Bringing the Good Feelings Back: Imagining Stó:lo Justice

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Abstract

The Stó:lo people face many challenges and issues as they create a government and justice system based on prior ways of governance and justice. Some of these challenges and issues include the documenting and synthesizing of current understanding of judicial practices, establishing principles of membership or citizenship, legitimizing their own institutions, and establishing the scope and mandate of the House of Justice. The Stó:lo people are deciding what they want their justice system to look like. They face a multitude of existing judicial models and the importation of legal practices from elsewhere.

Members of the Stó:lo Nation negotiate their way through various levels of federal and provincial government bureaucracy as they form relationships with these government bodies and establish their place among them. Yet, Stó:lo members must also temper their own bureaucratic growth with the need to remain flexible and responsive to the needs of the community.

Current understandings of Stó:lo justice practice frame the expectations the Stó:lo people have of their own justice system. Discursive features of previous justice practices and contemporary Stó:lo issues include the importance of elders in community decision making, the importance of community and cohesion, the strength of the family and the desire to settle problems internally without external interference, the importance of sharing resources, and the Stó:lo’s connection to the spiritual world.

In this paper I study the inception and growth of Stó:lo nationhood, and the creation of one of the Stó:lo Nation’s emerging institutions, the House of Justice. I refer to the ethnonationalist literature of Benedict Anderson, Stanley J. Tambiah and John L. Comaroff. Anderson’s “imagined community” is the central metaphor for this paper.
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Introduction and Thesis Statement

On Saturday May 24, 1997, at the “Stó:lo People of the River Conference”, Stó:lo Nation Justice Worker Robert Phillips talked about the creation of the Stó:lo Nation House of Justice and the adjunct Stó:lo Nation healing centre. According to Phillips, the purpose of the healing centre will be to provide an alternative corrections facility for Stó:lo and other First Nation offenders serving sentences in the mainstream correction system. The focus of the centre would be to heal the victim, the offender and his or her family and provide post release support.

At the end of Phillips’ talk, Stó:lo Nation member Chief George Campo expressed concerns about the creation of the healing centre. Campo and Phillips debated Stó:lo healing practices, including the proposed use a Healing Circle and Medicine Wheel at the healing centre. Campo said they are not part of Stó:lo healing practices and their use is inappropriate in a Stó:lo healing centre.

Campo made the point that there are only three Stó:lo Nation members incarcerated in the federal system and most First Nations offenders are from elsewhere in Canada, primarily the prairies. He asked why the Stó:lo were building a healing centre for mainly non-Stó:lo people.

Further to this, said Campo, if the Stó:lo are going to help others (even those from diverse cultural traditions) then it should be done in a Stó:lo way. Phillips and Campo also debated the level of community support for the healing centre. Campo said the community supported the venture because they believed that the healing centre would be for the Stó:lo people being healed through Stó:lo tradition. Campo then raised the following series of questions: does the Stó:lo Nation hope to make a profit or do they want to help people without consideration of the cost or benefit? If they want to help people, who do they want to help—Stó:lo or non-Stó:lo? If there is no financial gain for the Stó:lo community why should the Stó:lo subsidize others using resources that could be returned to their own people? The concerns that Campo raised at the
conference highlight some of the issues surrounding the creation of the Stó:lo Nation's House of Justice. The debate between Campo and Phillips on the nature of Stó:lo justice practices and the purpose of the healing centre underscores what the Stó:lo are facing as they now take on the task of structuring their own justice system.

In this paper I study the inception and growth of Stó:lo nationhood with particular attention to the development of one of its emerging institutions, the Stó:lo House of Justice. I examine the community debate and the discourse surrounding the understandings of prior justice practices and the creation of a new Stó:lo institution as viewed through the concept of ethnonationalism.

With the creation of the Stó:lo Nation and its associated institutions, including the House of Justice, we are witnessing the Stó:lo community in the process of creating and presenting itself as a state. However, this state is emerging within the context of another state, the confederation of Canada. The Stó:lo are attempting to assert their "difference" to the larger, mainstream society. Much as Benedict Anderson described his "imagined community," the Stó:lo are imagining themselves as a state. As this process of imagining unfolds we must remain alert to one of the ironies of ethnonationalism: that as the ethnonationalist state emerges from an idealized conception of government into a working reality, it becomes increasingly similar to a euronation in structure.

As the Stó:lo Nation has grown, its institutions and bureaucracy have become increasingly elaborated. This paper details the Stó:lo's process of imagining within the context of recent political events in BC, such as the recent Delgamuukw decision, the treaty process and the release of the report of the Royal Commission on Aboriginal Peoples.

My findings suggest that the ethnonationalist state holds many paradoxes. In establishing institutions that supposedly reflect prior ways of leadership and justice, the Stó:lo Nation actually begins to look quite new. It is also the irony of the ethnonationalist state that as it grows
in size and scope of responsibility, it takes on many features of a eurostate and becomes increasingly elaborated, bureaucratic, centralized and institutionalized. It is also ironic that discourses on prior ways of leadership and justice reflect contemporary cultural, social and political issues that face the Stó:lo. The imagining can be difficult. Imagining the principles of membership, the process of institutionalizing “traditions,” coming to terms with different notions of Stó:lo culture, and legitimizing their new institutions, are some of the challenges the Stó:lo face as they attempt to create the House of Justice.

Nature of the Data

This paper is the result of an ongoing dialogue with the Stó:lo. My interests in Stó:lo culture and law led to my involvement with the Stó:lo Traditional Justice Project in the spring of 1996. This project seeks to document current understandings of Stó:lo traditional justice practices to understand what might be reasonably incorporated into a developing Stó:lo justice system. Dr. Bruce Miller and I participated with Stó:lo elders in this study of traditional Stó:lo justice practices. Stó:lo elders were interviewed on the topic of traditional Stó:lo justice. The interviews, which averaged ninety minutes each, were tape recorded and then transcribed. Recurring themes and ideas on justice were noted and summarized. The summaries and findings of our interviews and, whenever possible, the direct statements of the elders, were compiled into a document provisionally titled Stó:lo Aboriginal Justice, which was submitted to the Stó:lo Nation on February 26, 1997.

I have been a participant and observer at conferences and key meetings on the creation of the House of Justice. My methodology also incorporates interviews and discussions with key personnel in the Stó:lo government. On March 11, 1997 Bruce Miller and I were invited to present our document, Stó:lo Aboriginal Justice, at a meeting of the Justice Committee at Stó:lo
Nation offices. In October 1996, initial findings were presented at the “Stó:lo Justice Conference,” and in May 1997, more material was presented at the “Stó:lo: People of the River Conference.” Stó:lo responses at these conferences and meetings form part of the continuing dialogue on the subject of current understandings of Stó:lo justice.

The Concepts of Ethnonationalism and Nationalism

Early theoretical approaches to ethnonationalism, such as Barth’s, assumed that an era of economic globalization would see a diminishing of ethnic factionalism (Collier 1993:1). The premise was that ethnic boundaries and divisions would disappear if the mechanisms that created or maintained them, such as domestic economic protection policies and political isolation, were to disappear. In an era of cultural and economic globalization it was assumed that ethnically distinct groups would be assimilated into the larger dominant culture (Collier 1993:1).

More recent theories take the approach that the same forces, such as communication technology, that have created greater world political, cultural and economic unity have, paradoxically, also created political, cultural and economic diversity. The theoretical focus is now on the process of globalization as a catalyst for the creation of ethnic distinctions. Study has been directed away from the view of ethnic boundaries and ethnic groups as survivals of a pre-modern era, to the study of the invention and revitalization of traditions (Collier 1993:1-2).

Not all scholars agree on the nature of the relationship between increasing ethnic factionalism and the globalization of world resources. Falk Moore states that the two are opposite processes whereas Comaroff views them as “complementary sides of a single historical movement” (Comaroff 1996:174). In spite of differences of opinion regarding the nature of their relationship, the undermining of the nation state and the emergence of a new tribalism are
features of what Comaroff calls the post-colonial world (Comaroff 1996:169). The term *tribalism*, in this context, refers not to First Nation or native North American tribal social organization but, rather, to an organization of individuals based on ethnic or primordialist principles.

... in a changing post colonial world, history, it seems, is being made differently, in such a way as to mark the increasing convergence of ethnic consciousness and national assertion. The product, which we see all around us, is an ever greater incidence of ethnonationalism (Comaroff 1996:175).

Ethnonationalism differs essentially from European notions of nationalism. However, ethnonationalism does not exist in opposition to euronationalism; rather, there is a dialectical relationship between the two. Tambiah observes that ethnonationalism is neither a “pre-modern survival” or derivative; it is a product of the struggle against European hegemony. He articulates this point in his definition of the term ethnonationalism:

What I call ethnonationalism relates the generation of regional or sub-national reactions and resistances to what is seen as an over-centralized and hegemonic state, and their drive to achieve their own regional and local socio-political formations (Tambiah 1996:128-129).

Comaroff characterizes ethnonationalism by contrasting and comparing the historical foundations and philosophical underpinnings of the ideal types of ethnonationalism and euronationalism. What follows is a brief summary of the notions of ethnonationalism and euronationalism based on the distinctions made by Comaroff, Tambiah and others.

European nationalism, or euronationalism, is secular and largely a creation of eighteenth century social contract political theory, universalistic principles of citizenship, capitalism and enlightenment liberalism and rationalism (Collier 1993:2, Tambiah 1996:124, and Comaroff 1993:175). Some of the features of euronationalism are an assertion of legal and political jurisdiction, and dominion in geographical terms and governance through a centralized, bureaucratic and hierarchical level of organization. The goals of early European nation
state-building were the unification of its people, the creation and maintenance (and often expansion) of geographical boundaries, and the formation of a citizenry, national identity, national culture and national economy (Collier 1993:2).

Tambiah states that in spite of its reputation as being the ideal model on which to base a nation, the euronation concept has failed in many respects. Much of this failure has to do with the euronation state's inability to reconcile the ethnic and linguistic diversity which may lie within its borders (Tambiah 1996:129). Where ethnic and linguistic diversity are bound together within the confines of a nation state, ethnonationalist movements can be viewed as a response to the often smothering presence of the state. Ethnonationalism is non-rationalist and non-universalistic, it extols cultural singularity, declares a spiritual charter and accords membership by ascription which Comaroff states, "is taken to ensure a particularly deep emotional attachment" (Comaroff 1993:175). Comaroff states that ethnonationalism, "whether or not it controls a sovereign territory and a state, tends to demand the allegiance of its subjects wherever they are ..." (Comaroff 1993:175). Whereas euronationalistic allegiance is rhetorically focused on historical processes and a geographically bounded area, ethnonationalist allegiance is focused on notions of primordialism.

In his work *Imagined Communities*, Anderson states that for the purpose of coming to a definition of *nationalism*, the term is best viewed as being closer to notions of religion and kinship than to ideologies such as liberalism:

Part of the difficulty is that one tends unconsciously to hypostasize the existence of Nationalism-with-a-big-N (rather as one might Age-with-a-capital-A) and then to classify it as *an* ideology... It would, I think, make things much easier if one treated it as if it belonged with 'kinship' and 'religion', rather than with 'liberalism' or 'fascism'. In an anthropological spirit, then, I propose the following definition of a nation: it is an imagined political community—and imagined as both inherently limited and sovereign. (Anderson 1996:5)
Anderson uses the term *imagined* because one’s sense of belonging within the
community of fellow citizens is largely lived within the mind of the individual. That is, that all
members of a nation will never know each other, or meet face to face. Any feelings of
connectedness are largely created or imagined within the mind of each (Anderson 1996:5).
Anderson quotes Gellner’s assertion that “nationalism is not the awakening of nations to self
consciousness: it invents nations where they do not exist” (Gellner 1964:169 in Anderson
1996:6). A nation is characterized as a community by Anderson because, in spite of inequalities
among its members,

the nation is always conceived as a deep, horizontal comradeship. Ultimately it is
this fraternity that makes it possible, over the past two centuries, for so many
millions of people, not so much to kill, as willing to die for such limited

Anderson’s *imagined community* provides the starting point for my discussion on the creation of
the Stó:lo Nation House of Justice. In the following sections I discuss the creation of the Stó:lo
Nation and its emerging institutions, and look at problems the Stó:lo Nation faces as it builds a
government structure based on prior ways of governance and leadership.

The Stó:lo Nation

The Stó:lo are *Halq’emeylem*-speaking central Coast Salish people who live in the upper
Fraser Valley region of B.C.’s lower mainland. The Stó:lo form part of, and participate fully in,
the vast cultural mosaic that is a feature of British Columbia’s urban and suburban lower
mainland region.

Until recently, the eastern regions of the B.C. lower mainland were primarily agricultural
and farming areas. However, Vancouver’s increasing population and high housing costs have
pushed development steadily in that direction. Condominiums, new residential neighbourhoods,
and shopping malls are now a common feature as one drives east along the Trans Canada
highway from Vancouver toward Chilliwack. This area comprises much of what are the Stó:lo’s traditional lands. Therefore, far from being an isolated community, as is sometimes the case for other First Nation communities, the Stó:lo are part of a growing, dynamic urban environment.

Currently, the Stó:lo people are politically organized under the Canadian government’s Indian Act into twenty-four bands (Carlson 1997:107). The political entity of the Stó:lo Nation was formed in September 1994, after twenty-one of the twenty-four Stó:lo bands, previously represented by two separate councils, united under one umbrella organization (three bands remained independent) (Carlson 1997:107 and Sqwe’lqwel te Stó:lo 1995a: 3). Entry into treaty negotiation was the main reason behind the formation of the Stó:lo Nation. Unification allowed the Stó:lo more effectively to marshal resources and present a stronger presence at the treaty table. More important, however, following treaty negotiations the Stó:lo anticipate increased political autonomy.

It is the long term goal of the Stó:lo Nation to be self governing (Carlson 1997:106). However, the term self government is problematic. It is a particular feature of ethnonationalism that, whereas the notion of self government is a featured element of First Nation’s political sovereignty discourse, and although the right of First Nation’s people to self government is enshrined in the Canadian Constitution, a clear legal definition of the term has never been given. In attempting to seek a definition of the term it becomes evident that self government means different things to different people. Notions of self government also frame people’s ideas about contemporary justice issues. For some, self government means the ability to deliver services directly to the community, or participate in alternate justice programmes, while still functioning under the auspices of the Indian Act. Others equate self government with notions of sovereignty or nationhood status. 4
For the Stó:lō Nation it appears that self government means full political, administrative and judicial autonomy within its territorial boundaries while remaining within the nation state of Canada. The following excerpt is taken from the Stó:lō Nation’s website:

For the Stó:lō, self-government is something being achieved and implemented incrementally. As Stó:lō Elder, and Chief of the Yakewakwioose community, Frank Malloway explains,

self-government is controlling your own resources and being able to take control of your lives. It means being able to develop land the way you want, and to use money as you see fit.

Stó:lō Grand Chief Clarence Pennier, the Executive Director of Aboriginal Rights and Title Department of the Stó:lō Nation explains that,

We have to look at the past to see how it was organized and then look at today and ask how we want to change. We have to have more control over how land is developed and over how resources are extracted. We have to look after the environment for our children’s children. Elders have to become more involved and have a larger role in the community.

Steven Point, Chief of the Skowkale Community and Chief’s Representative for the entire Stó:lō Nation, sees self-government as a process,

... reasserting the right to hunt and fish and trap does not go far enough... Self-government must be a process, not a destination, to become a reality. There must be an internal change which transcends where we were as wards of the government, to political organizations pressuring government, to actually becoming self-governing. Self-government is becoming a reality. We are taking on more jurisdiction, more responsibilities. We are becoming self-governing (Carlson 1996a:15).

Thus, Stó:lō Nation self government can be viewed as emerging through an *imagining* process. Stó:lō leaders believe that political autonomy for the Stó:lō means more than increased control over resources and service delivery. The Stó:lō’s self government focus is multi-directional and its development has many repercussions for Stó:lō culture, economy, and relations with neighbouring communities and various levels of government. At least, it
promises economic prosperity through commercial and business enterprises and community
development through cultural, linguistic and educational programmes.  

The study of traditional Stó:lo law and the creation of the House of Justice now has great importance to the Stó:lo Nation and its long term goals of self government. The growth of the Stó:lo Nation since its creation in 1994 has been staggering and reflects a proliferation of administrative departments, government offices, human resources and portfolios. With fewer than 20 employees in 1994 the Stó:lo Nation staff has increased to over 200 in number. The Stó:lo Nation has taken on an increasing number of responsibilities, services and projects. Much of the Stó:lo Nation’s energy has been centred on land claims and treaty negotiation. While the Stó:lo Nation has as its long term focus political autonomy from the federal government’s Indian Act administration, current day political and legal realities shape the way in which the Stó:lo Nation conducts its business. The Stó:lo are greatly affected by shifting tides in treaty negotiation throughout the province and legal decisions made in provincial and federal courts. For example, the recent Delgamuukw decision of the Supreme Court of Canada (December 11, 1997) has shifted the entire focus of the Stó:lo Nation land claims strategy. Prior to the Supreme Court decision the Stó:lo Nation spent a great deal of effort on traditional use studies in order to meet the legal tests and requirements for establishing a successful claim of prior rights and title to their traditional land base. The focus has now shifted to what would have been phase two of the Stó:lo’s land claim—how the Stó:lo’s traditional law determined their relationship with their land base (personal communication Keith Carlson, June 10, 1998).

The contemporary Stó:lo Nation government is highly elaborated and bureaucratic in nature and in many ways mirrors the mainstream Canadian government’s structure. Some similarities to the Canadian government are intentional as the Stó:lo attempt to take what is theoretically good from existing systems and incorporate them into their own. However, the
form this notion takes can have some ironic twists. For example, the House of Elders, the house primarily concerned with Stó:lo tradition and culture, is modelled after the Canadian Senate. As the house of regional representation and sober second thought, the intention of the Canadian Senate is to employ the skill and wisdom of Canada’s foremost parliamentarians as a check against any ill conceived actions on the part of the commons (McNaught 1976:135) The House of Elders is intended to provide each community with representation by an elder knowledgeable in Stó:lo traditions and culture, so that Stó:lo ways of knowing and understanding are well represented by the actions of the Stó:lo government. Under the Stó:lo constitution new laws must be approved by the House of Elders. The House of Elders is also responsible for seeing that Stó:lo leaders live up to their moral obligations to the Stó:lo community. Elders have the power to remove Chiefs who are abusing their power or not living up to the title of Chief (Sqwe’lqwel te Stó:lo 1995b:1).

The House of Justice is a branch of the Stó:lo Nation government. This branch was formed to deal with justice issues of central concern to Stó:lo people and culture in a way appropriate to Stó:lo cultural values. The House of Justice is formed by three members from each of the House of Respected Leaders and the House of Elders. Though still in its formative stages, representatives of the Stó:lo Nation intend that the House of Justice will deal eventually with issues ranging from rights to corporeal and non-corporeal property to criminal acts. It will also exist to ensure that laws passed in the House of Respected Leaders are implemented and to impose penalties if these laws are broken (Sqwe’lqwel te Stó:lo 1995a: 3). It is the creation of the House of Justice that will form the core of my inquiry.
Why a Separate Justice System?

In the spring of 1996, the Royal Commission on Aboriginal Peoples published its report, *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada*. This report was the latest in a long series of reports that had been generated by the numerous commissions of inquiry into aboriginal peoples and the law which have been founded over the last decade. This report, like many before it, sought to understand why aboriginal people are over-represented in the current Canadian justice system (Royal Commission 1996:xi). The Commission was also charged to provide a framework for change with two approaches in mind: reform of the existing justice system and, more important, “the establishment of Aboriginal justice systems as an exercise of the Aboriginal right of self-government.” (Royal Commission 1996:xii). It was this latter approach upon which the Commission focused for the purpose of compiling their report. The issue of Aboriginal justice cannot be separated from the issue of self government. It was the conclusion of the Commission that self government and political sovereignty could form the basis of new relationships between the First Nations and the rest of Canada and its institutions for the betterment of all.

Chief Steven Point, in his opening address to the Stó:lo Nation Justice Conference, held in October of 1996, framed the current discourse by noting that First Nations communities must decide for themselves how they can best achieve their long term goals. Point argued that although in the past justice issues came second to those of education and social services, justice has now become as prominent an issue. Point concluded by raising a series of questions: what should a Stó:lo justice system look like? Do the Stó:lo want to take responsibility for offenders in their communities? Do they want a police force, jails and other institutional trappings? Once these issues are decided, how will policies be established? Only one certainty exists for Point, and that is that the current mainstream system is not working for the Stó:lo or other First Nations
communities. For the Stó:lo, merely participating in alternative or diversionary programmes is insufficient to meet the social and cultural needs of their community. In fact, the larger mainstream system, which is seen to be at the root of many problems, is not really changed by the implementation of alternative sentencing. During the justice conference, speaker Jim Maloney, of the First Nations Tribal Justice Institute (and investigator in the Donald Marshall inquiry), encouraged the Stó:lo to take responsibility for creating their own justice system and not wait for governments to give them jurisdiction. So, it is within this context of emerging self government and judicial autonomy for First Nations communities, and a climate of frustration and dissatisfaction with the existing justice system, that we will view the justice imaginings and initiatives undertaken by the Stó:lo Nation.

The Stó:lo Nation House of Justice: An Historical Narrative

The creation of the House of Justice has not followed a linear progression, but rather has been an oscillating process that intertwines with the development of other Stó:lo Nation institutions. The creation of the House of Justice followed the unification of two existing Stó:lo councils, the Stó:lo Nation Canada and the Stó:lo Tribal Council, in September 1994. However, the House of Justice was the last of the Stó:lo Nation houses to be formed, as it drew its membership from the two other houses, the House of Respected Leaders (Si:yem) and the House of Elders. The two other houses had to be operational with Elders and Si:yem chosen for each House to represent individual member bands. It is the responsibility of each band to choose their Elder representative. The House of Elders was officially recognized and the Elders honoured in a ceremony hosted by the Stó:lo Nation on February 23, 1995 (Sqwe’lqwel te Stó:lo 1995b:1). Following that event the two houses were able to send their representatives to the
House of Justice. By January 1995 the concept of the House of Justice was well established but the details were sketchy (Sqwe’lqwel te Stó:lō 1995a:3).

In spite of this, the work of studying justice and corrections issues continued, much of it through the Aboriginal Rights and Title department. During the period that the House of Elders was being formed, and before the creation of the House of Justice as a functioning branch of the Stó:lō government, the Stó:lō Nation had undertaken a policing study. “Research of Policing Options in the Communities of the Stó:lō Nation” questionnaires were distributed throughout the community to find out what type of policing was wanted by Stó:lō community members (Sqwe’lqwel te Stó:lō 1995b:2). The research was headed by former RCMP officer, Dennis Morgan, who was hired on a temporary basis as the Co-ordinator for the Stó:lō Nation Community Policing Options Research. More surveys were conducted by staff at Aboriginal Rights and Title throughout the fall of 1995. The focus of the surveys was on justice and corrections issues within the Stó:lō community, the legal profession in general, and corrections institutions such as Kent, Matsqui, Mountain, Mission, Ferndale and Elbow Lake (Sqwe’lqwel te Stó:lō 1995d:6). In June 1995, the Mt. Thurston Proposal Committee was created to consider the idea of taking over a former maximum security facility, and turning it into a Healing Centre for Stó:lō and other First Nation offenders currently serving sentences in the mainstream corrections system (Sqwe’lqwel te Stó:lō 1995c:12).

In addition to conducting research and surveys, Stó:lō Nation Justice Worker, Robert Phillips, and others in the Stó:lō Nation Aboriginal Rights and Title Department organised conferences around criminal justice issues, such as the justice conference, the “People of the River” conference and a policing conference. As part of their research on criminal justice issues the staff of the Aboriginal Rights and Title Department also sought to undertake a study of Stó:lō aboriginal justice practices. The Stó:lō Traditional Justice Project was initiated in the spring of
1996. During the planning stage of the project, Stó:lo leaders stressed the importance of incorporating important aspects of traditional justice into the contemporary practice of the House of Justice. The Stó:lo might have chosen from a variety of existing alternative justice programmes that are currently successfully employed by First Nation communities across the country. However, Stó:lo leaders were not as interested in incorporating pre-existing models into a justice system as they were in creating a justice system that was uniquely Stó:lo. In the words of one Stó:lo leader during a traditional justice project planning meeting, “we don’t want to know what others are doing, we want to know what we did.” The Stó:lo face several issues and challenges as they attempt to incorporate justice practices into a contemporary system. In the following section I review some of those issues.

The Institutionalization of Stó:lo Justice

The first issue the Stó:lo face is the task of coming to a current understanding of Stó:lo justice practices. In the words of one elder:

I think we don’t really know how much was given to cover which crimes, which disputes. A lot of these things that happened a long time ago. Before Coqualeetza came and the Heritage Project that was in existence before Coqualeetza, they were dealing with a lot of research. I worked with them for awhile, and I don’t think they really got down to justice issues. You know there was so much work to do with the language and the place names and all that you know, and the justice system just sort of took a back seat. It wasn’t really dealt with until a few years ago. When the justice issue came and we were going to look after our justice and “we’ll go back to our old ways” but again, what were the old ways? A lot of our elders have taken a lot of history with them. You know, people that are not around today.

Later, he added

Today we vote on things. Our old people never voted on anything. They’d sit there until they reached a consensus, until everybody agreed. They’d never vote on anything. If it took two to three days they’d stay there and keep discussing it. It’s similar to I guess you’d say a jury today, they retire to chambers and keep hashing things out until everybody reached the same consensus. And that’s the way our elders dealt with the things, or the head of the families, they retired to the
longhouse and they’d never come out of there until they all agreed on the decision. I’ve never heard of them not coming through a deadlock. I guess everybody would just go home and forget about it (taped interview with Bruce Miller and Cindy McMullen, June 14, 1996).

This elder’s statements underscore the problems the Stó:lo Nation is facing in their attempt to implement “traditional” Stó:lo justice into a contemporary setting. The Stó:lo Nation and institutions such as Coqualeetza have taken on many projects to research Stó:lo culture. Much of this research focus has reflected concerns of the day, such as language revitalization and social welfare issues. Justice issues are a relatively new research concern for the Stó:lo.

The way in which the Stó:lo Nation conducts itself today through voting procedures is seen more a part of the imposed system than a reflection of the way things used to be. However, with the heavy schedule of most elders and community leaders it seems unlikely that a system that relies on complete consensus and long verbal debates by family heads would work. Present-day meetings are conducted under Robert’s Rules of Order. Meetings are also tape recorded and made available in the Stó:lo Nation archives. Discussion is now between department heads, staff members and elected officials who are also members of extended Stó:lo families.

It is believed by the elders active today that many elders who might have known more about justice have passed away, leaving gaps in their understandings of earlier systems. Many elders said that they couldn’t remember what their parents and grandparents had told them; often the subject of “justice” or “law and order” was never brought up. One elder said,

When I was learning a lot of things from my father very seldom did we deal with justice issues. It was mostly the family things, maybe in the background it was something similar to dealing with, like you say, domestic disputes or crimes against different families. But it isn’t really spelled out where you can understand it (taped interview with Bruce Miller and Cindy McMullen, June 14, 1996).

Another added,
I can't go too much on how they used to punish people. My grandfather didn't talk about that too much. I guess he wanted me to be a good boy! (taped interview with Bruce Miller and Cindy McMullen, June 28, 1996).

This same elder didn't want to discuss troubles of the past. Instead, he wanted to talk about the good things that are happening in his community, such as the healing and spiritual work that is being done by the young people. He saw discussions about past wrongs as being counter-productive and saw it as his responsibility, as a community and spiritual leader, to focus on the positive initiatives his community is taking.

Some elders presented highly idealized notions of earlier Stó:lo society as being trouble free and harmonious. One elder said that before the arrival of Europeans in the area the Stó:lo never fought or argued. She said that everybody got along all the time and people happily shared what they had with each other (taped interview with Bruce Miller and Cindy McMullen, May 23, 1996). Today's problems in the Stó:lo community are seen as being the result of drugs and alcohol, lack of belief in a higher power, and the breakdown of families. The return to an earlier way of life focused on hard work, strong family ties, and traditional values is seen as a remedy for today's problems.

The creation of the House of Justice is thought by many in the Stó:lo community as a means of returning to those traditional values. Learning from the elders what the traditions were, breathing life into those ways, and incarnating them in the present system is what many believe the House of Justice to be about. However, echoing the elders' statements above, discovering what the old ways were is not as easy as it may seem to be.

A second issue for the Stó:lo is the issue of citizenship. It is an irony of the ethnonational state that while membership is based on ascription rather than by universalistic notions of citizenship, imagining the principles of membership of an ethnonationalist community reflects these tensions. The ethnonationalist state is a state of sentiment. Unlike the euronation state
which is bounded geographically and by rules of citizenship, members of the ethnonationalist state can have difficulty in finding out who they are, in terms of membership, geography, culture and spirituality. People disagree about who is Stó:lo and what Stó:lo traditions are. This became evident as the Stó:lo traditional justice project got underway. Initially, there was discussion over which elders should be interviewed. When considering whether it was appropriate to interview a prominent elder from Musqueam one Stó:lo elder said that “Stó:lo” meant “people of the river” and that included the Musqueam no matter what anyone felt to the contrary (taped interview with Bruce Miller and Cindy McMullen, June 14, 1996). The Musqueam elder echoed this sentiment when he said that he considered himself to be a person of the river. However, it is unlikely that in today’s political climate many in the Musqueam community would state that they are Stó:lo, or vice versa. Clear distinctions are made between the communities especially with regard to current land claim negotiations. Not content with viewing themselves as “up river” and “down river” peoples as is said to have occurred in the past, each community has made a separate proclamation and statements of traditional boundaries. Not surprisingly, however, these statements of traditional boundaries overlap.

When findings were presented to the Stó:lo Nation hosted conferences and the Stó:lo Nation Justice Committee, the fact that Puget Sound materials were included in the findings often raised questions. Some people agreed with the inclusion of this material, stating that their parents or other relatives had told them about prior close relations with Puget Sound communities. Stories are told of boats and canoes filled with families travelling freely across waterways that are now bisected by the international boundary. Present-day political realities have made distinctions between these regions that did not previously exist. Prior to the creation of the Canada and US international boundary and the implementation of the Indian Act, the Puget Sound, southern Vancouver Island peoples, and the Stó:lo had a great deal of contact and
shared traditions through marriage and other associations. Yet some now question whether linking Stó:lo, Musqueam, southern Vancouver Island and Puget Sound information is appropriate. Comaroff states that collective memory and knowledge, often held by the community's elders, is a critical element for the ethnonationalist state. However, a challenge for the Stó:lo has been to discover what that collective knowledge and memory is (Comaroff 1996:176). Far from being a reinstatement of past ways, the Stó:lo Nation House of Justice is very much a newly styled institution reflecting the current day concerns and issues of the Stó:lo people.

A third issue facing the Stó:lo is the establishment of the scope and mandate of the House of Justice and the services it will provide. Robert Phillips, at the Stó:lo “People of the River Conference”, discussed plans to open a healing centre, the focus of which would be the healing of the victim, the offender and his or her family, and post-release support. There is currently a provision in Section 81 of the Conditional Release Act which allows for First Nations offenders to be released to the custody of First Nations communities to finish out their sentence. The healing centre in question could be used to provide services under Section 81 for those incarcerated in the federal system. Under this proposal, the Stó:lo House of Justice will not serve the Stó:lo community exclusively, but the community may benefit financially by the facility.

Many Stó:lo don't want to be in the business of providing service to all First Nations offenders; this is a point of contention in the community. Pieter de Vink, Deputy Commissioner of Corrections Services Canada, pointed out at the Stó:lo Nation “Justice Conference”, that the offenders the Stó:lo Nation will potentially be dealing with are from the federal system. These offenders have been found guilty of committing very serious crimes. Eventually, many offenders will complete their sentences and upon release may end up living in the Stó:lo
community, instead of returning home. He said that the biggest challenge for First Nation offenders is finding a place to go after their release, as most First Nation communities are not willing to take these offenders back. Clarence Pennier echoed these concerns at a Justice Committee meeting (March 11, 1997) when he said,

Even though the majority of the inmates are non Stó:lo a lot of them like our climate and stay down here. You know maybe one of the reasons they stay down here is because their home communities don’t want them back because of their record and things like that. So, that is one of the thoughts we had in mind. That if we were to have a healing centre, and if we were to take inmates in from other communities from outside of Stó:lo territory, then we would have to have some kind of contact with their home communities and talk to them and explain that if we can take their members out of the institutions and put them through a healing centre would they take them back into their community because there will have been some kind of you know, a... (Robert Phillips interjects with “home placement programme within the healing centre.”) Yeah (answered Clarence).

A fourth issue for the Stó:lo is the legitimization of its newly founded institutions. The élan associated with ethnonationalism is that of harmony, healing and community cohesion. However, in creating new social institutions the Stó:lo are also faced with the task of legitimizing those institutions, dealing with a diversity of needs within the community and a diversity of opinions on how those institutions should function. Some Stó:lo are dissatisfied with services being offered by the Stó:lo Nation, such as Xolhmi:lh, the Stó:lo Family and Child Services Programme. The control and administration of child protection and social services have been a point of contention between the Stó:lo (and many First Nation communities) and the federal and provincial governments. Xolhmi:lh was formed by the Stó:lo Nation in 1993 to provide child protection services to the Stó:lo community and to take over many of the services that were provided by the B.C. Ministry of Social Services and Housing (Sqwe’lqwel te Stó:lo 1995a: 12).

This programme could overlap with, or have consequences for, the House of Justice over time, as the House of Justice branches out into areas such as family law. One elder described
how her grandchild, the child of her youngest son, was apprehended by *Xolhmi:lh* because of what the staff at *Xolhmi:lh* considered neglectful actions on the part of the child’s parents. The elder’s main complaint was that no one at *Xolhmi:lh* contacted her about the problem before they apprehended the child. As a grandparent, the elder felt that the care of the child was her responsibility and that *Xolhmi:lh* overstepped its boundaries and behaved in a heavy handed way not consistent with traditional Stó:lo values. She said,

Now we have *Xolhmi:lh* out there, wearing the Indian name *Xolhmi:lh*. *Xolhmi:lh* to me is, ‘looking after your people, looking after them’. But are they? They’re not doing that. You know what they do? What they do is hearsay, ‘oh that party over there is not looking after their kids’. Right away they’re right over there and apprehend the kids. And when they take the kids they live and they eat from the kids.

I was the one that named that *Xolhmi:lh*. But I took it for granted that they had that beautiful name *Xolhmi:lh*, which means, *you look after them*. You don’t just go by what you hear, you got to go by what you see. And I told them before that time, I said, ‘you wait until a member of that family is saying, ‘I can’t stand my son, the way he’s taken care of them kids. Take them away’”. Then they have the right to take them kids away (taped interview with Bruce Miller and Cindy McMullen, May 23, 1996).

In the past she said an organization like *Xolhmi:lh* was not needed, as grandparents took care of their grandchildren. This same elder said that in the past the Stó:lo never argued and everyone got along. However, today child protection is needed. It is her feeling that *Xolhmi:lh* responds to rumours and apprehends children with little reason. In addition, there is the impression that the fostering family “live and eat” off the apprehended children as they get expenses paid by *Xolhmi:lh*. The elder felt that other family members should be able to take care of apprehended children because they would do it for the good of the child and not for the money from *Xolhmi:lh*. In this sense then, the elder felt that *Xolhmi:lh* differs little from other bureaucratic child welfare agencies and functions no differently than the provincial government’s social services. In Comaroff’s terms, the ethnonation comes to look very much like the Canadian state for individual band members.
The fifth issue for the Stó:lo in the process of creating the House of Justice is the importation of justice models from elsewhere. Shortly after becoming involved in the Traditional Justice Project, Robert Phillips, Justice Worker for the Stó:lo First Nation, invited me to attend a one day seminar sponsored by the Aboriginal Justice Directorate and the B.C. Ministry of Social Services. The seminar, entitled “Policy Forum on Non-Judical Family Dispute Resolution in Aboriginal Communities,” was held at ministry offices at the Plaza of Nations in Vancouver on April 30, 1996. The guest speakers for the policy forum were Matt Hakiaha, a Maori and former Youth Justice Worker with the Child and Young Persons Services in New Zealand, and James Zion, Counsel for the Navajo Peacemaker Court. The purpose of the policy forum was to provide those with an interest in developing family dispute and youth justice alternatives to learn more about New Zealand Family Group Conferencing and Navajo Peacemaker Court approaches.

Provision has been made in the current B.C. Children and Family Services legislation for the implementation of Family Group Conferencing, which is a system of dispute resolution based on traditional Moari practices. The Ministry of Social Services, following the belief that First Nation’s justice initiatives should be innovative, is hoping that First Nations communities will be among the first to attempt a Family Group Conferencing model in their family service programmes.  

Phillips became very interested in Family Group Conferencing as a result of the information learned at the policy forum. Phillips was responsible for creating and implementing Stó:lo Nation justice initiatives and service delivery for the House of Justice. He saw the potential for incorporating many Family Group Conferencing procedures into a Stó:lo system. In particular, this model seemed ideally suited to young offenders. The presenters at the policy forum were enthusiastic and very knowledgeable about describing and marketing the concept of
Family Group Conferencing. They gave tips on how to secure funding and ideas on what to say to government bureaucrats, politicians, and members of the public from right wing conservatives, in favour of long harsh incarceration sentences, to liberals wanting a rehabilitation focus in sentencing. The B.C. Ministry of Social Services and the Aboriginal Justice Directorate were enthusiastic about implementing the model in a First Nations community in B.C., and Phillips was enthusiastic about applying it to the Stó:lo Nation. The Family Group Conferencing model allows for great flexibility and can be adapted to a variety of settings and cultural requirements, so Stó:lo justice practices could easily be incorporated into it. In addition, the Stó:lo Nation would get government support, an easily marketable programme, and a pan-aboriginal healing model that seemed to be highly successful wherever it had been implemented.

A sixth issue for the Stó:lo is the nature of inter-governmental relations and the relationship the Stó:lo Nation has with its own members. It is the nature of the relationship between the ethnonationalist and the euronationalist state that to the ethnonationalist the eurostate appears not only top heavy and inaccessible but also “inherently colonizing, lacking in humanity and bereft of social conscience” (Comaroff 1996:176). In functioning as an ethnonationalist state and while creating unique and innovative institutions, the Stó:lo Nation is constantly met with the overburdened slow-moving bureaucracy of the provincial and federal governments. Ironically, as the Stó:lo Nation becomes increasingly institutionalized, those who must negotiate their way through the emerging bureaucracy discover that it, too, is becoming increasingly remote and inaccessible.

With Robert Phillips’ influence many, if not most, aspects of the New Zealand Family Group Conferencing model were incorporated into the House of Justice family and youth service programmes even before the Stó:lo Traditional Justice Project had been completed.  

Even
with a great deal of support from involved parties, however, implementation proved to be
difficult. Initial attempts at Family Group Conferencing presented unforeseen complications.
Four Stó:lo youths were charged with stealing and vandalizing a car. Phillips attempted to have
the youths routed out of the mainstream system into the Stó:lo Nation’s fledgling House of
Justice for Family Group Conferencing. Phillips was met not only by uncooperative youths but
also uncooperative parents and RCMP officers. At a Justice Committee meeting (March 11,
1997) he told this story,

It’s not going along according to plan. I figured it would come together
much sooner than it has. But preparation time is paramount. I still haven’t
received the report from the RCMP—the incident report. I called the police
officer and said ‘Constable, I need this report’ and he goes ‘okay, I’ll give you a
call back’ and he gives me a call back and says, ‘contact records’. So, I contacted
records and they said, ‘I can’t give you that information, you need the Constable’.
So I got the run around just from the Mission RCMP! It was just incredible. So I
contacted the RCMP and I still haven’t received a call back from the RCMP and
you know how RCMP schedules are, it could be evenings or nights.
I think it will work much better once we get a position for this or, and, I
should say, the Stó:lo Peace and Security Service, because then we’ll be dealing
with our own people and then there will be a line of accountability to our own
people and by our own people. So right now the only thing that we could really
do with the RCMP is maybe write a letter and say, ‘we need this record’. But
then, they could easily say this is private records and all this stuff.

Ultimately, this initial attempt at family group conferencing was unsuccessful. There were
problems getting the families in agreement and before the conference could be pulled together
the youths re-offended. Since that time however, family group conferencing has been carried
out successfully at Seabird Island (personal communication Robert Phillips, July 9, 1998).

Phillips also found considerable frustration in dealing with various government agencies
which Phillips believed focused almost exclusively on policy and procedure. In spite of words
of encouragement to the Stó:lo from people like Pieter de Vink, Deputy Commissioner of
Correctional Services Canada, to be creative and to find their own way when undertaking justice
initiatives, those attempting creativity are often met with a slow-moving, cumbersome
government bureaucracy ("Justice Conference" October 30, 1996). At the Justice Committee meeting (March 11, 1997) Phillips talked about an experience he had at a government sponsored justice conference he had recently attended.

When we broke up into small groups at the conference, we were supposed to talk on how to start up programmes. The leader was a lady who’s pretty high up in the provincial government and all she wanted to talk about was procedures and policies, you know, what we can do on a province-wide basis. I let her go for about ten minutes and finally I stopped her and said, ‘what we’re doing here is grass roots community level and we’re trying to figure out how to start programmes.’ But what she wanted us to do was her job, how to figure out how to do this B.C. wide. Every time we would try to get her back on track she would lead the group away from that. That small group was okay, but again I didn’t really get what I wanted from it, so I think what we’re going to do here is just go ahead and start developing some of our programmes and fulfil that proposal, and send it their way so the onus will be on the federal government then to do something.

In dealing with the federal government’s Aboriginal Justice Directorate he said,

I think that they’re still making it up as it goes... I think this Aboriginal Justice programme is still in draft stage, I think they’re still trying to figure it all out myself. One of the things that’s going to be a little funny later on is that once they do get it all prepared they’re going to go, ‘where have you guys been?’ I bet you that’s going to happen, and we’ve been waiting for this....

Margaret Commodore, former Yukon Justice Minister, who was very active in the House of Justice corrections feasibility studies, is now questioning whether or not justice initiatives will work at the Nation level. She believes that the Nation should leave justice issues to the individual Stó:lō bands. She said the Nation deals with problems by ‘bogging down,’ they get stuck too easily and nothing gets done. 18

An Introduction to Current Understandings of Traditional Stó:lō justice

Although this paper is not intended to be a comprehensive summary of traditional Stó:lō justice practices, I want to provide some salient features of the current discourse on Stó:lō justice that are relevant to their present-day concerns. I present this material to illustrate the current
discussions and understandings of Stó:lo justice as it relates to the issues of creating justice initiatives in the Stó:lo community. Elders chose to present and highlight certain points about traditional justice that reflect these concerns and this material presents yet another paradox. The community believes the discourses about prior justice practices ought to direct justice and social issues today. The following are features of current discourse concerning prior justice practices and contemporary Stó:lo issues: the importance of strong, yet compassionate, community leadership, the importance of elders in community decision making, the significance of Si:yem and their embodiment of all that is good about Stó:lo society, the importance of community and family cohesion, the desire to settle problems and make important decisions internally (without external interference), notions of greed versus sharing (in light of issues of equitable sharing and controlling of resources, especially as they relate to current disputes over fishing), and the Stó:lo's connection to the spiritual world.

These understandings of Stó:lo justice practice frame what the community will find acceptable in the House of Justice system. The community will decide the degree to which what they created differs from what they understand Stó:lo justice to be about. Community standards and expectations are very high. For example, discourses on prior justice speak of the importance of right relations and proper conduct and the importance elders' teachings. This is also reflected in the Sto:lo Nation government, as the House of Elders is given the powers to withdraw a chief if he or she fails to uphold the standards of the office.

Stó:lo justice is founded on the belief that individuals are part of a greater whole that includes relations with one's family, community and other immortal, spiritual beings, and that one's actions impact those around them. Community values and cosmology are at the heart of Stó:lo justice practice, and are reflected in the basic premises of Stó:lo justice. These premises include a preference to settle problems informally and to not interfere in the problems of others,
a belief that your actions impact on your family and others, and a belief in supernatural sanctions for wrongdoing. These are considered in the following section. 19

Discourses about Sto:lo Justice

In interviews with Sto:lo elders it became clear that informal resolution and peace-keeping are preferred to more formal or elaborated kinds of resolution. Avoiding confrontation and public display of trouble is strongly preferred and people will go to great lengths to solve problems informally and internally (that is, within the family and/or between the parties directly concerned).

The elders spoken to stated that the first stages of resolving a conflict would involve a great deal of talking. Initially, a wrong-doer would be addressed by family and friends. Elders stated that those who could “give a good talk” were valued in times of trouble. Thus, talking and counselling serve not only to solve disputes but to also diminish tensions and diffuse problems as they arise.

The notion of Sto:lo justice also includes the belief that wrong-doers hurt their families as much as they hurt themselves and their victims. A wrong-doer puts a “black mark” against his or her family name, which is extends back through the generations to shame ancestral names. There is a great deal of external pressure from family (especially elders) and internal pressure to behave and put things right. One elder explained that,

If we do something wrong you’re not only dirtying your name, you’re dirtying our family name. So if you do something wrong you put a black mark on us too so we want you to go out there and fix it... In other words you almost have to live up to why that name is given to you cause elders already see some traits in some young people and usually they won’t give you a name until you’re in your teens or late teens so at least you’re developing some of the traits or characteristics of someone, maybe your father, mother, grandfather, great grandfather, and maybe they think that maybe you deserve that name because maybe you have some of the traits of somebody in the family (Miller and McMullen 1997:9-10).
As these premises make clear, one’s family provided the foundation for a good relationship with the community, the external and non-human world. Personal counselling and education started in childhood when individuals were taught traditional attitudes and proper behaviour through the telling of family history, lectures and stories. One elder said:

Each family had their own laws. A lot of families were very strong in their own laws, own family laws; well, in everything: way of living, supporting, helping, teaching and even looking after the children and everything like that. I think part of your family law became community law. But it has to start with the family. (Miller and McMullen 1997:7).

The fundamental tenets of current Stó:lo justice practice also contain a strong belief in spiritual sanctions and supernatural repercussions for wrong-doing. Elders continually stated that one’s actions determine one’s destiny or fate, and that people don’t necessarily have to punish a wrong-doer because “things come around,” and eventually the evil ways of the wrong-doer will catch up with him. This notion that things come around ties in with the preference for non-interference. One elder said that,

It might take a long time but justice is served by just your actions... if you do something bad you’ll get punished for it later. The people don’t have to do the punishment, its our Creator, I guess, that makes sure that you don’t benefit from what you’ve done. Maybe you’ll benefit in a certain degree but in the long run you’ll suffer for it. (Miller and McMullen 1997:8).

This deeply imbedded analogy between the fate of evil-doers and the notion that all things are eventually returned to you in a reciprocal arrangement, is also related to attitudes surrounding wrong-doing, greediness, and hoarding. Greed is considered a motive for illegal activities. Greed is a state of alienation and the opposite of generosity; it isolates people from the community. Waste is considered to be a form of greed and to be greedy and hoard things is wasteful. The reciprocal movement of goods and services through the community is the thread tying people together on a practical basis, both in mundane giving of food gifts to relatives or the
distribution of gifts in potlatching. This system is threatened by greed and waste, and people, as a result, are isolated from each other. One elder explained,

The most serious crime of our people is greed. That’s what we were told by our elders, ‘don’t you be greedy, you share what you have and in the end it’ll all come back.’ (Miller and McMullen 1997:10).

Aims of Stó:lo Justice Practices

A primary goal of current understandings of traditional Stó:lo justice practice is to reinstate wrong-doers into the community, solve the immediate problem, and restore right relationships with people. The restoration of the community is more important than punishing the wrong-doer. An elder explained how families might settle problems between them:

I think most of it was done through the head of the family. The head of the families would meet and they would discuss the crime, or whatever it was and they’d reach a consensus... If you did something wrong the family would take the responsibility and make an offering. They call it an offering. Some of the things in the old days were canoes, because they were like cars today, ‘ah, I’ll give you my car if you forget about this.’ But it was canoes in those days. I don’t think it was really food because food was so plentiful that it wasn’t expensive. Later on, my Dad was saying, when it was settlement time, it was horses. They took the place of canoes. He talked about people bringing horses right into the long house to distribute to somebody (Miller and McMullen 1997:14).

Families are brought together through this gift exchange and the reciprocal relationship is maintained. This exchange of goods was described as an exchange of “good feelings.” One elder said that gift giving “brings the good feelings back;” it means, ”we’re not mad at you anymore.” One elder explained it this way,

I think if they, the family, agree that this person is sorry and really trying to pay back by doing different things they’ll agree, ‘okay, maybe you’ve done enough.’ Maybe then they’ll have a little ceremony to say, ‘okay we’ll agree with that family and this family,’ do it publicly in a feast or potlatch or something... Of course they agree to it first... (Miller and McMullen 1997:14).
The elder explained that the public ceremony was also a way for the family who was wronged to publicly state to the family of the wrong-doer that,

We’re not going to be angry with you, we’re not going to bring you down, we’re not going to say anything. We understand you’re sorry, okay, we’ll agree to that, we think you did enough to say, or show, you are. Okay we’ll get together, we’ll do it publicly where we’ll let the public know the things been resolved. Let’s get on with living together, sharing and helping. (Miller and McMullen 1997:14).

Legal Concepts and Procedures

An elder stated that law and justice are,

a right relationship, a good relationship… I guess our people are always talking about getting along. I guess maybe that’s justice. But a good relationship, not only with your family but with everybody, and not only people, with mother earth, the birds, the fish, the animals, the plants, the grass. It’s a relationship with everything, everything on this planet…. Take care not only of yourself, but anything and everything whether its human, or even the rocks, even the rocks are alive. Take care, and that way you take care not only of yourself and everything will be okay, be balanced (Miller and McMullen 1997:15).

The notions of law and justice are understood to be directly associated with proper conduct. It is thought that people who have been raised and who live in the community, who have “advice”, and who live in the community should know the rules and abide by them.20

Healing is a key feature in discourse on dispute settling. Elders say that sometimes it was thought best to settle problems right away. However, when disputes were particularly heated it was sometimes thought best to settle the problem after people had calmed down. Elders’ advice and spiritual practice help this process.

One elder said that some communities had community courts which served as a site for formal public dispute resolution. The court was not a forum for determining guilt. He stated that if something was serious enough to be heard in the courthouse then the details of the situation and the parties involved were known to most people in the community. The elder described his memories of the community court house,
Our court house, as it was called then, was used as court houses are used today. I was quite young then but I knew that people that did something wrong were brought to the court house. They had benches all the way around, parents and some of the elders would sit around and talk to that person and try to resolve the situation between the offender and the victim. As the offence or crime got more serious the more people were brought in, like the chief and some members and some elders and when it got a little more serious then they’d bring other chiefs in from the surrounding area. Elders that had knowledge of some of the things to help resolve the matter. I guess it was more of a reconciliation between the groups… (Miller and McMullen 1997:22).

Other elders stated that sometimes a dispute could be brought into the larger community for resolution. According to one elder, when this happened,

More often than not they [the audience] know what’s happened. And I guess with the pressure from the family, you know, talking about the name thing, that person will say ‘yes I did it’ and now what are you going to do now? What do you intend to do and of course then you’d hear views from all sides and the person more often will say they did it and if not then the session will go all night (Miller and McMullen 1997:22).

The public setting required the co-operation and participation of the wrong-doer. One elder explained that family pressure provided a strong incentive for the wrong-doer to cooperate,

I think when something like that happened they had but no choice to come and they were almost made to come by their own family otherwise its kind of a disgrace… I would think to somewhat degree peer pressure but mostly the elders in the family. They were really strict that way at that time (Miller and McMullen 1997:23).

Public shaming could involve a public talking to from members of the community, elders and visiting participants. It was also possible that those wronged could stand up and make a statement to the participants. One Stó:lo elder explained that the public setting and the prospect of public shaming served as a deterrent for others witnessing the events.

Quite often most of the village would be there whether they were part of it or not. But they’d be there to see what’s going on and they’ll know and I’ll guess they’ll pass the word on like, ‘if you don’t behave, you know what will happen’… (Miller and McMullen 1997:23).
Use of the Right People

A significant feature of current understandings of Stó:lo justice is the employment of appropriate personnel. The proper people only must be drawn into the resolution and only at the right time. Ill feelings arise when people involve themselves in other people’s business and when those who should be taking care of the problems fail to do so. This is especially true when issues cross family boundaries. There is a strong preference for settling intra-family disputes within the family. There is also a preference for settling disputes within as narrow a circle of disputants as possible, even in cases involving non-family.

Depending on the nature and severity of the conflict, however, outside Si:yem can be drawn in in order to resolve the problem. Si:yem are widely recognized and respected people within Stó:lo communities. Counselling from Si:yem was taken seriously and they often had the final say on a dispute. An elder said that,

The old respected chiefs, Billy Sepas and Harry Stewart and Billy Hall, their decisions were honoured by the other people even if they didn’t come from this reserve. They held high positions as leaders. Whatever they decided, you respected their decisions (Miller and McMullen 1997:20).

It is said there was a strong preference to settle problems within the family; and outside Si:yem were brought in only for significant, long standing, unresolved disputes.

Restitution and Service

Elders said that restitution was the most common way to settle a dispute. As mentioned before, gift exchanges sorted out problems between families and brought them together in a reciprocal relationship. Restitution may also have included service to the family or community as a way for an individual to reinstate himself in that community. One elder explained the notion of service,
To this day I call it a win-win situation, not like the other type of system where its win-lose; you did something wrong so you’re the loser, you’re going to pay for it by going to jail or something else. But our system at the time was what I call win-win where it’s, you did something wrong, let’s try to resolve it. Either through restitution or even go live with that person to help them. At that time things were kind of a matter of survival, you had to get wood, you had to go fishing, you had to go hunting, because there was no such thing as welfare, so it’s a matter of survival (Miller and McMullen 1997:24).

Exile

Not all the elders interviewed agreed on the issue of exile. Whether or not exile was used, whether or not the exiled could be let back in to the community, or whether their children would be admitted are debated points. The elders who believed that exile did occur made the distinction between two types of exile: internal and external. Internal exile refers to a state of internal alienation. The wrong-doer lives in the community but is not a part of the community.

The contemporary understanding of banishment is that loneliness was the punishment.

One elder explained how a banished individual could be brought back into the village:

We had banishment too but that was the last resort. Banishment isn’t, say, ‘so long and we don’t see you any more’ if they sent you away, and again it depends on how serious it is, if the person mends their ways and does better and helps and gives restitution and does all those sorts of things, then maybe they’ll be allowed to come back. But again, it depends on how serious it is... (Miller and McMullen 1997:26)

Discussions About Co-operation and Sharing

Stó:lo elders were reluctant to address issues of conflict, especially those surrounding the use of resources. The general consensus is that people were generous, shared all that they had and helped each other. Theft of resources is also said to have been a rare occurrence. One elder said that he never heard of a cache being broken into until the mid 1970’s. Before that time people used to leave boats and motors on the river unattended. Since the 1970’s, boat and cache
theft have become more common and this particular elder has lost both a boat and a motor to thieves.

Summary: Discourses about Stó:lo Justice

Stó:lo elders highlight the conciliatory nature of Stó:lo justice practices. People talked, and when things got very bad, they moved away from the situation. Discourse about Stó:lo justice practices highlight the importance of right relations with the world, proper behaviour and conduct as an aspect of justice practices. An elder said that getting along with everything and everyone is justice.

Conclusion and Discussion

Anderson states that one of the paradoxes of nationalism is that there is a dissonance in the historic modernity of the nation state versus its antiquity in the eye of the nationalist (Anderson 1996:5). That is to say that although the nation state as we know it is historically young, in the imagination of the members comprising the state, that nation state has great antiquity — particularly in the case of ethnonational states whose origins are based in notions of primordialism and spiritual charters. Members of the Stó:lo Nation emphasize a deep and rich and timeless tradition. They take seriously their spiritual connection to the land, their resources, traditions, and language, and members of the Stó:lo Nation imagine that their own government can embody that relationship through their institutions and administration. Inevitably, however, tensions emerge between the ideal and the real, the traditions and the bureaucracy, and there is a limit to the imaginings. Once the Stó:lo people take on the institutional apparatus and trappings of a euronation state, they may be perceived by their own membership and constituent bands to have those features of euronationalism — despite their best efforts not to.
In contrast to the euronation state of Canada, which is built upon universal principles of citizenship, rationalism and liberalism, the ethnonationalist Sto:lo Nation state is built upon primordialist notions of cultural singularity and spirituality. It is the irony of an ethnonationalist state that, even though it is built upon horizontal lines of leadership, it still requires an administration and a bureaucracy. In spite of attempts to the contrary, as the Stó:lo Nation has grown in scope of responsibility and sphere of influence, it has taken on many features of the eurostate and has become increasingly elaborated, bureaucratic, centralized and institutionalized. It has also taken on many of the concerns of a eurostate — that is, the establishment of geographical boundaries and the creation of a citizenry, a national identity, and a national culture.

Justice in particular has emerged as a significant issue for the Stó:lo Nation because of criminal justice concerns in the larger Canadian First Nation community, justice initiatives occurring in the mainstream criminal justice system, and recent Supreme Court of Canada rulings that have consequences for treaty negotiations. It is difficult integrating understandings of Stó:lo traditional justice practices into a contemporary bureaucracy. Although based in notions of tradition, the creation of the House of Justice is also a complex reflection of current community concerns, the interests of involved staff and community members, and the proclivity of the mainstream government bureaucracy. In spite of the Canadian government’s desire to have First Nations communities come to them with unique, innovative, tradition-based ideas for justice initiatives, it was easier to adapt a New Zealand Maori-based dispute resolution model into the fledgling Stó:lo House of Justice.

In basing a system on purported prior practice there is not always agreement on this prior practice. Members of the Stó:lo community do not agree on all of the key features of current understandings of Stó:lo justice practice and how they should be represented in a contemporary
Creating the House of Justice involved a great deal more than reaching back and plucking the information out of the past and applying it to present day disputes. Sometimes the elders do not remember, do not know, or are reluctant to say what happened in certain circumstances.

The bureaucratization of Stó:lo tradition is seen as being cumbersome to members of the Stó:lo community. Like a set of Russian dolls that nest one inside the other, the various levels of Stó:lo society — the family, the band and the Nation — views the one above it as bureaucratized and centralized. The Sto:lo Nation, in turn, views the Canadian government as bureaucratic, slow moving and oppressive. Some Stó:lo community members feel estranged from the Stó:lo government. For example, the elder who said that the Stó:lo Nation Family and Child Services Programme is Xolhmi:lh in name only, felt that the programme was not living up to the “Indian name” or the expectations of Stó:lo community values.

The Sto:lo Nation faces the incorporation of other justice practices, such as the Medicine Wheel, Healing Circles and Maori dispute resolution practices into the House of Justice. Disputes arise in the community as some members embrace these other traditions and incorporate them as traditional Stó:lo practices.

The Sto:lo Nation must also legitimize their newly formed institutions. Even when creative and workable justice programmes are established and operational people don’t always want to participate in them. Enthusiasm for the Stó:lo Nation House of Justice is not universal, nor do all, when faced with troubles with the law, wish to support Stó:lo Nation self government and judicial autonomy. In these cases, the mainstream system requires less effort, has fewer consequences, and is less focused on the need for personal change than is an alternative programme.
The Stó:lo have very high standards and expectations of their emerging House of Justice. Discourses on Stó:lo justice practice place a great deal of responsibility on the individual and stress the importance of right relations with a wide spectrum of human and spiritual beings, proper personal conduct, good family influence and the importance of elders. In addition, community cohesion is an important aspect of justice practice. Problems arise when community expectations are not met. Uncooperative families, chronic repeat offending after participation in Stó:lo healing programmes, or chiefs who may not meet the ethical standards of their position challenge the expectations of the community for their newly formed justice system.

There are problems imagining the future through the past. People do not agree on the full scope and mandate of the House of Justice. People debate how Stó:lo traditions should be incorporated and what the House of Justice should look like. Community members disagree about whether the House of Justice should provide services to the Stó:lo community exclusively, or to include those from outside of the community.

As the imagined tradition-based system is run through the wheels of bureaucracy, the spiritualist thrust behind the original intentions becomes increasingly rationalized and centralized. Here I would like to recall the observations of Margaret Commodore and speculate that perhaps the future of Stó:lo self government lies at the band level, not at the Nation level. Perhaps the smaller scale band level government would be more responsive to community needs. It is also possible that the scale of band level organization would be more reflective of a tradition based system that takes into consideration the importance of family cohesion and involvement and the need to settle problems internally and without the involvement of too many people.

The Stó:lo face many issues as they embark upon the creation of the Sto:lo Nation House of Justice. This paper has focused almost exclusively on the problems and the challenges the Stó:lo encounter. However, the Stó:lo have many strengths to draw upon. In spite of stresses
and strains, the members of the Stó:lo Nation are motivated and enthusiastic about bringing positive change to their community. Although the Stó:lo Nation is beaurocratized, it functions at a level far more approachable and responsive to the Stó:lo community than the federal and provincial governments. The Stó:lo people believe that their government can represent them and serve them better than the current federal Indian Act system. Stó:lo Nation programmes and services are created with the good intentions of meeting the particular needs of the community they serve. The goal is to make the Stó:lo responsible for key decision-making in their own community and to take that power away from the federal and provincial governments. In spite of problems with their own institutions, the Stó:lo people are seeking to extricate themselves from the oppressive influence of the federal and provincial governments.

In creating institutions based on understandings of culture and tradition the Stó:lo have great assets to draw upon. Whereas differences in the Stó:lo community could cause factions, it is the nature of Stó:lo culture that complete consensus on issues is not always needed and diversity, especially with regard to family knowledge, is seen as a strength and a pool of knowledge to draw upon. The Stó:lo Nation staff is well informed, educated, creative, positive, and personally and professionally committed to bring positive change to the community. The Stó:lo people take great strength and motivation from their cultural traditions, their community elders and their optimism for the future.
Endnotes

[1] The term ethnonationalism will be discussed in the section “The Concepts of Ethnonationalism and Nationalism.” Tambiah states the ethnonationalism can be characterized as the “politicization of ethnicity” with the focus of the ethnic group being on its members’ collective entitlements and rights (1996:128).


[4] Vine Deloria and Clifford Lytle (1984:14-15) state the distinction they make between the two concepts of nationhood and self government,

> When we distinguish between nationhood and self-government we speak of two entirely different positions in the world. Nationhood implies a process of decision making that is free and uninhibited within the community, a community that is in fact, almost completely insulated from external factors as it considers its possible options. Self government, on the other hand, implies a recognition by the superior political power that some measure of local decision is necessary but that this process must be monitored very carefully so that its products are compatible with the goals and policies of the larger political power.

They add that,

> Self government is not an Indian idea. It originates in the minds of non-Indians who have reduced the traditional ways to dust, or believe they have, and now wish to give, as a gift, a limited measure of local control and responsibility.

> The term “nation to nation” relations is used frequently in the language of First Nation sovereignty issues and land claims. The notion of nation to nation relations is the cornerstone of the Assembly of First Nation’s directive (AFN). Nationhood implies not only self government, but the right to govern oneself as a nation without interference from the mainstream system. Therefore, nationhood may imply self government, but self government does not always imply nationhood.

[5] The Stó:lō Nation is reaching out to neighbouring communities in their urban environment.
through educational programmes. At the Stó:lo Nation’s Xa:ytem Longhouse at the Hatzic Rock site and the Shxwt’ə:selhawtxw (The House of Long Ago and Today) situated beside the Coqualeetza Long House, a warm and inviting environment provides the backdrop for programmes designed to teach Stó:lo culture and history to lower mainland school children. The Stó:lo Nation, in a joint project with local school districts and the B.C. Ministry of Education, produced the Stó:lo Nation’s Electronic Library, a web site designed for use by Fraser Valley secondary school students. At this web site students can access eighteen essays on Stó:lo culture and history, supplemented with images and sounds, four appendices (oral narratives and place names), and a glossary of key words all of which form suggested and required readings for various Fraser Valley high school courses. The Stó:lo Nation’s web site also provides the Stó:lo Nation with a vehicle to inform the whole world on the Stó:lo Nation’s plans for the future and their vision of self government and political autonomy.

[6] The administrative structure of the Stó:lo Nation has five departments. The largest is Health and Social Services, the other four are Community Development and Education, Aboriginal Rights and Title, Child Welfare, and Finance (Carlson 1997:107). Each of these departments is headed by an executive director, or Portfolio Chief. Together, these five departments deal with an extremely diverse range of social welfare, educational, economic, legal, cultural and political issues within the Stó:lo community and between the Stó:lo Nation and neighbouring communities. To meet the diverse issues the Stó:lo Nation faces the staff of the Stó:lo Nation come from a wide range of professional backgrounds (Carlson 1997:107).

The Stó:lo Nation government has been divided into three branches, The House of Respected Stó:lo Leaders, the House of Elders and the House of Justice. The House of Respected Stó:lo Leaders is the main political and legislative arm of the Stó:lo Nation. Each of the Nation’s member communities is represented here proportionate to their population. The Chiefs of the House of Respected Stó:lo Leaders also elect the five Portfolio Chiefs of the administrative arm. These Portfolio Chiefs form the Special Chiefs Council which is chaired by the Stó:lo Nation’s Chief’s Representative. The Chief’s Representative is considered to be the political spokesperson for the Stó:lo Nation and is ultimately accountable to the Stó:lo Nation Chiefs (Carlson 1997:107). The House of Elders is the second branch of the Stó:lo Nation government. This is the branch that was modelled after the Canadian government’s Senate and is primarily concerned with cultural and traditional issues. Each Stó:lo Nation community is represented by at least one elder.


[9] The over representation of First Nations people in the criminal justice system across Canada has been the subject of much inquiry by those in academic, legal and government professions. For more information on this issue please refer to Michael Jackson’s article, Locking Up Natives in Canada, Report of the Canadian Bar Association Committe on Imprisonment and Release, 1988 reprinted in the UBC Law Review 23 1989. The UBC Law Review also published a special
edition on Aboriginal Justice in 1992. The Royal Commission Report *Bridging the Cultural Divide* is also a good source for more information. The scope of this paper does not allow for an analysis of the relationship between the current justice system and First Nations people. Suffice it to say that there are many cultural barriers and historical events which have served to alienate First Nations from Canada’s justice system. Ovide Mercredi, then head of the Assembly of First Nations, in his presentation to the Aboriginal Justice Inquiry in Manitoba stated, “In law, with law, and through law, Canada has imposed a colonial system of government and justice upon our people without due regard to our treaty and aboriginal rights.” (Royal Commission 1996:57).

With the issues stated thus, if the mainstream justice system is the problem, are Aboriginal justice systems established through Aboriginal self government the solution? The Royal Commission believes so and in echoing Mercredi’s sentiments found,

It is in Aboriginal law, with Aboriginal law and through Aboriginal law that Aboriginal people aspire to regain control over their lives and communities. The establishment of systems of Aboriginal justice is a necessary part of throwing off the suffocating mantle of a legal system imposed through colonialism. (Royal Commission 1996:58)

In spite of a favourable review of the Royal Commission report from First Nation communities and a commitment to change on the part of the federal government, the federal government has done little to implement the recommendations of the Royal Commission. This has drawn further criticism and resentment from First Nations wishing to see change in their communities. The Honourable Jane Stewart, Minister of Indian Affairs and Northern Development, in her address on the occasion of the unveiling of *Gathering Strength — Canada’s Aboriginal Action Plan* (a response to the Royal commission report) outlined Canada’s commitment to the betterment of First Nation communities with regard to criminal justice issues. In making her point she relays a story told to her by Stó:lo Nation Chief, Steven Point.

Chief Steven Point of the Stó:lo Nation in British Columbia points to that legacy in describing day-to-day life in his community. As a lawyer, he talks about “Indian Day” at Chilliwack court, the day on which all of the Indian cases are dealt with. He can even laugh a little when he says that these court days are a little like a family reunion because there are mothers and fathers, sons and daughters, brothers and sisters all there in trouble from the same families. As a Chief, he says there are not enough hours in the day to help members of his community struggling with alcoholism, devastated by suicide, or tempted by crime for lack of anything better to do. He says that trying to cope with it all is like trying to hold water in his hands.

[10] Steven Point, the Chief’s Representative (head political official) of the Stó:lo Nation, was the first speaker at the Justice Conference. He is a lawyer and the former head of the Native Law Programme at UBC.

Many alternative programmes, such as healing circles, are part of an offender’s sentence that comes in after the individual has been arrested and charged by the police and found guilty in the courts of the mainstream system. Other programmes allow for alternative intervention programmes during a period in which sentencing is deferred. Some elders’ counselling programmes take place in prisons during the course of an individual’s incarceration. Being
involved at this level means, for some, that the mainstream system is still in control and the Stó:lo’s contribution to the system is merely adjunct to the larger bureaucracy.

[11] Si:yem are widely recognized and respected people within Sto:lo communities. Wayne Suttles (Suttles 1987:177) provides an explanation of the Halq’eméylem term Si:yem,

The term Si:yem (and variants) is often translated as “chief.” It did not, however, mean “chief” in any political sense in pre-reservation times, but rather indicated the social status of the person so labelled. It was used for persons of both sexes of upper-class status. As a term of address it was the equivalent of “Sir” or “Madam” or perhaps “My Lord” and “My Lady,”...

[12] For a description of some of these alternative justice programmes see Rupert Ross A Return to the Teachings.

[13] Since the Sto:lo Nation Traditional Justice Project is not yet complete and the document submitted to the Sto:lo Nation (Miller, Bruce and McMullen, Cindy 1997) is still in its draft stage, the names of the elders interviewed have been withheld.


[15] However, George Campo pointed out that the reason the federal government gets rid of facilities is because they are losing money.

[16] Information received at the policy forum from Fred Storey, Programme Manager, B.C. Ministry of Social Services.


[18] Interview with Jane McMillan and Bruce Miller, June 4, 1998.

[19] The organization of the material reflects my own theoretical standpoint. Comparisons to mainstream justice terms and the classification of the material under such headings as, “The Use of the Right People” and “Legal Concepts and Procedures” are mine alone.

[20] Wayne Suttles summarized this teaching under the term “advice,”

Advice consisted of genealogies and family traditions revealing family greatness, gossip about other families demonstrating how inferior they are, instruction in practical matters such as how to quest for the right kind of guardian spirit, secret signals for indicating that someone is of lower-class decent, and a good deal of solid moral training (Suttles 1987:8).
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