INFORMATION TO USERS

This manuscript has been reproduced from the microfilm master. UMI films the text directly from the original or copy submitted. Thus, some thesis and dissertation copies are in typewriter face, while others may be from any type of computer printer.

The quality of this reproduction is dependent upon the quality of the copy submitted. Broken or indistinct print, colored or poor quality illustrations and photographs, print bleedthrough, substandard margins, and improper alignment can adversely affect reproduction.

In the unlikely event that the author did not send UMI a complete manuscript and there are missing pages, these will be noted. Also, if unauthorized copyright material had to be removed, a note will indicate the deletion.

Oversize materials (e.g., maps, drawings, charts) are reproduced by sectioning the original, beginning at the upper left-hand corner and continuing from left to right in equal sections with small overlaps.

Photographs included in the original manuscript have been reproduced xerographically in this copy. Higher quality 6" x 9" black and white photographic prints are available for any photographs or illustrations appearing in this copy for an additional charge. Contact UMI directly to order.

Bell & Howell Information and Learning
300 North Zeeb Road, Ann Arbor, MI 48106-1346 USA
800-521-0600

FINDING OUR WAY:
PATHS TO JUSTICE REFORM IN AN ABORIGINAL COMMUNITY

By

MARCIA HOYLE BARRON, M.A.

A Thesis
Submitted to the School of Graduate Studies
in Partial Fulfilment of the Requirements
for the Degree
Doctor of Philosophy

McMaster University

© Copyright by Marcia Hoyle Barron, October 1998

PATHS TO JUSTICE REFORM IN AN ABORIGINAL COMMUNITY

DOCTOR OF PHILOSOPHY (1998) McMaster University

(Anthropology) Hamilton, Ontario

TITLE: Finding our Way: Paths to Justice Reform in an Aboriginal Community

AUTHOR: Marcia Hoyle Barron, B.A.(Hon), M.A. (McMaster University)

SUPERVISOR: Professor Wayne Warry

NUMBER OF PAGES: x, 271

Abstract

This applied, participatory action research explores the context for community-based justice and conflict resolution mechanisms in Sagamok Anishnawbek First Nation. Within the pluralistic Canadian context, Aboriginal ways of law and social control are being reasserted by some First Nations both as a basic right, and as a means of "healing" their communities of the debilitating effects of colonization. This research shows a community in flux, where jural values are divergent and changing, but one in which a distinctive approach to some aspects of social disruption and its resolution is apparent. Like a number of other Aboriginal communities, Sagamok experiences a high level of interpersonal violence, and "mischief" committed by youths in need of improved life opportunities. Community members indicated through this research that they eschew incarceration for most offences in favour of a communicative, rehabilitative response to crimes. They want to strengthen communicative ties to young offenders, and use local resources to address their behaviours. In this and other basic jural values, Sagamok Anishnawbek have shown a preference for restorative justice whereby restitution and reparation take place within a personally relevant social context. In doing so, they model recent "innovations" in criminal case processing. Restoring justice goes far beyond dealing with crime, however, to addressing intracommunal conflicts and tensions. At present, the values and norms relating to conflict and its resolution revealed through this research are manifest chiefly at the individual level. If a justice model is to be developed, such basics need to be discussed and debated at the community level, through communicative processes such as community consultations. If Sagamok residents are to discuss and debate these building blocks of a justice system and develop a locally appropriate model, they will need to address some fundamental community development needs, one of which is the need for processes of conflict resolution within and between family groups.

ACKNOWLEDGEMENTS

It has been a humbling experience to prepare a list of those people who have helped in one way or the other in the development of this dissertation which, on the cover, bears only my name. Nevertheless, traces of their influence appear all through this work, as they have likewise been etched into my life. I thank each one for the different ways in which they have engaged, instructed, challenged, delighted, comforted, collaborated, supported, listened, and endured, during the course of this work.

Thanks first of all to my thesis supervisor, Dr. Wayne Warry of McMaster University, who has been not only a model of excellent scholarship and hard work, but a supportive friend, mentor and guide whose help has been immeasurable, and whose work has been an inspiration. I thank Dr. William Rodman of McMaster, who has given wholehearted support and guidance since my undergraduate days, saw me through the Master's program, and served on my Ph.D. committee. It was Bill who first introduced me to the topic of alternative dispute resolution in an undergraduate class in Political Anthropology. Many thanks as well to Dr. Trudy Nicks for her solid support throughout the doctoral program as a member of the thesis committee, and whose practical advice helped keep me on track. There are many other members of the Anthropology Department at McMaster, faculty and fellow students, who have in various ways

educated, challenged, befriended and supported me; in particular I thank Ann Herring, Dick Preston, Ellen Badone, Rosita Jordan, Janis Weir, Gwen Reimer, Jean Becker, Ed Koenig, and Todd Garlie.

To the Sagamok Anishnawbek, I say "Chimeegwetch" for many things. This work would not have been done without their patience and generosity, support and collaboration. In particular, I want to thank Nelson Toulouse, who, as Chief of Sagamok Anishnawbek in 1992, initiated the justice research and guided me through the first few months; Madonna Toulouse, to whom I am deeply grateful for her generous hospitality and friendship; Peter Owl for his teachings on many aspects of Sagamok and Anishnawbek life; Harvey and Delores Trudeau for their counsel, friendship and hospitality; Sagamok Peacekeepers Valentine Eshkakogan and George Trudeau for their generous assistance with many aspects of the work; Sagamok Health and Social Services department for help and co-operation; Sagamok Band Council for help and material support; Sagamok Anishnawbek Administrative staff for their patient assistance; Elders Dominic Eshkakogan, Martin Assinewe, Tom Trudeau, Jesse Hardisty and others; and to Ray Solomon for sharing his essay on Aboriginal Justice with the Justice Research team.

The actual work of the research project was not mine alone, but a team effort. To those who worked on the preliminary and interviewing stages of the research, I offer my thanks and admiration for your dedication and persistence in the work: thanks to Tracy Toulouse, Dianne Bob, Laura Trudeau, Arnelda Bennett and Bridget Francis. Thanks to

Tracy also for her special artwork dedicated to the project. Many thanks to all those people of Sagamok who generously provided their time and effort to be interviewed, and whose vision of justice for their community will guide the path into the future. I would also like to thank Marlene and Val Nose of Massey for their support and warm hospitality on many occasions. Thanks also to Dr. Victor Lytwyn for generously sharing his archival research of Sagamok and Biscotasing history, and allowing me to cite from his annotated bibliography of these.

I would also like to acknowledge with thanks the material support of this research from the following sources: a doctoral fellowship from the Social Sciences and Humanities Research Council of Canada, a travel grant from McMaster University, the Beverly Jackson award from the Canadian Federation of University Women, and research funding and publishing of the community research report provided to Sagamok from the Fund for Dispute Resolution, Waterloo, Ontario.

Finally, I could not have completed this work without the loving support of my close friends and family, all of whom have made sacrifices of one kind or another, and none of whom ever questioned this latest turn in my life's path. My inexpressible thanks to John and Joyce Maxwell, to Dave Potter, to my mother, Irene Barron, sisters Elizabeth Barron Cecyre and Barbara Barron, and my three children, Ian, Dan and Karen Hoyle.

Table of Contents

Introduction 1

A Guide to the Dissertation 3
Aim of the Thesis 7
The Contribution of this Research 9
Aboriginal Justice and Alternative Dispute Resolution 13

Chapter One: The Focus: Aboriginal Community Justice in its Many Aspects

Introduction 18
Background: Aboriginal Peoples and the Canadian Justice System 22
Aboriginal Justice as an Example of Legal Pluralism 30
Indigenous Law and the Canadian State 35
Aboriginal Justice as a Pragmatic Response to Crime 44
Indigenous-Initiated Reforms 49
Aboriginal Justice as an Expression of Self-Government 53
Aboriginal Justice as Community Development 58
Chapter Summary 63

Chapter Two: The Process: Applied Participatory Research 66

Implications and Outcomes of a Participatory Approach 66
Participatory Research 69
The Paradox of the PR Paradigm 71
Adjusting PR to the Realities of Sagamok 73
Steps in the Research Process 76
1. Hiring Co-Researchers 76
2. Establishing a Research Committee 80

3. Fostering Community Participation in the Justice Issue 82
4. The Interviews: Adapting Method to Indigenous Expertise 90
Chapter Summary 94

Chapter Three: The Community: Changes and Challenges

Introduction 96
A Brief Historical Picture 98
The Community Today 107
Four Communities, or One? 110
The 'Ins' and 'Outs' of Band Politics 112
A Recent Case: The 'Gabriel Northwind' Letter 118
Former Modes of Social Control 123
The Role of the Sagamok Police 132
Sagamok Justice Needs: Crime and Disorder 139
Rates of Offences 140
Perceptions of the Problems 143
Hidden Domestic Violence 146
The Processing of Offences 148
Chapter Summary 151

Chapter Four: Community Justice: Healing and Restoring the Social Body

Sociolegal Values: Enduring, Contestable and Changing 155
Approaches to Law in Sagamok: Shadows of The Old Way 158
Contemporary Approaches to Conflict 164
Avoidance 165
Alcohol 169
Abuse: Handling Conflict Through Violence at Home 171
How to Respond to Young Offenders? 177
The Role of Elders 185

Sagamok Perspectives:
Getting to the Root of the Problem 190
Healing the Individual 195
The Concept of Reintegrative Shaming 200
Chapter Summary 203

Chapter Five: Model Development: Resources and Constraints

Introduction 208
Working toward Consensus 208
The Paradox of Modeling Change 215
Developing a Model 218
The External Context for Model-Development 223
Government and Public Support for Aboriginal Justice 232
Chapter Summary 235

Chapter Six: Summary and Conclusions 236

Chapter Endnotes 244

Bibliography 252

List of Tables

Table 1 - Sagamok: Most Common Offences 140

Table 2 - Estimates of Trouble and Crime 146

Table 3 - Suggested Interventions for Domestic Violence 173

Table 4 - Suggested Interventions for "Wrong Behaviour" 196

Introduction

"...the justice system is almost immoveable to the forces of change. It is one of the few major institutions in our society that has not changed significantly during the last century." (Lilles and Stuart, 1992:1)

"The alternative to looking back with regret is to face our responsibilities, and our opportunities, when they arise. Anyone with knowledge of the issues relating to the Aboriginal people in Canada knows that we have reached a watershed today" Joe Clark (1997: A21)

Anthropological accounts are often framed within a wider narrative of the anthropologist's journey to the "field", the physical journey a metaphor for the writer's ritual passage through the vicissitudes of "fieldwork" to a new level of understanding. On my own journey along the 400 Highway in Northern Ontario to begin the research described here, I was thinking of the changed and changing nature of anthropology, in which such journeys are much less clearcut than they used to be. Knowledge is no longer understood as something the anthropologist packages up and brings back home after a year or two of study with a group of people who play host to an inquisitive stranger. Today, cultural anthropology is a diverse range of activities that take place much closer to home and on very different terms than was previously the case; terms that are now in many cases negotiated with host communities in their interests as well as those of the anthropologist. In the midst of these ruminations, the slogan "No Justice, No Peace!", spraypainted across the top of the approaching highway overpass, reminded me abruptly

of the purpose of my research journey, and the reality that for the Aboriginal peoples of Canada, the subject of community-based "justice" cannot be understood apart from a wider understanding of justice in the sense of fair treatment and self-determination, and how achieving that will go a long way towards bringing peace to Aboriginal communities.

The embeddedness of Aboriginal justice in the multiplex nature of Canadian society and law is a key factor in understanding the complexity of the issues involved, and the elements and forces that shape Aboriginal communities and their aspirations. I have tried to stand back enough to understand more about wider contributing factors such as the history of Aboriginal peoples' interaction with the settler population, British colonial and Canadian government policies, the dynamics of legal pluralism, aspects of Anishnawbe culture, and the nature of conflict. At the same time, I have tried to keep the focus on the community because I believe that ultimately, the characteristics and experiences of a community and its people are the determining factors in what kind of justice system will work on the ground, and how effective it will be.

My research goal was to discover the present context for the delivery of alternative justice in one Aboriginal community. Through ethnographic and participatory action research, and working with some Sagamok members as co-researchers, I intended to document individuals' experiences of the Canadian justice system, knowledge of traditional social control mechanisms and norms, contemporary values and norms about

community disruptions and their resolution, the nature of policing from within and outside the community, and a profile of lawbreaking in Sagamok. Through participant observation, I also hoped to gain an understanding of interpersonal and political conflicts, and the ways in which people in Sagamok deal with them on a daily basis.

I have worked from a broad definition of "justice system" and "law," that goes beyond a criminal justice perspective to include the various ways, formal and informal, individual and collective, of addressing conflict and lawbreaking in a community context. I have considered the historical processes of colonization and modernization that have shaped the community of today, as well as individual and family factors that contribute to the incidence of crime and conflict.

A Guide to the Dissertation:

The dissertation describes research conducted at Sagamok[1] Anishnawbek First Nation between 1992 and 1994. The first phase took place between June and August 1992, when I spent the summer months in the community exploring the possibility of undertaking a more extensive project; the longer second segment was conducted between June 1993 and June 1994. Shortly after completing the research, I presented a summary of the research findings to Sagamok Chief and council, which they approved. I also provided the Council with copies of the report for distribution in the community. The Fund for Dispute Resolution, which had contributed funding for the project, published the report under the title Bringing Justice Home[2].

The thesis analyses aspects of the research process, the problems and strengths of the particular methods chosen, community characteristics that affect the nature and progress of the research, and the wider context in which justice research of this kind takes place. The first chapter explores this context as concentric rings, beginning with the broad background of legal pluralism, and narrowing the focus down to the community level.

Sagamok is an Anishnawbek[3] reserve located in Ontario on the North Shore of Lake Huron. At the time this research was conceived and begun, Sagamok was part of the North Shore Tribal Council, an affiliation of seven Anishnawbek First Nations along the North Shore between Sault Ste. Marie and Sudbury.[4] With a population of nearly two thousand (about twelve hundred of whom reside on reserve), Sagamok is one of the larger First Nations along the North Shore. Although for a period of time during this research Sagamok withdrew from the tribal council, at the time of writing it has renewed its affiliation with the council. Where they are pertinent to the progress of the research and the potential success of a community-based justice system, I discuss the events and issues surrounding this withdrawal.

My initial contact with Sagamok came through my thesis supervisor, Dr. Wayne Warry of McMaster University, who had worked with all the reserves of the North Shore Tribal Council during the development of a Health Transfer plan that would ultimately turn over responsibility for health care delivery to the communities.[5] He advised

Sagamok Chief Nelson Toulouse of my interest in conducting research in an Anishnawbek reserve such as Sagamok, and Chief Toulouse presumably saw this as an opportunity to have funded research in a sector that he saw as pivotal to the achievement of self-government. Sagamok is a particularly interesting case study, as there has been no published research regarding a community of this size and in a similar location. The very few community-based research projects that have been undertaken have been in either vary large encapsulated southern reserves, Northwest Coast or remote Northern communities, each of which share some similarities, but differ in important respects. At the time we began this project there had been no study of this kind done in an Anishnawbek reserve in the near North.

Chapter Two describes the process of initiating the research and some of the problems engendered by my position as a doctoral student and the tenuousness of the project in the beginning stages. I link this to a discussion of the ideals of participatory research versus the pragmatics of the research needs and politics of reserve communities, and the needs of academic researchers. I then describe some of the ways in which I attempted to deal with these problems, and the eventual progress of the work.

Chapter Three gives a profile of Sagamok, including a brief historical background, and some of the present realities as seen through my eyes, as depicted by socioeconomic and police statistics, and as portrayed by community leaders in personal interviews. I describe some of the characteristics of policing, the police role as a long-

standing element of social control in Sagamok, and their necessary role as an already established element in the development of a justice alternative.

The fourth chapter offers a discussion of community-based justice as restorative justice; how Sagamok sociolegal values that were expressed in interviews and in community dynamics demonstrate a contextual and reparative approach to "trouble", and provide the foundation for justice forms that would situate the person and the problem in their community and cultural context. I propose that in the present sociopolitical circumstances of Sagamok and other First Nations in Canada, institution building such as that required for alternative justice systems must necessarily be holistic and aimed at healing the person in their family, community and national context. I discuss how this requires integrative social programming and capacity building in communities such as Sagamok, and how this integration reflects what seems to be a fundamental Anishnawbek value of concern for the internal integration of the individual, and the importance of family interactions.

The discussion in Chapter Five goes on to address some of the specific local challenges to this kind of development, and the resources that are already present in Sagamok for this kind of change. I propose that the creation of models for community-based justice is most productively done in and by communities themselves, and outline the context for this reform. The elements of this context include government-imposed limits to autonomy in general, debates over jurisdiction, and internal community

divisions and resistance to change. The Sagamok study exemplifies the need for discovering a community mandate for justice, and the need for a sense of communal ownership and accountability for conflicts and social control. In light of community divisions here and in other reserves, the definition of community itself can be a major obstacle to cooperation. Beyond their territorial borders, the relationships between individual First Nations and their external affiliations such as tribal council, the Anishnawbek Nation, and the nation state of Canada, can help to constitute the development of cultural and community identity necessary for self-government, but also offer challenges to that identity.

Aims of the Thesis

The research that forms the basis of this dissertation had a twofold purpose, in that it was conducted for applied as well as theoretical reasons. The practical purpose was to offer research to Sagamok in support of their wish to address their justice needs in a culturally appropriate way. Toward this end, I prepared a research report at the end of the project, presented it to Chief and Council, and printed enough copies for wide distribution in the community. In addition, an edited version of this report was published by the Fund for Dispute Resolution[6] for use by other First Nations. A consequence of the research process itself was a measure of community development through the training and experience in research skills acquired by those individuals who worked with me on the research project.

As a contribution to Aboriginal justice research and applied anthropology, the dissertation offers an ethnographic in-depth account of one Anishnawbek community, and an exploration of the context there for justice alternatives. The theoretical aim of this discussion is to go beyond the specifics of the Sagamok example to clarify factors underlying the development of Aboriginal justice systems within the Canadian nation state.

In the discussion that follows, I contend that the Anishnawbek ontology and jural values that constitute the building blocks for a community-based justice model are consciously active in Sagamok at the level of the individual. These need to be made manifest and debated, and through processes of Anishnawbek decision-making, expressed at the communal level before designing any particular model of justice. I propose that a participatory research methodology can facilitate these communicative practices that are fundamental to a sustainable justice system through the processes of individual participation and public discussion. The process of community consultations that has been used in other community development areas would be one way of achieving this kind of communication. When critical analysis is reflexively used in this way to integrate existing social institutions with innovative program design, the possibility of an appropriate and sustainable community justice system is enhanced.

I propose that a process of conflict resolution for intracommunity conflict and tensions between family groups in Sagamok is a necessary precursor to the opening of a

communicative space for the articulation of justice norms and values. At the present time, capacity for community development is considerably hampered by conflicts that are founded on class divisions, long-standing disputes between families, mutual distrust, and competition for scarce resources. Similar tensions have been described for other First Nations (Boldt 1993:125), whereby some commentators have gone so far as to say that there is a "breakdown of consensus"(Long1990:771) in many contemporary Aboriginal communities. With the understanding that there is never complete consensus in any society, the thesis explores the possibility of Sagamok achieving enough agreement on basic justice issues to move ahead in the planning process. A useful way in which the knowledge gained through this research could be applied would be that other First Nations who are preparing to design community-based justice institutions could make use of the Sagamok research experience.

The Contribution of This Research

Much of the recent discussion in this country, most particularly the report of the Royal Commission on Aboriginal Peoples (RCAP1996a), has reiterated what many local native community leaders have said for quite some time: that community-based justice systems work best when they respond to local situations and have a firm base in the grassroots of the community. It is clear, then, that if Aboriginal justice systems are to reflect the goals of Aboriginal leaders and communities, thorough research and community consultations must be conducted as an essential first step to any changes in

the status quo in justice delivery. This dissertation gives substance to those recommendations by describing the process of basic research as it has transpired in one Anishnawbek community. It grounds the theory of alternative justice in the reality of one place, and gives a comparative demonstration of how the local context for justice reform fits into larger contexts for this kind of planned change. This knowledge has application for native communities and government policy advisors, as well as future researchers.

A fundamental principle guiding this research has been that justice reforms for Aboriginal communities need to have their foundation in the structure, philosophy and culture of the community itself. A corollary is the belief that members of the community should participate as fully as possible in the development of justice alternatives so that justice design is appropriate to local cultural values, and communities can become empowered through regaining ownership of the means of social control.

The kind of research we conducted in Sagamok First Nation is the first necessary step in laying the foundation of an alternative justice system that can work. Without the knowledge, support and involvement of the community, chances of success are tenuous (Hylton 1994:152; Ryan 1995; T Johnston, p.c.). With this belief as a fundamental hypothesis, and for other reasons outlined in subsequent chapters, I chose an applied focus and a participatory research methodology that would enable community participation in the research process, and lay the foundation for community consultations at a later stage. Both participatory research and community consultations are essential

precursors to implementation of justice programming. There are problems and difficulties with the participatory model for contemporary Aboriginal communities, however (see Ryan 1995), and I discuss these and their effects on this research.

As an academic and applied researcher, I have a theoretical interest in the concept and development of Aboriginal community justice, but I also believe that research should produce knowledge that communities can use to further their goals. This is particularly vital in light of the history of anthropology's links to colonial administrations in the past, and its creation of an exotic and objectified "other" through research and writing (Said 1989; Weeks 1990:237). Indigenous groups worldwide have been the object of research that often placed researchers' aims over community rights and needs. In light of the enormity of some of those needs in the present, social science researchers are positioned to redress the balance somewhat by doing work that can further community development. One of the chief values of the Sagamok research is its potential to serve as a case study for indigenous groups in Canada, and perhaps elsewhere, who hope to reclaim justice delivery for their own communities, and in the process, build community capacity for self-government.

A number of broad systemic factors, such as federal and provincial government policy, Canadian legal ideology, the substance of Canadian law, the law enforcement process, and public opinion, originate outside communities but have a direct impact on the conceptualization and implementation of community-based justice. Anthropologists

have traditionally used the research process to bridge inside and outside views; to be outsiders who, through a combination of observation and participation, achieve some understanding of an insider point of view. The applied researcher, especially one from outside the community, can be a bridge between the outside and inside at both the intersubjective and broader systemic levels through the dialogic research process itself. Participatory research aims to alter the dynamics of the research dialogue, through the mutual creation of knowledge and sharing of power in the practice of research. One of the aims of this thesis is to explore this bridging process as I experienced it throughout the course of the research, and its implications for and effects on a particular community.

The preceding paragraphs reveal two of my principles; that I am committed to applied anthropological research, and that I support the right of indigenous peoples to self-determination in justice. This situates my research to a degree that many social scientists might find uncomfortable. The argument has been made fairly convincingly over the past couple of decades that no research is ideologically, morally, or politically neutral, nor is scientific inquiry wholly objective. Since this is the case, I believe that we need to be explicit about the positioning of our research. Doing this does not preclude an unbiased research methodology; it does, however, enhance awareness of the total research context, which includes the researcher as individual and citizen.

Regarding the second principle, I would answer that I support the right of indigenous peoples to their own justice system without necessarily advocating the

institution of such systems in every community. The appropriateness and necessity of that should be decided by the community in question after research and consultation, but I believe that the historically dominated Aboriginal peoples within nations such as Canada have the right to a culturally appropriate justice system, that social control is an integral part of culture, and that they should be able to opt for this within the structure of the Canadian nation state. In conducting this research, however, I did not openly promote this stance. I attempted to keep open dialogue with all members of the Sagamok community, both those for and against self-government, and, in interviews, asked open-ended questions that were designed to manifest the full range of opinions regarding Native justice as part of self-determination.

Despite my initial belief that community-based justice would be of benefit to Sagamok, my main research goal was to ascertain community beliefs and values within the whole constellation of subjects related to this concept, and to present these findings to the community for their judgment. The dissertation explores some of the problems of trying to maintain this position, and the complex relationship between participatory research and community development.

Aboriginal Justice and Alternative Dispute Resolution

The phrase "Aboriginal justice" has several different connotations in contemporary Canada. The term is used in a generic sense by Aboriginal and non-Aboriginal commentators in reference to the goal of having Aboriginal peoples treated in

a fair and just manner in the resolution of land claims and treaty rights negotiations. It is also used to refer to the power of First Nations to legislate their own laws in areas such as criminal justice, community standards, and resource management. It is the area of maintenance of community standards and resolution of conflict within communities that is the focus of this thesis.

The conflict resolution aspect of a justice system first brought me to the field of alternative justice for native communities. During studies for my master's degree, I had developed an interest in what has come to be called "alternative dispute resolution"(ADR) as it was unfolding in North America. In the United States in particular, a major avenue of judicial reform in the past two or three decades has been to channel some cases to mediation, negotiation and other non-adversarial methods of dispute resolution, rather than process them through the adversarial court system[7]. In the past five years in particular, the ADR field has burgeoned, and there are now numerous court-annexed mediation programs, victim-offender programs and community-based conflict resolution services in place. Canada has been slower to adopt these alternatives, but ADR is growing in this country as well, most vigorously in the private sector, but within government as well. In Ontario, the first court-annexed mediation pilot project was begun in 1995 in Toronto, and beginning sometime in 1998, all civil law cases in Ontario (with the exception of Family Law) will be subject to mediation as a first measure, and will proceed to court only upon the failure of that process.

When I first became aware of the growing phenomenon of ADR, I believed that the most promising area for these reforms was in Aboriginal communities, and that there was a significant need for community-based research to explore indigenous forms of conflict resolution. In Ontario, government-sponsored pilot projects had been launched in the remote Northern communities of Sandy Lake and Attiwapiskat,[8] but in a number of instances in Ontario and in other provinces, the communities had taken the initiative for this change themselves.[9] Only recently have governments become more willing to sponsor more of these reforms and the research that must precede them; the thorny issues of jurisdiction and local control have yet to be resolved or even confronted in particular cases . The negotiation of state power and local autonomy that is an integral factor in any situation of legal pluralism is a central concern in the development of local Aboriginal justice systems, and one which I discuss at various points throughout the thesis.

There is an interesting twist to the unfolding of events about anthropology's role in the move toward alternative forms of justice. The beginning of the ADR reforms in North America was informed by anthropologists' reports of extrajudicial and informal dispute processing in smallscale, "face-to-face" societies (Snyder 1981; Nader 1984; Merry 1992). A twist is now being added to to this loop through research on ADR's nexus with indigenous societies in North America. It must seem ironic to indigenous peoples interested in this subject that the trend in North American legal reform, as it pertains to them, is for governments to now promote the use of conflict resolution strategies such as negotiation, arbitration and consensus-seeking that were purportedly in

use in their societies for centuries before European settlers arrived on this continent. What is now called "restorative justice" describes the processes that to a significant degree constituted the pragmatic, solution-oriented and person-centered work of traditional Aboriginal communities in dealing with the problems of deviance and social control.

The feeling that "justice has been done" is one of the defining features of restorative justice; it is a more accessible, "grassroots" justice system that helps preserve relationships and communities. Restorative justice recognizes the social embeddedness of conflicts and crimes, and that their resolution can best be achieved by attending to that context (see DePew 1994:2). The main aim of a restorative justice process is to repair the damage done to individuals and communities by offences against the person and the social order, rather than simply to punish the offender. The term "Restorative justice", used in such a broad sense (Gilman 1997:14), however, can create conceptual confusion, and have policy implications as well, because it has become linked to specific methods such as mediation, negotiation and victim-offender reconciliation that have been used by state and non-state dispute resolution services in recent years. It is important to distinguish Aboriginal justice values from within the umbrella of restorative justice to avoid the development of government programs based on models currently in use. Restorative justice, from its relative obscurity only a decade ago in North America, has quickly become a hook on which policy makers would like to hang justice reform for Aboriginal peoples. To avoid the inevitable result of ill-fitting justice program designs,

studies such as this one can show that devolution of justice models from the top down to communities is not an appropriate response to the contemporary situation of many First Nations. Mediation, for example, which is a cornerstone of alternative justice reforms in the mainstream system (Merry 1990), relies on a face-to-face expressive mode of dispute resolution that would not be appropriate in Anishnawbek communities. Rather, as LaPrairie suggests for the James Bay Cree (Brodeur, LaPrairie & McDonnell 1991), the use of intermediaries would be more compatible with Cree modes of social interaction (Preston 1991). Likewise, in small communities like Sagamok, victim-offender dialogue and reparation may not be the answer in cases of sexual violence in which vulnerable women and child victims need protection from abusers as a first step in the resolution of the problem.

Chapter Four outlines what I believe this research shows about Sagamok values regarding interpersonal conflict, the way to address socially disruptive behaviour, and the values that would guide criminal case processing in Sagamok. But also, and I think, more importantly, I discuss the gaps between such ideals and the reality of everyday life and relationships. I conclude, at the end of the dissertation, that a means of resolving conflicts between family groups and individuals is a necessary and fundamental step toward the design of criminal case processing, and that the success of any such design will hinge on the effectiveness of these conflict resolution strategies. In the following Chapter, I discuss the many factors, external and internal, that have shaped the Sagamok of today, and thereby influence the nature of any future justice initiative.

Chapter One

The Focus: Aboriginal Community Justice in its Many Aspects

"We may be a square peg unable to fit into your round hole. In such a case, we may have to ...mutually create another shape...to accommodate both of our societies."(Zebedee Nungak, in Inuit Justice Task Force 1991:172)

Introduction

The wide diversity among First Nations in Canada precludes the use of broad generalizations about "Aboriginal values" as a conceptual basis for planned change. This diversity is often left unacknowledged in popular literature (e.g. Ross 1992, 1994), and in reports of Aboriginal justice Conferences and Inquiries (RCAP 1993; Manitoba 1991) The result is an essentializing of "Aboriginal" values in contrast to "White" values, and the elision of significant differences between Aboriginal groups. On occasion, the Aboriginal/Non-Aboriginal differences are presented in schematic fashion, with lists and charts contrasting worldviews and value systems (Dumont 1993:46-47, 60-61). One of Dumont's characterizations of value differences, for example, is that Aboriginal kindness originates from a desire for harmony whereas non-aboriginal kindness is motivated by the "personal pursuit of individual development, success and private gain" (Dumont 1993:60). Such writing contains the often explicit assumption that "...these values that are most representative of Aboriginal people are sufficiently resistant to acculturation so as to persist over time and through various assimilative forces that have been at work

since the time of contact...." (Dumont 1993:44). My belief that Aboriginal thought, experience and social life is more complex than such neat presentations would suggest was one of the factors that led me to community-based research. If such assertions were accurate, I wanted to be able to help demonstrate so through an in-depth study of modern community life; but I was reasonably certain that the rapid social change and acculturation in Sagamok, as in many First Nations, would have had effects on the supposedly immutable "traditional" values often presented in the literature. If such was the case, I believed it would be counterproductive to base contemporary Aboriginal justice systems on a system of idealized values from the past, rather than on the reality of today.

As I discuss in Chapters Three and Four, the Sagamok study shows that some of the fundamental "Aboriginal" values described in the literature as "traditional", such as non-interference and respect for the autonomy of others, an emphasis on the person rather than the act, and outward harmony in interpersonal relations are indeed operative and evident in Sagamok social interaction. A contextual problem-solving approach to justice problems was also strongly evident. Other values vaunted as "Aboriginal", however, such as respect for Elders, harmony-seeking and talking matters through to consensus are challenged and changing in today's community. The multiple understandings of "tradition" and "traditional" in Sagamok, and the interaction of these understandings with Christian and mainstream secular values complicate any rendering of what constitutes "traditional values" in the modern lives of Sagamok residents.

Within cultural groups such as the Anishnawbek, there are regional and community differences that have a significant impact on the experience of individuals with the Canadian justice system. Many Anishnawbe communities are located in the far northwestern region of Ontario, and are only accessible by air. But there are many Anishnawbek living in the near north in communities like Sagamok. While they have a history of longer and more intense interaction with white society, and a more heterogeneous membership as a result, they are no less "Aboriginal", and they also merit a reflection of their social reality in the formation of Aboriginal justice policy .

Much of the literature on the failure of the Canadian system to address Aboriginal needs is based on these remote fly-in communities in the far North (Finkler 1976; Solicitor General 1986; Griffiths & Patenaude 1988; Working Group on Administration of Justice 1988; Auger et al 1992; Minore 1992; IFNA 1993). There is more documentation of these far northern communities than there is of those in the near north, because their problems are more acute, and are in many cases exacerbated by the very conditions of remoteness from justice and other social services (Inuit Justice Task Force 1991; Minore 1992:282-3). Delay in handling of cases is complicated by the fact that there are infrequent court sittings, held only when justice officials fly in from the South (Ross 1992; Minore 1992). The time lag between commission of an offence and its hearing in a fly-in court makes punishment redundant in cases where the offender, victim and community may have already resolved the issue through informal means. Alternatively, some communities have no court services at all, and offenders must be

flown out to the nearest location of court sittings, where their case could be remanded more than once before sentencing occurs (Working Group on Administration of Justice 1988:3). This surely causes significant disruptions to family and economic life.

As to the broader context of developing Aboriginal justice models for today, community justice goes beyond its planned or lived form in communities to include the wider context of such things as First Nations politics, government policy and the Canadian economic and social polity, all of which are interrelated. There are perceptions and positions regarding Native justice from outside agents like governments, the Canadian populace, Aboriginal political organizations at various levels, adjacent communities, academics, and the legal community, among others, that can and do have a considerable impact on the fate of justice alternatives in any one place. In some instances, these factors can constrain thinking and action, and in others they foster opportunities for change, but whichever is true, they must be taken into account.

Before discussing the elements of community justice that were the focus of the Sagamok study, I will explore this broader context, from its widest aspect inward toward the community circle.

Background: Aboriginal Peoples and the Canadian Justice System

Indigenous law can and has changed the way the dominant legal system conceives of law; an example is the way in which courts have acknowledged Aboriginal

conceptions of the family in child adoption cases (Minore 1992:282; Ryan 1995), or Aboriginal norms of resource stewardship (Grant 1988:263). The government has begun to recognize an Aboriginal "style" of justice that addresses persons and their actions within a whole social context. This includes treating offender, victim(s) and community together, rather than isolating the "legal" from human situations, as the Canadian justice system does. Community participation in case processing for criminal offenders has, over the past five years, increasingly been seen as a viable option by mainstream judges (LaPrairie n.d.; Lilles & Stuart 1992; Morrow 1992; R. v. Cheekinew 1993; R. v. Morin 1994; R. v. Naappaluk 1994).

The Canadian government has supported research and pilot projects in several areas, including urban settings. In 1992, the Federal government created a fund of over twenty six million dollars for new Aboriginal Justice Initiatives, and by 1994, the federal Department of Justice was funding sixty native justice pilot projects (Manson 1994:25). Such a development indicates a shift in government policy regarding Aboriginal justice and the imminent implementation of further reforms.

The need for fundamental reforms in the administration of justice for Aboriginal peoples in Canada has been recognized for some time (Finkler 1976; Law Reform Commission 1976; Havemann et al 1985; Coyle 1986; Solicitor General 1986, 1987), by independent researchers and government bodies alike. It was more than twenty years ago that the Law Reform Commission of Canada began to suggest more humane and

community-specific alternatives to the mainstream system. One writer at that time suggested that

> *"...the criminal law and its processes should be no more than one of many standards for the protection and betterment of modern, complicated post-industrial society. ...there is a demand for a replacement or...a modification of the conflict model with greater emphasis on the cooperative method of resolving and controlling community problems" (Parker 1976:88 in Law Reform Comm).*

In the past five years alone, there have been a number of provincial inquiries, a Royal Commission report, and other large-scale research projects focused on the topic of Aboriginal justice (Brodeur, LaPrairie & McDonnell 1991; Province of Alberta 1991; Province of Manitoba 1991,1991b; Inuit Justice Task Force 1993; RCAP 1993, 1996a; Ryan 1995). The purpose of the provincial inquiries has been largely to examine why Aboriginal people are so much more likely than their non-native counterparts to come into contact with the legal system at all levels (RCAP 1996a:32), and why Canadian prisons are housing such high proportions of Native offenders. Moreover, the inquiries were set to discover the elements of Aboriginal experience of being "processed" through the system. The reports of these inquiries assert that, in addition to the widely publicized cases of attested racism and maltreatment, such as the Helen Betty Osborne and the J.J.Harper cases in Manitoba[1] there is ongoing systemic discrimination and lack of cultural awareness of the part of the justice system at all levels in the treatment of Aboriginal people (Havemann et al 1985:9; Barkwell et al 1991:73). Such discrimination can take the form of police discretion in monitoring and charging individuals, to alien

features of the court process such as a language barrier, and gulfs in understanding between the Canadian legal understanding of guilt and the Anishnawbek understanding of it. Aboriginal peoples' relationship to the Canadian criminal justice system is a national issue that has caused the criminal justice system to be called a "crushing failure" in its dealings with Aboriginal people (RCAP 1993a:4). Sagamok resident Ray Solomon reflects a prevalent Aboriginal view when he writes, "How much respect can you have for a system that treats property as more valuable than human sorrow and pain?"(1992:1).

Both the Manitoba Inquiry (1991) and The RCAP (1996a) justice report recommend sweeping reforms to the present system, but beyond that, to the creation of Aboriginal justice systems that will express Aboriginal nations' views of law. This is a significant change from past suggestions of reform. For some years now, the federal and provincial governments have been seeking ways to address the problems of Aboriginal peoples' conflict with the mainstream justice system, but this has often taken the form of "indigenization" (Morse 1980; Havemann 1988:71), or "tinkering with the system" (Manitoba 1991a:258), rather than a change in the fundamental philosophy, values and practices of the present system to one that practices Aboriginal ways of social control. As I discuss throughout this dissertation, I believe the local community, including urban Aboriginal groups, to be the place where models of Aboriginal social control and dispute resolution are best developed and implemented. Later in this chapter, I discuss the recent RCAP (1996b) alternate view, which advocates the implementation of Aboriginal justice mechanisms at the level of the "nation".

The vast amount of research on Aboriginal crime and imprisonment has documented the "overrepresentation"[2] of Aboriginal offenders on police books, in the courtroom, and in carceral facilities in this country. In the province of Saskatchewan, for example, up to 65% of the prison population is of Aboriginal descent, even though they make up only 15 % of the provincial population (Romanow 1994). More than half of the inmates in Manitoba jails are Aboriginal (Manitoba 1991:86). Overall, Aboriginal offenders make up approximately 10% of the total prison population, despite representing only 2-3% of the total population of Canada. An Aboriginal youth has as much as thirty times the chance of being incarcerated as his non-Aboriginal counterpart in Canada (Hylton 1994:150). Aboriginal women comprise up to 30% of the inmate population of the Ontario region Federal prison for women, and higher percentages in some of the Western carceral facilities. Moreover, they are incarcerated for more violent interpersonal offences than are non-Aboriginal women (LaPrairie 1987:123).

One reason that governments are increasingly willing to look at new approaches is the widespread dissatisfaction with the mainstream justice system's way of dealing with crime and conflict in Canada at large. This frustration with the present system exists at the administrative, procedural and substantive levels. The justice system is perceived as "not working" in general, and in particular, not for Aboriginal people. From an administrative standpoint, the present justice system has become overburdened and backlogged to the point where, for example, offenders wait in custody for months for

their trial date, and thousands of cases have been thrown out of court because they were on the books too long. As Senior Judge Gauthier of Sudbury region observes,

> *"...many of the cases that we see drag on for a long time, and are only dealt with long after the offence has been committed. I think that, especially for young people, the prospect of having your case dealt with speedily is an important factor, because they often act impulsively, and they should suffer the consequences speedily so that the link between their behaviour and the consequences is fresh for them."*[3]

Popular dissatisfaction with the rationalized, adversarial procedures of courtrooms that prohibit the conflicted parties from "telling their story" (Conley and O'Barr 1991:14) or from constructing their narrative in terms they see fitting (Merry 1990) has paved the way for such informal alternatives as negotiation, mediation and restitution within the mainstream system of the United States, and similar frustrations exist in Canada (Gilman 1997:14). A Sudbury district judge, in discussing native alternatives to the formal system with me, expressed her frustration with the system by saying that:

> *"Most people see the justice system as the answer to their problems. They come here as a first response, when in fact, we should be the last resort in solving some of the problems that people bring here. Our system is simply not equipped to deal with a lot of the problems that people bring for solution".*

The judge remarked further that

> *"I think in an alternative system, when much more discussion can take place, and all the factors can be known better than they can in the mainstream system, people go away more satisfied that justice has been done."*[4]

In the Espanola District Court where I observed cases over a period of several months in 1992, charges that were being heard for the first time in June were booked for trial dates in November. The cases that were being tried in June were in many instances for incidents and crimes that had taken place fully a year before that time. There were several incidents of cases being remanded three and four times before coming to trial.[5] Incidents such as these are common not only for Aboriginal people, but for many who are "processed" through the mainstream system (see Griffiths and Patenaude 1988:253). From a substantive standpoint, there is a growing recognition that criminilization of some behaviours, and bringing the full weight of state revenge on individual offenders by incarcerating them, does not solve the root of the problems of social deviance, crime and conflict. The Aboriginal emphasis on getting to the root of the problem and keeping it within its social context has attracted justice reformers looking for a way to change a system that fails not only Aboriginal consumers, but the general public as well.

As several commentators have pointed out (Havemann et al. 1985; LaPrairie 1987; Rudin and Russell 1993), it is not because they are inherently more criminal that Aboriginal people are charged and imprisoned at several times the rate of non-Aboriginal Canadians. Rather, systemic factors largely due to processes of colonization, such as low socioeconomic status, culture loss, residential school trauma, and residence patterns need to be taken into account. Differential treatment at the hands of police has been cited as a factor in higher arrest and incarceration rates for indigenous peoples (Havemann et al

1985; Griffiths & Patenaude 1988), but recent research suggests that the overrepresentation phenomenon is just as likely to be due to factors of demography (age), gender (male), education, employment and income (LaPrairie 1990; DePew 1994:59). DePew points out the well established fact that most crime is committed by males between the ages of fifteen to twenty-four (1994:103,n.18). While this cohort comprises a significant percentage of many reserve populations (Canada 1995), this is also a group that is gravitating to urban areas in search of life opportunities. LaPrairie (1992:2) shows that, while levels of interpersonal violence are high on reserve territories, the largest percentage of Aboriginal crime resulting in incarceration takes place in large urban centres where Aboriginal people constitute the most disadvantaged group. For crimes committed on reserve, Kunitz and Levy (1994:189) propose that rural residency is as potent a variable as race in explaining crime patterns.

Despite the fact that clear inequities exist, the canvas is painted in shades of grey. A recent Cree justice study reports, for example (Brodeur, La Prairie and McDonnell 1991) that courts are generally not sentencing Cree accused more harshly than non-Aboriginals and in fact, that treatment of Cree defendants appears to be more lenient (1991: 69,74). The Espanola District Court where Sagamok offenders were tried showed a similar pattern. In cases such as those, it seemed that judges were taking the context of the crime and extralegal factors such as the circumstances of the offenders into account, rather than proceeding strictly on factsheets. In some cases, the presiding judge seemed to make an extra effort to understand mitigating factors that might be due to cultural or

socioeconomic differences before sentencing (Fieldnotes, July 1992).The implications of such findings for Aboriginal justice research and program design, suggest that we need to look much deeper than the notion of cultural difference to understand Aboriginal peoples' relationship to the Canadian justice system, and the patterns of lawbreaking within Aboriginal communities, and between geographical regions in Canada.

The remaining difference between some Aboriginal sociolegal values and those driving the Canadian justice system remains a legitimate reason for devising community-based alternatives. Equally compelling is the argument that Aboriginal peoples have a fundamental right to govern themselves in all areas, including law, under both the Canadian Constitution and international norms of human rights.

The release of the RCAP report (RCAP 1996a, 1996b,1996c,1996d)[6] supports the constitutional right of Aboriginal peoples to their own justice system, and suggests several concrete ways in which this may be achieved under self-government. Indications to date are that the federal and provincial governments do not have the political will to implement the recommendations of this document that reiterates the findings of the provincial inquiries. The RCAP report, which I discuss further in this chapter, has been virtually ignored by the federal government (Clark 1997). In spite of this failure, however, there continues to be further grassroots development of community-based Aboriginal justice. Aboriginal people are expressing the possibility of a reclamation of social control on their own terms as a path to individual and community healing. They

must do so within the context of their relationship to the Canadian nation, and it is this relationship that I will now discuss.

Aboriginal Justice as an example of Legal Pluralism

The broadest and most abstract aspect of the wider context for Aboriginal justice has been its situation within and domination by a system of foreign-imposed law. For the indigenous peoples of Canada, this has meant first interaction with, and then suppression by British, French and later Canadian law. It is such an interaction between differing systems of law that constitutes a condition of legal pluralism. DeSousa Santos (cited in Merry 1992:358) calls legal pluralism a "key concept in a postmodern view of law", and Merry(1992:357), writing about the same phenomenon, but subsuming it within "transnational processes", centres legal pluralism in modern anthropological thinking about law. Others have made the same assessment (Fitzpatrick 1988:180;Tamanaha 1992:5).

Recent objections by some scholars call for a serious questioning of, or abandonment of the concept altogether (Star & Collier 1989; Jackson 1992;Tamanaha 1992; Woodman 1992; Greenhouse 1995). In the discourse that eschews "legal pluralism" as a descriptive term, the concept of legal pluralism is depicted as an attempt by lawyers to appropriate and call "legal", a field that includes "...some rather varied institutional forms/normative orders/fields of understanding..." (Greenhouse 1995:17). The position taken by indigenous legal scholar Moana Jackson is that "legal pluralism, as

a concept, is inherently assimilative and racist." (Jackson 1992:444). Both Greenhouse and Jackson, speaking from different perspectives, claim that the term "legal pluralism" ascribes the specific rationalized Western conception "legal" to non-western forms of social ordering, and in doing so, perpetuates the colonial domination of indigenous social systems. I continue to use the term with the understanding that both lawyers and social scientists have tried over the last thirty years to find a mutually acceptable terminology to describe ways of social ordering, and the debate continues. I use the term in the belief that the concept, as a framework for discussion of certain phenomena, can be separated from the imperialist history from which such phenomena arose. The way in which I am using the term, then, is in the broad sense in which Hooker first began to use it as a situation in which differing systems of law interact (1975:6).

"Legal pluralism", in its common usage, denotes the interaction between different systems of law in colonial or postcolonial states. A product of colonialism, the "transfer of whole legal systems across cultural boundaries" (Hooker 1975:1) was thought of initially as a one-way transfer characterized by the imposition of a foreign system of law on an indigenous system. In situations such as this, elements of the indigenous system were retained or reshaped through colonial processes, existing as parallel but structurally inferior systems (Merry 1991:897; Woodman 1992) and referred to as "customary law".

Many scholars of legal pluralism have now realized that the process was neither unilateral nor totally hegemonic. Sally Falk Moore (1978) used the term

"semiautonomous social field" to describe phenomena such as the local courts of customary law in colonial Africa that had autonomy to develop local practices, but always within a dominant structure that circumscribed their function (Merry 1991:906). The extent of this circumscription varies widely over space and time. Rodman (1985; 1993), for example, describes a situation in the post-colonial Pacific state of Vanuatu in which local villages developed their own legal code and enforced it without the interference of the state. The extent of legal autonomy of colonized states varies according to many factors, including the nature of the indigenous society (Starr and Collier 1989:24), the identity and ideology of the colonizing state (Comaroff & Comaroff 1991), the length of time they were under colonial rule and the nature and practice of postcolonial governments.[7]

The Aboriginal peoples of Canada are an example of temporal variation in the extent of their legal autonomy (as I discuss further in this chapter), in that they moved from full autonomy and equal nation status at the beginning of the colonial encounter to a virtually total restriction of autonomy under the modern Canadian nation-state. After more than two hundred years of such restriction, the wherewithal and confidence to resume responsibility for social control is harder won than in other instances.

The modern understanding of the fluid and complex nature of legal pluralism has grown in tandem with changing anthropological conceptions of law itself from that of a set of rules to one of a social process that takes place in "...a context of multiple,

overlapping "semi-autonomous social fields" (Griffiths 1986:38; Moore 1978 passim). A modern legal pluralism concentrates on the interaction and interpenetration between legal orders (Fitzpatrick 1988; Starr & Collier 1989:9), rather than portraying them as antipodal. Most of the recent legal anthropology literature focuses more on the ways in which constraints on autonomy have been resisted than on their restrictive power. State and non-state ("informal") law have a measure of autonomy in relationship to each other (Baxi 1986; Starr & Collier 1989:9; Rodman 1993), and the state can never exclusively appropriate the notion of law. It is possible for indigenous social control systems to claim the legitimacy that state systems take for granted, and claim the right to a viability of their own.

Both state and informal legal systems are "massive abstractions", to use Baxi's phrase (Baxi 1986:52), and do not convey the contingencies, compromises, and discretionary practices that characterize legal systems as they are practised. State law is far from monolithic; it is a patchwork of strategies including arbitration, mediation, and victim/offender dialogue, many of which have been instituted in the West as a result of the influence of dispute resolution forms from other cultures. In Canada for example, some courts have in the past accommodated Aboriginal law in the areas of adoption and marriage, but not in criminal cases (Griffiths and Patenaude 1988:260,273). Many of the mundane conflicts in North America are solved by customary procedures such as self help, discussion, negotiation and third party intervention, rather than judicially (Arno

1985:47). On the other hand, non-state legal systems, as Baxi (1986:59) illustrates, are just as capable of producing coercive social reality as the legal systems of the state.[8]

On the ground, then, colonial powers were never able to achieve the "seamless web of institutions" (Brogden 1991:3) aimed at establishing their own legitimacy at the expense of local law and social control. Nevertheless, dominance was accomplished insidiously by social institutions such as education and religion, and coercively by legal systems. Colonizers used the "law" as an instrument by which to enforce the hegemonic assault on indigenous social structure and consciousness of which law itself is a part. The Indian Act passed by the new Canadian government in 1876, and the forced attendance at residential schools for Indian children are classic examples of such hegemony. In the face of such assaults, a central challenge to indigenous groups encapsulated within nation-states has been to attempt to maintain local forms of social control in the face of state power and the engulfing power of capitalist social and legal forms.

Neocolonial history in Canada has been characterized by largely muted but protracted struggles over the relative jurisdiction and legitimacy of indigenous and state social control. The interaction between state processes and local realities is a struggle for power: the state attempts to wield it, and the local "semi-autonomous social field" attempts to re-negotiate, redefine or resist it. If understood in this way, state law can be seen, not only as an entity imposed on subjects, but as an arena of contested power

relations (Starr and Collier 1989). Contemporary moves toward justice autonomy by Aboriginal people in Canada can be understood within this framework.

As Merry (1991:896-7) notes, colonial law was a double-edged sword that, while subjugating local law, also provided a forum for "...constraining the very forms of power that it makes possible" A contemporary Canadian example of this, is Aboriginal groups' use of the court process to negotiate land claims and Aboriginal rights. Aboriginal leader Harold Cardinal comments on the way in which the Indian Act expresses this paradox: "...the Indian Act...is discriminatory from start to finish. But it is a lever in our hands and an embarrassment to the government..." (in RCAP 1996c:256). Within colonial power relations, after being repressed for long periods of time, some forms of indigenous systems of social control have managed to hold on to life and sometimes reflourish.

Indigenous Law and the Canadian State

Canadian colonial history reflects this uneven and complicated state of contested power relations. The Canadian government perspective on Aboriginal justice must be understood in the historical context of pre-confederation British colonial policies, and later Canadian ones, that enabled capitalist expansion in the New World. Unlike the British policy in Africa and India of supporting local legal systems and naming them "customary law", the indigenous systems in Canada were at first recognized and later denied legitimacy (LaPrairie 1987:129; Schmalz 1991:84). This practice differed from colonialist policy in the United States, where Indian Nations were accorded the status of

sovereign dependent nations who continued to use their traditional courts(Morse 1988; Inuit Task Force 1991; Rudin and Russell 1993). Although the nature of these courts has changed over time, partly in response to federal policies and U.S. court decisions (Clark 1990:180), the basic status of Indian law differs substantially between United States and Canada.

After the decline of the fur trade and the numerical ascendancy of the European population in the new Canadian colonies, the chief purpose of government policy toward Aboriginal peoples was one of assimilation (Ponting 1986; Clark 1990; Miller 1991; Havemann 1992). Since the days when Indian allies were no longer needed for military strength (RCAP 1996c:285), and since the settler population outnumbered the indigenous population, ruling governments in Canada have been unwilling to cede any real power to Native governments, despite resistance from indigenous leaders (Dickason 1992:300; Schmalz 1991: 205ff)

Early in the colonial era, the British and French authorities acknowledged the validity of tribal law and jurisdiction over both Aboriginal residents and individuals from the settler population who had committed crimes on Indian territory (Schmalz 1991:84). Dickson-Gilmore (1992:480) cites the Albany Treaty of 1664, wherein the British agreed to respect Mohawk political and legal institutions and to give "all due satisfaction" in cases where disputes crossed national borders This doctrine of separate but equal nations provided for the return of offenders to their own jurisdiction for justice.

The deference to indigenous nations and their jurisdiction was not only out of the British need for Indian allies; early observers showed respect for the peace and order within Indian communities. By the same token, Indian jurisdiction was recognized through the British injunction against those settlers who might try to escape colonial justice by taking refuge in Indian territory (The Royal Proclamation, 1763, in Canada 1992). In addition to this recognition, for most of the 18th century, British authorities accommodated Ojibway custom by paying compensation in goods to the relatives of injured or slain warriors (Baraga 1847:24; Kinietz 1947:86; Schmalz 1991:66,90,91). By following this particular practice, the British were simply adhering to the status quo between some of the indigenous nations themselves. Devens reports, for example, that certain lands in Michigan had been ceded to the Ojibway by the Ottawa in the late 18th century in compensation for a murder (1992:99).

The accommodation of Aboriginal law by the British faded when their military power was more firmly established late in the eighteenth century, and the number of settlers had grown to the point where indigenous peoples were becoming a minority population. The recognition of Indian legal authority, at least for crimes not involving whites, continued until 1803, when the British colonial government passed the Canada Jurisdiction Act, bringing these offences under British Colonial law (Barkwell 1991:8). For Aboriginal peoples, though, especially those in remote areas, the *de facto* state of social control in their communities did not change until some time later. In the North

Shore region, around the time of the Robinson-Huron Treaty of 1850, government commissioners surveying the area remarked about local Anishnawbe law that:

> ...long established custom, which among these...tribes is as binding in its obligations as Law in a civilized nation, has divided this territory among several bands...possessing an exclusive right to and control over its hunting grounds...This same law or custom...has vested one or more persons in each of them with a species of authority and control over its individual members and its property, which though neither well defined nor regulated, is generally submitted to when circumstances require its exercise...[9]

Aside from the common practice of regulating hunting territories, there were other instances of the continued viability of Aboriginal law. As late as 1875, there were examples such as the Metis settlement of St. Laurent in what is now Saskatchewan, where the community developed and governed itself by its own set of laws (Barkwell 1991:22ff). In the remote areas of Northwestern Ontario, some Aboriginal communities continued to employ their traditional law within their territories until very recently even though they are legally subject to Canadian law (RCAP 1996a: 20ff). Communities such as those, however, were the exception rather than the rule by early in this century (see Finkler 1976:13; Griffiths and Patenaude 1988:255ff). R.G. Moyles, in his description of the first case of Inuit tried under Canadian law in 1917, quotes the trial's Crown Attorney C.C. McCaul's opening address, indicative of the perceived state of legal pluralism in Canada at that time:

> "The Indians of the Plains,...and the Chippeweyans and the Sarcees and the Stoneys have been educated ...to know that [Canadian] justice...is an impartial justice by which the person who is charged with crime is given a fair and impartial trial..." "...the Eskimo of the Arctic regions have got to be taught to recognize the authority of the British Crown, and that the authority of the Crown

> and of the Dominion of Canada, ...extends to the furthermost limits of the frozen North" (Moyles 1989:38).

McCaul, representing the Canadian state, went on to emphasize that the importance of the Inuit trial lay in its symbolic message not only to the Inuit that they must obey Canadian law, but to white Southerners, that they could rely on the protection of the State when they carried the capitalist enterprise into the Arctic, as they had just begun to do. As McCaul's remarks indicate, Aboriginal law was perceived to be moribund in indigenous communities of the more populated southern Canada by early in this century; but was this actually the case?

Along the North Shore of Lake Huron in the 1930's, elected chiefs were still largely responsible for settling disputes, according to Kinietz (1947:86). This was true of Sagamok, according to some residents. A chief who held power early in this century is referred to as "Dbaaknige", the judge, for his ability to resolve disputes. Various references were made by respondents to disputes being taken to the chief and council in the past. Oral history in Sagamok tells that early in this century there was a medicine man here who was widely acknowledged as the most powerful in the area, and that disputes were often settled through the surreptitious use of his powers. The modern chiefly role that was instituted by the creation of reserves is said to have often been designated to such medicine men who were already powerful social actors in Anishnawbe society (Hallowell 1955:121).

Although government Indian agents were appointed magistrates or justices of the peace for reserves, local indigenous groups were able to circumvent this foreign authority or use it for their own ends by deciding when to report incidents, or use the agent against a rival. This would have been made possible by the fact that agents had large territories under their jurisdiction and did not always live in the communities for which they were responsible. Likewise, reserves were policed from the outside by police officers who responded when called but were not ubiquitous.

Indian Agents' association with Sagamok is first documented in 1874[10]. Despite the agent's sweeping powers, his presence in the community was sporadic. Elders have reported that the Indian agent "...came and gave money for treaty. That's the only time he came, once a year."[11] Other remarks by elderly Sagamok residents corroborate this statement, and indicate that the only time the Indian agent came aside from 'Treaty Day' was in response to conflicts that could not be solved locally, or when financial assistance was needed, as in the case of a house fire. In a society with negative sanctions against face-to-face conflict, the outside authority of the Indian agent could be a useful liaison between conflicted parties (cf Bishop 1974:64). There are a number of such cases documented in past correspondence between Sagamok residents and the department of Indian Affairs in Ottawa, or the regional Indian Agent, based in Sault Ste. Marie.

There were times, as in the following case reported by a Sagamok Elder, when the department dealt with such a conflict at arm's length:

> *"...one Indian guy who enfranchised came to cut wood in our maple bush. We wrote to Indian affairs and he told us to tell him to stop. The guy left his wood and my father told him to take it. He wasn't charged, he just got a warning."*

A less rigid, less Eurocentric view of "law"allows that many Aboriginal groups across Canada, while under the Canadian system (and using it for some purposes), have maintained at least a thread of continuity in implementing modes of informal social control and moral authority that control conflict and social disruption in their communities (Griffiths and Patenaude 1988:253; Royal Commission Report 1996c). This is particularly true for the more northerly reserves, but some First Nations in the more populated southern areas, particularly those of the Six Nations Confederacy, have maintained traditional government for decades when it was a violation of Canadian law to do so. During the period when many core indigenous cultural practices were illegal in Canada, the recitation of the Great Law went underground (Ponting 1986:153; Dickson-Gilmore 1992:496).

One recently documented instance of continued local autonomy comes from the Anishnawbe community of Muskrat Dam in Northwestern Ontario (Independent First Nations Alliance 1993). Until 1993, this remote fly-in reserve had called upon the provincial police only three times in its history, and the mainstream court system just once. Local means of social control that included designated monitors of behaviour, and exhortation by those with moral authority to offenders to live "in the right way", had

succeeded in maintaining order in this small group of about two hundred Anishnawbek in the face of colonisation.

In practice, then, legal pluralism in Canada did not end with the legislated imposition of Canadian law for Aboriginal peoples, but has persisted in various forms since colonisation began. In saying this, I do not mean to minimize the hegemonic effects of colonisation on Aboriginal institutions, but to show the thin line of continuity with traditional social control mechanisms that can be a foundation for an adaptive system of the future. Discussions of dependency notwithstanding, I believe there has been far more resistance by Aboriginal peoples to the replacement of their institutions than has been documented. This muted battle to protect the bases of their cultures (often taking the form of written correspondence with governments) has continued throughout the history of colonial interaction, and needs to be given more attention (see Dickason 1992; Devens 1992). Moreover, and perhaps more importantly, there has been continued resistance to the spirit of the law and to its claim of sovereignty even while indigenous peoples have shown outward compliance with Canadian law.

Colonial ideology views the replacement of indigenous institutions with those of the colonizing nation as an improvement and an inevitability. That mode of thought persists within the power structure in Canada, as was most strikingly demonstrated in British Columbia Chief Justice Allan McEachern's denial of Aboriginal rights in 1991 in the Gitksan Wet'suwet'en case[12]. McEachern's assessment of indigenous law in British

Columbia was that "a legal and jurisdictional vacuum existed prior to British sovereignty"(Cassidy 1992:11).

Despite the holdover of the colonial mentality that is found in some quarters, there is growing accommodation for legal pluralism in Canadian legal thought and government policy. In addition to public and academic objections, a number of legal scholars were appalled at McEachern's judgment (Ibid: 9). The recently released report of the Royal Commission on Aboriginal Peoples (1996b,c,d,e) indicates that the will for change does exist. Although governments in power remain reluctant to commit to fundamental change (Clark 1997), the government rhetoric at least is now acknowledging the need for basic reforms to the criminal justice system that will address the inequities and inappropriateness of the system for Aboriginal peoples. The struggle for autonomy in justice matters will be a more difficult one.

The overall policy environment within Canada and other neocolonial states has progressed to the point where few informed policy makers would place Aboriginal justice within a narrow criminal justice framework, or try to force it into the dominant paradigm of adversarial and retributive justice administered by the Canadian state. Aboriginal communities, however, are more concerned with implementing pragmatic solutions to their community problems while re-establishing autonomy in justice administration.

Aboriginal Justice as a Pragmatic Response to Aboriginal Crime

While it is widely agreed that change is essential, there are different approaches to how this change should occur. There have been attempts made to change the status quo over the past two decades or so, with differing philosophical foundations and various degrees of success. Until recently, legal reforms affecting Aboriginal peoples have come from the top down; that is, they have been imposed by the government without consultation. The most basic reforms are those that have attempted to make the present Canadian criminal justice system more amenable to, and more culturally appropriate for Aboriginal people, based on the conclusion that Aboriginal people are fundamentally different from EuroCanadians. While purporting to acknowledge this difference, Canadian governments have aimed to keep Aboriginal offenders within the mainstream system based on the Western liberal principal of universalism. Using what Macklem (1993:11) calls a "rhetoric of similarity and difference", Canadian law, for the sake of its key principle of universalism, maintains the contradiction that Aboriginal people are equivalent to everyone else under the law but that their "difference" is the basis for intrasystemic reforms. Intrasystemic modifications have been tried at virtually all levels of the system, from policing through to incarceration. For example, cultural awareness training of non-Aboriginal police personnel and members of the judiciary has been common practice in some areas for the past few years. Depending on the geographical area, and the specific needs of the particular personnel, however, this could consist of general "ethnic" awareness, rather than specific understanding of Aboriginal cultural

norms and behaviours, and in any case, fails to address the fundamentally alien nature of Canadian procedural justice for many Aboriginal people.

While individual police, lawyers and judges within the formal justice system may be aware of and sympathetic to Aboriginal offenders' circumstances, Canadian procedural justice continually fails people like Ray Solomon of Sagamok, who expresses his frustration with the system this way,

> "Occasionally...the judge will ask for a pre-sentence report. ..[The offender's] past will be dredged up and the evils will stand out more than any good. His history will likely read: broken family, poor school grades, previous conflict with the law, no history of stable work, etc. Would any of these people judging him consider his environment or his peoples' past? Who's there to tell it? Certainly not the man about to be sentenced.(1992:3)

Other ways of making the justice system more accessible for Aboriginal peoples without substantially changing it are the use of liaison personnel such as Native Courtworkers, and the provision for Elder counselling and Native religious ceremonies within prison facilities (Waldram 1996). These reforms, despite their general record of success within the limits imposed on them, suffer from inadequate funding and have been terminated in some cases (Ontario 1989). There is still the perception by Native offenders, however, that while some culturally appropriate programs and counselling are offered within the prison, the only way to win parole is to conform to non-native interventions. Ray Solomon (1992:2) puts it this way:

> When a native person plans his or her future from the confines of their cell, their best hopes rest with trying to conform to the non-native approach, because he or she knows well enough that the support on the street is tied directly to A.A. or other programs.

A further step in the attempt to ease Aboriginal offenders' passage through the present system, is the recruitment of indigenous people as justice personnel, either as police, corrections officers, lawyers, or members of the judiciary. This "indigenization" represents what Havemann (1992:111) calls "the preferred means of integrating indigenous people into the imposed system of social control". Other scholars agree that by moving into the domain of informal conflict resolution, the state extends its power (Santos 1980; Abel 1981; Arno 1985; Fitzpatrick 1988). This argument holds that informal justice forms are rationalized by the state to meet the dictates of bureaucratic control and economic efficiency; and in the process state jurisdiction is expanded, thereby undermining the social infrastructure of the alternative institution. Indeed, all of these accommodative changes that have integration as their goal, leave ultimate control in the hands of the state, and fail to achieve the legal autonomy that indigenous leaders maintain is not only their right, but the means of healing their communities (see Morse 1991).

Beyond accommodative changes to the present system, some novel attempts have been made to devise justice procedures that reflect Aboriginal culture and worldview and address the lack of juridical decision-making powers in Aboriginal communities. These changes are basically of two types: those devised and implemented by the government

and its judicial representatives, and those designed and implemented by Aboriginal communities themselves. The latter are regrettably in the minority, but there are some notable examples that can provide communities like Sagamok some inspiration for model-development.

Of those reforms initiated by government and the legal system, the most common is the diversion model, in which persons who have been charged under the mainstream system are diverted to an alternative sentencing body such as an Elders' Panel or Sentencing Circle (R v. Morin 1994). As long as the Canadian government asserts the right to exclusive jurisdiction under its law, all Aboriginal justice systems negotiated with government approval will be variants of the diversion model, although they may vary as to when offenders are diverted from the Canadian system to the Aboriginal system. The point of diversion may range from pre-charge to final sentencing.

Sentencing Circles, a type of diversion model, were initiated by members of the Canadian judiciary as a way of incorporating Aboriginal social control mechanisms into judicial case processing, and devolving responsibility for post-charge dispositions to the community (LaPrairie 1994:8). The process involves discussion of the case at hand in a circle format that is intended to indicate equality between professionals and involved community members. In R. v. Morin (1994:150), the Court held that:

> The sentencing circle process gives the sentencing judge the fullest possible information concerning the accused and gives the accused, the victim, the community, the police and probation authorities an opportunity to arrive at a sentencing option which gives an accused the opportunity to try to change their lifestyle with the support of members of their community.

In both the Morin and the Willocks (R v. Willocks 1994) cases, the judges stated that they viewed Sentencing Circles as equivalent to the pre-sentence reports that are part of normal court procedure. It was held in R.v. Morin, that "It is the sole responsibility of the judge to determine what sentence is to be handed down. Any consensus developed by the sentencing circle will be reviewed by the judge to see if it is a suitable alternative sentence."(R.v.Morin 1994:151). Expressed more mildly, but nevertheless the same conclusion, was held in R.v. Naappaluk (1994:143) that "The judge must listen to the participants, discuss with them if appropriate, listen to their recommendations, and follow them in most instances".

The positive aspect of sentencing circles is the increase in community involvement in the judicial process and the resultant community interest in the welfare of the offender and victim(s). This community interest can surely foster rehabilitation in many offenders. The negative side, as I have indicated, is that the Sentencing Circle does not give autonomy to the community in any sense of the word.

Indigenous-Initiated Reforms

Indigenous reforms arising from within communities are more varied. These range from a revitalization of traditional social control mechanisms, such as the Gitksan Wet'suwet'en have attempted,[13] to the use of Band By-Laws under section 81(c) of the Indian Act. This Indian Act provision states that Band Councils may make by-laws for the purpose of "the observance of law and order" (Burrell and Sanders 1984:160). Rupert Ross points out, however (1992:109) that communities in Northern Ontario consistently fail to use the by-law provisions available under the Indian Act. Ross sees this as arising from the ethic of reluctance to direct or interfere in others' lives, or restrict their freedom. The other main drawback to choosing this option is that ultimately, any use of the provision is "at the pleasure" of the federal government by virtue of the Indian Act, and subject to court challenge, with the exception of bylaws regulating intoxicants on reserve (Elias 1991:108).

Recently, there has been an opening for development of laws under the definition of "First Nations Laws" in the Anishnawbek Policing Agreement. Currently, Anishnawbe peacekeepers are empowered to "...enforce First Nations laws and all applicable federal and provincial statutes on Anishnawbek Territory"(Policing Agreement:15). But the definition of "First Nations Laws" under the agreement (p4-5) allows for change, whereby "First nations laws means Band By-laws made pursuant to the Indian Act...and such other First Nations laws *as may be developed under a constitutional process and*

reflected in an amendment to this Agreement(emphasis mine). While this opens a conceptual space for the development of First Nations' law, in reality it merely reflects the status quo whereby the Canadian government insists on Constitutional entrenchment before agreeing to the development and enactment of Aboriginal law.

Under a revived Gitksan Wet'suwet'en traditional law[14], the majority of offenders are sent directly to the Aboriginal Justice staff after apprehension by the RCMP, but before any charges are laid (Gitksan-Wet'suwet'en Education Society 1992:8). This system was initiated by activist members of the Gitksan Wet'suwet'en peoples, and supported financially by the provincial government. If the offender admits his or her guilt, and if the victim of the crime agrees, the case is handled by committees of the offender's house and clan. A series of these councils of family and clan members are held in which a course of appropriate action is decided upon and supervised by house and clan members. The process takes more than a year to complete, and ends with a community gathering named the "shame feast", a ritual of resolution which is meant to end the case, and after which the crime is considered forgotten. As mentioned, such alternatives maintain varying measures of state control, while outwardly conforming to Aboriginal standards of conduct.

Like the much-emulated Navajo Nation in the United States, some First Nations have used a Court model to initiate community-based reform. Such models generally insert Aboriginal content into the Western structure in a combination of traditional and

modern methods. St. Theresa Point First Nation in Manitoba is an example of such a scheme, whereby local members serve as judge, magistrate, and court coordinator (Robert Wood, p.c.). A strong referral system has helped to integrate criminal justice processing with social services, making the system responsive to the context of justice problems. The use of a court structure will invariably change communication patterns and thus affect social relationships (Arno 1985:47); however, some communities may find that the court model is the best choice for their situation. One of the strengths of the St. Theresa Point system is that they encourage and support parental responsibility for the behaviour of their children. Serpent River First Nation, a neighbour to Sagamok, has begun to incorporate this principle in their response to a recent rash of break and enter and vandalism incidents, by planning to hold parents responsible for the actions of the disruptive youths.

Justice committees or councils are another way of addressing community crime. Some communities in the far North have set up such structures; Teslin Tlingit First Nation and other communities in the Northwest Territories have done this. In a reversal of the normal Elders' advisory council model, the Teslin Tlingit council determines sentences after a trial by a Canadian judge, and invariably, "sentences that have diverged from those set by the judge have been harsher than the recommended sentence" (Griffiths, Taylor and Belleau 1995:176-177). Wikwemikong First Nation on Manitoulin Island have recently (1998) set up a diversion project whereby cases diverted from the mainstream system go before a panel of community members for sentencing. The

demand for panel hearings in lieu of mainstream court appearances has far exceeded the anticipated number in the first six months of operation.

Hollow Water Manitoba is another community much cited by observers of Aboriginal justice initiatives (Lajeunesse 1993; Griffiths, Taylor and Belleau 1995; Royal Commission 1996a). The Hollow Water Resource Group was initiated by survivors of sexual abuse, the effects of which they believed were destroying the fabric of their community. Healing and community harmony is the goal of this program, in which the problem is discussed by all relevant parties in a "Healing Circle", the offender makes a public apology, and a Healing Contract is signed.

Some communities have based their community healing programs on spiritual values. Hodgson (1995) describes such a focus at Alkali Lake and Tache B.C. whose philosophy in dealing with a severe alcohol abuse problem is that "the community is a treatment centre and a healing place" (1995:188) Using the "major agent of change in the Indian community - the extended family", to achieve their goal, they have reached almost total sobriety in less than ten years. The programs in these two communities are affiliated with the Nechi Institute on Alcohol and Drug Education in Alberta, jointly housed with Poundmaker Lodge.

There are diverse models being used by First Nations, but the common features of community-initiated programs are that they arise in response to pragmatic community needs, they focus on individual and community healing, and they offer community support for both offender and victim. Whether this support is maintained in the follow-up

stages, and what problems these communities are experiencing with their particular model would be important information for those First Nations in the process of model-developing themselves. Given that factionalism is common in small reserve communities, and that interpersonal offences tend to ramify widely through kinship networks, it would be helpful to know how this has affected the progress of some of these initiatives.

Aboriginal Justice as an Expression of Self-Government

As I noted earlier, the colonial and later Canadian government version of legal pluralism was to initially recognize Aboriginal law by adopting a "hands off" policy regarding incidents on Indian territory, and then later attempt total suppression of that law by claiming the blanket jurisdiction of Canadian law. The Canadian state moved from a situation of legal pluralism to one of legal monism, at least as they conceived of it.

The power to legislate and administer all aspects of community life, including social control, is a fundamental aspect of Indian self-governance. There is little doubt that when Aboriginal peoples were sovereign nations on this continent, they had functional systems of law and social control that were adapted to their needs (Schmalz 1991:205). Many First Nations leaders and Aboriginal rights scholars claim that jurisdictional sovereignty has never been yielded despite the power asserted by the Canadian state (Ponting 1986:432; Clark 1990; Smith 1992). It has been argued

persuasively from many corners that the Aboriginal right to administer their own laws is one of the "existing rights" named in Section 25 of Canada's Constitution Act (1982) (Clark 1990; Kulchyski 1994; RCAP 1996c:255). Only if a "new partnership based on mutual respect" (RCAP 1993:417) between Canada and Aboriginal nations emerges, will the political goal of Aboriginal self-government proceed within the concept of self-determination.

Aboriginal peoples within Canada are clearly not alone in their struggle for autonomy of cultural institutions such as legal systems. Indigenous peoples worldwide who have been colonized and then encapsulated by nation states are waging similar struggles for self-determination. The constitutional right of cultural groups within nation states to uphold their cultural institutions is enshrined in international law (Morse 1988; Johnston 1989; Svensson 1992; Kulchyski 1994), and affirmed by bodies such as the United Nations Working Group on Indigenous Populations, and the International Labour Organization (ILO).

The recently revised ILO Convention No.169 affirmed the "...right to legal control over their own social and political institutions..."(Hazlehurst 1995:xi). The 1995 Draft of the Inter-American Declaration on the Rights of Indigenous Peoples calls for the recognition of indigenous peoples' "community rights" in developing their social institutions, including Indigenous Law (Article XVI). Article XVII of the same document

goes beyond guaranteeing this right to exhort states to include indigenous legal systems within national legal structures.

The recent and comprehensive report of the Royal Commission on Aboriginal Peoples in Canada outlines, in a fairly detailed fashion, the shape of what would be a "third order of government" which would enjoy "shared sovereignty" with the federal and provincial governments (RCAP 1996b:25). This huge and extensively researched document presents the outlines of Aboriginal self-government in optimistic tones, just as a previous report of this kind did in 1983 (Canada 1983b[Penner Report]). Constitutionally, there has been little progress since that time, although Constitutional definition of self-government came very close to being realized at the Charlottetown meetings in 1992. As yet, governments and Aboriginal nations have not been able to move beyond their conceptual differences that see bureaucrats promoting incremental change, and First Nations seeking a change in the fundamental relationship between themselves and the state (Warry 1990:64).

Speaking from a community-based perspective, and knowing that there is considerable wariness of self-government at the grassroots, I have taken the pragmatic stance of keeping one eye on the progress of the self-government debate, while concentrating more on issues of preparation for community-based justice at the local level. As I have discussed above, there is a growing number of communities who are assuming local control of case processing with or without the financial and legislative

support (at least for now) of the government. Such initiatives can take communities a long way toward juridical self-sufficiency while the wheels of the self-government debate grind on. Warry (1990:65) has referred to the kind of program planning that takes place without the desired constitutional recognition as the development of "incipient models". As I discuss in Chapter Five, the issue of self-government in its past and current configuration has failed to mobilize the grassroots for a number of reasons, yet the community development necessary to prepare the ground for future autonomy can proceed at a steady pace without the constitutional blessing of the Canadian state. I discuss the specifics of this kind of preparation for Sagamok in Chapter Five.

The Royal Commission report recommends that Aboriginal legal institutions be developed at the level of the 'nation'(RCAP 1996b:25), but it emphasizes that this would not be in the sense in which "First Nations" is currently used to refer to reserve communities. The Commission settled on the following definition of "nation", of which they estimate there would be between sixty and eighty in Canada:

> "An Aboriginal nation should be defined as a sizeable body of Aboriginal people that possesses a shared sense of national identity, and constitutes the predominant population in a certain territory or collection of territories" (RCAP 1996b:25)

In discussing jurisdictional levels, the report indicates that,

> "The Commission considers the right of self-determination to be vested in Aboriginal nations rather than small local communities" (RCAP 1996d:166)

> "Many interveners maintained that the local community is the principal unit" ...However, many also realize that this would be difficult to realize in practice....The result will likely be multilevel governments...(RCAP 1996d:158).
>
> "While a local community may take certain initiatives in the area of justice, establishing an Aboriginal court system will normally be the work of the nation" (RCAP 1996d:235)

My concern in reading these pronouncements from the Royal Commission, is that, once again, the community grassroots may be disenfranchised regarding crucial matters of autonomy.

The constituting of "nations" as defined by the RCAP report, will likely be a long-term process. The Anishnawbek, for example, began such a process a few years ago, in the revival of the Three Fires Confederacy[15]. For now, the bringing together of the Three Fires is more focused on a spiritual and conceptual unity than a political one, but if the RCAP recommendations became reality, it would be necessary to define the Anishnawbek nation for political purposes, a process which could cause considerable unease at the grassroots level. Moreover, as McDonnell points out, the demand that bands reorganize as nation-level collectivities is "radically at odds with band organization", and that "...we are approaching a real conceptual limit on our ability to positively imagine a future for the self-determination of certain band-associated traditions within the state" (McDonnell 1995:463). The defining of "nations" can be expected to cause strife, not only between First Nations and Canadian governments, but between individual First Nations, and between them and their larger political organizations at the regional and national levels. As I will discuss further, the problem of

defining and delimiting "community" has implications for designing specific models of response to criminal offences as well.

While the Canadian federal government on the one hand seems more willing recently to advance native self-government, with the other hand they have allowed the expansion of provincial jurisdiction over Aboriginal peoples through a broad interpretation by the courts of Section 88 of the Indian Act that allows for the jurisdiction of 'provincial laws of general application' over Indians (Sampson 1992:15; Boldt 1993:82). Under the Constitution, the responsibility for Criminal Law within the provinces is not clearly the responsibility of the provinces, and could just as likely be assigned to federal jurisdiction, or, as Gosse (1994:11) points out, to Aboriginal governments. The issue of provincial jurisdiction over Indians has become particularly contentious in the areas of child welfare and hunting and fishing rights in the past few years. It is understandable, then, how Aboriginal peoples might despair of ever winning negotiated agreements about community-based justice with governments that have shown consistent disregard for the validity of indigenous law. Certainly, they need to be cautious in this regard, and wary of imposed models that would duplicate mainstream ideologies and possibly extend state control rather than reduce it.[16]

Aboriginal Justice as Community Development: The Healing Paradigm

A discourse of disease is the predominant one in approaches to the social problems of Aboriginal communities. (Shkilnyk 1985; Aboriginal Family Healing Joint

Steering Committee 1993; Manson 1994; R.v. Naappaluk 1994:143; Justice and Warry 1995; Hazlehurst 1995; RCAP 1996c). Indeed, the Royal Commission report outlines one of their "four dimensions of change, to be "...healing of individuals, families, communities and nations" (1996e:7). Implicit in what many Aboriginal people are saying about community healing is a sense of loss of the community of the past. The lost community of the past is often portrayed as a harmonious whole in which "everybody got along"[17], shared, and showed respect to each other. Colonization and its effects are described as truly sickening, and it has been reiterated exhaustively that the time has come for individuals and communities to be cured. In their presentation to the Royal Commission on Aboriginal Peoples, the British Columbia First Nations representatives called the effects of the Indian residential school system like "...a disease ripping through our communities" (RCAP 1996c:376). The disease discourse is prominent throughout the RCAP report; they refer to the "...contagion of colonization" (1996c:376), and to residential schools as a "...particularly virulent strain of that epidemic of empire, sapping the children's bodies and beings" (1996c:379).

Many individuals within First Nations have suffered the destructive psychological effects of powerlessness characteristic of colonized populations whose best remedy is the exercise of real political power. Franz Fanon writes of how Western culture's effects have "...thrown the universe of the perceptions out of focus", and how "...families often cannot remain stable and unified when faced with the assault" (1963:196). Culture and role loss caused by the processes of colonization have wreaked psychological pain and

social upheaval in First Nations communities, the effects of which resonate outward from the individual to the community, and in the opposite direction (LaPrairie 1987; Justice & Warry 1995).

For several generations between the late nineteenth and mid twentieth centuries, children were taken to residential schools whose aim was to eradicate Indian culture and inculcate a Christian consciousness (Schmalz 1991;Dickason 1992).. When they returned to their communities, many of the children had lost their language, and thereby the means of cultural transmission from their parents and grandparents (Colorado 1988:57). Aboriginal economies eroded as a result of attrition of lands and loss of resources to the vastly expanded settler population, and with that erosion, many felt a loss of identity. Economic dependency, encapsulation on reserves, imposition of a foreign system of government, and restriction of traditional rituals and religions, have all been implicated in the high levels of alcohol abuse, domestic violence and suicide (Brant 1993:56)) that have characterized reserve communities in this century (LaPrairie 1987; Barkwell et al 1991:75).

The casting of justice reform into a healing paradigm by First Nations (Manson 1994; Roberts 1994; Ross n.d.) comes in part from the realization that the majority of conflict and "trouble" on reserves arises from alcohol abuse, psychological trauma and family dysfunction, problems whose genesis lies in culture loss, rapid modernization and economic deprivation that are poorly served by dominant system legality (Royal

Commission 1996:67; Aboriginal Family Healing Joint Steering Comm.1993: iiff). As one leader in Sagamok said, "...to have justice you have to have healthy individuals" (Fieldnotes, August 4, 1993). She could also have added, as have other Aboriginal voices, that healthy relationships and spiritual balance are considered key aspects of the healthy individual. The assumption, as one Sagamok Peacekeeper remarked to me, is that offenders turn to crime after they have become "sick" in their spirit and relationships.

Community-based justice systems have the potential to heal broken persons and relationships, because the Aboriginal approach to justice problems is to address the whole person in their social context, not to isolate a legal or criminological event. The social fact of young offenders committing "mischief", vandalism and petty theft, or violence that erupts after drinking alcohol, are not only problems of crime, but of individual social dysfunction and social disorder, or to express it another way, a sickness of the social body. They are also symptomatic of communities offering diminished life opportunities.

Because so much of the socially disruptive and violent behaviour in Aboriginal communities is directly attributable to alcohol consumption, the treatment of alcohol problems is most decidedly an Aboriginal justice issue, and justice systems that address this reality have the potential to bring about individual and community healing. Likewise, domestic violence is commonly understood as a symptom of sickness within the offender that spreads to the family and community (Aboriginal Family Healing Joint Steering

Committee 1993). Healing the offender is understood as an intervention whose positive effects spread to families and communities (Hodgson 1995:195). The Aboriginal approach to solving socially disruptive and violent occurrences is said to make offenders accountable to their victims and their community, but within an accepting and supportive atmosphere that enhances self-esteem and encourages rehabilitation. In the process, reparation of the ramifying system of relationships can bring about a sense of healing.

A common Aboriginal vision of a "healthy" community is one in which individuals and relationships are "healthy"; this in turn reveals a broad understanding of "health" that includes spiritual balance and self-esteem (Justice and Warry 1995:11), as well as the broader determinants of health such as economic sufficiency, adequate shelter, and employment opportunities. Community development in terms of contemporary Aboriginal discourse and popular understanding keeps the needs of the community and the individuals within it in a dynamic tension. In a very real sense, contemporary Aboriginal discourse equates community healing and community development. Communities will develop and "heal", when the individuals within them become healthy, and individuals will become healthy when they can live in a community that offers an enhanced universe of choices and opportunities, or what Dahrendorf (1979:70) calls "life chances".

The relationship between community development and self-government is also a dialectical one. Cultural and political self-determination will enhance the personal and

collective empowerment that leads to community development/healing. In order to implement self-government in communities, however, a certain measure of community development, particularly the enhancement of communication, needs to take place. Community empowerment and development are slow incremental processes, and it is therefore necessary to take a long term perspective on self-government initiatives.

Chapter Summary

Before proceeding to the Sagamok study, I have outlined the broader context in which the Sagamok case is situated. I have given an overview of the failure of the Canadian state to 1) address Aboriginal justice needs in reserve communities, 2) have law enforcement and administrative procedures that accommodate Aboriginal values and norms, and 3) recognize and/or support the Aboriginal right to autonomy in matters of social control. I point out that Canada has attempted judicial reform directed at Aboriginal needs, but that these invariably fall short of the fundamental shift in philosophy of law that would be necessary to accommodate Aboriginal social pathology and crime and their preferred ways of dealing with these.

If justice models are to be created on the basis of Aboriginal values, these cannot be assumed to match the lists of ideal, "traditional" values that pervade the Aboriginal justice literature. Rather, justice models will be most appropriate if they rest on analyses of contemporary community life and changing values.

The exercise of Aboriginal means of social control can be understood within a framework of legal pluralism. I emphasize that there has been an apparently continuous thread of resistance to the spirit of Canadian law, and ongoing implementation of traditional Aboriginal law in some communities. Aboriginal actors have sometimes been able to subvert and use the law to their own ends, even while being subjected to the insidious hegemony of foreign-imposed law. After outlining some of the most recent modifications to the justice system that have been attempted by government and at community initiative, I conclude that the common features of community initiated programs are that they arise in response to a need, they focus on individual and community healing, and they offer support for both offender and victim.

Community development and self-government are linked in a dialectical fashion. From a grassroots perspective, I maintain that community development can and should be an immediate priority, as the negotiations for self government are a long term process. I submit that community development and community healing are synonymous in current Aboriginal discourse, and that justice is linked to all other aspects of community development as a means of mending the destructive effects of state hegemony and legal control.

Today's Aboriginal communities are diverse and rapidly changing, the diversity and changes bringing with them the need to find new ways of conceiving of community. I believe that the process of research and development of justice models at the community level is one of the ways that these new conceptions of community can emerge. The

challenge to First Nations, at this "watershed" referred to by Joe Clark, is to find justice models that adapt the workable traditional mechanisms of social control to the heterogeneous social reality of contemporary Aboriginal communities. In the next chapter, I contend that the process of participatory research helps prepare the ground for such model development, and discuss both the model and how it was applied in the Sagamok study.

Chapter Two

The Process: Applied Participatory Research

"If the building of a bridge does not enrich the awareness of those who work on it, then that bridge ought not to be built...The bridge should not be "parachuted down" from above...it should come from the muscles and the brains of the citizens...so that the bridge in whole and in part can be taken up and conceived, and the responsibility for it assumed by the citizen."(Fanon 1963:199)

Implications and Outcomes of a Participatory Approach

Hugh Brody proposes that for Aboriginal peoples, "...to be neglected by science...might well be a blessing (Brody 1981:xii-xiii). There were times during the work at Sagamok that I felt this sentiment begin to prick my sensibilities, particularly if the research seemed irrelevant to community members[1], or if our interaction represented the "duelling paradigms" of Aboriginal and EuroCanadian cultures to which Rupert Ross refers (Ross 1994). For Sagamok's part, the decision-makers retained their willingness to have future research of this kind done by outsiders such as me. Despite problems that are implicit in the participatory research model, I believe it remains the most appropriate vehicle for applied, policy-relevant research in Aboriginal communities, particularly in fields such as education, health and justice.

The relationship between social scientists and Aboriginal communities is conducted against a background of cultural imperialism that makes fine-tuned negotiation and compromise on several fronts a basic ingredient of the relationship (Lockhart 1982; Brizinski 1989; Warry 1990; Reimer 1994). Unexamined practice on the part of EuroCanadian anthropologists and other social scientists can perpetuate this imperialism, because of the social placement of individual social scientists within the dominant system. I use the term "fine-tuned" advisedly, because during the entire course of this research, this negotiation was subtle and oblique, as much because of my personality as of the value Anishnawbek people place on restraint, and their avoidance of open interpersonal conflict. There were occasions on which I was considerably frustrated by delays and mishaps in the progress of the research, but I kept my frustration to myself in order to maintain friendly and respectful human relationships. Likewise, no one in Sagamok ever complained to me directly about my presence there or the way I was conducting the research, although I am sure there were frustrations on their part as well. Over the long term, this mutual accommodation and respect helped the research process, and more importantly, led to some new friendships.

An important part of my role as an anthropologist and member of the dominant society was to be open to discovering local knowledge. Because I was collaborating with members of the community as co-researchers, this included things such as their way of interacting with outsiders and with each other, and the culture of work in the community. For their part, it was necessary to adapt to and try to understand my work habits and

worldview, and tolerate my mistakes. I venture that this mutual adaptation was not easy for either of us.

I cannot speak for the people of Sagamok about what the "research relationship" was like for them, but it is an important part of this dissertation to discuss my perceptions of it, and how the progress and nature of the research was affected by some of the factors I have mentioned. I hope I can do this without feeling it necessary to defend or blame either of us for possible shortcomings in the research agenda or outcomes that occurred.

I chose the participatory action approach in part because its "value-explicit" (Van Willigen 1986:59) stance resonates with my belief that the division between objective "researcher" and passive "subject" reflects the ideology of rational Western science, and not the actual process of social science research, particularly ethnographic research. I also wanted the research to produce results that would be of use to the people of Sagamok, in other words, to be applied research. Frankly, I cannot imagine First Nations allowing anthropologists in on any other terms, in light of their feeling of having been "invaded" (Brizinski 1989:37) and "researched to death" (Warry 1990:63) over the past several decades (Lithman 1984:16).

The values and beliefs that guide action in cross-cultural encounters like this are often inchoate and changeable, and leave room for the creation of new knowledge on both sides of the communicative relationship (Bruner 1986:147; Fabian 1990). Both parties in the research relationship are teacher and learner interchangeably, and it is their

interaction that creates new knowledge (Fabian 1990; Reimer 1994:37). The participatory research process is a dialogical encounter that embodies this kind of knowledge creation (Hall 1979:405; Brizinski 1989:49; Said 1989; Fabian 1990:764). This is particularly true for ethnographic research, which is by nature interactive.

Participatory Research

The term "participatory research"[2] was coined by adult educator Bud Hall of Canada, who, with a long experience of work in Third World development, and East Africa in particular, developed the term and methodology. He did so partly in response to the frustration of other adult educators in Tanzania who saw the failing of traditional pedagogical methods to effect long-lasting change in development settings. Paulo Freire (1970) and his concept of empowerment of oppressed peoples through grassroots development in education are ancestral to participatory research. Freire believed that until oppressed peoples are empowered through setting their own agenda, development will be a hollow enterprise that perpetuates relations of dominance. As Hall notes, it is axiomatic in planning and education theory that, "...the likelihood of full and effective participation in any venture...is improved by involving would-be participants in the decision-making process."(1979:404). Hall was the one to link research theory to the emergent philosophy of participatory education.

The basic components of the PR trinity as Hall outlined them are: the full participation of the community; the educational potential of research, and PR's potential

for stimulating community development (Hall 1979:406). A few years later, Brown and Tandon (1983) made a distinction between 'action research' and 'participatory research'. They cited Rapoport's summary of "action research" as a practical, collaborative, problem-solving activity directed to the immediate needs of clients, but also to the goals of social science (Brown and Tandon 1983:278). In contrast, they summarized 'participatory research' as: "...an integrated activity that combines social investigation, educational work and action..." (1983:279). Brown and Tandon claimed that, while both types valued useful knowledge and developmental change, their differing ideologies moved action research to be concerned with problem solving within organizational structures, and participatory research to aim for a fundamental transformation that challenges the legitimacy of the dominant structural paradigm (1983:287; Convergence 1988:11; Reimer 1994:22).

The difference between the two is now less distinct, and the terms "participatory research", or the composite terms "participatory action research" (Ryan 1995) or "collaborative action research" (Warry 1990:62) are commonly used to denote an activity that works for change in a manner that involves full community participation in the research enterprise. In the context of applied anthropology for and with Aboriginal peoples in Canada, the broad umbrella of desired change is the realization of native self-determination (Warry 1990:64). When I refer to the Sagamok justice research as PR, this is what I intend to convey, although, as I go on to discuss, there are structural constraints

on the dissertation research of doctoral candidates that make it extremely difficult to approach full community participation.

As for the research process itself, PR calls for an equal, collaborative relationship between outside and local co-researchers, and the empowerment of the community as they become partners in the research enterprise (Hall 1979:402; Fernandes and Tandon 1981:5). The ideal result is developmental change achieved by engaged community members (Hall 1979:406). Hence PR is a framework within which a variety of methodologies can be exercised, rather than a methodology per se. The emphasis is on the research relationship, and the power relations within that relationship. PR requires that the researcher share power in a collaborative relationship through mutual decision-making about the aims and methods of the research to be done. Research can be a powerful tool of development in communities, and according to the PR paradigm, the knowledge generated by research becomes the property of the community in aid of development, rather than the property of the researcher.

The Paradox of the PR Paradigm

As Reimer (1994:12) has argued, the participatory model is an ideal one that is bound to be frustrated in practice, and this has led to a "...general failure in the literature to precisely define who and what has constituted participation". In other words, because participatory research often fails to achieve the ideal result of egalitarian engagement, researchers have a tendency to elide this aspect of their research efforts. Indeed, the

egalitarian ideal of PR is seen by some to be an 'illusion' with which host communities have lost patience (Brizinski 1989:38).

One of the chief paradoxes of participatory research rests in its ideal of having the community generate research needs and agendas. The PR paradigm allows for no element of "top down" creation of research projects from government or academics. Rather, research should arise from community grassroots as a way to reach consciously expressed common development goals. According to the PR ideal, a community would first articulate its development needs, formulate research goals toward those ends, and then engage whatever outside expertise is necessary to reach the articulated goals. If this were always the case, only those communities who were already a good distance along the self-determination continuum would benefit from research. There is a growing contingent of First Nations which have the means and political will to accomplish this, but there are a number of communities like Sagamok, who have pressing research needs, but are unable, for any number of reasons, to articulate a focus. They should not be excluded from the benefit of research resources in the interim because of this (cf Lockhart 1982:165; Warry 1990:64).

The underdevelopment of research agendas in communities like Sagamok is understandable in light of "internal colonialism"(Ponting 1986). Government control through the Indian Act crippled indigenous local control with government-created band councils, and in doing so divided communities and disempowered local decision-making

processes. The modern structures and political processes of First Nations are still in a state of flux such that insistence on a consensual ideal can delay community development. The paradox lies in the fact that the process of PR, if applied in a flexible manner, can be a means of enhancing development. By offering an interactive and communicative space to articulate programmatic needs, the PR process can move communities closer to directing their own research agenda and ultimately meeting some of their development goals.

After grappling with this and other key issues arising from the participatory model, I have come to rest on Warry's (1992:160) maxim that the participatory approach is "...best regarded as a theoretical model that must be constantly adjusted to the everyday realities of applied projects". I elaborate on the particulars of this adjustment in the Sagamok research throughout the remainder of this chapter.

Adjusting PR to the Realities of Sagamok

When I first broached the subject of conducting this research in Sagamok, I had both a research and a personal agenda for doing so. I had certain research questions that I felt could be answered in a community like Sagamok, but as a Ph.D. candidate, I needed to conduct research in order to fulfill the requirements of the doctoral program.[3] Since I was bringing both scholarship funds and outside agency funding to the project, the payoff for the community was that they would have research done at no financial cost. At the same time, the project would offer employment and training to a small

number of Sagamok residents who would be working with me as co-researchers, and ultimately a research report that could help guide community consultations.

I negotiated the research first with Sagamok Chief Nelson Toulouse, and later secured the Band Council's agreement. Negotiated in this way, with a principal gatekeeper of the community who wanted to see this kind of research done, the ideal of "community" setting the research agenda was not met. I doubt if this is ever the case in participatory research, because "community" is always incomplete and shaped by internal political forces. As I show in later chapters, an attempt to define "community" in Sagamok is a subjective and difficult thing to do. Tandon (1981:25) qualifies the "request from actors" step in the ideal PR approach by saying that the request may come from "powerful actors in the situation" or someone outside, but this can be transformed into a participatory process by following later steps, provided the "ideological stance is explicit". Doing this is Sagamok was something I saw as one of the primary and ongoing tasks of conducting the research, and one that required careful steps.

Ultimately, the extent to which a project is "participatory" is in the hands of the community, however that is defined. This was one of the hardest lessons for me to learn during the three years of steering the project through from a funding proposal to the presentation of a final report for Sagamok. Sharing control over the research proved to be a major challenge. Although this obstacle to participation is cited often in the literature (Fernandes and Tandon 1981; Jackson, McCaskill and Hall 1982:6; Warry 1992; Reimer

1994) I was unaware of how my conception of the participatory ideal was shaping my attitudes. Outwardly I was sharing responsibility and decision-making, while thinking that the people of Sagamok were not being "participatory" enough to make the project work. When I accepted that the project was going to happen according to Sagamok's criteria of participation, and not mine, I was able to change my perspective. I learned through this reflection that, not only can the PR model tyrannize researchers who fail to meet the ideal; if rigidly adhered to, it can be an ethnocentric refusal to operate according to local cultural norms of behaviour.

I began to learn this lesson early in the research process. In the summer of 1992, I went to Sagamok for a short, preparatory phase in which my major goal was to become familiar with the community, and to prepare the ground for the main phase of interviews by raising public awareness of the research. I also spent part of this time observing court cases in the nearby town of Espanola and interviewing outside justice personnel to establish the nature of Sagamok residents' involvement with the mainstream justice system. The funding proposal that I had written and Sagamok council had approved, was set up to split the funding over this three month period and a one year phase beginning in 1993. Under the terms of the proposal agreed to with the Fund for Dispute Resolution (FDR), Sagamok would administer the funds. The proposal did not yet have final approval by the Fund when I arrived in Sagamok, as I had decided that this was a necessary stage of the research whether it was funded or not. I had enough funding in

place from McMaster University and SSHRC to support my own work, but it was obvious we needed more funds if I was to employ local co-researchers.

As I was committed to sharing power and decision-making in the research process, I was reluctant to proceed without setting up a research committee. Chief Nelson Toulouse felt differently; he wanted to be sure we had the funds in place before publicizing the project. The result for me was a feeling of being in suspended animation, and a strain on my interaction with Nelson and with the funding officer, who wanted evidence of the collaborative nature of the research. I would have understood Nelson's position better if I had grasped then what Lockhart refers to as "community process dynamics" (1982:161), an insider's knowledge of social processes and relationships; knowledge that can only be feebly grasped by outsiders, and then only after long residence in the community. In hindsight I can see that he risked social currency if his advocacy of me and the research proved unfounded. Having substantial funding in place before publicizing the research gave the project more credibility and security.

Steps in the Research Process

1. Hiring Co-Researchers

I had hoped that the first step in the process would be to establish a research committee with whom I would consult regarding all the subsequent research activities. Indeed, this was to be one of the main mechanisms by which the research was to be "community-based". However, it was clear that doing this would take more time than I

had realized, as I was unknown and had yet to earn anyone's trust. By the time the FDR monies were assured, more than a month had passed, and it was now summer, when many Sagamok residents either work or holiday off the reserve.

After we received the needed funds, we could arrange for co-researchers to work with me during the time that remained for the first phase. I had an ideal co-researcher in mind: a person old enough to be taken seriously by most people, someone who was well known in Sagamok, a fluent speaker of Ojibway but with a solid grasp of English, someone with enough social skills to publicize the research, and who could commit to the project for the next year. According to the research proposal we had agreed upon, the co-researchers' main responsibility in this first phase was to research the documentary evidence of conflicts and their resolution in Sagamok history, and to work with me in publicizing the research project within the community.

Without a research committee yet in place, the Band Administrator and I agreed to proceed with the hiring of co-researchers for the rest of the 1992 phase. Once again, my agenda collided with that of community leaders (cf Ryan 1995). Rather than post notices for the positions in the hope of finding someone with some of my "ideal" qualifications, Nelson and other leaders chose to assign high school students to the project under the summer job placement program. I felt that the research needed older members with higher social profiles and experience, but in the interests of power-sharing,

I agreed without complaint and began to train the students in research techniques and work with them on a project plan.

I was frustrated with what seemed to be very low priority given to the research, and felt that this was unfortunate, given its potential to effect positive social change. On reflection, I could see that this was due to the lack of community sense of ownership of the research and the reason for its necessity, but more importantly, due to my reluctance to let things unfold more slowly because I was working to a schedule imposed by the requirements of my academic program. Indeed, Ryan estimates the average length of time for such a participatory justice project to be between four and five years. These events illustrate that this initial stage in PR, when the sense of community ownership is developing, can be a difficult one for researchers unless they have a good grasp of the PR process and are willing to share power in a real sense.

One of the hired students left the project after three weeks saying that it was too difficult for him to stay in Sagamok and continue to pay rent in Sudbury. Although he had relatives in the community, he was not a community member and he returned to live in the city. There was not enough time after his departure to hire and train another co-researcher, so the other student agreed to extend her time, and with the extra money we were able to raise her wages.

Fortunately for Sagamok and me both, the other student, Tracy Toulouse, gave large measures of enthusiasm, commitment and creative energy to the research. As we

worked together over the following two months our interaction restored my shaken confidence in PR as the intersubjective space of knowledge sharing that it is meant to be. Tracy, in addition to being an excellent co-worker and confidante, also provided what an older co-researcher would not have been able to: a window to the youth of the community, who, in any consideration of conflict and "trouble" in Sagamok, play a major role.

The following year, Tracy provided a necessary continuity by working on the project once more, and we hired community member Dianne Bob to work with us. It was helpful to have Dianne's knowledge of Anishnawbe language, and her perspective as an older adult, parent, and member of a different segment of the community, to contribute to the research team. In the absence of a research committee, the three of us worked together on the preparation of interview guides, often spending considerable time searching for the appropriate terminology or approach (see Colorado 1988).

When Tracy left Sagamok to take advantage of a cross-cultural educational experience, the personnel shortage became a hindrance to the completion of the project. In November, Dianne also moved from the community for personal reasons not connected to the research, and I was on my own. At this point, half way through the year, and at the point where we had completed the drafting of the interview guides and were about to begin conducting interviews, it was a major setback to contemplate beginning anew with the hiring and training of new recruits. High mobility of residents of reserves,

in response to limited employment opportunities, is a factor with which any participatory research project has to contend.

The solution we settled on was to hire interviewers on a pay per interview basis, as had been done in other research projects in the area. In the situation, it was principally time and funding constraints that led to this decision. The consequences were that we had no continuity of personnel other than myself, that there were time gaps when I was working alone. Despite these hurdles we were able to complete sixty-three interviews.[4]

2. Establishing a Research Committee

Having a research advisory committee whose members came from different segments of the community was one mechanism I had assumed would address the issue of representativeness, but the people whose advice I sought also suggested specific individuals for the committee. We decided that the committee should have at least one Elder, a Band Council representative, a youth member, a social services representative, a member of the local police committee and/or one of the local constables.

It was in September of 1992, after two failed attempts, that we at last managed to have a meeting of the committee. By this time, my residence in Sagamok was over for that year, and I was to return to McMaster University until the following May, to finish my academic requirements. Three of the committee recruits came to the September meeting, and we established the parameters of the committee's functioning. Its main purpose was to monitor the research process, act as liaison between me and the

community when necessary, and collaborate with me on the refinement of interview guides and other research materials. Tracy had agreed to work part time over the winter, continuing the document review and publicizing of the research.

Just before I returned to McMaster in September, there had been a Band Council election, and the incumbent administration had been replaced by their political rivals. I returned the following May to begin the main stage of the research. In discussing the research with new Chief Wilfred Owl, I learned that all committees operating under the previous administration had been dissolved, and that the rules for forming committees had changed. No committees could be set up until the Chief and Council had considered and approved the move.

At this point, I was uncertain of the new administration's views of the research project, which had been negotiated by their predecessors. The band administrator, with whom I had worked co-operatively the year before, acted as a liaison and advocate, and we acquired the approval of the new chief and council. However, it was necessary to go before the new council to outline the aims and methods of the research, obtain their permission to proceed, and ask them to sign a funding agreement with the Fund for Dispute Resolution.

The fate of the research committee was an example of the vulnerability of the research process to political events. The change in administration heralded a two year period of turmoil and dissension in the community, with private and public accusations

of wrongdoing and mismanagement, and open opposition by several members to Band Council policies. Band authorities did not go ahead with the creation of a justice committee. I attempted to form a research support group, or "circle" that was open to anyone who wished to attend, but popular wisdom had warned me that volunteerism is extremely weak, almost nonexistent in Sagamok. In interviews, there were several references to this state of affairs. As one band member put it to me, in reference to the need for adult supervision at the youth centre, "...no one wants to volunteer anymore; they only want to do things for money; "...it's all money..."[5] Another commented that "People here won't go out of their way to help each other. It's the dependency syndrome...They don't understand commitment."

Since the research committee seemed an elusive goal, I approached the local policing committee for permission to attend one of their meetings. I hoped to discuss the possibility of an integration of justice issues in general with their work. They agreed to my request, but for various reasons they did not have a meeting for the next several months. Policing in Sagamok was undergoing a significant change during this period, as they came under the new Regional Anishnawbek Policing Agreement that created an autonomous Aboriginal police force in the region.

3. Fostering Community Participation in the "Justice" Issue:

With my attempts at setting up a research committee proceeding slowly, it had been necessary to devise other means of making the project participatory in the interim.

Aside from our conscious efforts to set up a committee and publicize the research, however, awareness and a sense of ownership were developing as a byproduct of the actions and interactions of myself and the co-researchers.

Our visibility in the community was one of the factors that helped to slowly build up awareness and acceptance of the idea of "justice research". We had a small office set up in the community centre, just across the road from the Band Office. Because of a critical shortage of office space in Sagamok, the community centre functioned as a multipurpose building that housed a day care centre, a medical clinic, a recreation facility and offices, a planning and development unit, the Sagamok Bingo, meeting rooms, banquet hall, literacy classrooms, and distance education terminal.

In addition to our visibility to all the employees who worked in the building, there was a steady stream of band members in and out of the building, and our office was accessible to them. Tracy had used her artistic talent to paint a large poster for our wall, and people would come in and ask what "Native Justice Research" was about, giving us a casual opportunity to discuss the project with interested people. Some unplanned interviews arose from some of these encounters.

We also set up a booth at the yearly Sagamok Pow-wow, with tape recorder ready for anyone who wanted to have a say about justice issues, and pad and pencil on the table for written comments. Prior to the Pow-wow, Tracy set up an Essay contest which we advertised in the local newsletter, asking entrants to give their views of the Canadian

justice system, and whether their thoughts on how it could change if necessary. We received only one entry,[6] an eloquent, incisive and moving essay by an ex-offender. He subsequently agreed to participate as a panel member in an educational community forum, together with representatives from the justice system and treatment facilities.

The co-researchers themselves were significant catalysts in the growing identification with the aims of the research. Each was a member of an extended family network, and they would naturally discuss their work with their kin. My growing awareness that this was happening helped to teach me about the way in which change can and does ramify through family networks, especially in small communities. This was a valuable insight into workings of the Sagamok social body, the way in which a similar dynamic affects the progress of conflicts, and the often subtle nature of "participation".

For the most part, I believe their experience of working on the project was a positive one, and their individual awareness of wider justice issues increased significantly with their job training and access to information that I had available in the office. After the brief training session of about a week, in which I laid out the project as I saw it and taught them basic research techniques, each of the co-researchers spent time reading literature about native justice issues and descriptions of native justice pilot projects elsewhere in Canada.

One of the problems we faced was the perception that the justice research was part of the self-government plan for the community. In the most basic sense, community-

based justice is about self-government. What some Sagamok community members meant when they asked if we were "about self-government", however, had different implications here. In this case they were referring to the North Shore Tribal Council self-government agenda.

Contemporary relationships between individual communities and regional political bodies such as the North Shore Tribal Council are often characterized by inadequate communication and conflicting goals. The regional leaders at the North Shore Tribal Council had an overt agenda to bring about self-government for the seven member communities along the North Shore, and had signed a framework agreement with both levels of government outlining the broad parameters of its implementation. For the most part, these regional leaders were younger and had more formal education than the average community band council member. What I observed in Sagamok, however, was that the general and specific points of the self-government agenda were not being communicated to the grassroots of the community. The Sagamok membership were confused about what "self-government" actually meant, and older members in particular feared that present benefits under the Indian Act would be lost. One regional leader, a member of the Sagamok community, expressed his view of the situation this way:

> *"The majority of people are unaware of the global scene. They are concerned with day to day. There's ignorance of the issues, even on the council. They don't even know the Indian Act. They're not aware that authority comes from the outside, not ourselves. ...We need to educate the community. They don't understand self-government."*

Despite their awareness of the need for education about self-government, some of the speeches I heard given by Tribal Council representatives at community functions spoke generally about the history of Indian/White relations rather than giving the specifics of plans for the future. An emphasis on the historical narrative of Aboriginal-White relations, and the device of starting at the beginning and laying out the base of a story are consistent with Anishnawbek rhetorical patterns, but the short time period allotted to such education sessions left people uninformed about basic elements of the self-government question. I sympathized with the Tribal Council officials as they were caught between demands for information from their community constituencies, while at the same time caught under pressure from provincial and federal bodies to produce political agreements and concrete plans for self-government. Community wisdom was telling them, however, that the principles and specifics of such agreements should be coming from the grassroots, according to the principles of native lines of authority. National bodies such as the Assembly of First Nations have been told the same message from communities for years, but the gulf remains between self-government rhetoric and the pragmatic concerns of the average person.

The same conservative/progressive tension that causes political strife within individual communities is writ on a larger scale between the Tribal Council and those member communities who have older, more conservative leadership. When the political leadership of Sagamok changed in 1993, a more conservative administration opposed

Sagamok's membership in the Tribal Council, and held a community referendum on the issue that resulted in Sagamok's withdrawal from the Council.[7]

In Sagamok consciousness, self-determination in the generic sense and inherent rights affirmed in treaties are disconnected from "self-government" as it has been proposed by regional Indian political bodies and government policy of the past few years. Despite the long history of circumscription of their daily lives by government control, for many Sagamok members, their inherent right to self-determination is ineffable and strongly held. In my experience, this is perhaps even more true for the elderly members of the population, despite their public reticence on the issue. I believe this is so because they are the last recipients of Anishnawbek oral history transmitted in their language. The oral tradition kept the narrative of Aboriginal rights alive throughout and despite the history of interaction with "the white man". The elderly Sagamok members almost universally lament this loss brought about by the attrition of their language, and despair of how to respond to it[8].

As evidence of the sense of their right to self-determination, there is popular support for economic self-sufficiency, control of Sagamok Anishnawbek traditional lands, freedom from taxation, aboriginal rights to hunting, trapping, fishing and timber use, and child welfare policy. Our interviews also showed that the majority of community members favour self-determination in a number of social control issues such as treatment of young offenders and alcohol abuse. The fairly widespread resistance to "self-

government" then seems like a contradiction, but I believe it arises from the fact that local politicians, and those at the Tribal Council and wider regional levels have not clarified the link between self-determination and self- government for their membership. It also points out the need for enhanced communication between the generations.

Because I had heard enough grassroots talk from different sectors of the community to know how various people felt about the "self-government" issue, I did not want our research to be classified under that particular banner, even though our work was fundamentally "about" self-determination. I also had the classic anthropological dilemma of having lived with and associated with members of the "progressives" who were assumed to favour self-government, and was thereby at risk of being put on that side of the community by more conservative members. I believed that too close an identification with the "self-government" agenda as it stood in the popular consciousness would close off potential communication with some community members.

During one interview with a member of the new band council, I closed the session by asking the participant if he had anything further he wanted to add. He hesitated for a moment, then ventured that he hoped I wouldn't be swayed by "the self-government people" in coming to any conclusions in the research. I was reminded at that moment of how convoluted the issue was, when I realized that I had inwardly agreed with many of his comments about self-determination during the course of our interview, yet I knew that he and others who had an equal passion for the good of their community were opposing

each other rather than working together. An outsider like me was in the position to see the value of both sides and what potential their co-operation would have for the community.

Whenever I had the opportunity, I emphasized that this project was supported chiefly by non-government funding and that I was not working for the government. Moreover, I was doing my best to start at the grassroots level in laying the foundation for any possible justice initiative. It was one of the most challenging aspects of the research process to keep the differentiation clear between the goal of self-determination and the specifics of self-government framework agreements, and I will likely never know to what extent I was able to do this.

Our principal conscious effort at encouraging participation in the justice research was to publicize our goals and activities through the local media and information sessions. I found it difficult to walk the fine line between raising awareness and promoting a particular stance. While I favour native self-determination and the development of community-based justice, I felt it would be inconsistent with the principle of local self-determination to promote one form or another, or even to promote change of the status quo unless there was significant community readiness to do so. A major goal of the research as I saw it was to assess this readiness. Our presentation of the research, therefore, was intended to make people aware of what kinds of questions we were asking, and how we were going to conduct the research, while trying to ensure that

we did not bias the results. We tried to do this by offering information about the broader context of Sagamok local justice issues in as neutral a manner as we could.

Tracy and I worked together to write articles for the Sagamok monthly newsletter and the Tribal Council newspaper Council Fires. Tracy prepared posters which she placed in strategic spots around the reserve. We held information sessions: one for the Elders specifically, where we showed a video in the Ojibway language about the Manitoba Justice Inquiry (Manitoba 1991c), and another for the whole community at which various representatives of the formal justice system and Aboriginal representatives spoke. Ray Solomon, our sole entry in the Essay Contest mentioned earlier, sat on the panel and shared his insider's perspective of the Canadian justice system. About twenty band members, mostly women, attended this session.

4. The Interviews: Adapting Method to Indigenous Expertise

We began community interviews in November of 1993, about a year and a half after my initial arrival and initiation of the research. It may seem that this is a long time to spend in preparation, but in a community that is wary of outsiders and edgy about "self-government" it was necessary to prepare the ground as carefully as possible. Part of the delay was also due to the situation of co-researchers leaving the community, and some of the political problems already mentioned.

The long preparatory period gave me an opportunity to learn about what Lockhart (1982:161) calls "community process dynamics" before drafting interview guides. I am

certain that this learning helped make the interview questions more relevant to Sagamok reality. In this process, Tracy and Dianne were my main teachers as we discussed various issues while I worded the interview questions and they contributed their inside knowledge. Daily life around the community centre, my observation of and participation in community events, and my conversations with community members and leaders were also my teachers. This led me, for example, to frame questions about the nature of community in terms of 'gossip' and 'respect', and to know which questions to ask about particular areas of concern such as vandalism and alcohol abuse. We eventually drafted interview guides on which we all agreed.

The initial plan was to interview a stratified random sample of Sagamok's roughly twelve hundred residents. It was clear fairly early in the process that this would have to be adapted to indigenous science, as this type of sample would have excluded some of the Elders, the acknowledged repositories of indigenous knowledge. At that time (1993) there were only seventeen people in Sagamok who were over the age of seventy-four, and a random sampling technique would have excluded half of them from the overall sample. This was unacceptable to both the co-researchers and me. My co-workers simply assumed as a matter of course that all the Elders would be interviewed. Moreover, it was seen as a matter of some urgency, as one never knows when the community will lose Elders through death. The compromise we reached was to interview all of the seventeen senior residents, and take a stratified random sample of the remaining population between the ages of fifteen to seventy-three years from the names on the Band

List. In addition, we agreed to interview people known to be community experts or leaders in various relevant fields.

A factor that affected our progress was absence from the community (cf. Auger et al. 1992:323) or non-compliance; prospective interviewees would agree to an interview and then not be home when we arrived. When this occurred two or three times, we could be fairly certain that it was not coincidental. Of those interviewees who did participate, however, there was a high degree of compliance with the questions that we posed.

Very few of the interviews were audiotaped, as I had planned, because residents refused this procedure, and co-researchers were also very reluctant to tape interviews. Instead, we took detailed notes, verbatim when possible, of the interviewees' answers and comments.

The results give a picture of a representative sample of the population's perceptions of the major justice problems in their community, and some of their ideas about how to solve those problems. Together with the data we gathered from police records, court observations and historical documents[9] the total gives a good basis for the development of a community-specific model of justice for Sagamok, if the community so wishes.

What we did not achieve in this study is a profile of offenders, as Sagamok police refused access to that information. A partial knowledge of this could be obtained from court records, but that would only provide information about those offenders who

proceeded to trial. More information could also be obtained by tracking Sagamok residents charged in other jurisdictions. We may have missed a significant percentage of Sagamok offender profiles by not doing this, as it has been shown that the majority of Aboriginal crime resulting in incarceration takes place in urban areas (LaPrairie 1992:8) This is necessary information for program planning, and it would be of benefit to future planners to have information not only about the nature of offences, but particularly about the age and gender of offenders. Although we did not obtain documented evidence of these factors, interviewees' knowledge and perceptions of this kind of information, including that of the police, community social service workers, justice system personnel, parents and those who had experienced the justice system as offenders or victims, has been an equally valid source of knowledge on which to develop a justice model.

Participatory research in Aboriginal communities today is characterized by the adaptation of method to local knowledge and what Colorado (1988:11) calls "indigenous science". I understand her to refer to an experiential and relational kind of knowledge to which outside researchers are not privy. In the interactional process of participatory research, however, a synthesis of such insider knowledge with the skill of social scientists who are familiar with other modes of learning leads to a new kind of knowledge creation (Lockhart 1982; Fabian 1990). The process is subtle, and in my experience, requires patience, receptiveness and good will on both sides.

Chapter Summary

Part of the patience needed in the participatory research process is the willingness to see projects as long-term and incremental. As I have mentioned, participatory justice research projects have been estimated to take an average of four to five years (Ryan 1995). In this chapter, I have described participatory research as geared to social change, value explicit, collaborative and interactive. While the goal of participatory research is to work for change, this is always subordinate to the principle of community choice and self-determination.

In the Sagamok study, this principle is illustrated throughout the process, as I worked in an interactive and dialectical mode of knowledge production with local residents on the design, pace and execution of the research. I have described local constraints to the "ideal" research design, and the enrichment of the process through contribution of local insider knowledge and expertise.

Some commentators have expressed doubts about the possibility of authentic participatory research in contemporary communities, in light of what Warry describes as "...lack of research and analytic skills at the local level" (Warry 1992:156) that can make the dialogic process "extremely artificial". Taking a similar stance, Reimer (1994:20) writes that only a "diluted" participatory model is possible in Northern communities. In light of their critique, and similar sentiments expressed by Ryan (1995), I have had to ask whether the Sagamok research was indeed "participatory". As I say above, if you take a

long-term, incremental approach to participation, such a question takes years to answer. Perhaps it would be best to say that every participatory research project of this kind serves to broaden the understanding of what constitutes participation for research in contemporary Aboriginal communities. As I say earlier in the Chapter, communities that have dire need of research toward practical ends should not have to wait until stringent conditions of participation can be met. I believe that the terms and nature of participation can be negotiated over the course of the project, as was done in this case. The dialogic nature of such negotiation was, I believe, one of the strengths of this project, and created new knowledge. Aside from Warry's contribution (1992) there has not been a clear enough distinction between anthropological participatory research and other kinds. With Fabian (1990) I believe that the dialogic encounter characteristic of the ethnographic method can be a powerful means of knowledge creation.

One of the factors constraining the extent of participation in this project is what seemed to me to be a disconnectedness in the Sagamok popular consciousness between the concept of self-determination and the pragmatics of self-government planning. I outline some of the causes for this, including gulfs of communication between generations and political factions within the community, and a prevailing sense of disenfranchisement from larger political bodies such as local Tribal Councils and other regional organizations. In the next chapter, I give a historical background to cleavages such as these.

Chapter Three

The Community: Changes and Challenges

"...any tradition is so rich in ambiguity that persuasive arguments can be offered for developing it in alternative directions." (Unger 1983:91)

Introduction

As you drive to Sagamok along the road that winds for several kilometres beside the dark, steady waters of the Spanish River, at about the halfway point you see a prominent landmark on your left, sharply defined in the rockface of the LaCloche Mountains. Sagamok people call this place "Indian Head", and when seen in profile, it does conjure up a warrior of the past, the bristly pine tree on the top of the cliff serving as a feather headdress, an anachronistic "HI" painted in white on his neck. I drove past this icon several times each day. When Sagamok Elder Dominic Eshkakogan told me the story behind the place, I learned that this natural phenomenon had a supernatural significance that embodied cultural themes of deviance and social control. This is the story Dominic told me:

The Story of Spirit Lake and Indian Head:

> Some people had been trapping beaver all winter. They went fishing up the Sable River. They got some fish. There was one man who had stayed down all winter. He got beaver and was cooking it. The others watched him clean and cook it. He didn't take the glands out, or take the hind kneecaps out to return them to the water, as they were supposed to do to show respect. The others told this man, "Don't let the steam of your pot mingle with the steam of our pot", but as often happens in a campsite with pots boiling near each other, this happened.

> That night, when they were sleeping, the man turned into a windigo, a cannibal. He killed all the men except one, who had been sleeping near the edge of the campsite and managed to escape. The man who had become a windigo never came back. People believed that he was living in those cliffs along the river. At night, he would lay under the overhang of the cliffs. They would send out war parties after him, but he killed them all. Finally, they called in a medicine man for help. The medicine man called on the Thunderbirds, who hit the cliffs with lightning and thunder, and the cliffs shattered. What remained in the side of the cliffs was the man's head, which can be seen there today, and his spirit lives in the lake just behind the hillside, which is why it is named Spirit Lake.

Dominic also told me that the water of this lake is crystal clear and full of bass, but the bass don't bite. People have been known to mysteriously disappear into those clear, fathomless waters.

The story of Spirit Lake, a mythological murder story, reveals features of Anishnawbe modes of interaction and norms of social control. Unspoken, but understood in the story is the use of 'bad medicine' by a 'bearwalker', or sorcerer. According to Ojibway understanding, it was the power of sorcery that turned someone into the violent and cannibalistic *windigo*[1]. Sometimes this is an indication of malevolence turning back on its user, so the man in this story could have been a bearwalker himself. The story would indicate this, because only a crazy person or one with strong power would taunt the spirit world so flagrantly by breaking the fundamental laws of showing respect to animal spirits.

What I find most instructive about this story, however, is the way in which his fellow Anishnawbek handled this violent destructive force in their midst. Their actions could have been guided by the Ojibway ethic of non-interference in others' behaviour.

The warning signs were there, but the only action taken was to try to keep a safe distance, to avoid contamination. The story says nothing about any preventive measures taken to stop or punish his actions. If the murderer in this story was a powerful bearwalker, then fear for the health and well being of themselves and their families would have been the motivation for not crossing him in any way. Whether from fear or a desire to avoid confrontation, the Anishnawbek of the story took no action of their own until after the *windigo* had killed many of their people. Then they called on supernatural help from the outside.

I think there are contemporary lessons to be learned from this story, and I will address them later in a discussion of modes of social control. Just now, however, I turn to a brief outline of historical factors that have helped to shape the community of today.

A Brief Historical Picture

As in every other community, history sheds some light on present day social fracture lines and ongoing political conflicts. These divisions have at present, and will continue to have, a direct impact on the ability of the membership to work together on any program initiative, whether it be community-based justice, education, economic development, or any other form of community development. The history of how Sagamok was configured into its present shape will help to show the roots of some of these divisions.

Spanish River is one of the reserves that was set out in the Robinson-Huron Treaty of 1850 by the colonial government. Some two hundred years before, Etienne Brule and other French explorers had reported the residence of the "Amikwa" (Beaver) people in this location (Kinietz 1972:317; Butterfield 1898; Hallowell 1955:115; Hickerson 1972:43; Lytwyn 1990:3), but subsequent migration patterns and coalescence of small groups make it difficult to say that the Amikwa were directly ancestral to the Sagamok Anishnawbek. The complexity of migration and group organization patterns in response to pressures generated by colonisation (Hickerson 1972:20;Cornell1988:31) such as territorial battles, the fur trade, missionization and mass European settlement, make it difficult to trace Sagamok history with accuracy. There are, however, documented reports of agriculture on the islands immediately offshore the present Sagamok territory between the years 1760-1776, which would indicate summer residence and perhaps the beginning of yearly residence for some Anishnawbek at that time. Alexander Henry (1809:36) reported that "From the mouth of the River des Francais to the Missisaki is reckoned fifty leagues, with many islands along the route...On all the islands the Indians cultivate small quantities of maize".

The Spanish River people practiced a hunting and fishing subsistence economy, migrating inland upriver in small family groups during the winter months for hunting, and spending the spring and summer months in village aggregates at the lakeshore for fishing. Ruth Landes (1969:1) describes the Ojibway as living in "water-groups" of village clusters; the Spanish River was one body of water along which these small

villages grouped. This would have put Sagamok in a strategic location, resting as it is at the junction of two large bodies of water: the Spanish River and Lake Huron, and right on the main east/west canoe route across the top of Lake Huron.

Sagamok's strategic location at the mouth of the Spanish River was appreciated by the fur trading companies. The Spanish River mouth area and particularly a spot east of the mouth known as LaCloche, was an important locus of fur trading activity throughout the French and British fur trading era, from circa 1760's to the decline of the fur trade in the mid nineteenth century (V.Lytwyn, p.c.) The LaCloche river, a smaller river to the east of the Spanish, was a key portage link to points north and east of LaCloche. The Hudson's Bay Company ran the Fort LaCloche trading post on the LaCloche River site until the end of the nineteenth century.[2] The establishment of the LaCloche Post on Spanish River Anishnawbek territory no doubt encouraged Anishnawbek from various parts of the territory to settle in the LaCloche area year round, as time went on (cf Rogers 1969:32).

In 1849, Government representatives A. Vidal and T.G. Anderson, charged by the colonial government with outlining the parameters of reserves all along the North Shore in preparation for the treaty signing, reckoned the number of Anishnawbek Headmen in the North Shore area to be twenty-two. They also wrote concerning the demography of these bands, that "...there are fourteen located upon the shores of the lakes and three which are confined to the interior; there are also two bands having their hunting grounds

partly in the Hudson's Bay Company's territories and partly within the limits of the Province..." (cited in Lytwyn 1995:7).

In more recent memory, people report that their ancestors were Potowatomi from what is now the State of Wisconsin, Odawa (Ottawa) from Manitoulin Island and areas to the south and east of Sagamok, Ojibway from various areas, including those further up the Spanish River watershed, and those who "were always here". Although "shared communities" such as this were rare in the early postcontact period (Hickerson 1972:10), they became more common later, especially as Ojibway communities took in Potowatomi refugees escaping the harsh relocation policies of the American government in the early nineteenth century.

Early records of the Department of Indian Affairs[3] report that the Spanish River Band, as it had been designated by the government during Treaty negotiations in the mid 1800's, actually consisted of three groups of people originating from different areas. Two Spanish River "principal men", Namassin and Naoquagabo, are named on the Robinson Huron Treaty in 1850 for the "Spanish River Indians" (Canada 1992), but as the treaty talks took place in the fall of the year, there were Anishnawbek not represented in the talks. Sagamok oral history contends that four leaders were involved in treaty negotiations with the British.

What was called Spanish River Band No. 1, a band of Ojibway, was supposed to have come from the North Shore area itself; Band No. 2, also Ojibway, was divided

into two groups: one that came from the "left bank" of the Spanish River at the eastern end of the present Reserve, and another small group that lived upriver near the headwaters of the Spanish River, in the Pogmasing and Biscotasing areas. What was called Spanish River No. 3 was a group from Manitoulin Island who lived on the unceded territory at Wikwemikong, and from an area near Killarney, on the northeastern shores of Georgian Bay. Many of this group were Odawa. The Biscotasing and Pogamasing people were later referred to in government correspondence as "Spanish River No. 4", just after the turn of this century.

There was confusion in the Department of Indian Affairs as to whether the Spanish River Indians were one band or two. Moreover, within Band No. 2, there was a division developing between those who lived on the lakeshore and those who lived inland. This split within Band Number Two is likely where the three initial groups later came to be conceived of as four. In 1889, there were two chiefs; one lived at Sagamok, and the other inland at Pogamasing. The people of Band No. 2 living at Sagamok wrote to the Superintendent General of Indian Affairs to complain that the chief at Pogamasing, ostensibly Chief of Number Two Band, was "...nominally chief though never elected by us but merely calls himself chief...and never concerns himself with our affairs"(NAC RG 10, vol. 2475, file 98,646 [1889]) The confusion within the Department of Indian Affairs over whether the Spanish River Indians were one band or two, carried on for decades. According to Indian Affairs documentation there were two Chiefs until as late as 1932. Official correspondence in 1937, however, indicates that there was only one

Chief by then. In 1953, the Department arbitrarily decided that the people of Spanish River were one band, and therefore, according to the Indian Act, entitled to only one Chief and one Band Council.

Some of the people documented in the early government correspondence were signatories to the treaty, others came to reside at the Spanish River mouth location later, and had their names added to the treaty list at that time. The issue of who "the originals" of Sagamok are, is still the subject of competing claims to legitimacy.[4] Historical documents pertaining to the reserve show that very shortly after the treaty was signed, there was dissension as to who the rightful signatories to the treaty should have been.[5] This was apparently a common occurrence at the time, as principal men battled over scarce resources in the midst of the settlers' demand for their land, with little government protection. As a result, principal headmen sometimes rushed to sign agreements with the British before their rivals could do so (White 1991:496). It is very likely that many people who counted themselves amongst the Spanish River Anishnawbek were simply not counted at the time of Treaty negotiations, because it was in the fall of the year when most families would have already left for their winter hunting territories inland.

A report written in 1891 by a Department of Indian Affairs superintendent[6] points to some of the socioeconomic differences that were apparent between the groups that made up the Spanish River Band at the time:

> "The first division farm and fish,...The second are hunters, with the exception of those who live on the reserve, who are farmers. The third division live on Manitoulin Island and are very well-to-do."(p.6)

Not long after the turn of this century, some of the "well-to-do" families from Wikwemikong, Manitoulin Island, most of whom were Odawa, moved up to the reserve at Sagamok and began farming, logging and commercial fishing, as they had on the island. They left Wikwemikong because of conflict there between treaty and non-treaty Indians (Fieldnotes June 9, 1992). Many of this group were of mixed Anishnawbe/Caucasian ancestry as a result of long-term interaction with French or British settlers or traders. One of those families were the first at Sagamok to own and drive a car, and started up small business enterprises on the reserve. In general, this group of a few Ojibway and Odawa families attained a higher level of education than other families on the reserve, and they became influential in local politics under the elected Band Council system dictated by the Indian Act. They now constitute almost half of the present Sagamok membership. Those families who had resided in the heavily missionized Catholic community of Wikwemikong on Manitoulin Island were almost exclusively Catholic.

Some of the population of Sagamok Point and the east end of the reserve on the banks of the Spanish River adopted Anglicanism brought by missionaries in the late nineteenth century, and the Pentecostal church gained a foothold in Sagamok later. It later superseded the Anglican church as second to the Catholic church in influence. Although Christianity eventually made a significant impact on Sagamok consciousness and way of life, the traditional Ojibway religion was still a powerful force in the nineteenth century. In fact, a Special Commissioner's report[7] of 1856 indicated the

"...small apparent results of the labours of the Missionaries..." amongst the Spanish River Indians. Sagamok oral tradition holds that this place was once a locus of strong power, known for its medicine men, and Anishnawbek came from other areas for healing or the shaking tent ceremony, and for sanctioning of marriages. I was told that the most powerful medicine man in the whole North Shore area was a Sagamok Anishnawbe.

The fur trade, logging, fishing and small scale farming were the backbone of the local economy through the 1800's. After the decline of the fur trade, fishing and logging (mainly pulpwood) remained key economic sectors, and hunting for large game remained a significant part of the domestic economy. Since the signing of the treaty and the subsequent delineation of the reserve, and the passing of the Indian Act in 1876, the economic and political independence of the Sagamok Anishnawbek had begun to wane early in the twentieth century. The natural resources on the reserve territory were increasingly unable to sustain a growing population, and settlement by an expanding French and English population in the surrounding area was circumscribing their use of traditional territories North of the lakeshore.

As the settler population in the area grew, Sagamok Anishnawbek began to exploit this new market through the commercial sale of blueberries and crafts for tourists such as porcupine quill and birchbark boxes, and woven ash baskets. Sagamok is just a few kilometres off the Trans-Canada Highway, and thus within easy access of the summer tourist traffic that temporarily swells Northern populations every summer. This

short distance from the main thoroughfare was just enough of a buffer zone from white society that Sagamok, despite Christian missionizing and the overarching political control of the Indian Act and other federal policies, was able to maintain significant social distance from the local Canadian population well into this century.

In interviews, a number of Elders describe the days before the 1960's when there were not yet phones, running water, electricity or paved roads, as a time of closeness and mutual reliance. Elders report that "everyone had their own gardens" in those days, that they worked hard farming or harvesting timber, and "weren't on welfare". In the 1950's Sagamok had about a third of its present population, making community level decision-making and communication more direct than it is today.

Reportedly, Anishnawbe language use was virtually universal in Sagamok until the early 1960's. Today, it is rare to meet an elderly resident of Sagamok who does not speak Anishnawbe, and rarer still to meet a person under thirty who does; a demonstration of rapid attrition of indigenous language that characterizes the modern world. The sixties brought two major changes that contributed to the attrition of Anishnawbe language: children began to go off reserve to school in nearby Massey, and the provision of electricity brought television into Sagamok life. Today, in an attempt to reverse the language loss, Sagamok children are taught the Anishnawbe language at the local Beedaubun School, but for only one class period each day. There are no provisions for teaching Anishnawbe to adults at Sagamok, and the working language is almost

universally English. Under such conditions, it will be difficult to maintain Anishnawbe as a living language in Sagamok beyond the next generation, unless urgent and extensive measures are taken to preserve it.

The Community Today

The land area of the Sagamok Anishnawbek reserve is approximately 28,000 acres; a small land base in proportion to the population of almost two thousand, when compared to other reserves in the area. Timber resources are now severely depleted, there is very little farming, and only a handful of people still maintain seasonal gardens to feed themselves. Sagamok fits the description of the typical reserve land as put to me by one band member: "Every reserve I go to, I see the same thing, rock and water, rock and water, that's all there is" (Fieldnotes Dec.16, 1993). Admittedly the rock and water of Sagamok make beautiful scenery, but the land is increasingly unable to sustain economic activity for a population that has nearly doubled in the last twenty years (INAC 1992a). Although fishing, trapping and hunting for big game are still reportedly common, the extent of these activities has not been recently documented.[8] There are only two or three people who hold commercial fishing licences, and very few who still work traplines.

In 1995, the on-reserve population of Sagamok was 1,105 out of a total population on the Band Register of 1,803. Of the resident population, approximately half are below the age of twenty-five. The on-reserve figure represents 209 households, with an average of four persons per household. More than half of these households have

annual incomes under $20,000. Employment statistics (Sagamok, on file) show that only fourteen per cent of males and twenty-three per cent of females are employed full time. Less than half of sixteen to twenty-five year olds are in training or education, and only three per cent of males and one per cent of females in this age group are employed full time. This leaves a high proportion of bored young adults with time on their hands on a daily basis. Alcohol and drug use are high in this age group, as are accidental deaths related to drinking, and suicides.

Sagamok men in full time employment, including those living off the reserve, are working predominantly in the forestry sector. As is the case on many reserves, the First Nation itself is the largest employer, and local services are almost totally staffed by Band members. More than forty percent of Band members are on social assistance or disability allowance.

Aside from the bureaucratic administration, there is a new (1994) Health and Social Services Centre offering a range of services, a local elementary school and library, a community centre and day care, a Distance Education station, police and fire services, and a youth drop-in centre housing video games. The Band have successfully bid for timber-cutting rights off the territory, and are investigating a traprock mining operation on the territory. Most of this development has taken place in the last fifteen years.

The hint of future class division in the Superintendent's report of 1891 has been borne out in the present. Just as in many contemporary Aboriginal communities (Boldt

1993:xvii), one of the major fracture lines in the community is that between the affluent, more educated group and those with less income and education. It was a theme that kept repeating itself throughout interviews with community members and leaders alike, often expressed in terms of "jealousy" by the affluent sector. From the vantage point of the Sagamok poor, those with "big houses" and the incomes to support them are "too good for the rest of us". Although these socioeconomic differences are most often spoken of in terms of houses, boats and automobiles by the lower income group, the less often mentioned but manifest distinction between them is their degree of acculturation. This distinction falls along the lines between extended family groups. The more affluent families are largely those who migrated from Manitoulin Island and their descendants. Some of these families were affluent farmers on the island before migrating to Sagamok; some of their ancestors worked for the Hudson's Bay Company as interpreters and guides, their familiarity in English language and culture giving them a distinct advantage in the game of cultural adaptation to the newcomers. They were the first group from Sagamok to gain college and university education in the outside world, to work for the government or in the nickel mines of Sudbury, or to develop local business enterprises.

Four Communities, or One?

One of the main conundrums for any community-derived justice initiative is the issue of who or what constitutes "community". Sagamok members say that their "community" is sometimes more like four "communities" (Fieldnotes Aug.30, 1993; Apr.12, 1994),

constituted along different, crosscutting axes. There are four main kin-based groups living in clusters within four distinct areas of the reserve, although the nature of this is changing in recent years with the building of new subdivision housing. The make-up of these four geographically separate areas was described to me by one band official in 1993 in the following fashion: one group was "...mostly not educated, and [a lot] of them are on welfare"; one was made up of "politicians and the 'upper class', ...the "people with second story houses and boats"; the next was the "...middle class, [who]... are very native-oriented", and the "backwoods people..." (Interview, Nov. 16, 1993). As evidence that these groups are linked in the minds of some members to the original four groups represented at the treaty-signing in 1850, a leading politician proposed at one self-government information session that Sagamok devise its own electoral system whereby each geographic area of the reserve would be equally represented on the council. His rationale for this proposal was that four principal men had signed the treaty, representing four different groups (Fieldnotes, July 2, 1992).

The assessment of the four areas as told by the interviewee above describes a social structure which has become largely class-based in the recent past. The major division is between the two poorer groups, who together make up about half of Sagamok's on-reserve population, and a more affluent sector, which he breaks down into "middle" and "upper" class, making up roughly the other half.

These class lines are roughly coterminous with former tribal divisions. The Manitoulin group is principally Catholic, and is made up of two main family groups. Although both groups tend to vote as a block, they have not been equally represented on council until very recently. One large family group on Sagamok's more affluent side, has played a lesser role in local politics, but have been leaders in the revival of tradition, and seekers of spiritual power. They have done this while remaining supporters of the Catholic church. Popular discourse readily aligns the segments with family groups, rather than tribal affiliation,[9] and some of the divisions between extended family groups go back for generations. Transecting the socioeconomic differences already mentioned are divergent generational and religious perspectives.

These differences have a heightened impact in reserve communities compared to many other small communities where similar dynamics are found. The baseline for such comparisons lies in how Aboriginal peoples were colonized in Canada, whereby the denial or restriction of personal and collective autonomy and opportunity led to an apathy and despair that fostered social dysfunctions like alcohol abuse and family violence. A specific instance of how Indian Act policy has contributed to communal divisions is the effect of Bill C-31 on modern community life. Many women, who are those most affected by this reassignment of Indian status,[10] have returned to Sagamok in the past ten years. In many cases they are resented for their claim to scarce resources like housing and social assistance. Their long absences from reserve life has kept them out of social networks. In cases like this, the insularity of reserve life can be very exclusionary.

Despite the history of economic deprivation, some have adapted and thrived according to socioeconomic criteria. The last twenty or thirty years have seen dramatic differences in income and opportunity between segments of the community, more dramatic than those found in the nearby town of Massey, for instance, with a population of the same size. Productive and positive interpersonal interactions have little chance to take on a new life in the hardened soil of such differences.

The "Ins" and "Outs" of Band Politics

The pattern of political power operative within the imposed system of elected chief and councils interacts with family group alignments with the result that the incumbent chief and council have the support of just over half of the population, leaving almost half the population feeling unrepresented and mistrustful of their elected officials (see Boldt 1993:125). There are members of the community who desire change, and others who fear it.

Under the electoral system dictated by the Indian Act, Chief and Council are elected every two years. Sagamok has one Chief and twelve band councillors, the maximum allowable under the terms of the Indian Act. Politically, the four kin-based groups are subsumed under two main blocks, between whom political power has shifted since the imposition of the elected band council system, and perhaps before that. The position of Chief has shifted between two of the four family groups. A common pattern of the struggle for political power has been for the "outs" to undermine and oppose the "ins" in various ways, and for the "ins" to change and reverse the policies of their predecessors.

Sagamok's recent history has seen the ideological and power-based struggles escalate from relatively mild and covert to more intense and public, an indication of increased class division and higher political stakes. In the past, opposition to the incumbent administration was covertly achieved through letter-writing to the Department of Indian Affairs or to federal politicians. More recently, such opposition has taken the form of laying charges with the O.P.P. to initiate investigation of Band administration. In 1992, my first year in Sagamok, the Chief and Council were under O.P.P. investigation for alleged mismanagement of Band affairs at the instigation of a Band member who disliked their policy of Tribal Council affiliation rather than the previous direct link to DIAND. The supporters of this latter arrangement were successful in winning the election that year in Sagamok. Within a year, however, their administration was under police investigation for alleged mismanagement of Band funds.[11] Because political power has fallen along existing axes of family group and class, band politics and the struggle for political power have become invested with the currency of these other dividing factors.

I have not been able to untangle all the threads of factionalism in Sagamok, and although the two main blocks have different "tribal" roots, I feel it would be a misrepresentation of Sagamok interests to state it in terms which they themselves do not. There are more elements to it than this in any case. It is not simply a seesaw of power between groups; individual characteristics of Chiefs also play a role in patterns of leadership and legitimacy, and the interactional pattern of these groups has changed over time.

An examination of the makeup of Sagamok Band Councils for the past fifty years shows that, until the early sixties, one group, the former Spanish River Number Two, was ascendant. Since the early sixties, however, this group and the Manitoulin group have been more or less equally represented on Band Council. The group described by some from other groups as the "backwoods people" have been largely unrepresented on Council for at least the past fifty years. Despite their differences, the balanced Councils were able to work together between the 1960's to 1980's, to achieve community development in health and education particularly.

The past fifty years or so have been an age of heightened interaction with Canadian society, a growing awareness of Aboriginal rights and the need to negotiate Sagamok's future in the Canadian political economy, and a battle for scarce funding resources. Modernizing forces, the politicization of Indians in the sixties, and devolution of program administration and funding, put new requirements on individual Chiefs. In Sagamok during this time, Wilfred Owl ran uncontested as Chief for several terms, partly because he was one of a small number having the language and experiential skills to negotiate in the newly enlarged and more complex political context. This changed in the eighties when a new generation of the educated and politically astute either returned home after a period of work outside, or became old enough to assume political authority. Many of this group were from the more affluent segment of the community. Between 1980 and 1992, members of this group held the Chief's position, but the Councils

remained balanced between groups. In 1992, Wilfred Owl became Chief once again after a long hiatus.

The seesaw of political power is complex and has deep undercurrents. As Cornell demonstrates, some of these fracture lines have their gestation in the forced integration and imposition of a tribal political identity on formerly less inclusive and more autonomous groups (Cornell 1988:31; Hallowell 1955:112; Landes 1969:1) This is true here as in many other reserves in Northwestern Ontario. Small groups of related families living close together but separately on and around what is now Sagamok territory, were subsumed by the government into one administrative unit when the Spanish River Band was created. As we have seen, the "Spanish River Indians" were at one time considered four separate bands.

As Boldt has stressed, community momentum for positive change is severely hampered by these "emerging divergent class-based interests" that often fall along the same lines as kin-group alignments (1993:125). This is clearly recognized by Sagamok leaders, one of whom expressed his frustration with the situation this way:

> *We are in political turmoil, as a result of the dynamics over the years for leadership control. There is a diversified group of people here, of family groups that behave differently from each other; that causes clashes.*

In Sagamok, the self-government issue is a page where ideological differences are writ large. One sector advocates self-government and the other is cautious. Although it is a crude characterization, I will call them the "progressives" and the "conservatives".

In some communities these divisions are coterminous with adherence or non-adherence to "tradition" (see Elias 1991:30), but in Sagamok those lines are blurred.

In the past ten years, the revival of "tradition", with its conceptual and experiential heterogeneity, has crosscut some of the existing fissions, and occasionally acted as a unifying force. The desire by some of the more educated and affluent to reclaim their Anishnawbek and Indian identity by reconnecting with lost cultural knowledge and practice, has shifted former power axes somewhat by placing them in a position of inferior knowledge in relation to their fellow band members who have kept the link with traditional knowledge and practice alive. Such a conceptual shift may not have any visible effect on Band politics for now, but it is surely changing manifest ideas of legitimacy and lines of authority in the community. If that is the case, it will have definite implications for local justice administration, particularly conflict resolution and treatment of offenders, as I discuss in the next two Chapters.

At a deeper level, spiritual understanding and balance are seen as integral to the healing of the whole person. Customary Anishnawbek healing practices, like the sweat lodge, that integrate physical and spiritual healing, are drawing diverse parts of the community together in their search for various kinds of recovery. Alcohol recovery programs based on "traditional" practice are an example of this; some of the revivers of "tradition" in Sagamok are products of such programs. Herbalists who have worked unobtrusively as healers for years are being sought out by more community members.

Drumming and dancing groups and pow-wows can act as centripetal forces as more individuals turn to ceremonies for help in reclaiming their identity as Anishnawbek.[12]

Each year on October 31st and November 1st, a feast day for the dead that is a syncretistic blend of Christian All Souls' Day and the customary Anishnawbek honouring of the ancestors gives the community a common focus. People gather over several days to make grave wreaths, some in family groups, some at the community centre, and co-operate to clean and decorate the cemeteries. Family groups feast in large home gatherings where a portion of all the food on the table is placed in the fire for the ancestors. What was in pre-Christian times a true communal gathering, however, is now, in its syncretistic form, divided along lines of religion laid down by Christian missionaries: Anglicans Feast on one day, Catholics the next.

Death draws the community together in other ways. As people in Sagamok like to say to explain the interconnectedness of kinship relations, "everybody here is related", so the death of one person ramifies throughout the community. Death's social effects go beyond interrelatedness, however. Funerals are the one occasion where the whole community participates, where class and religious differences are subservient to an ethic of mutual aid and sympathy. All family groups attend the wakes that precede funeral services, and bring food to the community feast that is normally sponsored by the family after a funeral. It was a common response to our interview question of whether or not

Sagamok was a "close" community for people to respond that it was close only at funerals or in times of crisis.

Conflicts too are as inevitable as death. As the following case shows, the increasingly complex and rapidly changing community of today brings with it political conflicts that crosscut kinship ties, and the intracommunal bonds are less straightforward than they used to be. The community of the future will need ways to deal with such conflicts.

A Recent Case: The "Gabriel Northwind" Letter

Early in 1993, the issue of who the "originals" were became the focus of acrimonious debate at a community meeting.[13] In keeping with the Anishnawbe cultural imperative to avoid open interpersonal conflict, leaders decided not to hold further community meetings for fear of a repeat confrontation. As a result of this decision, many band members began to suspect that political decisions were being made in secret behind closed doors. This lack of a democratic voice in community affairs, the perception that legitimate concerns were being ignored, and the implementation of policies that the "progressives" felt were anachronistic and wrong, led to a widespread questioning of the band government's legitimacy. The prevailing community mood was one of tension and acrimony. After brewing for several months, events erupted later that year into what people on both sides perceived as one of the most serious and protracted political conflicts ever experienced by the community.

The galvanizing issue was the decision by Chief Wilfred Owl and his Council to withdraw from the North Shore Tribal Council in November of 1993. This was done after a referendum in August of that year in which Band members were given two days' notice of the issues on which to vote. The tribal council affiliation was one of three issues decided on the same ballot: the other two were the tribal council's "initiatives on Self Government" and "acceptance of on-reserve taxation".[14] Twenty seven percent of eligible members voted in the referendum; two thirds of those voted to withdraw from the Tribal Council and reject its self-government initiatives.

One of the effects of this decision was the imminent withdrawal of services provided to Sagamok by the tribal council, such as nursing care and a support program for victims of family abuse. In the face of this and other changes, a group of dissident members circulated a letter to Sagamok households in which they outlined a list of objections to the way the community was being governed. The letter was signed with the pseudonym "Gabriel Northwind".

One of the band councillors, Angus Toulouse, together with another member of the "progressive" constituency, who had circulated a signed letter of objection to council policies, were held responsible for the Northwind letter. They were subsequently warned by a Band Council Resolution [15] that the Chief and Council would "no longer tolerate" opposition to their objectives. Furthermore, Chief and Council would invoke the

banishment provision[16] if the dissident behaviour continued. Part of that resolution reads as follows:

> ...be given notice to immediately cease and terminate all activities and initiatives which promote community unrest by publicly denouncing and condemning the objectives of the Chief and Band Council and;
>
> WHEREAS:
>
> The membership Law [Banishment provision] outlines, the Band Council, may on 60 days written notice to a member, convene a general meeting of the Band to consider whether the member should be expelled on the grounds that the member has been convicted [of] serious offence or a pattern of the other serious offences and constitutes a threat [to the] life, safety, or physical or mental well being of other persons in the community.
>
> THEREFORE BY IT RESOLVED:
>
> Should the disturbance persist [in the] community caused by these individual(s) by misleading the community through the general media, the Band Council shall banish both individuals (or any associated person(s)) from the community of Sagamok Anishnawbek, with the membership laws or with the powers entrusted upon the Band Council.

Toulouse responded by using the outside media[17], and by circulating a pamphlet to the membership on the territory, objecting to the chief's invocation of the banishment provision, and stating that his rights were protected by the Canadian Charter of Rights and Freedoms.

The language in Toulouse's pamphlet indicates value orientations that hold implications for the creation of a community justice model. Part of the document reads:

> ".... As far as I am concerned the Band Council Resolution is in violation of the Charter of Rights and Freedoms. Section 2 of the Charter states as follows: '2: Everyone has the following fundamental freedoms: a) freedom of conscience and religion; b) freedom of thought, belief opinion and expression including freedom of the press and other media of communication; c) freedom of peaceful assembly; and d) freedom of association.' Section 24 of the Charter provides access to the courts for persons whose rights and freedoms have been violated. ...There is no question that the Charter applies to the Band Council. The Band Council is created under the Indian Act which is federal law and certainly the Charter applies to all federal law. At the very least a court would declare the BCR [Band Council Resolution] as being invalid because it violates individual rights and freedoms....I have no desire to engage in a legal battle, however, I will not hesitate to do so to protect my rights and interests..."

Toulouse stated further that:

> "In my view the correspondence merely requests the Band Council to be accountable to the community by consulting the community on program and service delivery. I don't know how such a request can be characterized as being a denunciation or condemnation of the Band Council. On the other hand the Band Council Resolution dated December 1, 1993, is nothing less than a heavy handed approach at suppressing basic rights and freedoms in the community."

Toulouse went on to suggest that the chief obtain a written legal opinion regarding the charges, and "...for the results to be made public so that the Band members will know that their rights and freedoms are protected by law." I am unsure of the details of ensuing events, except that Toulouse remained on the Band Council, and the public aspect of the conflict diminished. Eight months later, he was elected chief in the regular biennial election.

There have been other cases in Sagamok within the past few years, such as a suit for wrongful dismissal by a former Band employee, for example, that demonstrate a growing emphasis on individual rights and a willingness to pursue their protection through appeal to the mainstream legal system. The nature of the conflict and the actions taken by those involved, have lessons to teach future justice reformers for Sagamok. Values that are often hard to consciously articulate will be demonstrated in the positions taken in a conflict. Whatever their genesis, such conflicts reveal the dissonance of values between individuals or groups that is a consequence of the social and normative changes of modernity.

This particular conflict was primarily about political power, but key jural values surrounding individual rights and community welfare that emerged in its unfolding demonstrate its ideological nature. Values such as these form the basis for the development of laws, and the way they are administered. The long history of appeals to outside authority as a means of handling local political disputes has important implications for the development of future conflict resolution mechanisms in Sagamok, and suggests that some cases at least would need to be taken to a forum outside of Sagamok, such as a regional justice committee or court of appeal.

A central justification for the reinstitution of Aboriginal justice systems in Canada has been precisely because core Aboriginal values are not represented in the mainstream system. Just what these core values are in today's First Nations is still largely

undocumented and rhetorical. Their documentation in Sagamok was a principal goal of this research, based on the theory that core social values are subject to change, and that the development of a justice model would need to be based on contemporary values rather than idealized values of the past.

It would be facile to see Councillor Toulouse's invocation of the Charter in his defense, and Chief Owl's charge that public dissidence was a threat to community welfare, in simply dichotomous terms. This is not strictly a case of individual versus collective rights; it represents different generations, different socioeconomic, educational and religious backgrounds, and different views of the political process, among other things. What this case points out is that the Sagamok of today is a much more heterogeneous and externally constrained collectivity than it was in the past. Awareness of this multiplicity of values and accommodation to it will be a crucial part of the model-developing process of creating a justice system. This case must also alert Sagamok justice planners to the reality of a rights-based philosophy in their community, and the need to accommodate this within any justice model.

Former Modes of Social Control

A case history approach can lead to a rich hermeneutic source for sociolegal norms and values. Llewellyn and Hoebel (1941), in their famous The Cheyenne Way , use such an approach to outline Cheyenne "law-ways", in the belief that cases can manifest conflicting and sometimes latent norms (1941:20ff). Just as the "Gabriel

Northwind" case illustrates contemporary jural values, there are cases in living memory that give instruction in Sagamok Anishnawbek "law-ways" of the past. One of the first lessons is that only cases of murder merited designation as "cases" in people's classification. There is ethnographic evidence to suggest that this is typical of an Anishnawbek criminological taxonomy (Raudot 1759:354; Kinietz 1947:85). The word "crime" is reserved for very serious offences such as murder. Other offences that were considered serious breaches of normative behaviour, such as adultery, were reportedly rare in Sagamok until about fifty years ago, and the perpetrators usually left the community of their own accord. I learned of three cases of murder, and in all three cases "nothing was done" by the law.

The first case is of a body found back in the late 1930's or 40's in LaCloche Lake. The body had washed up on shore, after having been submerged under the water in a canoe weighted down with rocks. Although people suspected a certain individual of being the murderer, the matter was never reported to police. The supposedly guilty party was not seen, and everyone thought that he was dead. Almost fifty years later, he came back to the reserve, an old man, with another wife he had married while away. The family of the victim openly confronted him about the murder several times, but he stood his ground, denying any wrongdoing. However, on his death bed he admitted his crime and asked for their forgiveness.

According to the person who told me this story, the perpetrator had not only killed one person, but had robbed the relatives of a valuable resource in their family. The murder victim, as their uncle, the brother of their mother, would have been the one to teach them traditional knowledge (Fieldnotes, April 13, 1994). One Elder, in referring to the community reaction to this case, said that "No one ever found out what happened. It was not reported because the people were scared. There was really no law to take care of it".

Another case of murder was probably the result of a drunken fight, according to Sagamok oral history. The victim was given a proper burial at the site of the crime, and the man who killed him left the community and went south. The case was never reported to the police. After thirty or more years, the man, by then in his late sixties, came back to the community, thinking enough time had passed by then. People tolerated him, and he was able to live here until he died, but the family of the victim would bring up the case to him when they talked to him, and other people might hint at it. The man's explanation was to say that, "Well, that was part of my previous drunken life." By his account, he had straightened up and lived a sober life for most of the intervening years.

The offenders in these very similar cases, both young males, left the community abruptly, aware that their presence in the community would no longer be tolerated by other members. It appears that both men, however, believed there was a statute of limitations on their crimes, and returned home seeking reconciliation. The families of the victims had no avenue of reparation; the outside authorities were left uninformed of the

murders because of the reluctance of Sagamok people to interact with the mainstream system. However, years later when the supposed murderer returned, the families sought reparation through hearing an admission of guilt. In both cases, the family of the victim took the initiative to confront the offender in their search for closure.

The following is an excerpt from an interview with a seventy-eight year old man who was describing how trouble was dealt with when he was young. He describes the two extremes of law enforcement that characterized life early in this century; either a total lack of response to crimes, or overzealous prosecution of alcohol-related offences. In his account, a third murder, that of a medicine man, is mentioned:

> "There was no justice back then. No police, nothing, you hardly ever saw the law." Once [two guys] beat a medicine man to death and then nothing come of it". Then again, [some guys] went deer hunting and [one of them] was shot in the back. They never did anything about it. At first he was presumed drowned, but they dragged for the body and they found a bullet hole in his back."[18] ...Whoever did wrong wasn't punish for it. When the white man did it, it was taken care of; when the Indian, nothing was done"
>
> "Another time I was arrested at home. Our chief was the police at the time. He came to my house and was waving a summons at me. My wife's brother was visiting at my home. I was accused of giving drinks to a minor. They turned around and said I was bootlegging and allowing drunkenness in the house. There was a whole bunch of us were hauled in. ...nothing was ever done about suicides."

Also instructive in these cases is the initial reaction of the community to "do nothing", a response very common in Aboriginal communities (Brodeur, LaPrairie & McDonnell 1991). The Elder's observation, furthermore, that "there was no law to deal with it", shows that, in the early part of this century, with their own justice mechanisms

atrophied and replaced with the arm's length justice of the Canadian state, the people of Sagamok were left in a juridical vacuum in cases such as these.

There is evidence from ethnography (Kinietz 1947) and oral history, however, of local conflict resolution for less serious matters. Kinietz wrote that Chiefs settled as many matters as they could, and referred intractable cases to the Indian Agent (1947:83). One Elder told of how, in cases of conflict, people would learn the right thing to do from their dreams. Others related that cases were handled in the community through holding general meetings attended by all members of the community. One Elder told us that, in cases of trouble, "...community members used to get together and talk about the problem and decide what's going to happen." One such problem was the case of the woman with the ripped underwear.

The incident was handled by the chief who was known as 'Dbaaknige'(the judge), who was in office early in this century. This story[19] is about two brothers who lived together in harmony until one of them married. The new living arrangements were satisfactory until one day the husband saw his wife washing her underwear and noticed that they were torn. Since he and his brother had been drunk the night before, he assumed that the ripped underwear had resulted from an attack by his brother on his wife. He confronted his brother with this accusation, but the brother denied it. The husband didn't believe his brother, so he went to Dbaaknige to settle the matter. The chief did not want to settle this on his own, so he called a community meeting. He took testimony from the

brother, who denied the charges. Then they brought out the ripped underwear and held them up as evidence. Finally, they asked the wife for her side of the story. Embarrassed, she announced that the underwear had been ripped for quite a while, and that's how she wore them.

I have wondered why, aside from its humour value, this case has been preserved in Sagamok oral tradition. Surely Dbaaknige earned his name on the mediation of many conflicts. On close listening, though, the teachings of this story show important elements of Anishnawbek social structure of the past, and resonate clearly with contemporary Sagamok experience. The story is fundamentally about human relationships, filial and sexual. Most disputes occur between closely related kin, and a very high proportion of interpersonal conflicts revolve around gender and sexual relations.[20] This is as true today as it was when Dbaaknige was Chief. The story also demonstrates the latent mistrust that has been cited as pervasive in close Anishnawbek relationships (Hallowell 1955:148; Landes 1967:11). Also, like many disputes in the Sagamok of today, the interpersonal conflict of the story was ignited by alcohol. The story may also, at a deeper level, be a subtly cautionary tale for women in particular to avoid adultery, or risk the shame of exposure to the whole community.

Dbaaknige's handling of this case could serve as a model for today. The first thing the story tells us is that the "judge" included the community in the decision-making, rather than making a judgment on his own. Then the principals in the conflict

each in turn had an opportunity to have their say, and the result was resolution of the case.

Elderly residents of today may have seen local conflict resolution as children, because local Chiefs like Dbaaknige were still resolving conflicts in the 1930's and 1940's. Since then, however, there has been outside police intervention, and local constables working for (and trained by) the Royal Canadian Mounted Police (RCMP), or the Ontario Provincial Police (OPP). We were told that, in the 1930's through the 1950's, "anything major" used to go to police in Blind River or Espanola. To do this required walking to the town of Massey ten miles away to telephone the police, as there were no telephones in Sagamok.

Some of the older Sagamok residents have memories of contact with the Canadian justice system when they were younger where they could not afford to pay fines levied against them for crimes such as public drunkenness or even for drinking inside their homes. This meant that in those days, when "moonshining" was the way to access alcohol, those people charged with possession and consumption of alcohol sometimes spent twenty to thirty days in jail for being unable to pay a fine. One Elder told us that going through the Canadian system "...was hard, because we didn't know how to read or write"; in other words, it was impossible to understand one's rights or the foreign process of justice.

Appeals to outside authority have been a preferred means of handling internal conflict. In the past the Indian Agent could function in this regard, particularly in the case of property disputes, but after the suspension of Indian Agents, the federal government was sometimes appealed to for help, through letter writing. There were various cases of this sort of correspondence in Sagamok archives, either to have an unwanted person removed from the territory, to resolve an intractable dispute, or to complain about the policies or actions of the incumbent Chief and Council. Ontario Provincial Police, who have shared responsibility for policing with local Sagamok constables since the 1960's, have sometimes been used in this way.

The Chief and sometimes the Councillors are still used as arbitrators or as a means of retaliation in disputes. In one incident I witnessed in 1993, the angry party went to the chief to resign his position in minor hockey rather than confront the person with whom he was angry. The two individuals involved in this conflict had been antagonistic to each other for years. The other party in this conflict confided to me that he was afraid his antagonist would "...hold a grudge against me for a long time, ...but he won't do anything until he is "intoxicated" some time, ...then he'll fight me". I later heard the complainant remark that going to the chief was "... the only way to get anything done around here".

Until at least twenty years ago, people would make direct compensation to the person offended or injured. If it was a young person, the parents would make them go to the offended party, or, more commonly, the parents would go themselves. Alternatively,

the wife of the offended party might act as an intermediary by going to the offender to ask for compensation.

One resident gave me an example from his own experience. When he was building his house about twenty years ago, he was doing it on his own, with no help from the Band. Some youths came and knocked holes in the walls he had just put up. He managed to track them down, and spoke to the parents. They asked him what he would need in compensation, and in reply, he told them what a financial burden this was causing him, and that the incident had disturbed his peace of mind and sense of security. The two fathers spent the next three days working with him on building his house, and after that, the matter was considered closed, with "no hard feelings". The principal of this story commented on the public nature of this compensation, too, in that everyone could see these men working on his house, and they would know why.[21]

Beyond the public means of social control, however, there were powerful covert means of regulating behaviour. The story of Spirit Lake presents these themes in mythological form. But there is considerable testimony in present day Sagamok to reiterate the presence of "bad medicine" as a powerful means of social control. There are still members of the community who are suspected of practising sorcery, and such "bearwalking" is often blamed as the cause of misfortune. As I have mentioned, Sagamok is reputed to have been a "place of power" in the past. It was within living memory, at least until the late 1930's, that a powerful medicine man (shaman) lived and

practiced the shaking tent ceremony here. Some Elders have testified personally to me concerning his powers of healing and prophecy.

Healing is intimately connected to theories of disease, and in Anishnawbe ontology, disease can be attributed to the malevolence of others. Based on my observations of Anishnawbe life, in Sagamok and beyond, the belief is fairly prevalent, although possibly less than was the case when early ethnographers made their observations of Ojibway life (Hallowell 1955; Landes 1967, 1969, 1971; Rogers 1962, 1969). The "Bearwalker" is referred to obliquely and in very careful terms, but the effects of sorcery's reputed power are still very strong in Sagamok life. I believe this is a major aspect of community divisions and the "jealousy" so often mentioned, as I have heard accusations on both sides that certain individuals or the other are using sorcery for personal gain. In the nomadic hunting and gathering communities of the past, the fear of others' jealousy and anger and their possible effects was a powerful force toward egalitarianism, and this way of thinking still has force in Sagamok. As I discuss in the following Chapter, the mistrust this engenders is debilitating and destructive to Sagamok's communicative life, and has definite implications for a justice model.

The Role of the Sagamok Police

Policing has been the main instrument of formal social control in Sagamok since the abdication of direct federal government control through the Indian Agents in the 1960's. The first of what were called "Supernumerary Special Constables" was appointed

in Spanish River in 1959. The Spanish River member occupying this ambiguous position was appointed under warrant by the Royal Canadian Mounted Police (RCMP), paid by the Department of Indian Affairs and responsible to them, and was required to work under the supervision of the Ontario Provincial Police (O.P.P.), who were doing most of the policing on the reserve at the time.

Not only was this early officer cast in the classical dilemma of divided loyalty between kin and neighbours on the one hand and employers and supervisors on the other, but he was caught amidst the confusion of jurisdiction on reserves between Indian Affairs, the O.P.P. and the RCMP. Moreover, amidst his other duties he was charged with the odious task of entering the homes of "intoxicated Indians" to arrest them for infraction of the Indian Act provisions regarding liquor on reserve.[22]

In correspondence from the Department of Indian Affairs[23] written in 1966, the Regional Director explains to the local superintendent that Indian Affairs pays for the special constable because "...liquor appears to be the basis of the law enforcement problem in this case". This was an Indian Affairs jurisdictional matter until liquor infractions were charged under the Ontario law a few years later. It is clear, then, that these early constables were there to enforce the Indian Act and exert control over the use of alcohol on reserve. Confirmation of this beyond that chronicled in Indian Affairs correspondence, is the termination of the first special constable position as soon as the

Spanish River Band voted for liquor privileges in 1961. After a hiatus of four years, a special constable was again commissioned for the reserve.

In 1965, a local DIAND official wrote to his superior in North Bay that he had received a "continual stream of complaints" from "serious-minded citizens" on the Spanish River reserve, complaining about the "lawlessness" and "drunkenness", as well as to complain that the O.P.P. were not responding when they were called. The subsequent re-hiring of a supernumerary constable for Sagamok in 1965 was done not only in the interests of Sagamok's welfare, but to fulfill DIAND's mandate to control liquor consumption on reserves, and to satisfy the Mayor of nearby Massey, who had complained about the lack of policing on the reserve.[24] The officer's role was described in an Indian Affairs memo as the following:

> He would act as on-the-spot Peace Officer, interpreter and guide for the O.P.P. and ...would be available for truancy, trespass and other minor matters.[25]

The special constables were encouraged not to use excessive force in making arrests, to call in the outside police as soon as they were able, and to provide information to the "regular" police in preparation for court appearances, which were not part of their duties. They had the powers of a peace officer, and were charged with enforcing the "general law of the land"[26] As this was the case, it is not surprising to see the superintendent write to his superior that very few people on the reserve would be willing to do the job of special constable.

Another special constable was eventually hired, and from the early seventies until 1993, there were two Sagamok officers, trained by the Ontario Provincial Police, and reporting to the O.P.P. detachment in nearby Espanola. As there were only two officers, they each worked shifts alone, and only during the weekdays and evenings. Although they were on call overnight and weekends, there were no scheduled shifts for these times. Residents complained that this was when most incidents occurred. If an incident occurred at these times, residents had to call either the Sagamok police or the O.P.P., and response times were often unsatisfactory.

In 1993, as one of the member First Nations[27] of the newly constituted Anishnawbek Regional Police Force, Sagamok's complement of officers was increased to five. This creation of an autonomous Anishnawbek police force was under the terms of a multipartite agreement with the federal and provincial governments and the Anishnawbek Nation, part of the growing trend toward Aboriginal policing across Canada. Under the new agreement, the First Nations constables are now called Anishnawbek Peace-keepers. Community control is meant to be enhanced through the operation of local policing committees made up of one elected councillor and at least two other community members, but in Sagamok this committee has been crippled by personal divisions and lack of leadership. In order to ensure political independence for this committee, these other members must not be part of the elected government, according to the terms of the agreement. Selected members of these committees from each member First Nation sit on a Board of Directors. The increased complement of officers meant that

police could now patrol in the late hours of the night and on weekends when people felt that "most of the trouble" was occurring.

At the time this research was concluded, it was still too early to assess whether there was any appreciable difference in policing style with the advent of the Anishnawbek police service. It would be surprising to see much of a change in policing practice in the short term, at least, as the present officers are trained by the O.P.P. and operate according to their model. What effect the Anishnawbek police will have on mainstream models remains to be seen, but the time is right for a mutually beneficial interaction between the two, as mainstream police services move toward community policing models (Personal communication, O.P.P. Sgt. L. Beach; DePew 1994: 62)

Aboriginal police in general have a difficult role to fulfill, one that LaPrairie describes as "...the worst of all possible worlds"(1991:57), whereby, if they work in their home communities, they are caught between their kin and their profession. This is as true of the police in Sagamok as it is of police in any small kin-based community, where there are perceptions by members outside their kin network that they favour their relatives, and resentment by their extended family when charges are laid against them. A number of Sagamok respondents expressed the belief that Anishnawbek police should be different from white police. This situation may be ameliorated by the addition of three officers from outside the community.

Questions of policing ideology and style are central justice concerns for Sagamok and other First Nations. Police, as the established front-line of justice personnel and first on the scene of trouble, are key actors in the eventual outcome of disputes and lawbreaking. Moreover, police modes of reaction and case processing are directly related to the respect and authority they hold in the community, and thereby have a direct influence on the degree to which residents and community social service personnel rely on police to intervene. As we see later in this chapter, Sagamok police lay charges for the most common occurrences of assault and liquor act violations at the same rate as local non-Aboriginal police. However, there is a general perception on the part of Sagamok residents that their police are more lenient than the outside police. This perception may have arisen in response to the low number of charges laid by Sagamok police for impaired driving, an offence rated as the most problematic by Sagamok residents in our interviews (see Table 3).

Common complaints in 1993, when we conducted the research, were that police were not available when needed, and that response times were slow. Many residents expressed a desire for more general patrolling by the police. There is also a common opinion that the police have not been able to have any effect on underage drinking. In expressing this sentiment, Sagamok members are demonstrating expectations of the police role that go beyond a reactive response to emergencies, to a more proactive, preventive role. One area of social life that is generally considered exempt from police intervention is minor family disputes, or "squabbling", as several members named it.

Some study participants indicated that, in the event of a suicide attempt or a family dispute, they would call the Social Services first, rather than the police. Within the past few years, Sagamok's community caregivers have developed a Crisis Intervention Team, and a Family Violence victim support service has been in place for several years.[28] Strong leadership in the social services has helped to develop these links that could be a fundamental part of Sagamok's future justice strategy. I was told by one of the police officers that the police have a good reciprocal relationship with the social services department, but a family violence worker indicated that, although she prefers their "own" police to the O.P.P., she hesitates to call them because they are not well enough trained in family crisis intervention. There is clearly room for improvement in training and interagency communication. Overall, it appears that Sagamok police are underutilized in proportion to the need for intervention.

Despite reluctance to call the police, and complaints about their performance, there are perceived differences between their own officers and outside police. The most prominent of these is that Sagamok police "understand us better", because they are Anishnawbe, they know people and they speak the language. There are perceptions by Sagamok members that O.P.P. officers stereotype Indians and treat them roughly, and that the O.P.P. "...should have to study Native culture" because "...we react differently to different situations". Sagamok police are described as taking a gentler, more helpful and more studied approach to incidents, rather than being "pushy". One interviewee described this as a "...wait and see attitude, that time will help the person calm down".

Sagamok Justice Needs: Crime and Disorder

Before discussing Sagamok's crime profile, some of the relevant demographic characteristics of this population of just over a thousand to keep in mind are the following: over fifty per cent of the on-reserve population is under the age of twenty-five; the largest (over twenty per cent) age group is between the ages of twenty and twenty-four; the largest single age cohort in Sagamok is that of twenty-one year old males; and the employment rate for this group is only three per cent (cf Depew 1994:17). It is a small community where people are interconnected through marriage and family, and alcohol consumption is a major problem. Most of these characteristics match closely with those of the Canadian Aboriginal population at large, twenty-one percent of which is 15-24 years of age, as compared to sixteen percent for the comparable non-Aboriginal population (LaPrairie 1992:10). It is well known that males in this age group are responsible for most acts of crime and disorder in Canada and other countries (Statistics Canada 1992:6; Depew 1994: 103,n18). Even though we lack offender profiles for Sagamok, the crime statistics (Table 1) show that the most common occurrences are "Other Criminal Code", which is most often acts of vandalism and "mischief", and it is reasonable to assume that such offences are being committed predominantly by young males. The following Table (Table 1) shows occurrence rates of the most common Criminal Offences for 1992 (O.P.P. files), and twelve months between 1993-4 (Sagamok Police Files).

Table 1 - Sagamok, Most Common Offences, 1992, 1993-4

	1992	1993-4
Other Criminal Code	48	61
Assaults[29]	37	44
Liquor Licence Act	43	38
Theft under $1000	21	32
Break and Enter	10	21
Offensive weapons	1	4
Sexual Offence	—	1
Elder Abuse	1	—

In both years in which offences were documented, the highest incidence is of offences categorized under "Other Criminal Code". Offences included in this category are such things as arson, bail violations and escaping custody, disturbing the peace, and property damage ("mischief"). The most common of these categories in Sagamok are property damage, or vandalism, and disturbing the peace. Provincial Liquor violations and Level 1 assaults are the next most common incidents. A high percentage of all offences are related to alcohol consumption. In January, 1994, for instance, twenty-four of the thirty-four incidents handled by police were alcohol-related.[30]

Rates of Offences

Results of the interviews in this research show that of the thirty-four residents who responded when asked to describe any personal experience of the Canadian justice

system, fifty percent (n=17) had been in contact with the mainstream system. Ten of the seventeen were female, and seven male. However, half of the females who had contact with the justice system were as victims or close relatives of male offenders. Thus, the number of actual male offenders represented by the responses is twelve; and five offenders were female. None of the offences by females was a violent offence; the majority were alcohol-related. One was incarcerated for failing to appear as a witness in a criminal case. Of those interviewees who described their experiences of court, probation was the most common sentence received. None of the sentences described were excessive; in fact, the dispositions described fell on the side of leniency.

Furthermore, investigation into residents' estimations of the fairness of the mainstream justice system showed that more than half of those who responded felt that the Canadian justice system was fair and treated Aboriginal people equally. This kind of information is important for the informed discussion of alternatives for Sagamok, but it contradicts the picture presented by Sagamok's crime rate.

In 1992, the crime rate in Canada was 103 incidents per thousand population.[31] In Sagamok for that year, the rate was 182 (total offences) per thousand population, and in a one year period between 1993 and 1994, it was 201 per thousand, almost double the Canadian average. It must also be kept in mind that these statistics do not take non-criminal traffic violations into account, nor does it include suicide and attempted suicide. When one also considers that there are frequent complaints that police are never there

when the real trouble is happening, it can be expected that the rates are actually higher than what is recorded.

When the number of violent crimes such as assault is calculated as a percentage of the total number of incidents, there is a significant difference. In Canada in 1992, the rate of minor assault was 6.41 per 1,000 population (Statistics Canada 1992:30). In Sagamok for that year, there were thirty-seven (37) assaults per one thousand population[32], a figure six times the Canadian rate. For a twelve month period between 1993 and 1994, the number of assaults was forty-four (44), that is, seven times the national rate. These rates approximate national averages for Aboriginal communities, where offences against the person are commonly the most frequent offence, and at substantially higher than average rates (Manitoba 1991:87,109; DePew 1994:102,n.15; Griffiths and Bellow 1995:167; LaPrairie 1995:164; Solicitor Gen. 1986:78; Solicitor Gen. 1987:13).

Aboriginal crime rates have recently been shown to be a factor of the location of offences, whether urban or rural (Kunitz and Levy 1984:189), and in which province they occur. In some urban areas, rates are much higher than on reserve. LaPrairie (1995:164) reports that in Saskatoon, for example, the Aboriginal crime rate was eleven times that of the non-Aboriginal population. These latest figures indicate that, while crime rates on reserve are high, urban Aboriginal crime rates are higher still. The Alberta Justice Inquiry

report showed that just over 5% of the total number of Aboriginals charged were charged on reserve.

Actual occurrence rates in Sagamok are difficult to assess, due to some of the problems already discussed, such as unreported incidents; domestic violence would be an example of the kind of incident that often goes unreported.[33] Another factor that would have affected the occurrence data is the fact that statistics prior to 1993 were documented in O.P.P. records, but in 1993, Sagamok assumed policing autonomy, including keeping statistics. There are two other major artefacts of policing being under local control after 1993: there were five officers instead of the previous two, and all occurrences were reported to local police rather than some occurrences being handled by the O.P.P. This may account for differential rates of some occurrences, although this is difficult to assess, because of differing attitudes to Sagamok police. While people complain that they are not always available when needed, some members have indicated a hesitation to call the Sagamok police.

Perceptions of the Problems

As a means of assessing Sagamok's crime problems, we were interested in the actual occurrence of socially disruptive and harmful behaviour, but also in residents' perceptions of the problems, on the assumption that the degree of fit between the two would indicate a number of things. We asked people to assess the severity of Sagamok's "crime and trouble", and estimate the most common types of trouble and crime in the

community. The same questions were asked of the police, (both O.P.P. and Sagamok police) and other justice personnel. We then examined police statistics to check people's perceptions against what was actually being dealt with by police.

If residents estimated certain crimes to be much more prevalent than what was documented in police records, it could indicate that a certain amount of social disorder was going unreported, or being "absorbed", as reportedly occurs in other Aboriginal communities (Brodeur, LaPrairie and McDonnell 1991; LaPrairie 1992:8; LaPrairie 1995:167). This could indicate either that people were not calling police to respond to incidents, or that police were underreporting the number of incidents they were handling. One of the contributing factors to the "absorbing" of socially disruptive and harmful behaviour is the way in which these behaviours are socially constructed. In answer to our question about drinking and behaviour, for example, results showed that the majority are willing to excuse socially disruptive behaviour in cases of drunkenness. Intoxication from alcohol is acceptable as a mitigating factor for violent or "bad" behaviour for 85% (n=39) of respondents. I elaborate on attitudes to alcohol consumption, and the implications of this, in the following Chapter.

A further indication of how values would have influenced residents' estimates of crime is how crime itself is defined. The widespread social disorder that is largely a result of drinking alcohol, or conflicted relationships may be thought by people to be "the way things are", instead of being considered within the purview of a justice system.[34]

In interviews with community members, we elicited their perceptions of the amount and type of crime and trouble present in Sagamok by posing a number of questions, including the following:

- What would you say are the greatest problems in this community?
- How serious a problem is crime in Sagamok ?
- What are the most common types of trouble, or crimes, in the community?
- Is there any particular group in the community that is in more trouble than other people?
- How much of the trouble in the community is related to 1) alcohol and 2) drugs?
- What is a serious crime? A minor offense?[35]

The following table (Table 2) was compiled from answers to the question "What are the most common types of trouble, or crimes in the community?" The number of responses, and the order in which they are placed, show which offences are considered to be most frequent:

Table 2: Estimates of Trouble and Crime-(By Frequency of Response)

N= 49 Total responses: 116-
1.Impaired Driving (n=27)
2.Alcohol use (n=21)
3.Break and Enter (n=18)
4.Drugs (n=15)
5.Vandalism (n=12)
6.Assault (n=11)
7.Wife Abuse (n=4)
8. Other: Family Disputes (1), Child Abuse(1), Elderly Abuse(1), Theft(1), Curfews violated(1), Suicide(1), Politics(1), Fraud(1)

Residents' estimates of the most common types of trouble show impaired driving to be the most frequently cited problem, followed by alcohol use. Few of the interviewees considered assault to be a common problem, despite police records to the contrary, and again, the social construction of assault plays a role, as well as presentation of the community to an outsider. In the following Chapter, I discuss the ramifications of this in reference to alcohol use as a common means of handling conflict and as a more socially accepted way of talking about problems of violence.

Hidden Domestic Violence

Domestic violence was given low priority in residents' estimates of common problems, yet when interviewees were asked specifically about this subject, a majority of

band members and police alike stated that domestic violence goes largely unreported. In response to the question "Do you think most cases of wife abuse are reported to police, or not?", more than sixty-five percent of respondents answered in the negative. The majority of those responded that "most" domestic violence goes unreported.

When asked whether wife abuse is a "crime" or a "private matter", over eighty percent of residents deemed it a crime. Thus it is not that domestic violence is defined differently that accounts for its being placed low in estimations of common crimes. The hidden nature of this crime, and its shameful associations, would partly explain its low frequency in estimations of common crimes, and contribute to its being turned inward, or absorbed. The high number of interpersonal offences (assaults) that do result in police intervention, however, would suggest that a similarly high amount of assault takes place in the home. There are several implications of this, which I discuss in the next chapter, but with regard to policing, as mentioned earlier, community caregivers sometimes hesitate to call local police for occurrences of family violence, as they are not trained properly in intervention methods. One family violence prevention worker expressed what is probably a more salient reason for hesitating to intervene in family disputes when she commented that to intervene "...is not our way" (Fieldnotes Aug 13, 1992). The emphasis on personal autonomy and reluctance to interfere with others' behaviour is one of the chief value differences that would influence the development of a justice mechanism for Sagamok, and one that needs to be openly discussed because of its far-reaching implications in the approach to family violence and other forms of social disorder.

The Processing of Offences

While domestic violence is one crime that is apparently absorbed and underreported in Sagamok, rates of offences cleared by charge from 1992-1994 rather than by other means are equal to rates of charge nationally. Moreover, in the latter part of 1993 and all of 1994, when Sagamok was policed by Anishnawbek Peace-keepers, while numbers of reported crimes were higher than under the previous arrangement, the rate of offences cleared by charge stayed the same. I calculated this for Assaults and Liquor violations only. The national rate for assault offences cleared by charge in 1992 was forty-seven percent; for Sagamok these rates were forty-three percent in 1992, forty percent in 1993, and under the Anishnawbek Peacekeepers in 1994, forty-seven percent. This is not entirely surprising, as these officers are trained by the Ontario Provincial Police in their approaches and techniques. Rates of clearance by charge are even higher for liquor violations than for assault: 59% in 1992; and 65% in 1993 and 1994. This could indicate that Sagamok police also categorize assault differently from the Canadian justice system view.

Any of the employees of the formal Canadian system with whom I spoke about the incidence of crime in Sagamok reported it as a "quiet" community. The youth probation officer had only two cases on file at the time of our interview, and he reported further that youth crime in the North Shore area had decreased in recent years. Local O.P.P. officers, who until 1992 were patrolling regularly on the reserve, called Sagamok

"quiet" compared to some other reserve communities in the area. They reported that only a small percentage of the incidents for the region arose in Sagamok, and that incidents were by and large alcohol-related, "...the occasional assault, that sort of thing".[36] Commentary like this points again toward underreporting of incidents. My observations of court cases arising in Espanola District Court over a ten week period in 1992, showed that the majority of cases that proceeded to court were alcohol-related. On every occasion on which I attended court, Aboriginal accused represented a minority of the daily docket.

It would further our understanding of the processes of Aboriginal involvement with the mainstream justice system to document the post-charge history of Sagamok accused, and see whether Sagamok conforms to the pattern suggested by LaPrairie (1995:165). She shows that, although the majority of Aboriginal inmates in correctional facilities are status Indians, most of the offences for which they are incarcerated are committed off reserve. Furthermore, although crime rates are high on reserve territories, few of the offences proceed to the formal system (LaPrairie 1995:167). For the James Bay Cree, LaPrairie shows that attrition rates are high for interpersonal offences, whereby victims, even when charges are laid, frequently dismiss the charges.

It would advance our knowledge of Aboriginal criminology if we could understand the dynamics of this social fact. Currently, it is not known whether the crimes committed off reserve (principally in large urban cores) are those which demand incarceration, or whether offences committed on reserve are treated differently.

LaPrairie's James Bay research suggests the latter. In Sagamok, although almost half of the incidents of assault result in the laying of charges, I can only use anecdotal evidence to compare with the pattern documented by La Prairie. Such evidence, from remarks made in interviews by outside justice personnel, and from my observations of court sessions in Espanola, suggests that few cases proceed to the formal court system. It is impossible to draw conclusions from this, however. The small number of cases I observed may have been an artefact of the time of year (June-August).

In the absence of adequate treatment facilities for socially disruptive and violent behaviours arising mainly from alcohol abuse and its root causes, offences that are more amenable to therapeutic responses are criminalized under the present system. In contrast, a growing number of Aboriginal communities see a therapeutic response to social problems as a treatment of the whole person who has become sick in spirit and therefore socially maladaptive. Particularly with regard to young offenders, the criminalizing of drinking offences, minor theft and vandalism can institutionalize adolescents to a pattern of criminal behaviour. Such a pattern fits the three chronic offenders from Sagamok whose stories I have heard. All three began drinking and committing petty thefts as preadolescents, and have spent most of their lives since then in various penal institutions (see Keysis 1993). Their stories and the comments of parents regarding their children being outside of their control, point to the need for preventive measures that reach children and address the root causes of these behaviours, as I discuss in the next chapter.

After hearing the stories of chronic offenders who had begun drinking and stealing at an early age, it was especially disturbing to see the same pattern beginning for the son of a Sagamok friend in 1993. This fifteen year old did poorly at school and skipped classes, and his parents felt they had no control over him. His first offence, a Level 1 assault (fighting), had occurred the previous year. While on probation for the assault, he was caught by Sagamok officers drinking tequila with his cousin late one night in violation of his curfew. As this was his second offence and he had violated his probation order, the gravity of the underage drinking charge was significantly escalated in the eyes of the legal system. He was released on bail on condition that he remain in Sagamok, but he went to Sudbury and was picked up again for underage drinking. He was then taken into protective custody at the youth detention centre in Sudbury. His parents, feeling that they had no influence over him, did not see any alternative to this incarceration. He remained there for several weeks before his court hearing. At the hearing, this teenager who had a drinking problem was brought into the courtroom in leg irons.[37] Since then, those shackles have been a chilling symbol to me of our system of punishment and its ascription of a criminal identity to a troubled and rebellious youth. I discuss some of the aspects of the problem of young offenders and troubled families in the following chapter.

Chapter Summary

The nature of a community and its interactions will in large measure determine the mode and viability of any community-based justice initiative. In this chapter, I have

tried to convey something of the nature of Sagamok as I have perceived it and as Sagamok residents have portrayed it. A brief historical background shows that the Sagamok of today was once three or four separate bands of "Spanish River Indians", some of whom were Ojibway, some Ottawa, and a small number, Potowatomi. Although they had a shared identity as Anishnawbek, these separate kin-based bands had a clear sense of "group" to the extent that intermarriage was rare (cf Rogers 1962:B89).

Since around the time of the Robinson-Huron Treaty in 1850, these groups have maintained less and less of their own identities, until in the 1950's, the Department of Indian Affairs deemed them to be one Band, "Spanish River Number Five", with one Chief and Council. Increased intermarriage between the groups over approximately the last twenty years has brought about a situation which is described by Sagamok members as "everyone here is related." The modern period has been an ebb and flow of conflict and co-operation, as citizens of the newly designated entity defend some aspects of their former identity, and are forced by outside pressures to find a new, blended one. In the past twenty years or so, these processes of interaction have become increasingly compromised by widening class differences and heightened political competition that tend to fall along former group divisions.

Past and present case histories have been examined for their hermeneutic value regarding Sagamok "law-ways". In contrast to Ryan's findings in the Dogrib community of Lac la Martre, NWT, we did not learn about a "rigid system of rules" (1995:3) which

had the "intent and spirit of Canadian law" (1995:xxvi). Rather, a Sagamok oral history of law and social control depicts two realities: one description relates the ideal of a society in which "everybody knew" how to behave, and those who seriously violated that moral order left the community. Fear of sorcery was a powerful deterrent to entering into conflicts or harming others . The other narrative is of Sagamok in the years after the turn of the century where "nothing was done" in cases of murder, and "there was no law". Families of the victims had no means of reparation and no sense of justice having been done, but nevertheless did not rely on mainstream justice to intervene. Indications of underreporting of incidents in the present day suggest that this profound sense of alienation and cynicism about the Canadian system still prevails.

Over approximately the past fifty years, the social control function has become more externalized. In the first half of this century, Sagamok was loosely policed by federal, then provincial, police, and the sporadic interventions of the Indian Agent. During this era the "do nothing" approach was common and many people felt "there was no law". Over the past fifty years, policing has gone through different manifestations to the situation of today, with a complement of five Anishnawbek Peacekeepers who are part of a larger, autonomous Anishnawbek policing body. They are perceived as gentler and more understanding of Anishnawbek ways than external police, but as having less training. Public estimations of the severity of the impaired driving problem, and their estimations that domestic violence goes mostly unreported, indicate that Sagamok police are underutilized in proportion to the need for their services.

A profile of Sagamok's crime statistics shows rates of interpersonal offences at six to seven times the national rate, and a high incidence of alcohol-related offences. This indicates a serious social disorder problem that requires treatment of its effects and its roots. In the following Chapter, I discuss some of the community's conceptual and human resources for dealing with the disorder that wounds individuals and impedes community development.

Chapter Four

Community Justice: Healing and Restoring the Social Body

"In the Mohawk language when we say law...what it really means is the way to live most nicely together...Living nicely together is an onerous standard." *Patricia Monture-Okanee (1994:227)*

Sociolegal Values: Enduring, Contestable and Changing

Most of the contemporary Aboriginal justice discourse rests on two major premises. The first is that the defining feature of Aboriginal peoples' interaction with the Canadian justice system is a cultural difference, and therefore a difference of worldview and values. The next premise follows on the first; that in order to "fix" this problem, alternative justice systems should be developed in indigenous communities based on "Aboriginal values". The problem with this argument, as I have stated, is its essentializing of both Aboriginal and "Western" or "EuroCanadian" value systems that ignores the diversity between and within First Nations, and the fragmented and shifting value system of the wider society.

The characterization of concepts like harmony-seeking and consensus, for example, is based on perceptions of Aboriginal peoples as they were in a past often romanticized by Aboriginal and non-Aboriginal commentators alike. These portraits are

seldom based on empirical research in contemporary indigenous communities, whose members have been profoundly influenced in this century by the forces of modernity and their interaction with EuroCanadian culture. Apart from the influence of the majority culture, Aboriginal cultures, like all others, are subject to change from internal forces as well (Hanson 1989; Sherzer & Urban 1991:14). Even if the assumed "traditional" baseline of values could be established, the extent of change, which depends on many factors, varies considerably between communities, and it would be equally specious to assume homogeneity of reaction to these influences across the spectrum.

As to the Canadian legal system, it relies substantially on the value systems of individual judges, and not simply on "the law", despite ideological statements to the contrary (Hart 1977:28). Under the common law system, judges create the law, not just apply it, and this leaves room for indeterminacy (Altman 1990:34). The national lack of consensus in a multicultural society such as Canada's may be the defining feature of contemporary law, and is increasingly undermining the "automatic authority" that the law has enjoyed in the past (Fulford 1995:C1). The critical legal studies movement, for instance, has seriously challenged the legitimacy of the rule of law in modern liberal democracies such as Canada (Unger 1983; Altman 1990:30). The idea of one law may still be a powerful one in Canada, but it is one whose hegemony has never been complete (as I discuss in Chapter One), and one that rests on an intertwining of different cultural roots and value systems, including, as I have said, Aboriginal law (see RCAP 1996d:188,189). Furthermore, when we talk about "the law" in Canada we must

remember that Canada has two systems of civil law, the Quebec system being based on the French Civil Code, the British Common law for the other provinces. Such a precedent surely opens a conceptual space in the Canadian legal imagination for the jurisdiction of Aboriginal law on Aboriginal territory.

The substantive and procedural aspects of any justice system come from the cultural and societal values and norms in which that system is formed (Lloyd 1964; Roberts 1979:54; Just 1991:385; Webber 1993:143; Gosse 1994:24; Ryan 1995), but these values and norms are seldom uncontested, and often used as weapons of power (Starr and Collier 1989). As the Gabriel Northwind incident in Sagamok demonstrates, power struggles can and do influence the public expression of individually held norms of disputing and ideas of justice. In that particular case, a struggle for political power and a public debate over the nature of individual and collective rights and responsibilities led to heightened community awareness of these crucial aspects of governance. Community members likely now have enhanced expectations of local government's accountability, and a better understanding of their individual rights in relationship to that government. Such an outcome constitutes community development, and shows that conflicts can have generative power (Simmel 1955).

The contestability and mutability of norms and values need not preclude the development of community-based justice systems based on them. These differences are not the total reality; areas of similarity and concordance also exist. Results of this

research show that for Sagamok, there is an ideational core of what could be called value orientations, and behavioural patterns or modes of interaction,[1] that people would likely call "our way". Though not unchanged, these have persisted despite the encroachment of non-Aboriginal culture via a modern capitalist economy, the mainstream education system, and the popular media (Rogers 1962:B91). Other research has shown that "Despite changes in the outward manifestation of culture, indigenous self-concepts and world views have remained distinctive and resilient" (Cornell 1988:34; cf Raudot 1709:341). These fundamentals constitute the social resources that will shape the "style" that Sagamok Anishnawbek adopt for community-based justice in the future. Another of those resources is the knowledge and remembrance that Sagamok Anishnawbek have of the way conflict and trouble were dealt with in the past.

Approaches to Law in Sagamok: Shadows of the Old Way

Reading Patricia Monture-Okanee's statement (quoted above) for the first time, I was reminded of comments made by former Sagamok chief Wilfred Owl at a meeting of the Ontario Native Council on Justice in 1993. In discussing the viability of a return to traditional Anishnawbe law, Chief Owl said that if communities like Sagamok returned to the traditional system of law, no one would be able to meet the standard. "That law was hard", he said. He stressed that it was in and through all aspects of life; it was not a set of rules. People today are too soft for that old law, he suggested, for it was an integration of moral and spiritual values that required discipline, attentiveness and self-

control. Peter Owl, a Band Councillor and community leader with whom I had several conversations about the nature of traditional law, described the Sagamok of the past as a society in which "everyone knew the laws" and when people offended societal norms of acceptable behaviour to a critical degree, such as committing murder or adultery, they would leave the community of their own accord.

Sagamok oral history indicates that murder seems to have been the one unforgivable offence. As shown in Chapter Three, only incidents of murder merited mention when we asked people about cases of "trouble" in the past. In the murder cases mentioned, the offenders left the community abruptly after their crimes. To remain in the community would entail intense shame and ostracism (cf Landes 1969:27), and in a society where interpersonal relationships are paramount, such treatment would constitute social death.

Shame also fell to those who violated rules of relationship with spiritual beings, especially those of the animal world on whom life depended (cf Ryan 1995 for Dogrib parallels). The story of Spirit Lake dramatically illustrates this principle, and Sagamok people have stories to tell that emphasize the same point. A senior resident told me a story from her childhood memory of a relative who was trapping beaver with his nephew. The nephew, out of ignorance, violated the laws of handling the carcass of the beaver, by throwing away the knees. As his uncle had predicted when chastising him for this disrespect, the beaver stopped coming to the traps. The nephew was told that it would be

necessary to make amends for this violation of spiritual rules. The beaver came back gradually, after the uncle corrected the situation by carving a beaver knee out of wood, and placing that in the proper place as a substitute for the real thing.

One of the questions we asked the elderly Sagamok residents in interviews was if they knew about "Anishnawbe Law", and overall, they answered that they did not know anything about it. I believe this response has a number of aspects to it. One may be an artefact of how we phrased the question; for interviews conducted in English, we simply used the phrase "Anishnawbe Law". The words "law" or "justice" have no Ojibway equivalent. The word we chose to use in Anishnawbe, after consultation with Elders and other Anishnawbe speakers, was "*dbaaknigewin*", which in English translation means "judgement". In essence, by choosing this word we merely put an Anishnawbe word onto the western conception of law. To allay the implications of this, we asked what seemed like a more neutral question: "Was there a way of dealing with trouble in the community in the past?". The majority of responses to this question made reference to use of the modern Canadian justice system in their lifetimes.[2] Again, on later reflection I could see that this question also cast a modern Western legal ideology over Anishnawbe reality, with the implicit suggestion that "law" is all about "dealing with trouble". Again we tried to grasp the essence of Anishnawbe law as moral teaching by asking : "...how did you learn the difference between the right way and the wrong way?" Some mentioned the Christian Church; others named parents and grandparents as their guides. They told us that their parents and grandparents were strict, and would give them scoldings or advice.

"Talking" to youths was a major method of keeping them on the right path. Seniors also told us that they were "twigged" or "whipped with a stick" to teach them a lesson (cf Ryan 1995:xxvii). Several of the older Sagamok members expressed regret that the youth of today seem impervious to adult exhortation and advice, and that parents are now prevented by law from using corporal punishment to teach their children (see Hazlehurst 1991:45 re Aboriginal parents in Australia). In their day, and according to their account, the family was the main locus of teaching and social control.

The senior members of the Sagamok community may have responded to our questions the way they did because the Anishnawbek law of the past was more implicit than explicit, more internal than external. The massive changes in Anishnawbe society imposed by colonization have weakened the normative community and family structure in which traditional law operated. The rules of behaviour in the past, many of which were modelled, rather than explicitly stated, operated within a social and economic way of life that has now largely disappeared in Sagamok. Rules of behaviour to maintain right relationships with animals, for instance, have less immediacy and importance for the young generation, because the hunting way of life is marginal to their pursuits. The community of today is many times the size of the Sagamok into which its senior members were socialized. Many of Sagamok's children today are socialized within single parent homes, a significant part of their socialization coming from television programs and school.

In the past realm of human relationships, the Anishnawbek internalized the norms of behaviour to such an extent that, as Hallowell puts it, social control was largely self-control (Hallowell 1955). Traditional customs and ceremonies that reiterated cultural principles disappeared here too, at least publicly, and have only been revived as public ceremonies over the last ten years or so. The law of the dominant society has been operative here for as long as anyone can remember, by Indian Agents first, and RCMP, and then by O.P.P. and now by Sagamok Police.

The characterizations of the old way describe a normative community in which unwritten law was embedded in everyday practice, interpenetrated with an economy and structure of spiritual belief that made life more "of a piece" than the compartmentalization of modern life. As told through the filter of today's search for identity and need for a foundation on which to secure self-determination, the darker side of ancestral social control is elided. That darker side included ostracism from the community, either physical or social. Removing offending members was analogous to surgery on the social body. Eventually the wound would heal, the scars would fade, and the social body could continue to function. That darker side also meant sometimes using covert means of retaliation against your adversaries. Gossip and shaming were powerful instruments of social control, but their power came from a normative unity that no longer exists.

One elder told us that

> *"My mother used to tell me that in the old days, when people did something, other people never forgot. People didn't let them forget, and that's powerful. You can't get that out there [in mainstream society], only in the community."*

As I discuss further, the modern use of shaming is problematic for various reasons, one of them being that the modern community is more normatively heterogeneous than the customary community.

For less serious offences, the Anishnawbe way was to correct through teaching and discussion within the family and the community, or to take no formal response at all. In this century, and particularly in the last fifty years, there have been significant social changes. As I discuss further, the family structure that socialized children to Anishnawbek norms of social control, and offered moral guidance to those who strayed, has gone through generations of trauma caused by the destructive effects of colonization, including the residential school system, and is now undergoing fundamental change.

In light of all these changes, is there still a prevailing sense of "how to live nicely together" in Sagamok? A prime value of the past that is still acknowledged as central today is that of "respect". Although the political battling and the level of interpersonal violence in Sagamok demonstrate the opposite, "Respect" is still a cultural ideal expressed in various ways, both prescriptive and proscriptive. Talking to one another, helping each other, sharing, and "getting along", are all prescribed as elements of respect that are vital to community health. Thus, the social disorder and political strife, drinking

and fighting that are common in today's community are, at the core, a loss of respect that is a deeply felt loss. As I discuss further in this Chapter, emotional restraint and the avoidance of open confrontation are understood as elements of respecting yourself and others (cf Hallowell 1955:136), as is avoiding doing harm to any person, including the self.

Contemporary Approaches to Conflict: Avoidance, Alcohol, Abuse

The contemporary Sagamok finds itself with a long history of cultural upheaval and loss that have seriously weakened the normative framework upholding self control, and a displacing of the localized, public dispute resolution sometimes enacted by former chiefs. A frequent response to this situation has been to take no formal action about social disorder and traumatic conflict. A similar pattern has been reported for other Aboriginal communities (Brodeur, LaPrairie & McDonnell 1991; Ross 1992:62; LaPrairie & Diamond 1992:422,424). Policing, the one formal means at hand, has been underutilized, for reasons discussed earlier. These patterns suggest that "trouble" in Sagamok has been largely carried by informal means of social control such as self-help, gossip, shaming and fear of sorcery. An exception to this is that chief and council are sometimes expected to fill a policing and social control role, although this is not part of their formal mandate. Complaints against disruptive behaviour or reports of conflicts are often taken directly to chief and council rather than to police. The abnormally high levels of interpersonal conflict, domestic violence, and alienated and suicidal youths testify to

the reality that informal means alone are no longer able to sustain such a burden. There is frequent acknowledgement by some community members that the present modes of avoidance, alcohol, and abuse are destructive ways of dealing with conflict and trouble. The interest Sagamok leaders have shown in developing formal Anishnawbek means of conflict resolution is an indication of their belief that this is the case (cf LaPrairie 1992b:288).

Avoidance

Sagamok is a contradiction in the sense that there are strong divisive forces and a history of long-standing conflict, yet the community retains enough cohesion that informal means of social control are still able to exert a powerful constraining force through relational networks. Reports of domestic violence going unreported by victims, for fear of shame and embarrassment, are a prime example of the power of public opinion.[3] As I have said in the previous chapter, fear of 'bad medicine' is still prevalent, including among the young adult cohort, and acts as a check to open confrontation, except when disputants lose their inhibitions to alcohol. Gossip is still an effective means of enacting revenge on your adversaries through shaming them (Landes 1969:13, 27; Barkwell 1991:16) and as a warning against deviance from norms, as has been reported for other Anishnawbek communities (Auger et al 1992:327), but it is subtly done. Public insults are avoided, and even in private conversation, people, especially older residents, are not in the habit of speaking ill of others, except in a circumspect way.

The character of gossip, then, is more a reporting of events with the moral conclusions left to the listener.

In addition to the systemic factors that contribute to individual suffering, cultural psychology can contribute to unresolved conflict. Conscious repression of outward hostility is a commonly documented behaviour pattern among the Ojibway and other Northern Algonquian peoples past and present (Hallowell 1955:133,137; Bishop 1974:64; Brodeur, LaPrairie and McDonnell 1991:70; Preston 1991:70) My observations of life in Sagamok, with a very few exceptions, support this assessment. Outward relations between conflicted parties were cordial despite unresolved antagonisms between them. This is one way of showing "respect" for each other. Such open-ended relational patterns, characterized by what Preston calls "interpersonal negotiation" are "desirable in small-scale societies where people know a great deal about each other" (1991:70) but are becoming less effective as Sagamok grows and changes. Preston maintains that the Algonkian East Cree resist pejorative labelling of others' deviance in favour of responding to individuals' behaviour on a case-by-case basis. The behaviour of Sagamok Anishnawbek indicate a similar value orientation, which is why, as I discuss further, they apparently place confidence in a talking remedy for criminal and disruptive behaviour. Rather than label people who commit vandalism or assault others as 'criminals', they exhibit a belief that the person has made a mistake and can be rehabilitated through talking and teaching. Given their preference for avoidance of direct

confrontation between disputants, however, such rehabilitative "talking" would be better done by a person or persons disengaged or distant from the actual offence.

When asked how they would respond to a person with whom they were angry, or react to someone who has hurt them or their family, the majority of Sagamok residents responded that they would avoid the offending person. Nevertheless, such avoidance can be very pointed, communicating clearly what is left unspoken. Moreover, conflicts between individuals ramify through kinship networks, as family members avoid someone in conflict with a member of their extended family. Seeing this in practice today, one can understand how lines of division developed and hardened within the Sagamok community over time. With increased intermarriage between Sagamok family groups, these lines crosscut even more relationships than they did in the past, adding tension to familial and workplace relations where avoidance is not possible.

Written accusations to a third party or outside authority, another aspect of the avoidance of direct hostility, remain common means of venting anger and aggression. Again, the 'Gabriel Northwind' incident is a recent demonstration of the power of outside opinion being brought to bear on a local situation. The avoidance of direct confrontation has implications for alternative dispute resolution mechanisms derived from European psychology. Contemporary versions of mediation as an alternative dispute resolution mechanism based on a personal disclosure model and open communication of grievances would be difficult to employ in Sagamok, given the preference for indirect

means of informal social control. It is important, therefore, to consider proposed mainstream models of dispute resolution carefully to assess the communicative model from which they arise, and find ways that are suited to Sagamok psychology and social interaction modes. For the James Bay Cree, who share this preference for indirect means, local intermediaries have been suggested as a means of handling disputes (Brodeur, LaPrairie and McDonnell 1991).

Having a third party intervene in disputes, the basic feature of all forms of mediation, however, is a common strategy used in Sagamok, although the third party is not usually the "neutral" one required by non-Aboriginal dispute resolution principles. It would be difficult to find such a person in a small, kin-based and closely interconnected place like Sagamok. Moreover, when the most important part of approaching a problem is to know its context, the principle of neutrality loses its relevance. Elder kin are sometimes called upon to play the role of intermediary, although more within the extended family network than outside of it. As mentioned, some band members still use the chief or council members in this capacity. Increasingly, however, the third party role and other forms of avoidance are countermanded by confrontations facilitated by alcohol use, which are widely tolerated if not publicly sanctioned.

Alcohol

The common strategy of avoidance has its counterpoint in the acting out of aggression that follows alcohol consumption. Paradoxically, when people drink alcohol

to escape strong emotions, the result is often a public and explosive expression of them. There are enough ethnographic citations of this behavioural pattern, from the early days of contact up to the present (see Brodeur, LaPrairie and McDonnell 1991:59 for Cree examples), to be able to say that alcohol consumption is the most common mechanism used to vent unexpressed anger in modern Anishnawbe society. It is certainly one of the most prominent means that people of Sagamok use, consciously or unconsciously, to handle conflict. The high incidence of interpersonal assaults that occur during drinking sessions attests to this. Whether unresolved interpersonal conflicts are sometimes the trigger for drinking, or drinking is simply the trigger for releasing repressed anger is difficult to say, but the result is the same. From a functional point of view, it could be argued that alcohol serves as a release mechanism, albeit an unsatisfactory and dangerous one, for the characteristic Anishnawbe emotional restraint in interpersonal relations.

A widespread tolerance for this kind of behaviour in Sagamok was indicated in interview responses, with a high proportion of respondents asserting that people's actions should be judged differently when they are drunk, and that they would not act badly if they were sober.[4] There were generational differences demonstrated in responses, however, to indicate changing values about drinking behaviour. The younger generation (15-35 years) were less willing to excuse what we termed the "bad or violent behaviour" that may result from drinking, than were their parents and grandparents. Significantly, one hundred percent of those over thirty five years of age in our sample who answered this question (n=22) were willing to excuse behaviour on the basis of drunkenness, as

opposed to seventy one percent (n=17) of those under thirty five. This means that alcohol as an instigator of open and often violent confrontation is not only a dysfunctional way of handling conflict, but is increasingly being seen as such by younger band members.

It is common to hear the sentiment in Sagamok that there is less "partying" now than there was a generation ago, although weekend nights in particular are still marked by drinking and fighting. This is also a result of demographics; a large proportion of young adults have left the reserve to find life opportunities elsewhere that are not available in Sagamok. A much larger percentage of Aboriginal young adults are in postsecondary training now than was the case a generation ago (Canada 1993b), and this keeps many of them off the reserve for most, if not all, of the year.

There are also cultural determinants of the changing pattern of drinking and partying. A pattern for some Sagamok men is to give up drinking and the associated "partying" in mid-life, to become more active in family and community life, and turn to spiritual growth. One of the signs of such growth is the ability to "respect" self and others, an attitude that drinking often impairs. A similar age-related pattern documented for Native clients at an Arizona treatment facility is understood in terms of deciding to "let in" the advice of caring, significant others as part of the "normal process of ...maturation"(Watts and Gutierres 1997:12). Such differences in drinking habits from one age group to another are a significant factor to consider in the design of alcohol and drug rehabilitation programs for Sagamok.

Abuse: Handling Conflict through Violence at home

I only touch on the subject of family violence here in its capacity as a means of handling conflict. A 1990 family violence study in Sagamok and a number of other Anishnawbek communities in Northern Ontario indicated that abuse is pervasive, begins early in life for many Anishnawbek, and is a learned behaviour that is transmitted from one generation to the next (Manotsaywin Nanotoojig 1990). Family violence is increasingly being seen as a key to most other social problems in contemporary Aboriginal communities, and therefore a top priority in community healing initiatives. There are communities such as Hollow Water, Manitoba, mentioned earlier, that have addressed the family violence problem directly, and based their justice initiatives on the treatment of domestic abuse (Ross 1996:29ff; RCAP 1996a:159ff). In Sagamok, the subject of abuse is still a shameful and deeply buried secret. As one resident put it, "I would call Sagamok a closed community because they keep everything to themselves. Everyone has a big secret to hide." Based on my court observations, however, on people's estimations of the amount of abuse, and on the response to our interview queries about preferred interventions for domestic violence, Sagamok would appear to have levels of abuse as high as that of any other Ontario Aboriginal community (Aboriginal Family Healing Joint Steering Committee 1993:7). Alcohol is often a precipitating factor in cases of physical domestic violence, but other ongoing behaviours harmful to the well being of other family members such as neglect, verbal assault, and economic deprivation

or fraud have been included as types of abuse in the Ontario-wide Strategy for Aboriginal Family Healing (Aboriginal Family Healing Joint Steering Committee 1993).

Such types of dysfunctional behaviour in Aboriginal communities have been traced to colonization and its psychic effects, and the trauma of culture and role loss. The psychic effects of poverty and marginalization also play a role in the inner conflicts that affect interpersonal relations and often result in physical, sexual and psychological abuse. Some of the symptoms characteristic of First Nations "Baby Boomers" are reported to be social maladjustment, abuse of self and others, and family breakdown (RCAP 1996b:377).

The repression of emotion is a noted Ojibway trait (Hallowell 1955:364; Miller 1991:50) and the dysfunctional side of placing such a high value on restraint can be seen when emotions explode into domestic violence. The subject of abuse and domestic violence elicited strong response and a clear message from Sagamok members that they would respond to domestic violence with punitive action in many cases. Like other behaviours that diminish and harm the self and others, abuse is also categorized as a profound lack of "respect", and a behaviour that most people claim almost never occurs when people are sober.

As the Table below (Table 3) indicates, the first intervention of choice for domestic violence was incarceration; counselling is mentioned just slightly less frequently, and is often included with incarceration as a response.

Table 3: Suggested Interventions for Domestic Violence

Number of respondents: 50			
Male Respondents (22)		Female Respondents (28)	
Jail term	09	Jail term	13
Family counselling	08	Counselling	12
Don't know	02	Removed from home	05
Arrest and charge	02	Police charge	04
Banish	01	Apologize to community	01
Sweats	01	Don't know	01

This strong preference by both sexes for sending perpetrators of domestic violence to the outside system may indicate the anger of respondents who have themselves been victims of abuse, but it is also an important finding for Sagamok justice planners to take into account. It indicates that domestic violence is considered by community members to be a different order of crime, one requiring a punitive response, and preferably, outside the community. If we take into account the extremely strong aversion to being restrained that is characteristic of Anishnawbek (Hallowell 1955:136), and the statements of Sagamok residents mentioned earlier eschewing incarceration, this preference for restraining abusers becomes even more remarkable, and one that cannot be ignored.

A complicating factor in the treatment of sexual abuse and domestic violence offenders is the small community size and its multiplex nature, making confidentiality extremely difficult. As noted earlier, residents estimated that most domestic violence goes unreported in Sagamok. Victims, the vast majority of whom are female, may only

feel safe when the offender is removed from the community. When we asked interviewees why cases of domestic violence might not be reported to police, the following responses were common: over half (53%) of the responses cited "embarrassment" in the community; the next most common reason given was "fear of punishment" by the abuser; some expressed fear at being victimized in court proceedings, or belief that "nothing would be done" in court. As evidence of this, police statistics for Sagamok for the years 1992 and 1993 show that the majority of domestic assault cases went unprosecuted because no charges were laid, or charges were laid and then dropped. As this has been the case with the outside justice system in the past, it could be expected that the aspect of shame and embarrassment would be more acute with a home-based system. The perception that victims of domestic violence are remaining silent out of fear of public opinion is another indication of the strength of gossip and "talk" to influence action in a community as small and intertwined as Sagamok.

One female band member, a victim of domestic violence, described her experience of the mainstream justice system's treatment of the offence:

> *I charged someone with sexual abuse and the guy got off and was made to do community hours. I went through all that justice system for nothing, because nothing came of it. I don't think I could go through that again...*

This is a case where the mainstream system, perhaps in a concession to assumed standards for "community involvement" or "tradition", placed the responsibility for the offender's rehabilitation on the community, when the community was unprepared for it. It is clear that a community service order was inadequate to make the victim feel that

justice was done in this case. We can judge from her remarks that this woman would be unwilling to press charges in the event of a further assault. A similar fear and cynicism on the part of other victims may be another of the reasons for the general lack of reporting of domestic violence in Sagamok.

It is clear that community members are not willing to take the same restorative, community-based approach to perpetrators of domestic violence, that they would prefer for other offences. This is a significant finding that justice planners will have to take into account, not only in Sagamok, but in communities that may be assuming local control of justice based on assumptions of "traditional" means of handling social disorder without assessing current value patterns (Dumont 1993; Gitksan Wet'suwet'en Education Society 1992; Hodgson 1995; Manson 1994; Ross 1996:29ff; RCAP 1996a:159ff)[5].

Clearly, these concerns need to be addressed in the development of community-based models. An integrated approach to domestic violence may see offences initially being processed off-reserve, and follow-up treatment taking place in the community, or a regional Anishnawbek justice body and/or treatment facility. The needs of children in these situations are also vital, and any follow-up programming would need to protect their right to safety. Preventive measures such as life skills counselling and alcohol abuse treatment programs will also address the domestic violence problem. A Sagamok community caregiver who has worked in the field of family violence and sexual abuse made this comment about the lack of rehabilitation opportunities for male offenders:

> *Rehabilitation is minimal, ...in sexual abuse cases. Indian fathers are pitiful when they confess; usually they are very remorseful and open to rehab, but those opportunities are lost, because it's hard to get them into rehab programs.*

Domestic violence is one area that requires a long-term approach and extensive community consultation before a workable model can be created that will include the various experiences and viewpoints of Sagamok members.

A community problem directly related to alcohol and drug abuse and youth suicide, is a prevailing sense of family breakdown and dysfunction. Domestic violence is one of the most traumatic manifestations of this. Family dysfunction is explained by community members in various ways, one of which is the effect of attendance at residential school from the late 1800's until the 1960's, of many Sagamok residents. At a community meeting in 1994, Peter Owl expressed the effect this upheaval had on Sagamok families:

> *When they removed the children, they took them off and gave them the education they thought was necessary. And when the old folks were left at home, the heartbreak that was there within those communities is still there today. You know it yourself, even today, if your child was to be removed from your family today, the heartbreak and the hurt that you would feel within yourself that you didn't have control over your family, that pain would stay with you. And that's exactly the way it was*[6]

How to Respond to Young Offenders?

The theme of lack of parental control of children and adolescents was a common one made in interviews. Older interviewees would frequently contrast this to their own upbringing, which was described as "strict". Today's parents, confused about their roles

and caught between value systems but not seeming to know which values to embrace, cannot discipline their children with the confidence that their grandparents could. Social service workers and other community caregivers recognize the need for teaching of parenting skills as one way of ameliorating the alienation between many adolescents and parents. There is a common perception among parents that youths have no fear of the consequences of their behaviour, but such a disregard for moral authority is understandable if clear values have not been communicated as part of their socialization.

Parenting skills are also needed by the large number of adolescents who have fallen precipitously into parenthood at an early age. In those families where young parents need training in parenting skills and also have a pattern of alcohol abuse, children are in jeopardy, not only regarding the physical necessities, but of repeating the behavioural patterns of their parents when they become parents themselves (Aboriginal Family Healing Comm. 1993; Brant 1993:69).

In a community where it is widely held that the criminal and disruptive behaviour of youths is due to family and community context, one would expect a community justice system to want to address this context. Such an addressing of harmful behaviour in its total context would encompass prevention, intervention, and post-release support. These three strategies would take place in the close family circle, the extended family circle, and the circle of the community. The same would apply for adult offenders. Many of them started offending as adolescents or younger, and have never received meaningful

intervention. One ex-offender who has spent a considerable amount of time "in the joint" explained his frustration at the lack of community support upon release:

> ...few native communities have support groups set up. We take the programs [inside prison], get parole and find out we are no better prepared for "straight life" than before we went to jail. In some cases worse off, since believing we are prepared and failing creates a serious loss of hope. Many of us have failed time and time again and the will to keep trying fades away (Solomon 1992:3).

The results of our interviews suggest that local theories of criminogenesis and restless, troubled youths show an understanding of the family and community context in which such problems arise. The problems, their causes, and the solutions are inseparable and interlocking. In suggesting interventions for young offenders, twenty-six percent of interviewees suggested counselling of some kind as a rehabilitative strategy. The option of choice was a group facility in Sagamok, so that young offenders could be kept on reserve. It is clear that Sagamok residents and leaders have a strong concern about the disruptive behaviour and substance abuse of their young members, and a willingness to deal with the problem within the community if the resources were available, but that parents feel unable to handle the problems themselves.

Once the youths leave the reserve and become "offenders" in the system, however, parents have no control and may then regret involving the police. As I have said, the mainstream justice system's criminalization of some behaviours such as underage drinking and vandalism is an inappropriate response to a social phenomenon

that calls for family and community action. The community and the justice officials recognize this, but parents seem to feel at present that there are no other options. A community-based system could take a proactive approach by integrating education for prevention with counselling approaches and family counselling if necessary, and involve the police in a comprehensive plan to respond to the sometimes fatal effects of behaviours like underage drinking and driving.

Vandalism, a frequent problem, is often done by children as young as nine and ten years old, a fact that requires family-based interventions rather than criminalization. Some Sagamok members who have been incarcerated several times told us that they began stealing at around that age, and were first charged when they were sixteen. Neither the justice system nor the community have ways of dealing with the youngsters who begin crime careers in some cases with these habits of theft and property damage. Vandalism, mischief and petty theft are rated as "minor" crimes by Sagamok members, and, as noted earlier, the majority of interviewees showed preference for restitution rather than punishment in such cases. Interventions for these behaviours could be based on a restitution model.

Sagamok's present resources for dealing with young offenders are decidedly inadequate. Community service orders, a sentencing option preferred by community members and judges alike, habitually fail due to lack of supervision. Neither the regional

youth probation officer nor local social service personnel can manage to adequately supervise community service orders without extra staff.

A mother told me her story in this regard: her son broke into a store in Espanola, and was charged with theft and sentenced to community service. He went unsupervised by the person who was supposed to be monitoring him. She tried the supervision herself, but soon realized that her son had lost respect for the system and knew he did not have to comply. She was taking blame for his behaviour in saying that she "should have taught him right" when he was little. She said that she and some of her siblings learned self-reliance and traditional ways (eating of wild meat) from her parents, but all that went by the wayside when they moved into the village from the bush. She and her husband had not taught their children those skills and values. She believes, too, that treatment of crime and disruptive behaviour by youth needs to begin in the family unit, not the community.

Like the mother above, there are others in Sagamok who make a direct link between traditional life skills, or ways of "the bush" and basic Anishnawbe values. It seems to be assumed that this pairing of traditional skills and values would keep youths in particular from bad behaviour, and indeed, in the past, these skills and basic values of social interaction were inseparable.

In the belief that education in traditional knowledge will set youth on the right path, one of the Sagamok police officers, who works full time as a community service officer, has taken some youths out on a winter survival course, where he demonstrated

traditional methods of survival, and held storytelling sessions. There are other concerned Elders in the community who are passing on Anishnawbe teachings to youths through traditional ceremonies, and community caregivers are expressing the need for more resource people for this kind of proactive, preventive approach. Moreover, while this approach may be effective for some individuals, it is not for all; Sagamok needs a variety of strategies to deal with youth crime. But the effectiveness of such an approach is questionable if "tradition", separated from lived and modelled values, is expected to bear the burden of rehabilitation of young offenders. A more effective strategy would be to deal with families as a whole, where the emphasis can be on learning and adopting healthy interactional modes together, and taking mutual responsibility for the behaviour of young offenders.

At the time this research was done, the pain and fear surrounding youth suicides the previous year still held the community in an icy grip. One of these had been in response to the accidental death of a friend; another was a shooting that happened after a bout of drinking and drugs. Guns are available in virtually every home, facilitating the execution of suicidal thoughts. In late 1993, there was still palpable pain, despair, and a search for explanations. One theory expressed to me was that some community youths were involved in a Satanic cult that would eventually kill more teens. The house in which one of the suicides happened was an "evil" place and after sitting empty for over a year, was taken down.

In response to the sense of crisis engendered by the suicides, Sagamok social service leaders set up a Crisis Intervention Team. Sagamok police have a protocol agreement with this team whereby they do not intervene unless there is direct personal danger to anyone; the crisis team handles the situation otherwise. The Crisis Intervention team is directed by Social Service personnel and staffed by trained volunteers who are on call at night and on the week ends. This development shows that an integrated approach to justice and the building of resources for a community justice system in Sagamok has begun.

The national Aboriginal suicide rate is the highest ongoing rate of suicide reported for any identifiable population in the world (Boldt 1993:xvii; Brant 1993:56). In Sagamok's population of just over one thousand, four young people took their own lives within a one year period between 1993 and 1994. Moreover, Sagamok's Crisis Intervention Team takes the so-called "contagion of suicide", where suicides are committed in imitative response to others (RCAP 1995: 7,17) seriously enough that they provide extra around-the-clock counselling for those considered at high risk: youths and persons closely involved when a suicide takes place.

The reactive approach is necessary, but a proactive and preventive approach could reduce the number of suicides. The demographics of youth suicide, most common between 14-25 years of age, include such factors as non-parental caretakers in childhood, caretaker arrests, early age of first arrest; arrest in the previous year, or the recent break

in a relationship through conflict or death (Brant 1993:56; RCAP 1995:8). A preventive approach to the factors of family dysfunction evident in this list would link with the integrated approach to justice that Sagamok leaders would prefer to take, in considering the life context and spiritual welfare of youths in trouble, and not merely their lawbreaking behaviour. Considering the link between recent conflict in relationships and suicide, education in conflict resolution methods would be a key part of a holistic approach to youth suicide as well as justice.

Interview responses regarding alternatives to the present system of off-reserve youth detention centres, showed a preference for the person-centred, contextual approach. Of those who responded to this question, fifty-eight percent were dissatisfied with the present treatment of young offenders in off-reserve detention centres. We asked those who expressed this view to suggest alternatives. Less than ten percent (7.5%, n=3) suggested incarceration as an option. The remainder suggested alternatives including a detention facility on reserve, counselling, community work, Elder's guidance, living with extended family, teaching of traditional ways, and provision of recreational activities.

One social service provider suggested that young offenders be required to participate in a ten-week program that would include education about values and the Anishnawbe way of life. As I discuss above, this strategy could be problematic in the current state of shifting values and generational differences. Ryan (1995:66ff), in her discussion of similar justice research in Dogrib communities at Lac la Martre, NWT,

advocates reviving the old values, and teaching them to the youth. Ryan concludes that "...considerable work will have to be done to convince the younger people that the values that underlie the traditional system will ensure a more humane system for the future" (1995:103). A similar call to the revitalization of traditional values such as respect and trust through bush training, has been made for the Cree by McDonnell, but like Depew (1992:541), who questions McDonnell's conclusions, I believe that values must be contextualized within modern life. Moreover, I think the youth are disenfranchised by such a proposal; they need to be a central part of determining what kind of system will work in their community.

Ryan assumes that "...people who are rooted in their own culture by understanding and knowledge, who are connected spiritually to the land, and who have some deep sense of a cultural self will assume more responsibility for their actions" (1995:67). This sounds desirable, but in the long run, how can youth achieve this connection to the land if the land cannot sustain them? The youth need a living culture, one that can sustain them economically as well as spiritually, or it will cease being culture, and become only iconic tradition. Cultural values are at their most potent when they guide everyday action. The separation of values from action is part of why there is such a moral and spiritual crisis, not only in First Nations, but throughout the world, as a characteristic and consequence of modernity. Ryan herself implicitly states this a few pages later, when she writes that "Life now is not so clear. The dismal lack of social control, often expressed by alcohol abuse and assaults, provides clear signs that people

are not anchored in functional ways in their own culture"(1995:70). In Sagamok, the hunting economy is no longer there to support the former rules for living, and the gap between Elders and youth is wide. As I have stated, a justice system needs to be based on broader value orientations, rather than trying to revive the kind of "rules" to which Ryan refers.

The Role of Elders

One of the perceptions voiced by Sagamok residents is that Elders' role has changed and their authority in the family structure has diminished in recent times. The issue of Elders and their role in community justice is one that has been the focus of a great deal of the discussion in recent years. Former government-sponsored pilot projects have used Elders' panels as pre-sentencing diversion mechanisms (RCAP 1996a:109ff). Based on our research in Sagamok, however, I believe that models making Elders the locus of decision-making in community justice would be counterproductive. More recent models of community justice involve a wider network of community members, including victims and close family members (Braithwaite 1989; Gottfredson and Goldkamp 1990; Griffiths and Belleau 1995:176-177; LaPrairie n.d.).

What we heard from Sagamok members and leaders, and from the Elders themselves, was that Elders' role in the past was contextualized within the extended family. In the early days of government-imposed band structure, when family groups were still political units, family groups had senior spokesmen who represented their

interests in community meetings.[7] By and large, however, Elders' moral influence was confined within the family; they lived with their children and grandchildren, their word was respected by younger generations, and they taught by example and parable. Their power, however, was not a coercive one; their legitimacy stemmed from their own obedience to the spiritual and natural codes, and their role as models of right behaviour. In the Anishnawbe society of the past, coercive power was held only by the "bearwalker" and people's fear of the power of sorcery; there was no enforcement body for law. The medicine man's power was sustained by fear of the consequences of bad behaviour (Landes 1967:7,11; Rogers 1962:D20; Rogers 1969).

The somewhat rarified model of Elder in Aboriginal cultural and political discourse today is not the one that some band members remember from the past. One community leader expressed his concern about this new "tradition":

> *We never talked about the Elders as a specific role. This seemed to happen after 1975, as a political thing. It comes in a native form, as we try to go back to our customs. We should examine the reasons underlying the change...*

Other residents explained their understanding of the change this way:

> *There's more of a focus on them now, a more important role. When I was growing up, we had respect for our elders, but within the immediate family.*
>
> *When I was younger, the elders weren't involved in politics. Advice was informal, if anybody needed advice, they were there. They were really respected.*

Elder residents themselves seem uncomfortable with the new role of "Elder" that a revitalization of "tradition" is defining for them. Several years ago a proposal was put to Sagamok Elders that they participate in a formal way to help discipline young offenders, but they declined on the grounds that they were not prepared to accept the responsibility. In some other communities, Elders Panels have failed (RCAP 1996a:106-108), partly due to a similar fear, compounded by lack of preparation and training for the role of justice arbiter.[8]

We asked senior Sagamok residents the following question : "Do you think Elders could have a part to play in dealing with young people who get into trouble? If so, what?" The nine who responded, made some of the following comments: "I don't know if the kids would listen. I talk to my grandchildren because I care"; "They won't listen. They don't speak Indian nowadays, they don't understand"; "Yes, they should. It used to be we respect our elders. They talk to you."; "No, because they don't listen"; "If they listen. My parents always told us to listen."; "The young people don't listen. When we got punished, we listened"; "No, they would be afraid"; "Yes, talk to them. Try to make them listen."

The statements of these elders give a clear indication of their hesitancy in taking an active role in counselling youth. The near-universal theme of "listening" in their statements reveals a key Sagamok value: the importance of communication and teaching between elders and youth. Their statements show too that erosion of indigenous language

and practice in the modern period have put a gulf between the generations. Also expressed clearly in the elders' statements is a perceived waning of their authority. With social structure having changed so that elder family members seldom live with their extended families, and the use of Anishnawbe language radically diminished in recent times, elders' legitimacy as sources of moral authority has eroded. The education and lifestyle of youth differ radically from that of their grandparents' generation, and they have changed their own role by assuming more personal autonomy than their grandparents had in their youth. I think it is simply asking too much of senior members and youth as well to put the problem of youth crime and trouble in the hands of Elders' panels, given the reported lack of respect and attention the Elders obviously feel, and their unpreparedness for some of the issues that will arise (LaPrairie 1992b:292; McDonnell 1995:466; RCAP 1996d:127).

One community leader expressed his concern about the effectiveness of Elders' counselling of youth:

> *... the kids aren't being taught the traditional values, so how would they understand what was being handed down to them? For example, some of them shoot a moose who has a calf. We were taught not to do that unless we were starving. But the kids don't want to listen, even when you tell them.*

This leader pinpoints the intergenerational and acculturation problem clearly. In order to understand a "sentence" coming from a panel of Elders who base their decisions on a complex of rules interconnected with a way of life, the youth would have to understand that cultural complex. The moral guidance they need today is one that must be fitted to

their lives and experiences of modernity within the Canadian social landscape. There will be others in the community as well as Elders who can offer such guidance.

The generation in-between, those who are children to the Elders and parents to the youth, seem to find it difficult to concede genuine authority to the Elders as well. Pam Colorado writes that, because of residential school, there is "...a generation of Elders living lives of great personal pain [which] ...may find outlets in alcohol or other...self-defeating and destructive behaviour...Elders in unresolved pain block the transfer of sacral Native science to the next generation" (Colorado 1988:57). The damaged legitimacy to which Colorado refers was the subject of one Sagamok leader's comments in an interview:

> *I have a negative view of them because I was molested by them. ...I will respect the ones I know who have not harmed children, but I know the past of some of them, and find it hard to forgive. When my generation becomes elders, then the term "Elder" will become true. I don't know who among them I can trust, or feel comfortable with.*

The moral and social authority that Elders of the past had as leaders of kin groups, may never be coterminous again. The sources of authority in the Anishnawbe community of the future will likely take a different shape; today there are various teachers, healers and guides in diverse social roles. In a situation where many Elders have been traumatized by the effects of colonization, the rapid advance of modernity, the residential school experience and cultural loss, they should not be expected to take on the

sole responsibility for counselling of young offenders, or arbitration of criminal offences or civil disputes. This is not to say that they should not have a role; they have wisdom and experience from which younger generations can learn. In the contemporary Aboriginal community, however, where youth are both the cause of unease and the source of future growth, a more representative justice body will be needed. Some of the most recent models of Aboriginal community-based justice have recognized this need; I will go on to discuss their possible appropriateness for Sagamok, but I will first outline what I see to be value orientations present in Sagamok that could be foundational in designing their own justice model.

Sagamok Perspectives: Getting to the Root of the Problem

Alcohol abuse is frequently cited as the major progenitor of Aboriginal social disorder characterized by high levels of interpersonal violence, sexual abuse and minor property crimes committed by bored and unoccupied youths (Hodgson 1995:188; Inuit Task Force 1993:7; Kunitz and Levy 1994:20;UCCM Wikwemikong Justice Project 1995), and Aboriginal communities have begun to find the solutions to this dysfunction in their own human and spiritual resources.

While these problems are not unique to First Nations, they are sometimes initiated and often exacerbated by cultural loss, marginality and low socioeconomic status leading to low personal autonomy and negative self-imaging. (Barkwell et al 1991: 75; RCAP 1995:8). There is clearly this pragmatic side to the healing paradigm, but just as

importantly, Aboriginal discourse expresses the need for healing in spiritual terms (Hodgson 1995:188). Crime and disorder are seen as spiritual dis-ease as much as sociological phenomenon; hence the link between the return to traditional spiritual practices and treatment of alcohol abuse, for example. The people of Sagamok also exhibited this social construction of crime and trouble as expressions of personal "dis-ease". Indeed, when asked for the causes of youth crime and trouble in Sagamok, those interviewed responded with "boredom" or "nothing to do" as one of the chief causes of high rates of alcohol consumption, accidents due to drunk driving, and "fights" on the week ends.

Sagamok residents, (older adults moreso than younger ones) have expressed a high tolerance for disruptive behaviour arising from alcohol consumption, with the exception of impaired driving. This tolerance for alcohol-induced violence combined with the high rate of alcohol consumption on week ends in particular could be a major barrier to the development of an integrated approach to the problem of social disorder. I believe that this is one issue for which community consultations would be an essential step in helping community members come to some kind of consensus about approaches to interpersonal violence.

Sagamok members also see criminal and harmful acts as an expression of strained interpersonal relations, or as a political statement. During the time I was in Sagamok, the band office was vandalized a number of times, and it was a common sentiment that this

destruction of property was a protest against the political incumbents. Many of the fights that occur are attributed to "jealousy", either over sexual relations, family group differences, or personality conflicts.

We asked residents and leaders to offer their perceptions of the major problems in their community, and specifically, those that the mainstream justice system was failing to remedy. The most common response was "youth"(25%); of those, "youth and alcohol" and "youth and drugs" were the main problems cited. Nineteen percent (19%) of responses cited problems with the formal justice system such as "Native lack of education about basic rights", cultural and language differences, and the inability to pay fines.

When political leaders and front-line workers were asked to make this same assessment, their responses were more varied, but alcohol and drug use were also mentioned frequently. The problem cited most often by this group, however, was "politics", the struggle for leadership and control, and competition between family groups. A significant amount of the human energy that is needed for community development is spent in these struggles. Sagamok Elder Martin Assinewe (1993:7) expresses his frustration with this state of affairs in a letter published in the community newspaper. He writes that,

> *"I am afraid that the division in our community is affecting our youth, there is too much politics... There have been two suicides and we know of another attempted suicide after the death of the last youth...generally, over the last fifty years, Sagamok could have made more progress if the people had worked together better."*

As part of their contribution to justice in their community, it falls to leaders to find ways of resolving these debilitating conflicts. Former Sagamok Chiefs Nelson Toulouse and Harvey Trudeau both have said that they would like to reorient the political structure along family and clan lines. In such a scheme, the divisions based on family lines could work in a complementary, rather than a confrontational, way. Under the present terms of the Indian Act, First Nations can opt out of the elected band council system and institute their own electoral system (subject to government approval). Sagamok has been discussing this option for a few years now, but the present fractured polity has frustrated any hope of consensus on the issue.

Mutual distrust and suspicion have been seen as characteristic of Anishnawbe life for at least as long as modern outsiders have been observing and commenting on it (Hallowell 1955; Rogers 1962; Landes 1967). While this is usually attributed to the use of bad medicine, or what LaRocque terms "psychic manipulation" (1997:82) by certain individuals, it is impossible to say which came first. Hallowell sees this fear and mistrust as part of a more general anxiety characteristic of the Ojibway and other Northeastern Indians, or any group whose psychological pattern is prohibition of expressions of anger (1955:137). Whatever the source, strained interpersonal relations take their toll on the communicative life of the group (Justice & Warry 1995), and threaten the viability of justice and community development initiatives based on a communitarian model. The Anishnawbe pattern of strong individualism and personal autonomy could become lost among current pan-Indian ideas of the pre-eminent collectivity and organic community.

While the development of community-based justice systems is more amenable to such communitarian ideologies, the answer does not lie in imposing them on groups like the Anishnawbe, who place such a high value on personal freedom and autonomy. Change must come from within. As I have said previously, characteristics of particular communities and First Nations need to be the basis for community-based systems.

Community characteristics that Sagamok does share with many other First Nations across Canada include low socioeconomic levels, a high unemployment rate, and a very large and influential adolescent cohort (Solicitor General 1987:14; Barkwell et al 1991:86; LaPrairie 1992:10; Depew 1994: 17,59; Griffiths and Belleau 1995:167). A factor not often mentioned, but one which is pertinent, is that most reserve communities are small and rural, two community characteristics that contribute significantly to the problem of bored youths with time on their hands and unrealized goals (Fanon 1963:195; LaPrairie & Diamond 1992:419; Depew 1994:72).

Finding "something to do" for the youth may sound simplistic, but I believe it is a key path to community healing, and one area of social policy that would address several problems simultaneously. Education, recreation and employment opportunities for youth appear to have been a key concern of Sagamok leaders for some time, but lack of resources, including trained staff, is always the Achilles heel of such preventive measures. In 1994, while I was in Sagamok, the recreation program shut down due to lack of funds from DIAND. That DIAND should fail to recognize and address the link

between recreation and sports facilities and the problem of troubled youth is astounding.[9] In a list of psycho-social stress compiled from six hundred non-directed interviews with Aboriginal people across Ontario, the number one cause was cited as inadequate housing, number two was unemployment and lack of income, and number three was absence of recreation facilities and programs (Brant 1993:57; Depew 1994:72). Addressing the diminished opportunities of Aboriginal youth and their resulting alienation should be a key concern of program planners, and easily falls within the aegis of "justice as healing".

Sagamok Perspectives: Healing the Individual

One of the local constables took me for a tour of Sagamok shortly after I arrived in 1992. It was a clear, warm June day, and the beauty of Sagamok's shoreline enclaves and the view across the North Channel of Lake Huron were exhilarating. At one of these picturesque spots, he pointed out where he expected a healing lodge to be built when the time was right, as a local traditional specialist had seen a vision of such a place right there. This led to a conversation about how to respond to crime. He was describing a new program in Toronto[10] that he thought provided the opportunity for the "deep healing" necessary for offenders. He went to share his philosophy of crime whereby "...there is a certain point in each life where it starts", meaning, where the person becomes "sick" or damaged in some way, and become alcoholics, criminals or drug abusers. The way to address the behaviour should be to find that point, and heal the damage (Fieldnotes, June 16, 1992).

The view of crime and its resolution expressed by this constable is one that was repeated many times in interviews throughout the Sagamok research. When asked "What is the best way to help a person change their wrong behaviour?" a counselling approach was overwhelmingly favoured by interviewees. The following Table (Table 4) illustrates this graphically:

Table 4: Suggested Interventions for "Wrong Behaviour"

"Talk to them"	24
Counselling	23
Justice System	04
Family, friends	03
"Just be there"	03
Nothing	02
Indian medicine	02
Education	02
Talk to Elder	01
Group therapy	01

The above list clearly shows that the desire for mainstream style justice is a low priority in Sagamok. The counselling, or "talking" remedy suggested instead, places the focus on the offender as a person, rather than on the behaviour. People showed a concern for the welfare of offenders, and expressed the sentiment that offenders need help in understanding their own behaviour. In contrast to the truth-seeking "What" and "How" of the Canadian system, Sagamok residents have shown more interest in the "Who" and "Why" questions of criminogenesis. Of sixty-two respondents, only four preferred a punitive response to wrongdoing through the mainstream justice system, with the

exception of murder and sexual abuse. Likewise, approximately 70% of respondents preferred compensation as a response to vandalism and stolen property, rather than punishment. Similar restorative justice values have been cited for other Aboriginal groups (Brodeur, LaPrairie and McDonnell 1991; Rogers and Tobobondung 1975:300; Ross 1992:62; Royal Commission 1996:21; Schmalz 1991:106).

Beyond viewing crime as spiritual dis-ease in the offender, crimes are assessed according to their damaging effects to persons more so than property. Thus, many Sagamok residents rated harmful gossip and interfamily jealousy as a serious problem in the community far more often than they mentioned vandalism. Again, because these show a lack of respect for persons, they receive a heavier negative sanction than property crimes. The current social dysfunction in Aboriginal communities is often expressed in terms of spirituality and identity, as one Sagamok leader expressed in an interview when he was discussing the "problems" in his community:

> *"Most of them don't even know what it means to be Nishnabe...They don't know that to be "Nishnab" means to be part of a people that were proud and had a spirituality."*

An ethic of dealing with the problem and the person in a holistic fashion came through quite clearly in Sagamok. Community members predominantly see offenders as in need of guidance, rather than "bad" or "dangerous", and express a desire to "solve the problem" rather than punish the offender. In this restorative justice approach, Sagamok Anishnawbek have modelled recent criminological research that has provided evidence for

the efficacy of sanctions from personal networks over that of the criminal justice system (Braithwaite 1989:28; Gottfredson and Goldkamp 1990:135). This approach has the support of some members of the judiciary, including a Sudbury judge who expressed the view that:

> *One of the chief values I can see in an alternative system is that people in the community are able to identify the impact of an offence on the victim and the community, far better than we can in the mainstream system.*

Sagamok members expressed a desire to find out "why" people were in trouble and then try to correct the problem (cf Just 1992:390). The values expressed showed a moral, pragmatic and holistic approach to offences against the social order.

In response to a query about the effect of a jail term on offenders, the overwhelming majority felt that it had "no effect" and that rehabilitation would be preferable. Ray Solomon of Sagamok (1992:3), a recipient of the formal system's punishment in the past, writes the following:

> *"Our ancestors, our traditions, values and beliefs worked towards solving wrongs, rather than seeking punishment. Punishment teaches nothing. It creates bitterness. Victims hold bitterness towards the offender, while the offender is sitting in jail saying, "they don't understand."*

Even those few who thought jail was beneficial, expressed the belief that "rehab" should be a major part of the carceral regimen (cf Solicitor General 1986:140). The following comment by a female community caregiver is an example of such a sentiment:

> *Jail? Yes, I believe in it. There should be more programs, though, to point out their wrongdoings. They should listen to more lectures from knowledgeable people. Life skills programs would be good.*

As we have seen earlier, although they hold a negative view of incarceration as a response to most offences, Sagamok members make an exception for family violence. For young offenders, there are restorative justice models used elsewhere from which Sagamok may want to extract elements, as I discuss further.

As we have seen in Chapter Three, Sagamok residents place the blame for much of the crime and disruption on alcohol use and abuse. They stress that interventions should "heal" the offender rather than punish them. They have said that if offenders are to be incarcerated, rehabilitation and treatment should be a major focus of the carceral program. Rather than simply expanding the number of existing programs, a question that needs to be raised is whether these programs are designed to meet the needs of Aboriginal offenders. Return to traditional religion has been a way out of alcohol abuse for many Native offenders (Waldram 1996), but this may not be appropriate for some.

Similarly, as the Cree justice report cautions, it is important to fully understand the problem before devising solutions, and that "different drinking patterns such as binge drinking [may] require different treatment approaches" (Brodeur, LaPrairie and McDonnell 1991:106). Moreover, if an integrated approach were taken to alcohol rehabilitation programs, they would include an understanding of and response to the family and community trauma that results from alcohol abuse, and the culturally specific psychological factors (Watts & Gutierres 1997) that influence drinking patterns.

The Concept of Reintegrative Shaming: Keeping Offenders in the Circle

With regard to interventions for youth, there has been a recent trend, particularly in Australia and New Zealand, towards shaming as a treatment and preventive strategy (Braithwaite 1989; Gottfredson and Goldkamp 1990; LaPrairie n.d.). Braithwaite is an Australian criminologist who believes that shaming, when done by the community in a reintegrative, rather than in a stigmatizing and disintegrative manner, leads to lower crime rates. A key factor is the nature of the community. The shaming needs to be done with respect and a willingness on the part of the community to be involved in the reintegration of the offender. Braithwaite stresses the importance of the interdependency of social attachments and commitments of youths in helping to promote changed behaviour, and claims that the most important feature of a negative sanction is its "social embeddedness" (1989:55). A key component of this approach is the reintegration of alienated and troubled youths into the community where they can feel a significant part of the collectivity. The main mechanism through which this "reintegrative shaming" has been attempted in the past few years, is the "family group conference", used in New Zealand or its broader Australian variant, the "community accountability conference" (Moore 1994; LaPrairie n.d.:7) whereby relevant family members and "attached" others, together with the young offender and perhaps the victim, help the youth see the impact of their actions, and work toward a solution to the situation.

Other recent criminological research on deterrence corroborates the evidence that the sanctions of parents, friends, schools and employers are more important as deterrents than criminal justice system sanctions (Gottfredson and Goldkamp 1990:135). Japan offers an example of this phenomenon, whereby the social institutions of family, school and local community are still effective as means of informal social control (Haley 1991:138). If the theory of reintegrative shaming with its emphasis on community support is correct, then, as Braithwaite points out, separating offenders from their societal context is the most counterproductive response (1989:4).

Sagamok residents show a valuation of this principle in wanting to keep young offenders in the community so that they can "talk to them" and help them see where they went wrong. Braithwaite claims that "young people need to be encouraged to understand and adhere to basic rules of reciprocity and justice, not excused for failing to understand and adhere to them"(Ibid). In effect, then, this most innovative strategy for dealing with young offenders closely resembles the contextual approach and value of talking to youths taken by the Sagamok Anishnawbek.

The two fundamental preconditions for reintegrative shaming are the communitarianism and interdependency characteristic of "multiplex" societies. Shaming was effective as a moral reprisal in traditional Aboriginal society (Landes 1969:13-14; Barkwell 1991:16) because these were small, tightly-knit kin-based groups characterized by interdependence and a high level of adherence to a consensual moral code. It is

uncertain whether the intergenerational dissonance of values, and class-based differences that characterize Sagamok and other communities today (see Boldt1993:125) would hinder the effectiveness of shaming.

Sagamok parents, leaders and community service workers have expressed the desire to strengthen societal bonds with young offenders and help them understand key social norms and values. There are some important questions to be asked before attempting this kind of strategy for young offenders. One of these is whether the community still constitutes a personally relevant collectivity for youths, or are they so alienated that this is no longer the case? Do the youth of Sagamok with their greatly diminished range of life opportunities, have enough of the necessary attachments to make this method work? The possibility of an affirmative answer to the first question and a negative one to the second, makes it imperative that, for one thing, Sagamok let the voice of youths be heard in community justice consultations. For many of Sagamok's high school population, their experience of the Canadian educational system has been alienating in the extreme. Many would report that they made no new significant attachments during their high school years. Many dropped out of school. Likewise, many are unemployed, and thus do not have the kind of attachments to employers cited to which Braithwaite refers.

The concept of reintegrative shaming might have potential for adult offenders, as it encourages restitution and reparation, fundamental Sagamok values. Moreover, as

Sagamok interviewees believe, many adult offenders go through the mainstream system without having changed or learned why they "go wrong". A case processing method that allows for restitution and forgiveness has the potential to lift the "burden of shame" that people carry, in part from being subject to systems that involve "the unjust use of power", an experience that Aboriginal people in Canada surely know all too well (Moore 1994:18).

Chapter Summary

Are there recognizable social characteristics in the form of "value orientations" (Barth 1969:14) on which to rest Anishnawbek modes of dispute and crime resolution for today's communities? After completing this study of Sagamok, I would suggest that there are, but stress at the same time that these value orientations can differ from one community to the next, and over time in one community. Moreover, as we have seen for Sagamok, fundamental jural values and normative rules of social and political interaction are contested and variable within a community at any particular time, and a justice system of the future must take these divergences into account.

We can see from Sagamok members' descriptions of social control in the past that law was not institutionalized but internalized. People "knew what to do" because the community was bound together by common values reiterated by shared experience. Law was not handed down by political authority, but was understood to be a cosmic order in which all animate things interrelated according to certain principles. That normative

consonance no longer exists, but responses to our queries about responses to crime have indicated value orientations that extend across a representative sample of the Sagamok population.

Admittedly it is more difficult to work from a base of broad and flexible value orientations in recreating new justice institutions, than it would be to have a list of traditional "laws" to encode. However, in the changed community of today, developing a justice system will mean defining and debating basic moral standards, and defining substantive and procedural law on the basis of those standards. In the process, Aboriginal autonomous social control will be strengthened and Aboriginal law created. The continuing importance of "respect" as a core value in Sagamok shows that one of the fundamental principles of restorative justice (Gilman 1997:15) already guides social interaction.

What would restorative justice and community healing mean in Sagamok? In the narrow sense, it would be a means of dealing with crime and social disorder that would hold offenders accountable for their actions, and have them make reparations to their victims. This, in essence, is the main principle behind restorative justice (Wright 1991:17, 41). In a more inclusive sense, it would be a means of mending ruptured relationships, with self, family and community, and finding less destructive ways to deal with conflict. In the process, individuals and community would be helped to recover from individual and communal wounds. This broader sense is more directly in accord with the

Anishnawbek relational emphasis (Rogers 1969:35; Colorado 1988:50; Ross 1996:63). A common Anishnawbek perspective is to see crime and social disorder not simply as deviant or illegal acts, but as people acting in an unhealthy way that harms relationships (cf Ross 1992:62; RCAP 1996:59). Taking this principle into account will mean that preventive community development and therapeutic approaches to relationships will be a key part of justice planning in the broad sense.

One of the goals of this research has been to specify the major fronts on which community healing needs to take place in Sagamok. The pattern of offences documented above shows the same high levels of interpersonal violence common in other Aboriginal communities, and that these events are closely connected to alcohol consumption and other dysfunctional effects of modern reserve life. The interview results show, however, that assaults are not rated by residents as a major problem.[11] Rather, the alcohol consumption leading to assaults and other harmful behaviour such as impaired driving and domestic violence was the chief concern noted by interviewees. This indicates a holistic approach that aims to get to the root of the problem, rather than punishing the wrongdoing. To me, this value orientation is one of the most positive resources with which to begin building a community justice model for Sagamok.

Similarly, in regard to young offenders, Sagamok residents have shown an understanding of some of the root causes of their behaviour by citing family breakdown and lack of opportunity and useful activity for youths. They have also indicated a

preference for a counselling approach for most social disorder problems in the belief that crime and social disorder problems also have psychological origins.

What remains to be developed is a process that will allow for the public articulation of the differences that do exist, and a means of using the creative power within these differences. Within a framework of disputing processes, where the necessary adjustments and compromises to individual values can be made, the interests of communal growth and development can be fostered, and development of a justice model can proceed. I do not think this is an unrealistic goal for Sagamok, although it is probably a long-term one. As I remark earlier in this chapter, Sagamok residents show a notable willingness to listen and consider the viewpoints of others before speaking. As discussed above, Sagamok Elders reveal the importance they place on this aspect of their cultural identity when they express their dismay over modern young people who do not seem to listen anymore. Engaging this capacity to listen, as the Elders have indicated, will be a critical task of Sagamok leaders in justice planning and other avenues of community development.

Beyond these conceptual issues, however, lies the question of community capacity and willingness to accept the responsibility of first defining, and then maintaining standards of "living nicely together". For development of a community-based justice system, the sentiment is clearly there, but the will may not be sufficiently developed yet (cf Ryan 1995:21,71). The social and community development necessary for the development and maintenance of community-based justice will be a long-term

process, one that can begin now, but will probably take considerable time to achieve what Sagamok members hope their own justice system can do.

Chapter Five

Model Development: Resources and Constraints

One big mistake we could make is in believing we can solve our problems "NOW", with the magical powers self-government gives. ...Our history is not one of timetables and deadlines. Things like that cause mistakes. Take our time and do it right the first time. In seven generations we'll see if we did good. (Ray Solomon, Sagamok)

Introduction

Rather than recommend any one program model, this chapter aims to show the present context for model-development in Canada and in Sagamok. To do this, I recapitulate some of the intracommunity factors and the extracommunity political landscape that both foster and limit the development of legal autonomy. Included in the extracommunity context are Aboriginal political organizations with which individual First Nations like Sagamok are affiliated, the features of this relationship that are beneficial to communities, and the ways in which community interests are frustrated through this relationship.

Working toward Consensus: Owning the Problem and Seeking the Solutions

Sagamok Anishnawbek, like other First Nations, must balance a delicate tension between the ideal and the workable in trying to renegotiate their place in the Canadian political economy. Community leaders face a formidable challenge in meeting the

manifest needs of their citizens, helping disparate family groups work together for the good of the collective, and trying to build a future for their predominantly youthful membership. They need to manage growing populations and scarce resources in a context of dramatic and rapid social change, but are often constrained to do so within the parameters set by the federal and provincial governments of Canada. Local leaders who are aware of the wider provincial, national and international context in which these tasks are set are often torn between spending their energies on the task of local governing and the need to negotiate for collective rights on the larger stage. Furthermore, the policies of local politicians are circumscribed by Indian Act provisions that require elections every two years[1], a requirement that makes it extremely difficult for elected Chiefs and Councils to realize long term plans.

In Sagamok, while leaders have negotiated social change in the past two decades, they have recently become more aware that the majority of their membership have a weakly developed sense of ownership of the goals achieved on their behalf through the Tribal Council structure. Boldt's (1993:163) phrase describing the average grassroots Indian as "psychologically disenfranchised" applies here. The problem of "...how to generate real community participation in the framework of a program which for economic reasons must be oriented toward larger units of organization" is a basic obstacle to development, according to Cornell (1988:38). Sagamok, a "blended" community, is a good illustration of a case where community development depends in part on a degree of group identification and commitment which did not formerly exist.

Many contemporary Aboriginal communities suffer from a lack of consensus and a vast "psychological distance" between band members and tribal government "which is not of their making" (Long 1990:771).

As discussed earlier, between Sagamok and the North Shore Tribal Council, this gap between the self-government goals of Tribal Council leaders and the grassroots is frequently a result of the confounding of self-determination and a particular vision of "self-government" in people's minds. It is also a consequence of a communication gap. What transpired with regard to Health Care is a good example of how this was played out in Sagamok. Over a period of approximately five years, Sagamok, along with the other member communities of the North Shore Tribal Council, carefully planned the transfer of responsibility for Health Care from the federal government to the member communities under the aegis of the Tribal Council. Community planning councils and consultations were a basic part of the process. At the very end of the process in 1993, when the final agreement was about to be signed with the Medical Services Branch of the Federal government, Sagamok voted by referendum to withdraw from the Tribal Council and hence its self-government initiatives. One of their complaints against the Tribal Council system was that funds were funneled through the regional body rather than coming directly to Sagamok, with the result that they had less funds and less autonomy. The Chief and his supporters complained that they were being overgoverned in this arrangement. The Sagamok Chief and council subsequently negotiated a bilateral

agreement of their own directly with the federal government, as did some of the other member communities of the Tribal Council.

While the reasons for Sagamok's withdrawal from the Tribal Council go beyond the "self-government" issue, the fact remains that the grassroots of the community are still poorly informed and frequently apathetic about such initiatives taken on their behalf. The number of residents who are aware and interested in self-government issues *qua* self-government issues, represents a small proportion of the population. The issue of the relationship between Sagamok and larger political structures such as the Tribal Council, the Union of Ontario Indians and the Assembly of First Nations needs to be clarified for community members, and perhaps re-worked so that they feel enfranchised and gain an increased understanding of the larger issues beyond the community level. This wariness of Tribal Council structure and plans, while stalling regional initiatives, demonstrates a will toward grassroots democracy, and a strong sense of place, that I believe is a Sagamok strength. It is more likely that Tribal Council and wider regional initiatives will succeed if the constituent communities assume ownership of the problems and challenges that self determination entails. I think communities and the North Shore Tribal Council both realize now that self-determination is a long range goal, and it will take time for community capacity to build.

I have outlined in Chapter Two how the process of participatory research itself can facilitate the building of consensus for justice planning. Dissemination throughout

the community of the results of our research is one step.[2] Awareness of the number and kinds of offences that actually take place, and of the sociolegal values expressed in interviews can offer a baseline for discussions. The next step beyond the educative and information-gathering stage of research has the greatest potential for developing a sense of community ownership of justice problems and their solutions. That next step is the actual development of an appropriate model of community-based justice, through community discussion and debate. An important part of the preparation for these discussions will be an educative process in which Sagamok residents learn what relevance a community-based justice system would have for them and their families. I believe this process of personalizing justice issues is essential in a community where disengagement and a sense of apathy about community goals are characteristic of a wide segment of the population.

Two interacting factors that frustrate the building of consensus in Sagamok are increasing discrepancies in formal education levels and economic status. As I have indicated, these social factors have become key axes along which social gaps are widening. Norms of leadership and authority are changing, as education level becomes a key requirement of the chief's role, and one determinant of "respect" for leaders. The modern requirement of a certain level of formal education needed to hold administrative jobs has led to a situation where most Band employees are young. This development rests uncomfortably with traditional determinants of respect for leaders, which were wisdom, competence, humility, honesty, bravery and generosity, qualities that grew with maturity.

In particular, humility and generosity have been mentioned as key requirements of the Chiefly role in the past, when the Chief was seen as one who serves the people, rather than rule them.

Significant intergroup differences have led to the emergence of class divisions, group competition, "jealousy" and mutual mistrust. Often these axes closely parallel kin alignments, and to a lesser extent, religious lines, as Christianity continues to lose adherents and influence[3]. In an indirect way, then, addressing these inequities will help ameliorate the political strife that paralyzes the achievement of self-determination. The settlement of land claims to increase the local resource base, improvement of education, health, housing and social services are all urgent needs. Sagamok needs recreational facilities and employment opportunities for youth to provide healthy alternatives to boredom and alienation .

All of the above are justice issues in the broad sense, which is how Sagamok members have indicated they perceive community justice problems. As I have indicated earlier, one of the key justice perspectives of Sagamok members is to see the present social disorder problems in terms of individuals in need of guidance and teaching. Addressing the root causes of injured and broken social relations that lead to so much of the social disorder in Sagamok is to take a holistic and integrated approach to justice in a broad sense. An authentically Sagamok Anishnawbek justice system, then, will be based

on this premise; but it will be developed and become operative within a larger legal and political landscape.

More specifically, one of the first steps towards building consensus on justice could be the creation of a justice committee whose membership would be representative of the various family groups in the community, as well as youth and Elders, men and women. The importance of ensuring a sense of ownership by having broad representation on this committee cannot be overstressed. Only then would there be a broadly-based acceptance of the legitimacy of the model-developing process. This acceptance would grow largely through the informal microprocesses of family group interactions. A truly representative justice committee could use the kin-group structure that up to now has often been a source of conflict and competition to help integrate the community. Regardless of the eventual role or importance of a justice committee structure for Sagamok, it is a key component of the beginning stages of model development as an integrating mechanism and means of enhancing communication between community segments. As I have indicated in Chapter Four, the fear and distrust that often characterize social relations could make such integration a fragile and arduous process.

In Sagamok, the background research about community needs and values has already been done, and the next step for a justice committee would be to initiate community consultations toward developing a model. Moreover, from a purely practical point of view, a volunteer justice committee could be formed and begin organizing

community consultations with virtually no financial burden to Sagamok. In a community where political authority and legitimacy are contentious and contested, the question of who makes key justice decisions will be a challenging one, hence the need for a representative committee. What has been said in earlier chapters regarding the political turmoil of the past few years and some of the centrifugal factors inherent in the community structure, should make it clear that this will be a daunting and possibly long-term task (cf Depew 1994:71). A number of Sagamok leaders expressed the will for this kind of change, as the following comments indicate:

> *Sagamok knows what it wants and can take care of its own people. Rights have to be acknowledged and the collective has to be acknowledged. ...We've got to define the inherent right to self-government and work with it. There still needs to be that work that develops models, or takes models from the outside and adapts them.*
>
> *Having people come together, I guess that's a dream. You'd never have just one focus. If people had a common goal. There should be more focus on making definite changes, recognizing problems, correct what's happening.*
>
> *From the bottom up, getting people involved in what is happening.[They need] input into policy-making, change in the way they've been used to handling things. They need to begin to understand the meaning of self-government. They need an opportunity to voice their concerns...*

Whether these statements will go beyond rhetoric to action will be a key determinant of whether political change will enable a justice mechanism to work.

The Paradox of Modeling Change

Historically, legal systems have evolved by accretion. As Foucault (1979) has demonstrated, they have been flexible and adaptive to changing societal forms and

cultural norms. In other words, they are not only conceived, but lived. Community-based alternatives would ideally evolve in the same way, but are repeatedly put in the situation of having to prove they can walk before they can stand. As Rupert Ross says, Aboriginal justice systems are often compared to ideal systems, when in fact they should be compared to the present, very flawed system (Ross n.d.). From an Aboriginal sovereignty perspective, they should not be compared at all, they should just be, as is their right. However, we are not living in ideal circumstances, and compared they will be; so a proactive approach would be to derive justice systems that will withstand the inevitable comparisons.

Law, as Starr and Collier (1989:11) point out, is a "historical product"; legal systems are part of wider cultural systems, and that is why "people treat legal orders as appropriate vehicles for asserting, creating, and contesting national identities". In Canada, the heretofore reluctance of the state to support truly autonomous Aboriginal justice systems, shows that the contest is not only about power, but about values, in that "the criminal justice system exists to preserve the basic values of our culture" (J.L.T. James cited in Havemann et al 1985:9). The Canadian justice system has evolved from an ancestral base of the philosophy and culture of industrial Britain and Europe (Gosse 1994:10; Dworkin 1977:60), and its chief value, individual liberty guaranteed by the rule of law, has even deeper roots in ancient Greek and Roman cultures (Giddens1987:149; Altman 1990:22; RCAP 1996a:12). The rule of law, equality before the law and due process are based on the legal idea of the rights of the individual citizen, which has been

central in Western thought since the classical Greek period (Rudin & Russell 1993:38; Dahrendorf 1988:30). As I have discussed previously, however, the Canadian legal system, particularly the common law, is neither immovable nor homogeneous, but a dynamic and processual institution in which there could be room for Aboriginal justice design, given the political will to allow for such innovation.

In Canada, the Aboriginal justice initiatives that have succeeded have the key characteristic of historically evolved justice systems in that they arise out of local experience. An example of this is the Hollow Water First Nation in Manitoba, whose "holistic circle healing project", which arose as a response to sexual abuse, has been successfully operating for many years (RCAP 1996a:159ff; Ross 1996:29ff). In Alkali Lake and Tache B.C., communities have responded to widespread and destructive alcohol abuse by developing programs based on traditional healing approaches (Hodgson 1995:188). In such cases, where justice measures have been developed on a base of contemporary experience, they are historical products in the sense that the postcolonial "diseases" of social disorder and dysfunctional behaviour are historical products. Justice mechanisms have evolved in response to these social facts arising from historical experience. Aboriginal communities have to break the mould, however, in that contemporary social conditions require a more conscious and deliberate creation of legal systems. What is happening in some cases already, and will likely continue to happen, is that the practice comes first, and the creation of code will follow (Zion 1988; Miller 1996). A basis in community life is a crucial precondition for authenticity; this is the

reason why models must be developed in communities in response to the lived, contextual experience of its members (Jackson, McGaskill and Hall 1982:3; Habermas 1984:108).

When members of the mainstream society criticize the cultural justification for Aboriginal justice systems, they do not acknowledge that the formal justice system evolved in response to cultural practice (Webber 1993:43). Many of our most long-standing legal rules were not expressly created, but were accepted as law because "they represented the customary practice of the community" (Dworkin 1977:62; Altman 1990:175). Justice systems that are lived into being will ultimately be more effective in fulfilling their purpose because they are based on relevant values, customs and norms. Therefore, First Nations need not feel the need to invent totally new forms or revive purely traditional forms, in order to create culturally appropriate and viable justice bodies for their communities. To have healthy individuals and a healthy community as a justice goal, and to let a model be shaped by contemporary values in the seeking of this goal, is innovative enough as it is.

Developing a Model

The structural form of one justice model can have different philosophical content in different operative contexts. For example, the court of the Navajo Nation, modeled on the United States adversarial system, and administering its laws, has influenced the procedural nature of United States law. It has done this over approximately the past

decade, through consciously incorporating traditional Navajo thought, using indigenous language, and having Navajo principal actors as justice officials. Fitzpatrick (1986) points to situations like this as one way in which state hegemony can be resisted, and state law reshaped, through changing its operative context. Moreover, in the Navajo case, while U.S. law is paramount for a number of serious criminal offences (INAC 1991:4), Navajo common law applies in the vast majority of cases. Alternatively, offences are recategorized so that they fall under Navajo jurisdiction rather than state or federal law (Hemmingson 1988:7,11,16). Over the course of the past few years, Navajo law has been encoded, and a Navajo common law tradition structurally similar to U.S. law has emerged (Zion 1988). A similar process is unfolding on the West Coast among Coast Salish peoples living on both sides of the Canada-U.S. border. In their case, although their Tribal Court, or "house of justice" operates according to a court model, they are creating code by tailoring law to specific community contexts and experience (Miller 1996).

An Aboriginal popular justice tradition can evolve in other forms than the court model, however. Decision-making bodies such as justice committees or even the flexible community accountability conference will not be entirely "ad hoc" bodies, but would have the potential to shape a legal tradition over time. The advantage of such flexibility is that this shaping of legal tradition can be responsive to changing societal norms and values more rapidly than the present mainstream tradition can be. The need for such

responsiveness in order to sustain restorative justice is another justification for having a wide community representation on any justice body.

The report Bringing Justice Home, which I wrote and presented to Sagamok Chief and Council in November 1994, suggests that the broad mandate of this initial justice committee could include the direction of any future justice research, liaison on justice issues between community and chief and council, development of integrated community justice policy, and oversight of the creation of appropriate structures (Hoyle 1995:19). The report also suggested the hiring of a justice co-ordinator for an initial term of one year to oversee the process and "assist the justice committee in the early stages of its development"(Ibid). In addition, the report posed a series of questions that could help to clarify Sagamok's justice goals. They included the following (1995:18):

- What are Sagamok's jurisdictional goals? Do we want a separate, parallel justice system, or a blend of jurisdictions with the Canadian system?
- What are the community's needs that a local justice system could meet?
- What do we believe about individual and collective rights?
- What do we believe about the rights of the victim of crimes? How will those be balanced with the rights and responsibilities of the accused?
- What are the available human and program resources in the community now, and what resources would be needed to achieve our goals?
- What are the financial resources available, and what would be required to achieve our goal?
- What shape will community-based justice take? Are there models we can adapt to suit our particular needs?
- Do we want to keep justice delivery within the community, or participate in a regional approach with other First Nations?

- What kind of education and community development needs to be done to lay the foundation for a community-based system?
- What is the position of the federal and provincial governments regarding jurisdiction, and what are the necessary steps to be taken to discuss/negotiate this?

As I have illustrated, there are many resources and models which Sagamok can draw from, within Sagamok itself and from other First Nations, other countries, from the mainstream system and alternatives within the mainstream system. Traditional healing methods such as sweat lodges and fasting have been revived in Sagamok over the past few years, in the belief that social upheaval and destructive behaviour have their roots in spiritual dis-ease. Some residents have suggested using these rituals as offender or post-incarceration treatments. In recognition of the enduring strength of the extended family structure, some Sagamok leaders have postulated using these strong intragroup bonds as a framework for a justice system:

> *We need to look at the families in the community, and see how that structure could be used. We need to work up to the transition process. We need a reassertion of traditional values in all aspects of life. A lot of it has stayed clandestine over the years, but is there. We have responsibilities in terms of collective rights; the Canadian system doesn't understand this.*

> *We need to look at what former definitions of community were, what former social structures were. Informal structures worked in times of crisis.*

> *People would have to take ownership of the problem. Everybody would be subject to the same law. I wouldn't see the need for Canadian laws. If a community justice system is going to work, the community should be able to find the facts and discuss them.*

In a proposal submitted in 1995 for government funding support,[4] we explained how existing infrastructure and services could be integrated to address justice problems:

> *We intend to use existing services and infrastructural resources in the community as much as possible, in order to develop a low-cost alternative to the present system. Costs can be minimized by re-orienting services that already exist, integrating case processing with other interventions, and encouraging the involvement of trained non-professionals, especially where traditional methods of healing and dispute handling could be employed.*

One of the more difficult challenges facing justice planners in Sagamok may be addressing the role that alcohol consumption and abuse plays in the amount of crime and interpersonal violence. There is a direct link between alcohol consumption and crime, in reality and in residents' perception. A sample period in January 1994 showed that fully two thirds of the reported offences for that month were directly related to alcohol consumption. Some residents estimated the amount of alcohol-related offences as high as one hundred percent. Moreover, residents cited impaired driving as the number one justice issue in Sagamok.

A counterpoint to this, as I have discussed, is the social construction of drinking as an escape mechanism, and with that, the reasoning that drunkenness excuses "bad" behaviour (cf Marenin 1992:355; Just 1992:389). In questioning residents about this issue, younger members were less prepared than older members to excuse socially disruptive behaviour committed while in a drunken state. Achieving consensus in public discussions on the issue of alcohol will be a major task of justice reform, given these

emergent value differences. One point of agreement, however, is that there is a need for many more alcohol and substance abuse treatment centres in the North Shore region.

The issue of alcohol abuse has been dealt with in some other communities through the use of band by-laws against alcohol. Whether or not this is a choice that Sagamok will make in the future, the need for an integrated, proactive response to alcohol abuse is clear. Criminalization of deviant behaviours resulting in detention can potentiate disruptive tendencies in youth, rather than check them. Until the Anishnawbek Peacekeepers, of which Sagamok police are a division, differentiate their style of policing from the mainstream reactive model, the by-law approach could result in a higher rate of detention of youths, rather than the desired opposite effect.

By blending what can be learned from outside with the particularities of Sagamok, the community members can tailor a justice system to their needs. As I have said, Sagamok can begin to assume ownership of justice issues and proceed with the creation of a justice committee to steer their course. Existing social services can be reoriented and integrated with new justice programming. These internal processes can go only so far, however, until the boundaries of state power and jurisdiction are reached.

The External Context for Model-Development

The best way to illustrate this external context in general might be to narrate what I have learned of Sagamok's particular placement and experience in it. I have described some

of this context in previous chapters, but the following discussion will describe it more specifically in reference to developing a model.

It could be said that it is more difficult in 1997 for Sagamok to assume control of justice delivery on their own terms than it would have been ten years ago. Then, the idea of Aboriginal community-based justice was rare, funds were more readily available, and innovative models had an open landscape on which to grow. In the past decade in Canada, restorative justice pilot projects, particularly Aboriginal versions, have enjoyed a rapid and widespread florescence. Legislators and the judiciary have appeared eager to embrace alternatives for Aboriginal communities, but I believe the pre-eminence of certain versions of alternatives has made long-term community-developed versions more difficult to foster.

My observations in this regard are based partly on Sagamok's experience of being offered an opportunity by the Department of Indian Affairs to launch an Aboriginal justice body along the North Shore. Sagamok was one of the seven North Shore communities approached with a proposed model by the Department in January, 1994. The Minister invited the North Shore communities to set up "tribal courts" that, in the Minister's opinion, could be operative within a few weeks of this invitation. The basic components were already laid out for the communities, and included the following[5]:

- to be run by Elders, either alone or as a panel
- there will be no lawyers involved
- will sentence cases referred by the Crown attorney

- penalties will have to be monitored
- report to the Crown attorney on results of sentencing
- start by handling one case a week

Despite the fact that no background research similar to the kind we were conducting in Sagamok at the time had been done in the North Shore communities, the Minister indicated that enough background research had been done, and it was now time for action. Without consulting the local Elders or community members, it was suggested that an Elders' panel be set up as a diversionary mechanism from the present system, with the government maintaining control over who would be sentenced and what the sentence would be. This kind of generic model-dumping is a clear illustration of how governments can respond to the popularity of a concept without careful consideration of the implications for communities, or the broader issues involved in justice planning. The same is true for other forms of community development (Elias 1991:168). Moreover, if the government can convince Tribal Councils to adopt diversion models like the above, they can give the appearance of promoting self-government while still maintaining judicial control.

Such a model, proposed by the federal government, illustrates the shift in policy from one of assimilation of indigenous peoples to integration and indigenization (Svensson 1978; Havemann 1988; Jackson 1992), a policy of which communities seeking autonomy should be wary. State power, as Foucault maintains, "...constantly seeks to win over, to implicate and incorporate companionable, if not always compatible, elements of resistance...to

fragment or contain resistances or render them marginal (Fitzpatrick 1986:72). Wisely, the North Shore Tribal Council declined the offer in favour of grassroots development of justice bodies for the North Shore over the long term.

The present federal government's practice of dealing with individual First Nations rather than Tribal Councils or regional political organizations such as the Union of Ontario Indians or the Assembly of First Nations, is one of the defining features of the present political context. This strategy is undermining an already fragile political unity, and indeed, is often preferred by communities who, like Sagamok, have sometimes found tribal councils unrepresentative of their interests.[6]

In this context, communities like Sagamok must negotiate funding support for community development. For community-based justice, this strategy makes it difficult to obtain significant amounts of funding, because research and pilot project funds are being spread so widely. This means that projects such as the community consultations needed by Sagamok for the model-development stage, may go unfunded because their budget is too large. As mentioned, while the initial process of forming a justice committee and beginning community consultations need not be costly, the later stages of the process may require legal consultants' fees and capital costs for training materials, for example.

Funding of justice initiatives is limited, and the power of funders who control these scarce resources to influence the nature of proposals, should not be underestimated. To the present, the federal government has allocated only a tiny fraction of the resources

expended on criminal justice in Canada, for Aboriginal initiatives (RCAP 1996a:71). Leaders in Sagamok, for example, found it difficult to know which government department to apply to for research funds, and the criteria for awarding these limited resources are often not clearly defined. The research, community consultation and pilot project phases of participatory research for justice programming are expensive and time-consuming if done thoroughly, and few communities have these kinds of resources. Ongoing funding is needed for these projects to become operational. The research for this project, for instance, was funded by sources that could not provide ongoing funding,[7] and to continue with the community consultation and implementation phases, as well as later program evaluation, will require additional non-capital funding.

Another characteristic of the political context are the ongoing jurisdictional battles between the federal and provincial governments in which indigenous peoples become entangled. This has been particularly true of the land claims and modern treaty-making process, but will also play a major role in negotiations over justice delivery. Concurrent with the development of principles, policies and procedures of a community-based system, it will be necessary to negotiate jurisdiction with regional, provincial and federal governments, a process that has the potential for co-operation and confrontation. Sagamok may decide to blend some aspects of justice programming with that of the mainstream system, at least in the beginning, until they are prepared to assume more responsibility. As I have said, some cases may be better dealt with in the mainstream system.

A single community is part of many other wider networks. In Sagamok's case these include the tribal council, the Union of Ontario Indians, the Council of the Three Fires, and The Assembly of First Nations. As I have said, unity in political bodies is tenuous and the various parties may work at cross purposes, particularly in the quest for scarce government resources. For the development of justice models, the ideal situation would be one characterized by open communication and co-operation in order to maximize use of these resources. For instance, while a court may not be feasible or desirable in individual communities, a regional court, particularly for appeals, may very well be. Indeed, this is the scenario suggested by the RCAP final report (RCAP 1996d:235). The current government policy of dealing principally with individual First Nations creates a situation in which very strong leadership is needed at the community and supra-community levels to foster the needed co-operation for such ventures.

Aboriginal leaders in such contexts will need to mediate the different visions of "justice" and "community" of their various constituents. In this regard, a relevant issue for local communities is one raised by the final report of the Royal Commission (RCAP 1996d, 1996e), and that is the issue of the level at which Aboriginal legal autonomy will operate. While acknowledging that some activities would be appropriate for the community level (RCAP 1996e:6), the RCAP report states that "All our recommendations...are based on the *nation* as the basic political unit of Aboriginal peoples. Only nations have a right of self-determination" (RCAP 1996e:5). The report proposes an "Aboriginal Nations Recognition and Government Act" to give the

government of Canada a mechanism for acknowledging established Aboriginal nations once their processes of "internal reconstruction and institution building" are complete (RCAP1996d:27). This is a blind spot in the RCAP report that I think could have major future implications if the Federal and Provincial governments decide to accept the RCAP framework and insist that self-determination only be operative at the "nation" level.

Given that both Federal and Provincial governments have to this point virtually ignored the recommendations of the Commission report, my concern about the ramifications of this suggested policy may be pre-emptive. My concern is that once again the grassroots of Aboriginal communities will be disempowered, particularly groups of former band-level organization such as the Anishnawbek. The assumption and narrative throughout the report is that Indians were all constituted as "nations" pre-contact, that this degenerated to "band" upon creation of band government with the Gradual Enfranchisement Act, 1869 (RCAP1996b:275), and that "nations" must once again be "reconstituted".

This is not true of groups like the Northern Ojibway, who were hunting and gathering band-level societies. Hickerson (1972:57) notes that it was shortly after contact that a more "tribal", or confederate nature of the Chippewa emerged; however, "The separate villages were not related as segments of a single functioning political tribal entity; rather they were potential allies, alliances realized chiefly in war and, at times, in the negotiation of treaties"(1972:77). As McDonnell notes (1995:311), band, rather than

tribal, identification and structure characterized the entire Subarctic region from Labrador to Yukon. While these separate indigenous bands were part of larger linguistic and culturally similar groups, they continued to have a band organization and frame of reference, and the government constitution of "bands" in the Indian Act sense represented in many cases, an enlarging, rather than a contraction, of their form of organization.[8]

If all Aboriginal societies must achieve self-determination as the "nations" defined by the Royal Commission, a fundamental change in their organization and identity would be required of the Anishnawbek, and it is one that they could predictably be expected to resist. Indeed, the vast majority of community representatives speaking to the Royal Commission indicated that they see the local community as the principal unit invested with the right of self-determination (RCAP 1996d:158). As the RCAP report acknowledges, Aboriginal governments will need power and legitimacy if they are to function effectively (RCAP 1996d:164); how can they do so, if their membership rejects nation-level structures as the operative units of governance?

Given the fragile unity of Aboriginal political territorial organizations, it can be expected that the processes of defining and delimiting the "nations" assumed by the RCAP report, and electing their representatives, will be a fractious and difficult one. Moreover, as McDonnell points out, band level societies would be put in a position of being "...far less able to voice their interests in a manner that even roughly corresponds to

their traditional institutions and political imagination" (1995:463). Once again, relations of dominance would prevail, as Aboriginal communities would be forced to respond to what Arno terms the "control communication" of governments, and in the process, undergo fundamental structural change (Arno 1985:48).

The RCAP final report is less relevant to the creation of Aboriginal community-based justice than is its earlier justice report (RCAP 1996), and I would hope that the sympathy for community-based justice evident in that report will not be lost in a focus on the larger "nation-level" policy of self-determination. As a good deal of the research has shown, the majority of crime and disorder in Aboriginal communities is contained within their boundaries, and often a product of community life (Auger et al 1992; Depew 1994:39,97; LaPrairie 1992:8; LaPrairie & Diamond 1992:420,424), and in most cases, would be more appropriately dealt with at the community level.

In some areas, such as criminal law for serious offences, jurisdiction will likely be shared with other levels of government. Other areas, such as land and resource management, may be under exclusive Aboriginal control. Some First Nations have already proposed or begun to use such rules and regulations, such as the Montagnais of Lac St Jean, Quebec (RCAP 1996d:147). Another example of such jurisdictional control is the United Chiefs and Councils of Manitoulin: they have drafted regulations and principles for the "...use and management of resources, including safety and conservation measures for respect of fish and wildlife, and distribution and sharing among community

members." (RCAP 1996d:148). On the West Coast of British Columbia, The Gitksan and Wet'suwet'en (see Grant 1988) and the Coast Salish (Miller 1996) have assumed similar jurisdiction.

Government and Public Support for Aboriginal Justice

The present government's slow response to the Commission's report leads to scepticism that it is ready for the "new relationship" with Aboriginal peoples posed by the Royal Commission (RCAP 1996a:76), although the "Statement of Reconciliation" offered in January 1998, is a move in that direction (Globe & Mail, Jan.8/98:A17).[9] In general, in the recent past, the Canadian public has leaned in the direction of support for Native self-government (Ponting 1986:41; Ross 1996; Clark 1997:A21), although this fluctuates in response to the nature of the confrontations between Aboriginal peoples and Canadian governments, and the slant these confrontations are given in the popular media. Law is one of the "hot points" around which swirls some passionate debate, largely because of the legal system's role of upholding societal values, particularly that of equality under the law.

Like Sudbury District Judge Gauthier quoted above, there are a number of justice officials who support Aboriginal justice initiatives.[10] One of the most vocal supporters has been Rupert Ross, former Crown Attorney in Northern Ontario, who has written widely on the need for reform (Ross 1992, 1994, 1996). As Judge Fafard of Saskatchewan has remarked (Royal Commission 1996a:73),"You can't punish a

community into functioning as a...peaceful community. It's got to be a healing process." On the other side is heated opposition from some who think that community-based justice for Aboriginal peoples is almost equivalent to apartheid (Schwartz 1990).[11]

As discussed earlier, a number of judges have been quick to endorse and use the sentencing circle option for disposition of offences (LaPrairie 1994; R.v. Naappaluk, 1994: 2 C.N.L.R.; R.v.Morin 1994:1C.N.L.R.). However, in view of at least one challenge to Aboriginal justice alternatives (R.v.Willocks, C.N.L.R.1, 1994) on Constitutional grounds, the judiciary may become more cautious in future in using Sentencing Circles or Elders' Panels. In the Willocks case, the government-sponsored projects such as the Aboriginal Legal Services in Toronto, and the Sandy Lake and Attiwapiskat pilot projects were challenged on the grounds that they created inequality for persons such as Mr. Willocks under the Constitution. His request for a stay of charges was denied, but the issue will no doubt be debated in the courts for some time (see for example: R. v. A.G. 1994: 3 C.N.L.R.).

In their local area, Sagamok Anishnawbek face such opinions; a crown attorney of the Sudbury District Court told me in an interview that she opposes Aboriginal justice systems on the grounds that they create inequality for local non-native accused. In her comments, this particular Crown Attorney demonstrated no understanding of the variable factors judges have used in determining the appropriateness of sentencing circles. These factors, expounded by Grotsky J. in R. v. Cheekinew (1993: 3 C.N.L.R.), show that key

factors considered are the impact of the disposition on the victim and the community. Referring to the first sentencing circle decision (R. v. Moses 1992:3 C.N.L.R.), Grotsky J. was guided by the principle of ongoing community supervision and support for the offender, and safety and harmony in the community. Cheekinew was denied the option of a sentencing circle on the grounds that these were not present; in fact, sadly, he lacked definable community context at all, even within the wide definition of community suggested by the presiding judge (R. v. Cheekinew, p177).

Whether or not it is the sentencing circle or a community-derived mechanism that decides the consequences for accused, the principle of community support for victim and offender is crucial, and remains a vital requirement of justice planning anywhere to ensure that support is available. The virtual unavailability of such support on reserves may keep inmates in urban areas after their release. This could be part of the explanation for Aboriginal incarceration rates that are much higher in urban than reserve areas (Barkwell 1991:103). Such support, in the form of addictions counselling, life skills teaching, employment eligibility assistance, and anger management, for example, may be needed by whole families rather than just offenders. Such support programs require a social service infrastructure that Sagamok needs time and resources to build, particularly if they are to be culturally specific. In Sagamok, where interpersonal and intergroup tensions and conflict are common, such programs may be needed by the majority of the membership. Once again, the problem of offender reintegration cannot be approached in isolation apart from considerations of the economic development needed to provide local

employment opportunities and the personal and family healing needed for health and growth.

Chapter Summary

I began this dissertation with a description of the conceptual context in which community-based justice is set, and here I have tried to outline some specifics of the social, political, and economic context in which Sagamok will develop a model for their own way of repairing the wounds to their social body. Clearly, there are diverse factors that will challenge the process of model-development, both within Sagamok and without. One of the most challenging of these factors is that the average community member has a weakly developed sense of identification with the self-government goals of either community leaders or regional bodies such as the North Shore Tribal Council. More than this, they can and do often feel antagonistic toward self-government goals and initiatives taken by leaders on their behalf. The tension that results from this dynamic can paralyse community movement on issues such as justice autonomy, despite grassroots support in principle for self-determination in justice.

The particulars of a justice model for Sagamok will emerge after a process of community consultations. However, as I say above, Sagamok members perceive justice problems in a holistic, personal and pragmatic fashion, and I suggest that the solutions be approached in a similar manner. To design conflict resolution and justice programs in line with the holistic philosophy demonstrated by Sagamok members would be to take a

preventive approach to the causes of social disorder, and a restorative approach to its manifestations. Prevention includes broadly based social and economic measures to improve life chances for community members.

The tensions and conflicts that hamper co-operation on any venture in Sagamok will no doubt also affect the development of a justice model. I have suggested that this body needs to be as truly representative as possible, including the youth,[12] whose boredom and alienation are clearly a prime concern of parents, leaders and caregivers in Sagamok.

In looking elsewhere for workable models, Sagamok can see innovative Aboriginal justice measures that have arisen in response to the lived experience of communities, in much the same way that English Common Law evolved. Guided by this principle, Sagamok would be wise to be wary of prefabricated models suggested by outsiders, and find ways to tailor a system to their needs. My belief that this is the best way to address local justice issues leads me to be skeptical about the recommendations of the Royal Commission on Aboriginal Peoples that justice systems and other vehicles of self-determination be operative at the level of the nation. I believe also that this policy will affect the Anishnawbek and other band-level groups more adversely than other Aboriginal groups who have a historical sense of "nation".

Chapter Six

Summary and Conclusions

I have commented previously that indigenous peoples of North America surely appreciate the irony of dispute resolution methods that are part of their heritage having found their way into the government's array of solutions for indigenous social control needs in the present. The history of suppression of indigenous law and dispute resolution by successive governments in Canada over the centuries since first contact makes that irony all the more potent. Yet, as I have said, indigenous means of social control were not entirely suppressed, and colonial control was resisted by Aboriginal peoples in various ways, including by the maintenance of distinct values and ideas of law. In Sagamok, social control was maintained by an understood moral code that was more internal than external, to the extent that violators of community standards policed themselves by leaving the community.

As distinct cultural minorities within the nation state of Canada, indigenous peoples have the right to governance by their own institutions, including law. They need now to develop justice systems that are appropriate to contemporary First Nations' realities. This is a human rights issue, and should not be predicated on whether or not the system they choose or create is "traditional" in a narrowly construed sense. Cultures and

societies change, and legal systems need to change with them. This is also true of the Canadian legal system in the pluralistic Canada of the present.

It is often suggested that indigenous law and dispute resolution processes should be reinstituted in First Nations because they are more culturally appropriate than the mainstream system. Acceptance of that assumption without gauging the present sociolegal context in communities could lead to "traditional" mechanisms being misapplied to radically changed communities. This research was intended to assist Sagamok to gauge their sociolegal context, by providing background knowledge of the relevant values and philosophy on which to base the development of any alternative. I have discussed how some values are contested and changing in Sagamok, particularly norms of leadership, the relationship between generations, and modes of handling conflict.

This research shows that there are high levels of interpersonal assaults and minor crimes such as petty theft and vandalism in Sagamok. Alcohol use is implicated as the chief causative factor in assault and disturbing the peace incidents, and much of the petty crime committed by youths is attributed to their "boredom" by Sagamok members. I have theorized that inherited modes of handling conflict, of avoidance and covert retaliation by means of "bad medicine" are unable to withstand the pressures of today's modern, larger community, and that alcohol has now become a chief means of handling conflict. Because of the close links between repressed emotion, alcohol use and the interpersonal

assaults and domestic violence that result, justice issues intersect with mental health and community development needs in a paradigm of "justice as healing".

The Sagamok Anishnawbek approach to the social disruption of crime and conflict places the emphasis on the person who enacts such behaviours, and further, to the root causes of their behaviour. A reparative response to cases of theft and property damage is the one preferred by Sagamok members, and reflects traditional restitutional responses to crimes.

Offenders are perceived as selves in need of teaching and healing, and Sagamok residents believe they can be counselled to go the "right way". The counselling and teaching approach to correction is by far the most common recommendation by Sagamok residents, with the exception of domestic violence, where incarceration was the most commonly suggested intervention by respondents, regardless of gender. The extent of domestic violence is unknown in Sagamok, chiefly because the vast majority of these incidents go unreported, according to interviewees.

Sagamok Anishnawbek have shown that their concept of justice goes beyond offenders and offences, to a concern with the family life and interpersonal relations that have such a profound impact on behaviour. I have commented that in this desire to "get to the root of the problem", Sagamok Anishnawbek have prefigured criminological approaches employed recently in various countries, for youth in particular. These restorative justice approaches, in particular the concept of "reintegrative shaming"

modeled on Maori concepts in New Zealand (Braithwaite 1989; LaPrairie n.d.; RCAP 1996a:120ff) show the efficacy of negative sanctions when they are administered by the personally relevant circle of family, friends and workplace rather than by the state. They also emphasize the importance of reintegrating the offending individual back into the community circle, and in doing so, point out how counterproductive it is to community well-being to segregate offenders from their relevant social context. Sagamok members have shown a preference for such an approach in suggesting a youth treatment facility in their community, where young offenders would be encouraged in right behaviour, rather than be punished for wrongs.

I believe that this research, beyond showing the nature of crime and conflict in Sagamok, has shown that Sagamok Anishnawbek have an approach to law, dispute resolution and criminal justice that is culturally distinctive. This approach can form the basis on which to build a local justice system. Moreover, the process of model-development itself, by means of community discussion and planning, has the potential to make this approach manifest at the community level where now it is held at the level of the individual. I emphasize throughout the dissertation that such grassroots development of justice alternatives for First Nations is essential for their success. Those Aboriginal justice projects that have faltered or failed, have done so because of the lack of community consultation at the developmental stage (RCAP 1996a:169; Ted Johnston, p.c.).

I believe this research has demonstrated community characteristics that will likely make the grassroots development of alternative justice measures in Sagamok neither a short term nor easy process. Sagamok has many of the necessary resources, including a long-standing community police presence, now larger and part of the Anishnawbek Regional Peacekeepers. Their role can, and likely will, change to reflect Anishnawbek philosophy. They may, for instance, find a key role in prevention, or as mediators of disputes. Sagamok has an established network of social services and a Crisis Intervention Team, but expansion and improvement of these services is urgently needed, to include sufficient mental health, alcohol treatment, and family counselling services to match the needs.

The resources need animation by individuals with a vision of Sagamok's justice options. As it is now, class and family divisions, which are often coterminous, block co-operation and frustrate the achievement of goals. Paradoxically, the process needed to develop modes of conflict resolution is in need of those same mechanisms in order to be productive. As I have said, the processes of community development and capacity building are long-term and incremental.

A question that must be asked of this research, one that I have asked myself, is where it fits in those processes. As I have said in the second Chapter, the ideal of participatory research is that it be initiated by a broadly-based segment of the community, in response to a need. This research was initiated by a collaboration between myself and

a community leader. It has been participatory in that community members helped to design and execute the project, and the results of the research have been returned to the community. It is action research in the sense that the long range goal was to support the development of a justice alternative *if and when the community was ready to adopt one.* That has not yet happened. Shortly after I presented a research report to the Chief, Council and band employees in November 1994, they asked that I follow up by writing a funding proposal for the community consultation phase. I wrote the proposal and sent it to the Chief and Council. I have maintained contact with Sagamok since that time, but as far as I know, there has been no further progress in obtaining funding or making reforms. They will take the necessary steps when the need, the will, and the human resources are in place. When they do, they have a base of knowledge from which to launch their initiative.

As mentioned earlier, sufficient funding is a necessary part of the animation of the available resources. There is no question that Aboriginal justice initiatives need significant funding, but these costs pale when compared to the costs of processing Aboriginal offenders through the present system. Moreover, the social cost to First Nations and the individuals who live there, of having unresolved crime and conflict on their territories, makes support of justice alternatives a human rights issue.

There are areas of justice administration that I have not dealt with here, such as regulation of land and resource use, that are of vital concern to Sagamok's long-term

interests. Although these other justice areas are important, I have kept the focus on matters of social control such as crime and conflict. If and when Sagamok becomes a fully self-determining community, they will no doubt deal with civil issues such as property ownership and employment rights, for example, which are two areas of growing dispute in the past few years.

In the present political and economic climate, the challenges to Aboriginal justice reform outnumber the opportunities; but some First Nations have managed, despite these, to use justice measures to move closer to their vision of healthy and functional communities. In the face of the growing strength of the drive to Aboriginal self-determination at the end of this century, the present justice system needs to adapt to a multiplicity of identities and experiential realities. If the Canadian system can be flexible enough to let these alternate forms flourish, it will be an example of the kind of healthy growth and adaptation that characterizes a justice system responsive to society's needs.

Endnotes to Introduction, pgs 1-17

[1] This old Ojibway name, formerly given as 'Sagamook', and referring to the southernmost peninsula on the territory, has been revived in recent years, to replace the name Spanish River reserve. Its meaning was given to me as land bridge, or place of joining between two bodies of water. Another meaning given is "meeting place", or "crossroads". Sagamok is located at the mouth of the Spanish River, on the northern shore of Lake Huron, approximately half way between the cities of Sudbury and Sault Ste. Marie.

[2] Hoyle, Marcia. 1995. Bringing Justice Home. Report of the Sagamok Anishnawbek Justice Research Project. Waterloo: Fund for Dispute Resolution.

[3] The term used by the "Three Fires" of Ojibway, Potawatomi and Odawa to refer to themselves. I will use this spelling throughout, although there are variants.

[4] The seven First Nations are, from West to East, Batchewana, Garden River, Thessalon, Mississauga, Serpent River, Sagamok and Whitefish Lake.

[5] This was a process that took more than four years. Near the end of the process, Sagamok withdrew from the Tribal Council agreement and opted for a bipartite agreement with the federal government. I discuss this withdrawal further in subsequent chapters. Nevertheless, its significance for the development of community justice is that the research and community consultation processes of the Health Transfer helped to prepare the ground for subsequent projects of a similar nature.

[6] The Fund for Dispute Resolution, (created by The Network: Interaction for Dispute Resolution, Waterloo, Ontario), provided sufficient funding for the project to enable the hiring of local co-researchers, a major facet of the research methodology.

[7] Referred to as Alternative Dispute Resolution, or ADR, it is more than a form of legal reform; it is a virtual industry in the business sector of the economy. More than this, however it could almost be called a "movement", as it originated in large part from American religious roots (Quaker and Mennonite) and in its mainstream, represents some major philosophical foundations of the contemporary U.S. It has generated a whole field of scholarship, a host of private practitioners and a large literature. When I use the term ADR throughout the text, this is what I refer to; other references to alternative dispute resolution will speak of it in the generic sense as an extrajudicial means of solving disputes and conflict, one of which would be indigenous ways of conflict resolution.

[8] These projects, funded jointly by the federal and provincial governments, are of the diversion type, which means that cases are diverted from the normal judicial channels to a panel of Elders that makes sentencing decisions.

[9] Some examples of this are: the Hollow Water First Nation in Manitoba, St. Theresa Point First Nation in Manitoba, the Gitksan Wet'suwet'en Nation, and the Mohawks of Kahnawake.

Endnotes to Chapter One, pgs. 18-65

[1] See: Province of Manitoba,(1991), Vol.2, Report of the Aboriginal Justice Inquiry of Manitoba: The Deaths of Helen Betty Osborne and John Joseph Harper, for a description of the investigation into these cases of the deaths of Aboriginal persons, both of which cases demonstrated that systemic racism "played a significant role"(p.89)in the outcome of the events.

[2] Carol LaPrairie(1995) writes that this phenomenon has as much to do with socioeconomic factors as ethnic ones; I discuss this in a later chapter.

[3] Ibid.

[4] Excerpt from an interview with Acting Senior Judge Gauthier, Sudbury District, March 1995.

[5] Fieldnotes, June 1992.

[6] See : Royal Commission on Aboriginal Peoples. Bridging the Cultural Divide. A Report on Aboriginal Peoples and Criminal Justice in Canada. Ottawa: Canada Communication Group,(Publishing). Released Feb. 23, 1996, and the Final Report, the Report of the Royal Commission on Aboriginal Peoples, released in November, 1996. Of the five volumes of the Final Report, Volume 2 , Restructuring the Relationship, is particularly relevant to justice issues.

[7] There are other examples of indigenous law from the Pacific area, but I take a similar position to Warry (1991:845) who writes that "...differences in social organization, cultural personality and state penetration into local autonomy make comparison ...problematic".

[8] Some members of Aboriginal communities in Canada, particularly women, have expressed this fear when faced with the possibility of a return to traditional law in their communities, and rely on the protection of the Canadian Charter against possible abuses of power in Aboriginal systems (Matas 1992:A6).

[9] Report of Commissioners A. Vidal and T.G. Anderson on visit to Indians, North Shores Lakes Huron and Superior for Purposes of Investigating their Claims and Territory Bordering on those Lakes, Archives of Ontario, Irving Papers, MU 1464, 26/31/04 , in V. Lytwyn, Annotated Chronological Index of Documents, History of the La Cloche Area. Prepared for Sagamok Anishnawbek, September 1994. Used with permission.

[10] Excerpted from an audiotape of a talk by Victor Lytwyn in Sagamok, March 1994, at a community meeting about Sagamok Anishnawbek history. Used with permission.

[11] Excerpt from interview with Sagamok Elder, January 1994.

[12] The case is recorded as Delgamuukw v. the Queen. See Cassidy 1992 for a thorough discussion of the case.

[13] I give further details of the Gitksan Wet'suwet'en system in a later chapter.

[14] Described to me by Gitksan and Wet'suwet'en representatives at a meeting in Ottawa, February 1994.

[15] The three fires referred to are the Ojibway, Odawa and Potowatomi peoples who are collectively known as the Anishnawbek. The Three Fires Confederacy includes Anishnawbek from United States and Canada.

[16] I expand on this concept further in Chapter 5.

[17] This is a comment I heard frequently in interviews at Sagamok.

Endnotes to Chapter Two, pgs. 66-95

[1] Rather than representing paranoia on my part, this is a well recognized phenomenon reported by Warry(1990:63) who writes that "Native people view anthropology as largely esoteric, irrelevant and as incapable of contributing to solutions to problems facing their communities..." See also, Brizinski 1989 and Reimer 1994 on this subject.

[2]Henceforth referred to as 'PR' throughout the text.

[3] See Reimer (1994) for a thorough discussion of the unique problems of what she calls "applied dissertation research", a term that would be equally apt for my research at Sagamok.

[4] Further, I discuss other contributing factors for this.

[5] Fieldnotes October 18, 1993.

[6] See Solomon (1993) in Bibliography.

[7] I discuss this further in Chapter 3.

[8] I discuss the language issue further in Chapter Four.

[9] Sagamok Police aggregate statistics, 1992-1994; OPP occurrence reports 1992-1994; selected correspondence and historical documents pertaining to Spanish River and Sagamok from National Archives of Canada.

Endnotes to Chapter Three, pgs. 96-154

[1] There is another possible interpretation to this story. It takes place at the end of winter, and the man/windigo had stayed by himself for the winter, while the others went upriver to hunt. The man could have been the victim of "windigo psychosis" from advancing starvation, and thus turned into a cannibal. Landes reports that Ojibway have so thorough a "tendermindedness" that they cannot turn to cannibalism without imagining their victims as proper edibles, such as beaver (Landes 1971:218).

[2] After changing hands at least once, the site was purchased by the Ministry of Natural Resources, who used it as a training camp, among other things. In 1992, after years of negotiations in which Sagamok claimed this land as rightfully theirs, they reclaimed the site by marching in on "Treaty Day" and planted the Sagamok flag. Negotiations for the recognition of their ownership of the site are ongoing.

[3] This and other references are from archival material collected for Sagamok, and on file there, by research consultant Peter DiGangi, and later by Dr. Victor Lytwyn. My thanks to them and to the Sagamok Band Council for access to this material.

[4] It is also the subject of Anishnabe humour. One band member, in response to a heated public exchange on the topic, had T-shirts printed with the phrase "I'm a Sagamok Original". I didn't see too many of these worn in public, however!

[5] Excerpt from an unsigned letter originating in Toronto, regarding the visit of three Chiefs who claimed that they were "...the original possessors and Chiefs of the Country about the Spanish River and that...the present occupiers of that tract....are not those who should have signed the late Treaty as the rightful owners of the land." (NAC RG 10, vol. 613, p.154)from a historical report by Victor Lytwyn to Sagamok Anishnawbek, 1995.

[6] Canada, Sessional Papers, 1892, vol. 10, no. 14, Report of the Department of Indian Affairs, James C. Phipps, Visiting Superintendent, Manitowaning. Cited in Lytwyn, n.d.

[7] Canada, Sessional Papers, 1892, vol. 10, no. 14, Report of the Department of Indian Affairs, James C. Phipps, Visiting Superintendent, Manitowaning. Annotated in a Bibliography prepared for Sagamok by Victor Lytwyn. Used with permission.

[8] Sagamok are in the process of a Land Use and Occupancy project that will take place over the next two years, and will provide detailed information of resource use of this kind.

[9] The whole question of the nature of tribal identity in communities is one that needs much closer examination. As Cornell (1988) notes, many indigenous groups who held an inclusive identity beyond the extended kin group or small village in pre-contact times, did so at the conceptual level, rather than the political level (i.e. a sense of peoplehood). Cornell maintains that it was the colonization process that created tribes as political entities, and that, at the conceptual level, the notion of "tribe" can still cover a range of heterogeneous "tribal" identities. This is likely true in Sagamok, where not only separate villages were consolidated, but the three "tribes" of Ojibway, Ottawa and Potowatomi all took on the identity of "Spanish River Indians".

[10] This legislation has revoked the former government policy of revoking Indian status for a number of reasons, mainly in the case of Indian women marrying non-Indians. Their children also lost a claim to Indian status. Since the Bill was passed in 1985, many women and their children who had been living off reserves have come back to claim membership.

[11] I discuss the political conflict between these two factions in more detail later in the chapter.

[12] I am aware that the discussion here is about various understandings and manifestations of what constitutes "tradition". The whole question of what constitutes "tradition" in the modern Indian community is a complex and changing one. For example, the dispensing of herbal remedies is an Anishnawbek (principally Ojibway) custom that has persisted for generations, passed down from healers to their apprentices. Other practices like the pow-wow for instance, are often referred to as "traditional", but are a recent phenomenon. Some of Sagamok's older population, particularly those who held to customary ways throughout their lifetimes, disparage modern pow-wows as too showy and too competetive, and not "real tradition". The whole area of what "tradition" means in modern Anishnawbek

life is a convoluted and extensive topic, and one which I do not have the space to explore further.Although I do discuss this with regard to Sagamok's potential for working together on community-based justice in later chapters, I am only able to comment on the topic incompletely in this dissertation. For more specific commentaries on this subject, see:(Jarvenpa 1985; Cornell 1988; Johnston 1976(1990)).

For example, the dispensing of herbal remedies is an Anishnawbek (principally Ojibway) custom that has persisted for generations, passed down from healers to their apprentices. Other practices like the pow-wow for instance, are often referred to as "traditional", but are a recent phenomenon. Some of Sagamok's older population, particularly those who held to customary ways throughout their lifetimes, disparage modern pow-wows as too showy and too competetive, and not "real tradition". The whole area of what "tradition" means in modern Anishnawbek life is a convoluted and extensive topic, and one which I do not have the space to explore further.

[13] I was told about this meeting by a co-worker on the justice research.

[14] From a circular posted by Chief and Council of Sagamok Anishnawbek, August 1993.

[15] Eight of the twelve councillors signed the resolution.

[16] In former times, banishment from the community was a last resort as a means of dealing with unwanted members. It was normally invoked only in extreme cases, such as murder, or intractable disputes. In the past few years, however, the concept has seemed attractive in some quarters as a way of dealing with violent offenders, for example.

[17] A report aired on CBC radio news Nov. 17,'93, and articles appeared in the Sudbury Star(Nov.29/93; Jan.14/94), Council Fires (Jan.94)and The Marketplace(Dec18/93).

[18] Two of the three murder stories were conflated in various tellings, but I concluded that this reference was to the same murder mentioned above where the body had been sunk in a canoe.

[19] The story was told to me by both Peter Owl and Chief Wilfred Owl. This is the story in my words, taken from my notes from their telling of it to me.

[20] See LaPrairie and Diamond, (1992: 419,426) for James Bay Cree parallels.

[21] Fieldnotes, April 20, 1994. Barkwell (1992:37) notes this practice among the Plains Ojibway.

[22] This reference is taken from a letter from the Regional Director of Indian Affairs to the Superintendent of the Sault Ste. Marie Agency, March 28, 1966. (Ref. NAC, R610, Vol. 11336, File 493/3-8-4, PT1).

[23] Jan 10, 1966, Letter from Superintendent of the Sault Ste. Marie Agency to the Regional Director. NAC, R610, Vol. 11336, File 493/3-8-4, PT 1.

[24] This reference is taken from a letter from Supt. of Indian Affairs, S.S. Marie, to Regl. Director, Aug. 20, 1965. (Ref. NAC, R610, Vol. 11336, file 493/3-8-4, PT 1).

[25] This reference is from an Indian Affairs Memo, Dec. 24, 1965. (Ref. NAC, R610, Vol. 11336. File 493/3-8-4. PT1).

[26] Ibid.

[27] The other First Nations signatories to the agreement are Garden River, Curve Lake, and Saugeen.

[28] This service was provided under auspices of the North Shore Tribal Council, and withdrawn in 1993 when Sagamok terminated its membership in the tribal council. The service may be reinstated under Sagamok's present Band Council Administration.

[29] Assaults are categorized for purposes of laying charges, in three categories. Level 1 assault is simple, or minor assault such as would normally occur in fighting, slapping, etc. Level 2 assault involves the use of a weapon, or results in bodily harm; Level 3 assault, or "aggravated" assault, results in serious physical injury to the victim. (Statistics Canada 1992:31). The vast majority of assault charges in Sagamok were for Level 1, or simple assault.

[30] Sagamok Internal Memo. Traffic violations not included.

[31] This and subsequent Canadian justice statistics from: Statistics Canada, 1992. Canadian Crime Statistics Cat. 85-205.

[32] Saganok's Band Membership is approximately eighteen hundred, but in 1995, the on-reserve population was 1,080.

[33] I discuss this issue in more detail in the following chapter.

[34] Chapter 4 discusses the question of values in more depth.

[35] While this question was intended to elicit values about the nature of crime, I include it here because such values influence what is reported and what is not. As such, they act as proximal influences to residents' perceptions of the crime profile.

[36] Interview, Sept. 28, 1993.

[37] When I asked why leg irons were being used, a police officer explained that they expected this boy to run away like his cousin, who was well known to police and had escaped custody and prison facilities at least twice.

Endnotes to Chapter Four, pgs. 155-207

[1] Webber (1993:137)contrasts the "manifest content" of cultures with such modes of interaction, which he refers to as "modes of discussion", meaning "...the way it poses and then goes about resolving questions".

[2] There are exceptions that I mention later in the chapter.

[3] I discuss this in greater detail further in the chapter.

[4] See Watts and Gutierres (1997:9) for comparative data on American Native populations.

[5] In a recent article, Emma LaRocque (1997), an Aboriginal woman and scholar in Manitoba has been critical of the use of "tradition" in some Aboriginal justice alternatives that promote reconciliation and forgiveness of sexual offenders. LaRocque contends that such initiatives, such as the Holistic Healing program at Hollow Water, Manitoba, are using principles derived from mainstream society and Christianity, rather than from traditional Aboriginal methods of justice that meted out harsh remedies for sexual offences.

[6] Comments made by Peter Owl at Sagamok Land Rights meeting, March 1994

[7] Dominic Eshkakogan, personal communication.

[8] From comments made by Cape Croker representatives regarding the discontinued Elders' panel in their community, at an Ontario Native Council on Justice meeting, March 1994.

[9] The Royal Commission report (1996f:68) recommends recreation and sports programs as part of the healing strategy necessary for community health and renewal.

[10] He was referring to the pioneering Aboriginal Legal Services of Toronto, where urban offenders are brought before a panel of Elders for treatment of their offence.

[11] LaPrairie cites similar results and questions whether these high levels of interpersonal violence has become normative behaviour. She tries to understand this in terms of modernization theory, concluding that "social disorganization may be a temporary product of the forces of change" (LaPrairie 1992:18).

Endnotes to Chapter Five, pgs. 208-236

[1] Under the Indian Act, Indian bands have the option of using "customary" electoral procedures, but very few have exercised this option to replace the government-designed process with indigenous leadership criteria (Boldt 1993:121).

[2] In November of 1993, after presenting my report to the Sagamok leadership, I provided them with 100 copies of the report for distribution in the community. I am unsure of the fate of these copies, but I do know that the mechanism for discussion of the research results has not been initiated yet.

[3] In response to the question "Do you think the Church influences people's behaviour...", only thirty-two percent agreed that it does. As well, when asked for ways in which people might be helped to change their "bad" behaviour, the Church was not mentioned at all.

[4] Sagamok Anishnawbek Community Justice Research: Bringing Justice Home. Proposal for Phase Two, p.4. I wrote this proposal at the request of Sagamok leaders, and submitted it to the Chief and Council in January 1995. They subsequently submitted the proposal for funding. They tell me they have been informed that funds are not available.

[5] I am citing a letter written to Sagamok Chief and Council by the Minister of Indian Affairs, and shown to me for my comments.

[6] Another policy decision that has negative implications for Aboriginal regional unity is the withdrawal in 1990 of federal funding for Aboriginal news media (Elias 1991:145).

[7] The Sagamok project was funded by a doctoral fellowship from the Social Sciences and Humanities Research Council of Canada, a scholarship from the Canadian Federation of University Women, a travel grant from McMaster University, and a grant from the Fund for Dispute Resolution, a limited fund set up by the Network: Interaction for Conflict Resolution, Waterloo, Canada. The Fund for Dispute Resolution also published the community report that resulted from the research.

[8] Hickerson (1972:45) notes that the merging of separate Ojibway "clans" was occurring in the seventeenth century, and that formerly separate groups such as the Amikwa, resident in the Sagamok area, lost their individual identity through this confederation process. Such amalgamation was largely a political and ad hoc strategy in response to European pressures, but it brought about profound changes in local social organization and leadership modes (1972:53).

[9] The document, and public statement, included an apology to Aboriginal people for their suffering in government-run and sponsored residential schools, the "suppression of Aboriginal culture and values", and "...the erosion of the political, economic and social systems of Aboriginal people and nations". While Grand Chief Phil Fontaine accepted the apology, many Aboriginal leaders expressed disappointment and anger at what was left out of the statement, and at the small sum dedicated to a healing fund.

[10] I have heard this from various judges at Native Justice conferences, in print, and in personal interviews.

[11] Several people have voiced this opinion to me in conversation, including a Crown Attorney working in a Northern Ontario urban centre. See also, Schwartz 1990.

[12] The youth who would agree to be on such a committee would likely not be the socially disruptive ones, but their viewpoint about youth needs would still be of value. In Sagamok, all the youth, troublemakers or not, are subject to the same lack of facilities and opportunities, although some have been socialized with the skills to know how to gain access to outside resources. And despite their socioeconomic and educational differences, virtually all of the youth have been exposed to the major social dysfunctions in the community. Moreover, youth representation would be important in creating the perception that youth concerns are being heard.

Bibliography

Aboriginal Family Healing Joint Steering Committee
1993. Final Report.For Generations to Come: The Time is Now. A Strategy for Aboriginal Family Healing.

Alfredsson, Gudmundur
1989. "International Discussion of the Concerns of Indigenous Peoples".Current Anthropology 30,(2). 255-265.

Altman, Andrew
1990. Critical Legal Studies: A Liberal Critique. Princeton, NJ: Princeton University Press.

Arno, Andrew
1985. "Structural Communication and Control Communication: An Interactionist Perspective on Legal and Customary Procedures for Conflict Management."Amer.Anth.87:40-55.

Asch, Michael
1993. "Aboriginal Self-Government and Canadian Constitutional Identity: Building Reconciliation". Michael D. Levin, ed., Ethnicity and Aboriginality: Case Studies in Ethnonationalism, 28-52. Toronto: University of Toronto Press.

Assinewe, Martin
1993. "Division in communities affects youth". Commentary reprinted from Sagamok Anishnawbek Community Newsletter. Council Fires, April 1993, Vol. 11(7), 7.

Auger, D., A.N. Doob, R.P Auger, and P. Driben
1992. "Crime and control in three Nishnawbe-Aski Nation communities: An exploratory investigation" Canadian Journal of Criminology, Vol 34, 317-338.

Baar, Carl
1988."The Courts in Canada".The Political Role of Law Courts in Modern Democracies. Jerold Waltman and Kenneth Holland, (eds), London: Macmillan. 53-82.

Baraga, Rev.F.
1847, Reprinted 1976. Inquiries, Respecting the History, Present Condition and Future Prospects, of the Indian Tribes of the United States. New York: Studia Slovenica.

Barkwell, Lawrence J.
1991. "Early Laws and Social Control Among the Metis". The Struggle for Recognition. Canadian Justice and the Metis Nation. Samuel W. Corrigan and Lawrence J. Barkwell (eds). Winnipeg: Pemmican Publications. 7-37.

Barkwell, L.J. and L. N. Longclaws
1991. "The Current Status of Metis People in the Federal Correctional System" in Corrigan and Barkwell (eds). 101-112. Winnipeg: The Manitoba Metis Federation, Inc.

L.J. Barkwell, D.N. Gray, D.N. Chartrand, L.N. Longclaws, R.H. Richard
1991. "Devalued People: the Status of the Metis in the Justice System" Corrigan and Barkwell, eds., 73-99.

Barth, Fredrik
1969. Ethnic Groups and Boundaries. Boston: Little, Brown.

Baxi,Upendra
1986."Discipline,Repression and Legal Pluralism".Legal Pluralism. Proceedings of the Canberra Law Workshop VII. Law Department, Research School of Social Sciences, Australian National University. 51-61.

Bishop, Charles A.
1974. The Northern Ojibwa and the Fur Trade: An Historical and Ecological Study. Toronto: Holt, Rinehart and Winston.

Boldt, Menno and J. Anthony Long (eds).
1985. The Quest for Justice: Aboriginal Peoples and Aboriginal Rights. Toronto: University of Toronto Press.

Boldt, Menno
1993. Surviving as Indians: The Challenge of Self-Government. Toronto: U. of T. Press.

Boldt, Menno and J. Anthony Long
1988. "Native Indian Self-Government: Instrument of Autonomy or Assimilation?". Long, Boldt and Little Bear (eds), Governments in Conflict? : Provinces and Indian Nations in Canada. Toronto: University of Toronto Press, 38-56.

Braithwaite, John
1989. Crime, Shame and Reintegration. Cambridge: Cambridge University Press.

Brant, Clare Clifton
1993. "Suicide in Canadian Aboriginal Peoples: Causes and Prevention". The Path to Healing: Report of the National Round Table on Aboriginal Health and Social Issues, 55-71. Ottawa: Royal Commission on Aboriginal Peoples.

Brizinski, Peggy Martin
1989. Participation as Social Science Method and Theory: Indigenous Response in the Mackenzie Delta. Unpublished Ph.D. Thesis, McMaster University.

Brodeur, Jean-Paul, Carol La Prairie and Roger McDonnell
1991. Justice for the Cree: Final Report. The Grand Council of the Crees (Quebec), Cree Regional Authority.

Brogden, M.
1991. "Criminal Justice and Colonisation" . The Struggle for Recognition. Canadian Justice and the Metis Nation. Samuel W. Corrigan and Lawrence J. Barkwell (eds), Winnipeg: Pemmican Publications. 1-6.

Brown, L. David and Rajesh Tandon
1983. "Ideology and Political Economy in Inquiry: Action Research and Participatory Research". The Jnl. of Applied Behavioral Science, Vol 19, No. 3, 277-294

Brown, Jennifer and C. Roderick Wilson
1989."The Eastern Subarctic: A Regional Overview". Native Peoples, The Canadian Experience. R. Bruce Morrison and C. Roderick Wilson, eds., Toronto: McClelland and Stewart. 134-140.

Brown, Jennifer
1989. "Northern Algonquians from Lake Superior and Hudson Bay to Manitoba in the Historical Period". Morrison and Wilson, eds., 208-237.

Bruner, Edward M.
1986. "Ethnography as Narrative", Victor W. Turner and Edward M. Bruner, (eds), The Anthropology of Experience. Urbana: University of Illinois Press, 139-155.

Burrell, Gordon J. and Douglas E. Sanders
1984. Handbook of Case Law on the Indian Act. Ottawa: Indian and Northern Affairs Canada.

Butterfield, C.W.
1898. History of Brule's Discoveries and Explorations, 1610-1626. Cleveland, Ohio: Helman-Taylor.

Campbell, Tom
1988. Justice. Issues in Political Theory Series, Peter Jones and Albert Weale, eds. Atlantic Heights, NJ: Humanities Press International Inc.

Canada
1983a. Community-Based Research: Report of the SSHRC Task Force on Native Issues. Ottawa: Social Sciences and Humanities Research Council.
-1983b. Issue No. 40, Minutes and Proceedings of the Special Committee on Indian Self-Government. Mr. Keith Penner, Chairman. Ottawa: House of Commons.
-1989. Indian Act. Ottawa: Minister of Supply and Services Canada.
-1990. "You Took my Talk": Aboriginal Literacy and Empowerment. Fourth Report of the Standing Committee on Aboriginal Affairs. Ottawa: House of Commons.
-1991. Issue No. 59. The Summer of 1990. Fifth Report of the Standing Committee on Aboriginal Affairs. Ottawa: House of Commons.
-1992. Indian Treaties and Surrenders, Vol 1, Treaties 1-38. (First printed 1891) Saskatoon: Fifth House Publishers.
-1993a. Household and Family Projections of Registered Indians, 1991-2015. Ottawa: Indian and Northern Affairs Canada.
-1993b. The Incidence of Family Poverty on Canadian Indian Reserves. Ottawa: Indian and Northern Affairs Canada.
-1995. Indian Register Population by Sex and Residence 1994. Ottawa: Indian and Northern Affairs Canada.

Cassidy, Frank
1991, "Aboriginal Governments in Canada: An Emerging Field of Study", F. Cassidy (ed), Aboriginal Self-Determination. Lantzville, B.C.: Oolichan Books and The Institute for Research on Public Policy, Halifax, N.S. 252-282.
-1992. (ed.) Aboriginal Title in British Columbia: Delgamuukw v. the Queen. Co-published by Oolichan Books, Lantzville B.C., and the Institute for Research on Public Policy, Montreal.

Clark, Bruce
1990. Native Liberty, Crown Sovereignty: The Existing Aboriginal Right of Self-Government in Canada. Montreal: McGill-Queen's University Press.

Colorado, Pam
1988. "Bridging Native and Western Science". Convergence, Vol XXI (2/3), 49-67.

Comaroff, Jean
1985.Body of Power, Spirit of Resistance. Chicago: The University of Chicago Press.

Comaroff, Jean and John Comaroff
-1991.Of Revelation and Revolution: Christianity, Colonialism, and Consciousness in South Africa. Chicago: The University of Chicago Press.

Conley, John M. and William M. O'Barr
1990. Rules Versus Relationships: The Ethnography of Legal Discourse. Chicago: The University of Chicago Press.

Convergence
1988, Vol.XXI (2/3). Focus on Participatory Research.

Cordella, J. Peter
1991. "Reconciliation and the Mutualist Model of Community". Harold E. Pepinsky and Richard Quinney (eds), Criminology as Peacemaking, 30-46. Bloomington: Indiana University Press.

Cornell, Stephen
1988. "The Transformations of Tribe: organization and self-concept in Native-American ethnicities". Ethnic and Racial Studies Vol. 11, Number 1, 27-47.

Council Fires
1992. "Inherent right to self government - what it means." August, 1992. p.11
1993. "Sagamok discusses final plans for new health care facility". March, Vol 11(6), p.1.

Coyle, M.
1986. Traditional Indian Justice in Ontario: A Role for the Present? Toronto: Ontario Native Council on Justice.

Dahrendorf, Ralf
1979. Life Chances. Chicago: The University of Chicago Press.
1988. The Modern Social Conflict. New York: Weidenfeld and Nicolson.

Depew, Robert
1992. Book Review. Justice for The Cree: Customary Beliefs and Practices by Roger McDonnell. Canadian Journal of Criminology, Vol 34, 540-542

-1994. Aboriginal Policing: A Research Perspective. Report prepared for the Royal Commission on Aboriginal Peoples.

Devens, Carol
1992. Countering Colonisation: Native American Women and Great Lakes Missions, 1630-1900. Oxford: University of California Press.

Dickason, Olive P.
1992. Canada's First Nations. A History of Founding Peoples from Earliest Times. Toronto: McClelland and Stewart.

Dickson-Gilmore, E.J.
1992. "Finding the ways of the ancestors: Cultural change and the invention of tradition in the development of separate legal systems". Canadian Journal of Criminology, 34, 479-502.

Dumont, James
1993. "Justice and Aboriginal People". Aboriginal Peoples and the Justice System, Report of the National round Table on Aboriginal Justice Issues. Ottawa: Royal Commission on Aboriginal Peoples, 42-85.

Dunning, R.W.
1959. Social and Economic Change among the Northern Ojibwa. Toronto: U. of T. Press.

Durkheim, Emile
1951. Suicide. George Simpson, ed. Trans. by John A. Spaulding and George Simpson. New York: The Free Press.

Dworkin, R.M.
1977. "Is Law a System of Rules?". R.M. Dworkin, ed., The Philosophy of Law, 38-65. Oxford: Oxford University Press.

Elberg, Nathan
1988."Comprehensive claims, culture and customary law: the case of the Labrador Inuit".Morse and Woodman, eds., Indigenous Law and the State.

Elias, Peter Douglas
1991. Development of Aboriginal People's Communities. North York: Captus Press, and Centre for Aboriginal Management Education and Training.

Fabian, Johannes
1990. "Presence and Representation: the Other and Anthropological Writing". Critical Inquiry 16:753-76.

Fanon, Franz
1963. The Wretched of the Earth. Translated by C. Farrington. New York: Grove Press.

Feit, Harvey
1994. "Indigenous Partnerships in Knowledge and Northern Social Research". Canada and Polar Science. John Stager, ed., 47-57. Yellowknife, NWT: Proceedings of a conference sponsored by The Canadian Polar Commission.

Fernandes, W., and Tandon, R.
1981. Participatory research and evaluation: Experiments in research as a process of liberation. New Delhi: Indian Social Institute.
Finkler, Harold
1976. North of 60: Inuit and the Administration of Criminal Justice in the Northwest Territories: The Case of Frobisher Bay. Ottawa: Indian and Northern Affairs.
-1988. "Legal Anthropology in the formulation of correctional policy in the Northwest Territories, Canada". B. Morse and G. Woodman, eds., Indigenous Law and the State, 413-420. Dordrecht: Foris.
Fitzpatrick, Peter
1986. "Custom, Law and Resistance" in Legal Pluralism. Proceedings of the Canberra Law Workshop VII. Law Department, Research School of Social Sciences, Australian National University. 63-82.
-1988. "The Rise and Rise of Informalism". R. Matthews, ed., Practising Theory. London: Sage
Fleras, Augie
1989. "Inverting the Bureaucratic Pyramid: Reconciling Aboriginality and Bureaucracy in New Zealand". Human Organization, Vol 48 (3), 214-225.
Foucault, Michel
1979. Discipline and Punish: The Birth of the Prison. Translated by Alan Sheridan. New York: Vintage Books, Random House.
-1980. Power/Knowledge: Selected Interviews and Other Writings. Colin Gordon (ed), New York: Pantheon.
Freire, Paulo
1970. Pedagogy of the Oppressed.Trans. by Myra Bergman Ramos. New York: Continuum.
Frideres, James D.
1988. Native Peoples in Canada, Contemporary Conflicts. Scarborough: Prentice-Hall.
Fritz, Linda and Zandra Maceachern
1985. Subject Guide to Native Law Cases and Annotated Text of the Indian Act of Canada. Regina: University of Saskatchewan Native Law Centre.
Fulford, Robert
1995. "Considering the public perceptions of justice". The Globe and Mail, Oct. 18/95, C1.
Gibbins, Roger
1986. "Citizenship, Political, and Intergovernmental Problems with Indian Self-Government". Ponting 1986 (ed), 369-377.
Gibbins, Roger and J.R. Ponting
1986. "Historical Overview and Background". Arduous Journey: Canadian Indians and Decolonisation. Toronto: McClelland and Stewart. 18-56.

Giddens, Anthony
1987. The Nation State and Violence. Vol. 2 of A Contemporary Critique of Historical Materialism. Berkeley and Los Angeles: U. of Calif. Press.
Gilman, Eric
1997. "Laying a Restorative Justice Foundation for Victim Offender Reconciliation Programs". Interaction. Spring 1997. 14-15.
Gitksan-Wet'suwet'en Education Society
1992. "Unlocking Aboriginal Justice". A proposal to the B.C. Ministry of the Attorney General.
Globe and Mail
1998. "To Aboriginal Canadians: 'Our profound regret'". Commentary, Jan. 8, 1998. A17.
Goffman, Erving
1963. Stigma: Notes on the Management of Spoiled Identity. Englewood Cliffs, N.J.: Prentice-Hall.
Gottfredson, Michael R. and John S. Goldkamp
1990. "Some Consumer Guidelines for Prison Alternatives". D.M. Gottfredson and R.V. Clarke, eds., Policy and Theory in Criminal Justice, 128-139. Aldershot: Avebury.
Gottfredson, Don. M.
1990."Research Policy: upside down and back to front?" Policy and Theory in Criminal Justice. Gottfredson and Clarke, eds., 160-180.
Gosse, Richard
1994. "Charting the Course for Aboriginal Justice Reform Through Aboriginal Self-Government". Continuing Poundmaker and Riel's Quest, compiled by Richard Gosse, James Youngblood Henderson and Roger Carter. Saskatoon: Purich Publishing.
Grant, Peter R.
1988. "Recognition of traditional laws in state courts and the formulation of state legislation" in Morse & Woodman, eds., Indigenous Law and the State.
Greenhouse, Carol J.
1995. Editorial Column, Association For Political and Legal Anthropology. Anthropology Newsletter. September 1995. 16-18.
Griffiths, Curt Taylor and A.L. Patenaude
1988. "Application of the Criminal Law to Native Indians and Inuit in the Northwest Territories, Canada" Comparative Law Review 22, 1-35.
Griffiths, Curt Taylor and Charlene Belleau
1995. "Addressing Aboriginal Crime and Victimization in Canada: Revitalizing Communities, Cultures and Traditions". Popular Justice and Community Regeneration, Kayleen Hazlehurst, ed., Westport Conn: Praeger. 165-186.
Griffiths, J.
1986."What is Legal Pluralism?" Jnl. of Legal Pluralism 24: 1-56.

Habermas, Jurgen
1984. The Theory of Communicative Action. Vol. 1: Reason and the Rationalization of Society. Translated by Thomas McCarthy. Boston: Beacon Press.
Haley, John Owen
1991. Authority without Power. Law and the Japanese Paradox. New York: Oxford University Press.
Hall, Budd L.
1979. "Knowledge as a commodity and participatory research". Prospects, Vol.IX, No. 4, 393-408.
Hallowell, A Irving
1955. Culture and Experience. Philadelphia: University of Pennsylvania Press.
-1992. The Ojibwa of Berens River, Manitoba. Ethnography into History. Edited with Preface and Afterword by Jennifer S.H. Brown. Orlando Fla: Harcourt Brace Jovanovich College Publishers.
Hanson, Allan
1989. "The Making of the Maori: Culture Invention and Its Logic", American Anthropologist 91, 890-902.
Hart, H.L.A.
1977. "Positivism and the Separation of Law and Morals". R.M. Dworkin, ed., The Philosophy of Law, 17-37. Oxford: Oxford University Press.
Havemann, Paul, K.Couse, L. Foster, R. Matonovich
1985. Law and Order for Canada's Indigenous People. Regina: Prairie Justice Research Centre.
Havemann, Paul
1988. "The indigenization of social control in Canada". Morse and Woodman, eds., Indigenous Law and the State. Dordrecht: Foris, 71-100.
Hazlehurst, Kayleen
1991. "Australian Aboriginal Experiences of Community Justice". Law and Anthropology. International Yearbook 6. Vienna: VWGO. 45-65.
-1995. "Indigenous Models for Community Reconstruction and Social Recovery". Popular Justice and Community Regeneration, K. Hazlehurst, ed., Westport, Conn: Praeger. xi-xxxii.
-1995b. "Unyielding domains in the post-colonial relationship". Legal Pluralism and the Colonial Legacy, Kayleen Hazlehurst, ed. Aldershot: Avebury. ix-xxxv.
Hedican, Edward
1995. Applied Anthropology in Canada: Understanding Aboriginal Issues. Toronto: U. of T. Press.
Hemmingson, Rick H.
1988. "Jurisdiction of Future Tribal Courts in Canada: Learning from the American Experience". Canadian Native Law Reporter, 1988 (2), 2-50.
Henry, Alexander
1809. Reprinted 1976. Travels and Adventures in Canada and the Indian Territories between the Years 1760 and 1776. (facsimile) New York: Garland.

Hickerson, Harold
1972. The Chippewa and Their Neighbours: A Study in Ethnohistory. New York: Irvington.
Hoare, Tony, Chris Levy and Michael P.Robinson
1993. "Participatory Action Research in Native Communities: Cultural Opportunities and Legal Implications". The Canadian Journal of Native Studies XIII, 1, 43-68.
Hobsbawm, Eric
1983. "Introduction: Inventing Traditions". E.Hobsbawm and T. Ranger (eds), The Invention of Tradition. Cambridge: Cambridge University Press, 1-14.
Hodgson, Maggie
1995. "Body, Mind and Spirit: Native Community Addictions, Treatment and Prevention". Kayleen Hazlehurst, (ed), Popular Justice and Community Regeneration: Pathways of Indigenous Reform. Westport Conn: Praeger, 187-199.
Hoebel, E. Adamson
1968. The Law of Primitive Man: A Study in Comparative Legal Dynamics. New York: Atheneum.
Hooker, M.B
1975."Legal Pluralism and the Ethnography of Law" and "Conclusion: Comparative Law, Conflicts of Law, and Plural Laws" in Legal Pluralism: An Introduction to Colonial and Neo-Colonial Laws. Oxford: Clarendon.
Hoyle, Marcia
1992. "Modelling Aboriginal Justice Systems in Canada" Commission on Folk Law and Legal Pluralism, Proceedings of the Wellington Congress. Vol. 2, 273-283.
-1995a. Bringing Justice Home. Report of the Sagamok Anishnawbek Justice Research Project. Waterloo: Fund for Dispute Resolution.
-1995b. "A Fitting Remedy: Aboriginal Justice as a Community Healing Strategy". Kayleen Hazlehurst, ed., Popular Justice and Community Regeneration. Westport Conn.: Praeger. 143-163.
Hunt, Constance
1991. "Aboriginal Decision-Making and Canadian Legal Institutions". Law and Anthropology. International Yearbook 6. Vienna: VWGO. 25-44.
Hylton, John H
1994, "Financing Aboriginal Justice Systems", in Gosse, Henderson and Carter. 150-170.
Indian and Northern Affairs Canada
1984. Handbook of Case Law on the Indian Act. Gordon J. Burrell and Douglas E. Sanders (eds).Ottawa: Ministry of Indian Affairs and Northern Development.
-1992. Information Sheet No. 2. "Bill C-31". February, 1992. Ottawa: INAC. p4.
-1992a. Community Profiles Management System, Profile Report, Spanish River.
Independent First Nations' Alliance (IFNA)
1993. Genowin Disomin/Gunowen Disomin. Keeping Ourselves. A Comparison of Justice in Four First Nations. Submission to the Royal Commission on Aboriginal Peoples.

Inuit Justice Task Force
1993. Final Report: Blazing the Trail to a Better Future. Montreal: Inuit Justice Task Force.
Jackson, Ted, Don McCaskill and Bud L. Hall
1982. "Learning for Self-Determination: Community-Based Options for Native Training and Research:. The Canadian Journal of Native Studies, Vol II (1), 1-9.
Jackson, Moana
1992."Changing Realities, Unchanging Truths".Commission on Folk Law and Legal Pluralism. Proceedings of the Wellington Congress, Vol 2. 443-455.
Jacobs, Lesley A.
1991. "Bridging the Gap Between Individual and Collective Rights with the Idea of Integrity", Canadian Journal of Law and Jurisprudence, Vol.IV, (2), 375-386.
Jarvpena, Robert
1985. "The political economy and political ethnicity of American Indian adaptations and identities". Ethnic and Racial Studies Vol.8, No.1, 29-45.
Johnston, Basil
1976. Ojibway Heritage. Toronto: McClelland and Stewart.
Johnston, Darlene M.
1989. "Native Rights as Collective Rights: A Question of Group Self-Preservation", Canadian Journal of Law and Jurisprudence, Vol 11, (1), 19-34.
Just, Peter
1992. "History, Power, Ideology, and Culture: Current Directions in the Anthropology of Law". Law & Society Review, 26(2), 373-411.
Justice, Christopher and Wayne Warry
1995. Shared Visions of Community Healing: a discussion paper for First Nations. North Shore Anishnabek Health Board.
Kallen, Evelyn
1987. "Multiculturalism, Minorities, and Motherhood: A Social Scientific Critique of Section 27". Canadian Human Rights Foundation. Multiculturalism and the Charter: A Legal Perspective. Toronto: Carswell, 123-137.
Keysis, Lindsay Farell
1993. "Take me to the River". Nativebeat, November, Vol 3(3), 12-13.
King, Richard
1987. "Role Shock in Local Community Control of Indian Education". Indian Education in Canada, Vol.2: The Challenge. Jean Barman, Yvonne Hebert, and Don McCaskill, eds., Nakoda Institute Occasional Paper No.3. Vancouver: University of British Columbia Press.
Kinietz, W.V.
1947. Chippewa Village. The Story of Katikitegon. Bloomfield Hills, Mich: Cranbrook Institute of Science, Bulletin No. 25.
-1972. The Indians of the Western Great Lakes 1615-1760.Ann Arbor Paperbacks: University of Michigan Press.

Kohl, Johann Georg
[1860] Reprinted 1985. Kitchi-Gami. Life Among the Lake Superior Ojibway. St. Paul: Minnesota Historical Society Press. Trans. Lascelles Wraxall. 477 pp.
Kulchyski, Peter
1994. Unjust Relations: Aboriginal Rights in Canadian Courts. Toronto: Oxford University Press.
Kunitz, Stephen J. and Jerrold E. Levy
1994. Drinking Careers: A Twenty-five-year Study of Three Navajo Populations. New Haven: Yale University Press.
Lahontan, Baron de
[1703] Reprinted 1970. New Voyages to North-America. Reprinted from English edition of 1703, Reuben Gold Thwaites. 2 vols. New York: Burt Franklin.
Lajeunesse, Therese
1991. "Cross-Cultural Issues in the Justice System: The Case of Aboriginal People in Canada" University of Hawaii, Program on Conflict Resolution. Working Paper.
Landes, Ruth
1968. Ojibwa Religion and the Midewiwin. Madison: The University of Wisconsin Press.
-1969. Ojibwa Sociology. New York: AMS Press.
-1971. The Ojibwa Woman. New York: W.W. Norton.
LaPrairie, Carol
1987. "Native Women and Crime: A Theoretical Model". The Canadian Journal of Native Studies VII, 1: 121-137.
-1992. Dimensions of Aboriginal Over-Representation in Correctional Institutions and Implications for Crime Prevention. Supply and Services Canada: Aboriginal Peoples Collection.
-1992b "Aboriginal crime and justice: Explaining the present, exploring the future". Canadian Journal of Criminology, Vol 34, 281-298.
-n.d. "Altering Course: New Directions in Criminal Justice: Sentencing Circles and Family Group Conferences".
-1995, "Dimensions of Aboriginal over-representation in Canadian correctional institutions and implications for crime prevention", Legal Pluralism and the Colonial Legacy, Kayleen Hazlehurst (ed), Brookfield: Avebury. 159-185.
LaPrairie, Carol and Eddie Diamond
1992. "Who owns the problem? Crime and disorder in James Bay Cree communities" Canadian Journal of Criminology, Vol.34, 417-434.
LaRocque, Emma
1997. "Re-examining Culturally Appropriate Models in Criminal Justice Applications", Michael Asch (ed), Aboriginal and Treaty Rights in Canada. Vancouver: UBC Press, 75-96.
Law Reform Commission of Canada
1976. Community Participation in Sentencing. Ottawa: Minister of Supply and Services, Canada.

Lilles, Heino and Barry Stuart
1992. "The Role of the Community in Sentencing" Justice Report, Vol. 8, No. 4., 1-5.
Lithman, Yngve Georg
1984. The Community Apart: A Case Study of a Canadian Indian Reserve Community. The University of Manitoba Press.
Little Bear, Leroy
1986. "Aboriginal Rights and the Canadian Grundnorm" in J.R. Ponting (ed) Arduous Journey: Canadian Indians and Decolonisation, 243-259.
Llewellyn, Karl N. and E. Adamson Hoebel
1941 (1987) The Cheyenne Way. Norman, Oklahoma: U. of Oklahoma Press.
Lockhart, Alexander
1982. "The Insider-Outsider Dialectic in Native Socio-Economic Development: A case Study in Process Understanding". Canadian Jnl.of Native Studies, Vol.II(1), 159-168.
Long, J.
1791. Reprinted 1968. Voyages and Travels of an Indian Interpreter and Trader. London. Reprinted by Johnson Reprint Corporation, New York.
Long, J. Anthony
1990. "Political Revitalization in Canadian Native Indian Societies". Canadian Journal of Political Science, XXIII:4, 751-773.
Lytwyn, Victor P.
1990. "Ojibwa and Ottawa Fisheries around Manitoulin Island: Geographical Perspectives on Aboriginal and Treaty Fishing Rights." Native Studies Review 6, No. 1, 1-30.
1994. Annotated Chronological Index of Documents. History of the LaCloche Area. Report Submitted to Sagamok Anishnawbek.
-1995. Annotated Chronological Index of Documents. Historical Report submitted to Sagamok Anishnawbek.
Macklem, Patrick
1993. "Ethnonationalism, Aboriginal Identities and the Law". Michael D. Levin, ed., Ethnicity and Aboriginality: Case Studies in Ethnonationalism, 9-28. Toronto: University of Toronto Press.
Manotsaywin Nanotoojig Family Violence Services Planning Project
1990. Za-Geh-Do-Win. Findings of Phase 1, Needs Assessment. Prepared by the Monitoring Committee for Twenty-four First Nations in Northern Ontario.
Manson, Margot
1994. "Justice that Heals: Native Alternatives". Canadian Lawyer, October. 24-28.
Maracle, Brian
1993. Crazywater: Native Voices on Addiction and Recovery. Harmondsworth: Penguin (Viking).
Marenin, Otwin
1990."The Police and the Coercive Nature of the State". E.S.Greenberg and T.F. Mayer, eds., Changes in the State, 115-130. Newbury Park: Sage.

-1992. "Explaining patterns of crime in the native villages of Alaska". Canadian Journal of Criminology, Vol 34, 339-368.

Matas, Robert

1992. "Native rite ruled subject to law. Band member unwilling subject of four-day spirit dancing ritual". Globe and Mail, Feb. 10. 1992, A6.

McDonnell, Roger F

1992. "Contextualizing the investigation of customary law in contemporary native communities". Canadian Journal of Criminology, 34, 299-316.

-1995. "Prospects for Accountability in Canadian Aboriginal Justice Systems. Philip C. Stenning (ed), Accountability for Criminal Justice, 449-477. Toronto: U of T Press.

McNamara, Luke

1992. "Aboriginal People and Criminal Justice Reform: The Value of Autonomy-Based Solutions". Canadian Native Law Reporter, 1992 (1), 1-13.

Merry, Sally Engle

1990. Getting Justice and Getting Even. Legal Consciousness Among Working-Class Americans.Chicago: The University of Chicago Press.

-1991. Review Essay: "Law and Colonialism". Law and Society Review, Vol. 25, Number 4. 890-922.

-1992."Anthropology, Law and Transnational Processes". Ann. Rev. of Anth., 21:357-379.

Miller, Bruce

1996. Paper delivered at Canadian Anthropology Society Meeting, Brock University, May 1996.

Miller, J.R.

1991. Skyscrapers Hide the Heavens. A History of Indian-White Relations in Canada. Toronto: University of Toronto Press.

Milling, Robert and Renee Puskas

1989. "Native Access to Justice: Legal Needs on the Walpole Island Indian Reserve". Windsor Review of Legal and Social Issues, Vol.1, 34-60.

Minore, J.B.

1992. "Not Just 'Potato Chip' Thieves". Robert A. Silverman and Marianne O. Nielsen (eds), Aboriginal Peoples and Canadian Criminal Justice. Toronto: Butterworths, 279-297.

Monture-Okanee, Patricia

1994. "Thinking Abour Aboriginal Justice: Myths and Revolution" in Gosse, Henderson and Carter, (eds), 222-232.

Moore, D.B.

1994. "Pride, Shame and Empathy in Children's Peer Relations". K. Rigby and P. Slee, Children's Peer Relations.

Moore, Sally Falk

1978. Law as Process: An Anthropological Approach. London: Routledge and Kegan Paul.

-1989. "History and the Redefinition of Custom on Kilimanjaro" in Starr and Collier, eds. History and Power in the Study of Law. Ithaca: Cornell University Press. 277-301.

Morrow, Doug
1992. Models for Native Community Involvement in the Delivery of Criminal Justice. Toronto: Ontario Native Council on Justice.

Morse, Bradford
1984. Aboriginal Self-Government in Australia and Canada. Aboriginal Peoples and Constitutional Reform, Background Paper No. 4. Kingston: Institute of Intergovernmental Relations
-1988. "Indigenous Law and state legal systems: conflict and compatability". Morse & Woodman (eds) Indigenous Law and the State. Dordrecht: Foris, 101-120.
-1991.(ed.). Aboriginal Peoples and the Law: Indian, Metis and Inuit Rights in Canada. Revised Edition. Ottawa: Carleton University Press.

Moyles, R.G.
1989. British Law and Arctic Men. Burnaby B.C.: The Northern Justice Society, Simon Fraser University.

Nader, Laura
1984. "The Recurrent Dialectic between Legality and its Alternatives", University of Pennsylvania Law Review, 132: 621-45.

Nielsen, Marianne O.
1992. "Criminal Justice and Native Self-Government". Silverman and Nielsen (eds), 243-258.

Northern Justice Society. Curt Taylor Griffiths, ed.
1989. The Community and Northern Justice. Vancouver: Simon Fraser University.

Ontario, Ministry of the Attorney General, the Department of Justice Canada and the Ontario Federation of Indian Friendship Centres
1989. Report of the Steering Committee on The Evaluation of The Ontario Native Courtwork Program (Criminal) Administered by The Ontario Federation of Indian Friendship Centres.

Ontario Native Council on Justice
1982. The Native Justice of the Peace: An Under-Employed Natural Resource for the Criminal Justice System.

Organization of American States, Inter-American Commission on Human Rights.
1995. Draft of the Inter-American Declaration on the Rights of Indigenous Peoples. Washington, D.C. General Secretariat of the OAS.

Ortner, Sherry B.
1984. "Theory in Anthropology since the Sixties". Comparative Studies in Society and History 26: 126-166.

Park, Peter
1997. "Participatory Research, Democracy, and Community". Practicing Anthropology, Vol. 19, No. 3, 8-13.

Partridge, William L.
1987. "Toward a Theory of Practice". Applied Anthropology in America, 2nd ed., E.Eddy and W.L. Partridge, ed.,. New York: Columbia University Press. 221-236
Platiel, Rudy
1992. "Indians seize camp: Chief demands return of native land". Globe and Mail, June 22, 1992, A10.
Ponting, J. Rick
1986a "Relations between Bands and the Department of Indian Affairs: A Case of Internal Colonialism?". Arduous Journey: Canadian Indians and Decolonisation. J.R. Ponting (ed). Toronto: McClelland and Stewart. 84-111.
-1986b. "Institution-Building in an Indian Community: A Case Study of Kahnawake" in J.R. Ponting, ed. 151-178.
Preston, Richard J.
1991. "Interference and Its Consequences: An East Cree Variant of Deviance?". Anthropologica XXXIII, 69-80.
Province of Alberta
1991. Justice on Trial: Report of the Task Force on the Criminal Justice System and Its Impact on the Indian and Metis People of Alberta, Vol.1- Main Report.
Province of Manitoba
1991a. Report of the Aboriginal Justice Inquiry of Manitoba,Vol.1, The Justice System and Aboriginal People. Winnipeg: Queen's Printer.
-1991b. Report of the Aboriginal Justice Inquiry of Manitoba, Vol.2. The Deaths of Helen Betty Osborne and John Joseph Harper. Winnipeg: Queen's Printer.
-1991c The Justice System and Aboriginal People. Video Summary of Vol. 1 of The Report of The Aboriginal Justice Inquiry. Ojibway Language Version. Province of Manitoba.
Province of Ontario
1993. Denied too Long: The Needs and Concerns of Seniors Living in First Nation Communities in Ontario. Toronto: Ontario Advisory Council on Senior Citizens.
R. v. Morin. 1994. 1 C.N.L.R., 150-159.
R. v. Willocks. 1994. 1 C.N.L.R., 167-176.
Raudot, Antoine Denis
[1709] Memoir Concerning The Different Indian Nations of North America. Appendix, in Kinietz, The Indians of the Western Great Lakes, 1615-1760. 339-410.
Reimer, Gwen
1994. Community Participation in Research and Development: A Case Study from Pangnirtung, Northwest Territories. Unpublished Ph.D. Thesis, McMaster University.
Roberts, David
1994. "Community Healing Its Wounds". The Globe and Mail, March 14, 1994. A1, A4.
Roberts, Simon
1979. Order and Dispute. Markham: Penguin.

Rodman, Wm. L.
1985. "A law unto themselves: legal innovation in Ambae, Vanuatu". American Anthropologist, Vol. 12, No. 4, 603-624.
1993. "The Law of the State and the State of the Law in Vanuatu". Contemporary Pacific Societies: Studies in Development and Change. V. Lockwood, T.G. Harding and B J. Wallace, eds., 55-66. Englewood Cliffs, NJ: Prentice Hall.

Rogers, E.S.
1962. The Round Lake Ojibwa. Toronto: Royal Ontario Museum Occasional Paper 5.
-1969. "Natural Environment - Social Organization- Witchcraft: Cree versus Ojibwa - A Test Case". D. Damas (ed), Contributions to Anthropology: Ecological Essays. Ottawa: National Museums of Canada, Bulletin 230, 24-39.

Rogers, E.S. and F. Tobobondung
1975. "Parry Island Farmers: A Period of Change in the Way of Life of the Algonkians of Southern Ontario" in Contributions to Canadian Ethnology, National Museum of Man Mercury Series, Paper No. 31. 247-366.

Ross, Rupert
1992. Dancing with a Ghost. Markham: Octopus Publishing Group.
-1994. "Duelling Paradigms? Western Criminal Justice Versus Aboriginal Community Healing" in Gosse, Henderson and Carter, 241-268.
-n.d. "Managing the Merger: Justice-as-Healing in Aboriginal Communities". Unpublished Discussion paper prepared for Aboriginal Justice Directorate, Canada.
-1996. Return to the Teachings. Exploring Aboriginal Justice. Toronto: Penguin.

Royal Commission on Aboriginal Peoples (RCAP)
1993a. Aboriginal Peoples and the Justice System: Report of the National Round Table on Aboriginal Justice Issues. Ottawa: Minister of Supply and Services Canada.
-1993b. Focusing the Dialogue. The Circle, Vol 2, No. 2. Ottawa: Royal Commission on Aboriginal Peoples.
-1995. Choosing Life. Special Report on suicide among Aboriginal People. Ottawa: Canada Communication Group.
-1996a. Bridging the Cultural Divide. A Report on Aboriginal Peoples and Criminal Justice in Canada. Ottawa: Canada Communication Group.
-1996b.Royal Commission on Aboriginal Peoples, Final Report. People to People, Nation to Nation. Highlights from the Report of the Royal Commission on Aboriginal Peoples. Ottawa: Ministry of Supply and Services.
-1996c. Looking Forward, Looking Back. Vol. 1, Final Report of the Royal Commission on Aboriginal Peoples. Ottawa: Ministry of Supply and Services.
-1996d. Restructuring the Relationship. Vol. 2, (Parts 1and 2) RCAP Final Report.
-1996e. Renewal: A Twenty-Year Commitment. Vol.5, RCAP Final Report.

Rudin, Jonathan and Dan Russell
1993. Native Alternative Dispute Resolution Systems: The Canadian Future in Light of the American Past. Toronto: Ontario Native Council on Justice.

Ryan, Joan
1993. Final Report, Traditional Dene Justice Project, Lac La Martre, NWT. Published by Lac La Martre Band Council, Dene Cultural Institute, and Arctic Insitute of North America.
-1995. Doing Things the Right Way. Dene Traditional Justice in Lac La Martre, N.W.T. Calgary: Univ. of Calgary Press and the Arctic Institute of North America.
Sagamok Anishnawbek
1993. "Origin of the Seven Fires". Sagamok Community Newsletter, May 16, 1993. p.11.
Said, Edward W.
1989. "Representing the Colonized: Anthropology's Interlocutors". Critical Inquiry 15, 205-225.
Sampson, Fiona
1992. Aboriginal Children's Law. Toronto: Ontario Native Council on Justice.
Santos, Boaventura de Sousa
1980."Law and Community: The Changing Nature of State Power in Late Capitalism" Intl. Jnl. of the Sociol of Law, 8:379-397.
Schmalz, Peter S.
1991. The Ojibwa of Southern Ontario. Toronto: U. of T. Press.
Schmeiser, Douglas
1974. The Native Offender and the Law. Prepared for the Law Reform Commission of Canada. Ottawa: Information Canada.
Schwartz, Bryan
1990. "A separate Aboriginal justice system?" Manitoba Law Journal, Vol 19 (1), 77-91.
Scott, Colin
1993. "Custom, Tradition and the Politics of Culture: Aboriginal Self-Government in Canada". Noel Dyck and James Waldram, eds., Anthropology, Public Policy and Native Peoples in Canada. Montreal and Kingston: McGill-Queen's University Press. 311-333.
Sherzer, Joel and Greg Urban
1991."Introduction: Indians, Nation-States, and Culture" in Sherzer & Urban (eds) Nation-States and Indians in Latin America. Austin: University of Texas Press.
Shkilnyk, Anastasia M.
1985. A Poison Stronger than Love: The Destruction of an Ojibwa Community. New Haven: Yale University Press.
Simmel, Georg
1955. "Conflict". Conflict and The Web of Group-Affiliations, trans. Kurt H. Wolff and Reinhard Bendix. Glencoe, Ill: Free Press.
Sims, Catherine A.
1996. "Exploring Ojibwa History through Documentary Sources: An Outline of the life of Chief John Assance". Dale Standen and David McNab (eds), Gin das Winan:

Documenting Aboriginal History in Ontario. Toronto: Champlain Society, Occasional Paper No. 2, 35-47.

Slattery, Brian
1992. "The Legal Basis of Aboriginal Title" Cassidy (ed), supra, 113-132.

Smith, Earl J.
1992. Report on the Nuu-Chah-Nulth Justice Conference, June 21 & 22, 1992.

Snyder, Francis G.
1981. "Anthropology, Dispute Processes and Law: A Critical Introduction". British Journal of Law & Society, Vol 8, No. 2, 141-180.

Solicitor General, Canada
1986. A Study of Manitoba's Northern and Rural Juvenile Courts.
-1987. User Report. Native Criminal Justice Research Issues and Data Sources.

Solomon, Ray
1992. Anishnabek Justice System. Unpublished essay submitted to the Sagamok Justice Research Project, September 17, 1992.

Starr, June and Jane F. Collier
1989. "Introduction: Dialogues in Legal Anthropology" in June Starr and Jane F. Collier (eds). 1-28.

Statistics Canada
1992. Canadian crime Statistics. Cat. No. 85-205, 1992.

Strathern, Marilyn
1985. "Discovering Social Control". Journal of Law and Society, Vol 12, No. 2.,111-134.

Svensson, Tom
1992. "Legal Pluralism: A Means to Control Resources Necessary for Ethnic Identity Manifestation". Commission on Folk Law and Legal Pluralism. Proceedings of the Wellington Congress. Vol 1. 343-377.

Tamanaha, Brian
1992. "The Folly of the Concept of Legal Pluralism". Commission on Folk Law and Legal Pluralism, Proceedings of the Wellington Congress. Vol 1, 5-47.

The Northern Justice Society
1989. The Community and Northern Justice. Vancouver: Simon Fraser University.

Twining, William.
1973. "Law and Anthropology: A Case Study in Inter-Disciplinary Collaboration". Law and Sociology Review 7:561-583.

Unger, Roberto Mangabeira
1983. The Critical Legal Studies Movement. Cambridge, Mass: Harvard University Press.

Van Willigen, John
1986. Applied Anthropology. New York: Bergin and Garvey.

Waisberg, Leo G.
1977. The Ottawa: Traders of the Upper Great Lakes 1615-1700. Unpublished M.A. Thesis, McMaster University.

Waldram, James
1996. Paper delivered at Canadian Anthropology Society Annual Conference, Brock University, St. Catharines, Ontario.
Warry, Wayne
1990. "Doing Unto Others: Applied Anthropology, Collaborative Research and Native Self-Determination". Culture X (1), 61-73.
1991. "Lessons from Papua New Guinea: Alternative Justice Systmes for Native Communities". Commission on Folk Law and Legal Pluralism, Proceedings of the VIth Intl. Symposium, Ottawa, Canada, Vol. 2, 842-857.
-1992. "The Eleventh Thesis: Applied Anthropology as Praxis". Human Organization, Vol. 51, No. 2., 155-163.
-n.d. "Unfinished Dreams: Suicide, Self-Determination and Healing in Aboriginal Communities". Paper prepared for the Royal Commission on Aboriginal Peoples.
Watts, Linda K. and Sara E. Gutierres
1997. "A Native American-Based Cultural Model of Substance Dependency and Recovery". Human Organization, Vol. 56, No. 1, 9-18.
Weaver, Sally M.
1986a. "Indian Policy in the New Conservative Government, Part I: The Nielsen Task Force of 1985". Native Studies Review 2, No. 1, 1-43.
-1986b. "Indian Policy in the New Conservative Government, Part II: The Nielsen Task Force in the Context of Recent Policy Initiatives". Native Studies Review 2, No.2, 1-45.
Webber, Jeremy
1993. "Individuality, Equality and Difference: Justifications for a Parallel System of Aboriginal Justice". Aboriginal Peoples and the Justice System, 133-160. Royal Commission on Aboriginal Peoples. Ottawa: Canada Communication Group.
Weeks, Priscilla
1990. "Post-Colonial Challenges to Grand Theory". Human Organization, Vol. 49, No. 3, 236-244.
White, Richard
1991. The Middle Ground. Indians, Empires and Republics in the Great Lakes Region, 1650-1815. Cambridge: Cambridge University Press.
Wikwemikong Justice Project.
1995. UCCM Wikwemikong Justice Project. Report and Proposal. Wikwemikong: Justice Project.
Williams, D.
1992."The Waitangi Tribunal and Legal Pluralism: a Reassessment". Commission on Folk Law and Legal Pluralism, Proceedings of the Wellington Congress, Vol.1, 75-87.
Woodman,Gordon
1992."The Indeterminacy of Folk Laws and its Implications". Commission on Folk Law and Legal Pluralism, Proceedings of the Wellington Congress. Vol. 2.429-442.
Working Group on the Administration of Justice in the Remote North of Ontario.

1988. Report of the Steering Committee.The Recommendations Concerning the Operation of the Fly-in Courts in the Remote Nishnawbe-Aski Communities: Are They Working? Thunder Bay.

Wright, Martin

1991. Justice for Victims and Offenders: A Restorative Response to Crime. Philadelphia: Open University Press.

Wright, Robin M.

1988. "Anthropological Presuppositions of Indigenous Advocacy". Ann. Rev. Anth. 17: 365-390.

Wulff, Robert M. and Shirley J. Fiske (eds).

1987. Anthropological Praxis: Translating Knowledge into Action. Boulder, Colo: Westview Press.

Young, T. Kue.

1994. The Health of Native Americans. New York: Oxford Univ. Press.

Zion, James W.

1988."Searching for Indian common law" in Morse and Woodman(eds), Indigenous Law and the State. Dordrecht: Foris,121-148.