aboriginal women. The important bottom line that emerges from these data, however, is that Aboriginal people have apparently not, by any means, generally lost confidence in the criminal justice system, although many of them clearly have serious concerns about the police. While discrimination or cultural insensitivity by agents of the criminal justice system may be a plausible explanation for some Aboriginal over-representation in the system, there is growing evidence that the factors that give rise to Aboriginal people's involvement in the criminal justice system are largely the same as those that give rise to non-Aboriginal involvement in it. If class and socio-economic disparity and the disadvantage in people's lives are significant predictors of involvement in the criminal justice system, it is important to examine the implications of this for both Aboriginal and non-Aboriginal populations and offenders.

As in any society, Canada has cultural/racial differences which play a role in virtually every aspect of public life. One of the most important among these is the criminal justice system because of its link to civil rights and the very freedom of the individuals involved. For generations, the Aboriginal people have struggled for equality in the criminal justice system and elsewhere. For this reason, culture-based approaches are important when dealing with solutions for Aboriginal people in the Canadian criminal justice system.

Thirdly, traditionally the Aboriginal people of Canada have been plagued by unequal treatment within the criminal justice system; “ largely

misunderstood as unintelligent, rural people, somewhat backward in their
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ways, this entire race of people was vulnerable to mistreatment from the early days of Canadian settlement, with the mistreatment continuing into the 21st century” (Wortley, 1999). In recent decades, legislation such as amendments to the Canadian Constitution in the early 1980s granted special protections to the Aboriginals against injustices based strictly upon their race, but the end result of that action after more than a quarter century is questionable, evidenced by the fact that while the Aboriginals only make up about “ 3% of the Canadian population overall, they make up nearly 15% of the Canadian prison population” (Roach, 2000). A statistic as drastic as this can only lead to a few conclusions: either the Aboriginals are rampant criminals, or they receive unequal justice in comparison to the Caucasian majority, for example. Using the history of racial relations in Canada as a frame of reference, it is far more likely that the Aboriginals have been discriminated against and jailed in large numbers, rather than a criminal epidemic in a tiny fraction of a huge national population. Therefore, the question of why a culture-based approach to this problem is needed comes to light.

Since the victimization of the Aboriginals in the Canadian criminal justice system, the pursuit of justice must be culture-based to level the playing field so to speak and to restore justice to an oppressed minority. This is important not only to administer uniform justice going forward, but also to address past wrongs done against the Aboriginals. Restorative justice, it should be pointed out, is far from reverse discrimination; rather, it is a powerful remedy for a powerful problem. This culture-based approach must use as its foundation “ the laws that were passed in 1982 as Constitutional amendments, designed

to provide the justice that was stripped from the Aboriginals for hundreds of years" (Roach, 2000). Legally, this gives protection where previously there was none.

Strictly from a cultural viewpoint, the criminal justice system as it applies to Aboriginals must likewise be revisited. Multiculturalism is an important part of this understanding; in other words, every effort must be made for law enforcement to realize the unique needs and challenges of this minority. Then, and only then, will equitable justice exist with a proper cultural approach. Restorative justice is concerned with healing victims' wounds, restoring offenders to law-abiding lives, and repairing harm done to interpersonal relationships and the community. It seeks to involve all stakeholders and provide opportunities for those most affected by the crime to be directly involved in the process of responding to the harm caused.

A central premise of restorative justice is that victims, offenders, and the affected communities are all key stakeholders in the restorative process. Victims include not only those directly affected by the offense, but also family members and members of the affected community. The safety, support, and needs of these victims are the starting points for any restorative justice process. Thus a primary objective is to attend to victims' needs: material, financial, emotional, and social. Addressing these needs and the needs of the community is necessary if public demands for severe punishment are to be quelled. This requires the assumption that crimes or violations are committed against real individuals, rather than against the state. Restorative justice, therefore, advocates restitution to the victim by the offender rather than retribution by the state against the offender. Instead

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of continuing and escalating the cycle of violence, it tries to restore relationships and stop the violence.

A restorative justice process also aims to empower victims to participate effectively in dialogue or mediation with offenders. Victims take an active role in directing the exchange that takes place, as well as defining the responsibilities and obligations of offenders. Offenders are likewise encouraged to participate in this exchange, to understand the harm they have caused to victims, and to take active responsibility for it. " This means making efforts on their parts to set things right, to make amends for their violations, by committing to certain obligations, that may come in the form of reparations, restitution, or community work." (Braithwaite, 2000)While fulfilling these obligations may be experienced as painful, the goal is not revenge, but restoration of healthy relationships between individuals and within communities that have been most affected by the crime.

Restorative justice is a forward-looking, preventive response that strives to understand crime in its social context. It challenges us to examine the root causes of violence and crime in order that these cycles might be broken. This approach is based on the assumption that crime has its origins in social conditions, and recognizes that offenders themselves have often suffered harm. Therefore, communities must both take some responsibility for remedying those conditions that contribute to crime and also work to promote healing. Healing is crucial not just for victims, but also for offenders. Both the rehabilitation of offenders and their integration into the community are vital aspects of restorative justice. Offenders are treated respectfully and their needs are addressed. Removing them from the community, or imposing

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any other severe restrictions, is a last resort. It is thought that the best way to prevent re-offending is through re-integration. The justice process in this way strengthens the community and promotes changes that will prevent similar harms from happening in the future. It is generally thought that restorative justice should be integrated with legal justice as a complementary process that improves the quality, effectiveness, and efficiency of justice as a whole. Due to the focus on the needs of the victim, the offender, and the community, restorative processes can help to determine how the law should be applied most fairly.

Restorative justice at the national level takes on various forms. Victim-offender mediation is perhaps the most common, and involves face-to-face dialogues between victims and offenders. Victims' needs, including the need to be consulted, are the focus. In victim-offender meetings, offenders have a chance to take active steps to make reparation to their victims. This extends further than monetary compensation, and includes an apology and an explanation of how the crime occurred. The offender might also do some work for the victim, or for some community cause selected by the victim.

Consequently, in order to cure the problem of over representation of aboriginal people in the Canadian justice system, there are many possible solutions that could be implemented to alternatively address crime. " Some of the more common programs that are currently underway in western cities are native-run community based counseling services, cultural awareness programs, legal counseling and drug and alcohol therapy." (Buckley, 1993)These programs are designed to help overcome the conflicts that many natives come across every day in their communities. Circle sentencing is <https://assignbuster.com/crime-in-systemic-aboriginal-oppression-criminology-essay/>

another resource that has been recently implemented in the Yukon and several provinces. In the same room, the judge, prosecutor, defense lawyer, victim, offender and community members all sit together to discuss a particular case. They discuss the background circumstances, needs of the victim and community and eventually arrive, by consensus, at an appropriate sentence for the offender. This is an effective alternative to sentencing because Aboriginal views and cultures are represented and it allows for restitution which the Canadian system usually ignores. Other solutions that I would recommend to combat the overrepresentation are; the hiring of more Aboriginals at all levels of the justice system to avoid racism and discrimination, the use of alternatives to justice since Aboriginals mostly believe against incarceration and the implementation of a Indigenous-run court system to better address their distinct needs.