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Legal Pluralism and the Colonial Legacy Perceptions of Justice Popular Justice and Community Regeneration

by Kayleen Hazlehurst (Ed)

Praeger Press

Reviewed by Bronwyn Fredericks

Kayleen Hazlehurst has compiled a fantastic collection of papers by both Indigenous and on-Indigenous people. The writings reflect an array of historical processes, legal systems, injustices, corrective measures, and inspiring strategies and programs, for Indigenous and non-Indigenous people in Australia, Canada, New Zealand and the rest of the world.

After completing these books I must say that I feel more confident in my understanding of the historical effects of colonisation and the law, and their impacts on Indigenous peoples. I understand more fully the history of my own family and the communities in which I have lived, and the continuing impact of colonisation on the lives of other Aboriginal Australians. I now have a greater knowledge of some of the tremendous strategies Indigenous peoples are using to overcome these negative impacts and to turn their lives around, to be more empowered peoples.

The books walk the reader from the deepest issues of colonisation, through the resultant trauma that continues to intertwine itself through modern Indigenous communities, and onto what can be done to heal the pain and empower people to work towards creating a better future.

The review will examine each book briefly, concentrating on chapters which appeal to me or which contain issues I feel are particularly significant.

Legal Pluralism and the Colonial Legacy

In this volume, the Australian, New Zealand and Canadian writers analyse how the legal and criminal justice arena impacts on the lives of Indigenous people in their countries. It is an interesting volume, being more historically oriented than the other two. The writers explain historical and political processes, how they relate to modern events, and the related to the concerns of Indigenous peoples.

Curt Taylor Griffiths, Darryl Woods, Evelyn Zellerer and Greg Saville in 'Crime, Law, and Justice in the Baffin Region: Preliminary findings from a multi-year study' (pages 131-158) present an interesting study of the area to the west of mainland Canada also known as the Eastern Arctic. The essay examines the complex of colonisation, development / under-development, and dependency. The social, legal, economic and political aspects of Inuit life are emphasised both historically and currently. They conclude that 'the administration of justice in the Canadian North

cannot be examined in isolation from the historical and cultural context'. The study reveals some interesting findings in which strong parallels can be drawn with Australia.

David McDonald and Kathy Whimp focus on 'Australia's Royal Commission Into Aboriginal Deaths in Custody: Law and Justice Issues' (pages 187-216). The writers avoid confusing, jargonistic language, to make clear, concise and strong statements about the Royal Commission. I feel they have captured some of the deep feelings that Aboriginal and Torres Strait Islander people have in regard to the findings of the Commission.

The Commission's findings are further studied by Christine Stafford. I found her chapter 'Colonialism, Indigenous Peoples and the Criminal Justice Systems of Australia and Canada: Some Comparisons' (pages 17-42) quite powerful. She openly states issues and thoughts that people, both Indigenous and non-Indigenous, have been expressing for a while. I have heard in Indigenous circles people saying that colonialism is still alive and well. That the drinking and the drugging is being used as a mask to bury feelings of anger, frustration and powerlessness. That it manifests itself through multi-layered and increasingly violent behaviour against the self and others. That some of the behaviour we are seeing in our communities can be attributed to intergenerational experiences. That the legal system denies the relationships between these problems, and its own processes perpetuate the problems. Stafford powerfully relates some of this dynamic to the experiences of colonised peoples in Canada and Australia.

Most of the writers in this volume articulate the view that empowering Indigenous individuals and communities to have influence in the justice system is more beneficial than being continually subjected by the system. Other writers highlight the need for autonomous systems of justice. The overriding theme is that greater empowerment and autonomy is the key to effective reforms for Indigenous peoples in the areas of social control and justice delivery.

Perceptions of Justice

This volume contains some very prominent writers in the fields of criminology, policing and justice, including several Australian writers. The writings demonstrate the direct links between the processes of colonisation and the position of Indigenous people within society. The writers collectively position criminal justice issues in their modern contexts, and relate them to the push for self-determination and self-management.

Chris Cunneen and Kate Kerley in 'Indigenous Women and Criminal Justice: Some Comments on the Australian Situation' (pages 71-98) concentrate on 'how the justice system operates in relation to Aboriginal women rather than on how Aboriginal women experience the system'. I was pleased to see that they additionally acknowledge the intersectionality of race, gender and class. These elements cannot be looked at in isolation. What needs to be understood is that Aboriginal women are not only discriminated against as women; they are discriminated against and impacted upon through other variables. Often this is negated or not validated.

The chapter highlights the increasing levels of violence within Aboriginal communities that Aboriginal women endure, and the levels of violence that go unreported. The violence may lead to alcoholism, drug abuse, neglect, and injury of self and others. The violence, which may cause violent retaliation by Aboriginal women, may also lead women on a path to prison. The response by the criminal justice system has been and is inadequate, and often increases the victimisation of Aboriginal women.

Graham Brice in 'Urban Policing and Aboriginal Social Health: Research and Action' (pages 197-216) importantly notes that 'Aboriginal women, reflected their having witnessed the harassment and arrest of partners, children, brothers, and other male relatives' (page 208). It is important because not only are Aboriginal women experiencing violence through their relationships with partners and family members, in their interactions in the community, and with the system; they additionally witness the impact of violence on others. It can only be concluded that many Aboriginal women are at crisis point, due to their constant traumatisation by a range of experiences.

The writers highlight where the judicial system needs to improve practice, and give examples of alternative community justice and crime prevention programs. I found throughout the volume my level of anger escalated at the policing system in Australia. The examples of violence by the system given by the writers helped highlight the issues, and brought other examples I knew of to mind. Hazlehurst in the introduction encompasses my sentiments when she says that resources presently used to process and gaol Indigenous offenders should be channelled into preventative programs, run in partnership with communities.

The focus of this volume generally demonstrates that greater empowerment and autonomy of Indigenous peoples is effective in social control, justice delivery, preventative and rehabilitation programs, and reform.

Popular Justice and Community Regeneration

I found this volume to be the most powerful of the three. It gives an analysis of community-based reforms and programs which address issues of alcohol and substance abuse, family violence, child abuse, sexual abuse, and community conflict. Strong messages are focused around the pain and hurt experienced by Indigenous peoples, and the power of Indigenous peoples to heal. It consists of two sections, 'Reclaiming the Community' and 'Healing the Hurt'.

Elise Redbird quotes Chief Seattle at the start of 'Honouring Native women: The backbone of Native sovereignty' (pages 121-142): 'A people is not defeated until the hearts of its women are on the ground'. This chapter gives strong messages about the importance of women within Indigenous communities, and in several ways builds on the information presented in the second volume.

Redbird powerfully states that 'self-determination, self-governance and sovereignty are not the fantasy of proud and once-independent peoples. They are the reality'. She suggests that to promote self-determination, self-governance and sovereignty, Native Americans and their institutions need to be re-empowered. The term 're-

empowerment' in itself is empowering, as it indicates that Native Americans, as Aboriginal Australians, were once empowered and self-actualising peoples.

Judy Atkinson and Coralie Ober in 'We Al-Li "Fire and Water": A Process of Healing' (pages 201-218) explain that many 'families and communities oppressed by colonisation show symptoms of dysfunction; that is they are functioning with difficulty and in pain'. Further, that 'the ability to resolve and release this pain in grieving ceremonies has been denied because of the unremitting context and the sheer volume of the trauma over the years'. In essence, their message is about the need for Aboriginal people to go through the processes of grief and loss, in order to become re-empowered, self-determining and self-actualising. Atkinson and Ober put forward strategies in the form of We Al-Li, a program for personal and community healing which has a focus group process, incorporating ceremony and contemporary therapies.

What I found a powerful experience was that as I read, my emotions were stirred, increasing my passion for the issues. I felt within me a close identification with the issues presented, the processes suggested, and the solutions put forward. I additionally became very much aware that it was the Indigenous writers who spoke to my heart. I felt their strength, their inspiration and their optimism. This affirmed in me the need for more Indigenous people to write about the issues, what is not working and what is working.

Aboriginal people are the experts on what happens to them on a day to day basis. What it means to get up every morning and face the day. What it means to be a victim or a witness to violence. What it means to be in, or have family members in, correctional institutions, and what it means to see the level of dysfunction in our communities. Aboriginal people are aware of what is going on, how it affects lives and communities. The final volume reminds us that the power to bring about change is within individuals, families, groups and communities.

Conclusion

These books powerfully advocate that Indigenous peoples be more involved in the judicial process, have more influence and control, and greater empowerment and autonomy, as means to realise self-determination, self-management and re-empowerment. I felt honoured to read the works, and give credit to Kayleen Hazlehurst for compiling an ensemble of such talent and importance.

The books are aimed at people taking undergraduate and postgraduate studies, along with those working in the area of law. I feel people within the areas of social science, welfare, health and community development would also benefit, due to the strong links between law, health, psychology and well-being.

There are two disappointing aspects. First, the cost, at approximately \$240.00 for the set or \$80.00 per volume, precludes many Aboriginal peoples from accessing them. Second, in a number of places I noticed the word 'Aboriginal' has been spelt with a small 'a', which I always find personally offensive. I rarely if ever see Australian, Canadian or New Zealander spelt with small first letters.

Atkinson and Ober state: 'We need to come together, sit with each other Dadirri (deep listening to one another), tell our stories and in dance, song, art and ceremony move into the future'. In doing this, sharing across class, race, gender, age and culture, we come to know one another more, acknowledge one another's pain and hurt, and heal and grow. This is about Indigenous and non-Indigenous peoples addressing the impact of history, trauma and power imbalances, generating change, re-empowerment, self-determination, self-management and reconciliation. It is about you and me. It is about us.