Dalhousie Law Journal

Volume 44
Issue 1 *44:1 (2021) Special Issue: Purdy Crawford Workshop: The Role of Business Regulation in Advancing the Sustainable Development Goals*

Article 4

6-2021

2021 CanLIIDocs 1680

A Review of Harold Johnson, Peace and Good Order: The Case for Indigenous Justice in Canada

Haneen Al-Noman
Schulich School of Law, Dalhousie University

Follow this and additional works at: https://digitalcommons.schulichlaw.dal.ca/dlj

 Part of the Criminal Law Commons, and the Indigenous, Indian, and Aboriginal Law Commons

This work is licensed under a Creative Commons Attribution 4.0 International License.

Recommended Citation

Haneen Al-Noman, "A Review of Harold Johnson, Peace and Good Order: The Case for Indigenous Justice in Canada" (2021) 44:1 Dal LJ 311.

This Book Review is brought to you for free and open access by the Journals at Schulich Law Scholars. It has been accepted for inclusion in Dalhousie Law Journal by an authorized editor of Schulich Law Scholars. For more information, please contact hannah.steeves@dal.ca.

Haneen Al Noman: A Review of Harold Johnson, *Peace and Good Order: The Case for Indigenous Justice in Canada* (Toronto: McClelland & Stewart, 2019).

2021 CanLIIDocs 1680

Peace and Good Order is a scathing indictment of the Canadian criminal justice system presented through Harold Johnson's lived experiences as an Indigenous defence lawyer and later Crown prosecutor in Northern Saskatchewan. The book alternates in tone, acting in part as a memoir, at times as a confession, but always presenting a compelling critique of Canadian criminal justice. The seamless shifts between the different tones combine to provide a powerful testimony to the utter ineffectiveness of incarceration as a deterrence mechanism and the havoc it wreaks on the lives of Indigenous communities. Johnson argues that despite all evidence to the contrary, the "principle of deterrence" continues to reign supreme in Canada's justice system.[1] Johnson does not resign himself to this grisly reality, however. Instead, he presents a forceful call: Indigenous Peoples must revive their own justice systems, with or without Canada's approval.

Johnson highlights the underlying difficulties of working in the legal profession as an Indigenous person. Pursuing a legal career not only left him with a huge amount of debt, but also eroded parts of his Indigenous identity. He acknowledges his contribution to the racism ingrained in the justice system, recalling many verdicts he successfully pursued that ultimately harmed communities. Both as a defence lawyer and a Crown prosecutor, Johnson admits that his legal career exacerbated Indigenous Peoples' pain and maintained the harmful status quo of overincarceration. Johnson recounts a case he prosecuted in which he worked with the defence to select an all-Indigenous jury that would "more likely [ ] understand the dynamics of small, isolated communities."[2] However, the accused, a Dene man, found himself standing before an all-Cree jury. As Johnson explains, the deep seeded intertribal rivalry between the accused's nation and the Cree Nation meant that the accused "didn't stand a chance."[3]

Johnson also details the way in which plea deals circumvent evidence law's exclusion of false confessions. Jurisprudence has developed the confessions rule over decades so that it is applied broadly to guard

1. Harold Johnson, *Peace and Good Order: The Case for Indigenous Justice in Canada* (Toronto: McClelland & Stewart, 2019) at 98.
2. *Ibid* at 91.
3. *Ibid* at 92.

against wrongful convictions.[4] This development arose out of the courts' concern with inducements, oppression, "the operating mind requirement" and police trickery that lead to false confessions.[5] However, as Johnson demonstrates, Canada's justice system is not as guarded against false guilty pleas. In fact, Johnson himself confesses that during his time as Crown prosecutor, he knows that he accepted guilty pleas from innocent defendants who hoped for a faster process or a lighter sentence.

Additionally, Johnson observes that merely changing the colour of people in the courtroom is not enough to address the overincarceration of Indigenous Peoples. Instead, the entire system merits reconsideration. Consequently, he takes the reader through the wider historical context: broken treaties negotiated in bad faith, residential schools that sought to eradicate Indigenous culture, and the violent kidnapping of Indigenous children in the sixties. The effects of this trauma and the resulting cultural vacuum gave way to "jailhouse culture" as Johnson describes it.[6] The majority of Indigenous people end up with a criminal record as incarceration is a normalized part of their lives.

In Johnson's narration of this history, who does the sentencing, jailing and punishing is simply not relevant. He critiques the systemic racism embedded in the justice system itself. White witnesses and defendants are treated differently and given more credibility. They are more likely to be believed and receive more lenient outcomes.[7] Clearly then, while evidence law aims to create a highly structured context between formally equal adversaries, the reality is much different. Simply put, formal equality in court fails to account for the substantive disparities between the parties. At times, the façade of formal equality lays itself bare as the colour of the accused's skin becomes a determinative factor. To illustrate this, Johnson tells the story of a white male charged with assault who consistently violated his bail conditions. The judge refused to remand the accused until trial despite the constant breaches. Johnson compares this with the many Indigenous individuals whom he had seen in the same position and who were remanded by this same judge. The only explanation for the difference in treatment here was race.

Johnson shows the incompatibility of the adversarial legal system with the collectivist cultures of Indigenous Peoples. He reminds the reader that sharing is fundamental to Indigenous Peoples.[8] Instead of accommodating

4. *R v Oickle*, 2000 SCC 38.
5. *Ibid* at para 2.
6. Johnson, *supra* note 1 at 103.
7. *Ibid* at 88.
8. *Ibid* at 83.

2021 CanLIIDocs 1680

2021 CanLIIDocs 1680

Indigenous communities and meeting them where they are, Canadian courts insist on requiring opposing Indigenous parties to compete for a favourable judgment. Adversary proceedings aim to find the truth.[9] To establish the truth, parties compete and bring evidence that supports their version of what happened. The system places oral testimony at a premium to successfully establish "the truth."[10] It demands oral testimonies and cross-examinations that can ultimately inflate tensions and pit community members against one another. Where the matter is criminal, a testimony against an accused could very well be considered a betrayal of the community. It can lead to social shunning and shaming. For this reason, Indigenous people may be reluctant to testify in Canadian courts and the adversary system fails to achieve its truth finding goal and risks wrongful convictions.

Hoping to cast aside the crushing burdens of the Canadian justice system's failures, Johnson calls for an alternative to deterrence. He argues for a system driven by Indigenous communities themselves, animated by redemption and grounded in Indigenous Peoples' inherent jurisdiction to govern their own affairs. He notes that his own Cree territory, Treaty Six, recognizes that the Cree have the right to "maintain peace and good order" between themselves *and* other tribes in their territory.[11] He interprets this text broadly as recognizing a right to both make and enforce laws in the territory. Johnson demonstrates that Indigenous Peoples have a right to their own justice systems and he urges Indigenous Peoples to act. Indigenous communities cannot afford to wait for the rest of Canada to change.

To illustrate the failure of the current justice system, Johnson shares the story of his brother's tragic death. He tells us about the drunk driver whose uncharacteristic negligence caused the tragedy. He investigates the drunk driver's backstory and acknowledges the good he had done for the community and the difficulties he underwent. He then recalls the sentence that only served to intensify the community's suffering. Johnson laments the Canadian justice system's failures in his brother's case. He assures us that a different sentence based on redemption and community-healing would have left everyone better off. Through his work, Johnson shows that justice is about "making the community and the victim whole again [and] healing the offender."[12] Deterrence served no one.

---

9. *R v Levogiannis*, [1993] 4 SCR 475 at 13, [1993] 4 RCS 475.
10. *R v Khelawon*, 2006 SCC 57 at para 35.
11. Johnson, *supra* note 1 at 122.
12. Johnson, *supra* note 1 at 134.

Peace and Good Order provides valuable insights to every reader. Johnson's book sheds light on why Indigenous Peoples are overincarcerated and what can be done to address it. To Indigenous readers and readers of colour in particular, Johnson speaks to struggles that are difficult to articulate. Some readers may agree with Johnson's rejection of Canada's justice system altogether and his position that pursuing reform from within is a wasted effort. Others may still hold on to the view that a more diverse legal community is an adequate remedy. Certainly, however, all will agree that something is deeply wrong with our justice system. The work necessary to bring about real and lasting change can no longer wait. Yes—Indigenous Peoples must lead the conversation, but everyone must play a role and we must do so now.

Haneen Al-Noman
JD Candidate 2022
Schulich School of Law
Dalhousie University

2021 CanLIIDocs 1680