

Reflections

Dr Ross Ingram Memorial Essay Competition

What can circle sentencing courts tell us about drug and alcohol problems affecting Aboriginal communities?

Highly commended

In New South Wales, circle sentencing courts take place outside of the courthouse, in a more informal community setting. The circle is made up of the magistrate, prosecutor, victim, offender (and his or her supporters), four respected Aboriginal Elders (who are significant to the offender), a representative of the support agencies and a lawyer from the Aboriginal Legal Service. The group talks about the impact of the crime on the victim and looks at the background of the offender and what caused him or her to get on the wrong path. The discussion can last up to 3 hours, after which the group develops a circle sentencing outcome plan, upon which all parties agree. The most important recommendations are made by the Elders. The outcome has to be acceptable to the magistrate. Nowra's circle sentencing court has been operating for close to 12 years and the magistrate there has never yet disagreed with the Elders. The circle outcomes also need to suit the ability of offenders to comply with the conditions, as we don't want them to fail.

How the circle relates to the Aboriginal traditional way of dealing with offenders

Up until the 1860s in the Shoalhaven region, we had a council of karadji men to administer tribal law. A locally known karadji man was Johnny Burriman. Keith Campbell wrote of him in the *South Coast Register*:

The work of Johnny Burriman to gain recognition for an important place for Aboriginal law in the Australian legal system failed, but the issue has remained. A significant step taken appropriately in the Shoalhaven district in recent years has been the introduction of circle sentencing.¹

I believe this was a small but significant step towards recognition of the authority of a council of Elders, if not our traditional lore.

The Nowra circle sentencing court provides for sensitivity in reaching a sentence with as much compassion as the crime allows, but without frustrating Parliament's intention. The justice carried out is a combination of criminal law and traditional values. Whereas the criminal justice system regards crime as something to be punished, Aboriginal people view it as something that requires healing. The regular courts have



Gail P Wallace
LLB
Project Officer, Circle
Sentencing Court

Department of Attorney
General and Justice,
Nowra Local Court,
Nowra, NSW.

Gail.Wallace@
agd.nsw.gov.au

doi:10.5694/mja14.00267

recently adopted a similar approach: their concept of it is therapeutic jurisprudence.²

How effective has it been?

The greatest achievements of the circle sentencing courts have been bringing down the barriers between the courts and the Aboriginal community, gaining mutual respect and also gaining a great deal of knowledge around the root causes of crime within Aboriginal communities, especially as it relates to alcohol and drug misuse.

The knowledge that has been obtained through open and honest dialogue between the Elders, the offenders and the victims could be regarded as revolutionary. Information is received "from the horse's mouth" — from the people who have committed the crime, who are experiencing the disadvantages and suffering of alcohol and drug misuse. They are open and honest about it. Sometimes they break down and cry and volunteer insights about their lives. Some circle members even reveal information about themselves for the first time in their lives.

Aboriginal Elders effectively use the Koori way of obtaining comprehensive information from offenders, through the narrative form rather than questions and answers, as it is our cultural way of communicating. The Elders are also very clever in their use of shame: they make the offenders ashamed of their actions rather than of themselves. They say to an offender, "Be a proud Koori: you come from a good family and a rich culture, but you have got to be ashamed of your actions; this is bad".

Understanding what underlies drug and alcohol problems

It is well known that the underlying causes of crime are unemployment, poor housing, poor education and poor health. As a result of the honest and open dialogue in each circle sentencing case, we have been able to identify some of the further underlying causes of this for Aboriginal people. We have discerned much self-depreciation, low confidence and low self-esteem, derived from 200 years of demonisation by the media

and government and only learning about the negativity of Aboriginality. There is also direct trauma from sexual abuse, assault, other types of violence and racism. Being told you are lazy and good for nothing becomes a self-fulfilling prophecy over time. Additionally, there is indirect transgenerational trauma. Many of our offenders are from the Stolen Generations or are affected by family members who were. Aboriginal and Torres Strait Islander people who have been removed from their families often suffer feelings of abandonment and rejection. Their reactions take numerous forms, including anger, grief, loss of identity, alcohol and substance misuse, violence and other socially unacceptable behaviour, problems in relationships, psychological difficulties and isolation. Lack of identity can be linked to mental illness. As Aboriginal people operate on a collective or community level, the extended family is integral to the recovery process. Many often find themselves feeling caught between two worlds — their Koori heritage and the white world they grew up in. This can lead to a sense of not belonging, or feeling unwelcome in either world, with a crippling sense of isolation.

Problems like these need to be taken into account by the court system. This information does not supply the court with an excuse for an offence but it does supply an understanding of the root causes of crime, which is subsequently helpful in developing and delivering crime prevention programs. It is our belief that if clients have the opportunity to work on these problems, it gives them a chance to heal and not repeat the behaviour that led them to the court.

Often Aboriginal people use alcohol and drugs as an anaesthetic for the pain, fear and loss of cultural identity they are experiencing. The “dual diagnosis” which may result does not just refer to clients with hard-core drug problems and schizophrenia. It also refers to clients with a lifetime history of alcohol use disorder and coexisting mental or other drug disorder. The most common mental disorders among offenders with any drug use disorder are anxiety disorders. Some evidence of the intensity of this problem was provided in the 2009 NSW Young People in Custody Health Survey, which found, among other important and disturbing findings, that 92% of young Aboriginal people in custody had a psychological disorder and 83% were risky drinkers.³ Young Aboriginal people make up 49% of the juvenile population in custody.⁴ Drug and alcohol problems are not easy to overcome if you don't know much about the causes. Service providers can learn more about the underlying causes of this problem and how to deal with them by participating in cultural awareness training.

After the circle — providing care

In circle sentencing courts, most offenders, and particularly those who commit the more serious offences, are people with a dual diagnosis. This is where the crime problem really becomes a health problem. To deal with it, Justice Health provides liaison nurses who work in courts and corrective services. We also have drug courts to deal with drug-addicted criminals.

However, there still appears to be a problem in dealing with offenders with dual diagnosis, mainly because they don't recognise or accept their illness. Within our Koori communities, there is a stigma around mental illness that leads to self-medicating with illicit drugs. There are also cultural barriers in accessing mental health services in NSW. Clients move between drug and alcohol and mental health services, and dual diagnosis clients are at risk of falling through the gaps. Most importantly, we need a model to promote community-based recovery rather than reliance on inpatient services, as Aboriginal people won't remain away from their families for long periods of time.

Overcoming the root causes of drug and alcohol use and resultant crime

We need to develop wellbeing programs that focus on physical, psychological, spiritual and personal wellbeing, so that offenders are able to overcome their drug and alcohol dependency and move on to employment, housing, education and good health. We need to tackle the root of the problem if we are to break the cycle of welfare dependency and drug taking that ends in crime and despair.

In a circle, Elders can only direct offenders to do something about their problems; but these directions are taken seriously by the offenders because they are delivered by their respected Elders. However, Aboriginal and mainstream support services are needed to assist offenders to heal afterwards. Aboriginal organisations act as a link between clients and professional and mainstream services and are able to advocate, refer and liaise as necessary. But mainstream services can be limited by a lack of resources and training of support workers about the cultural and communication barriers that prevent them from working effectively with Aboriginal offenders. Some of our clients have experienced judgemental and patronising staff, including psychiatrists, psychologists, drug and alcohol counsellors and general health workers, who have lacked patience, empathy or cultural insight. Cultural bias still remains in the literature of psychology. We need culturally appropriate training for service providers — training that takes into account our differences in experiences, ways of communicating, values, kinship and families, along with insight into healing that recognises the impact of transgenerational trauma, our history and experiences on the current life situations of our people. At the end of the day, our clients have to access these mainstream services. If we fail in these areas, what good are all the efforts we put into getting our people to these services in the first place?

The need for additional support and training

I believe that the programs and training I am calling for represent the way forward. We need to train those who work in mainstream services to be competent when dealing with our people. In the criminal justice system, we are mostly dealing with Aboriginal people with very



We need to develop wellbeing programs that focus on physical, psychological, spiritual and personal wellbeing



poor education who are often isolated from the rest of society. In the past, Aboriginal people were denied an education in Standard English and were only taught a modest amount of the English language, from which developed Aboriginal English. This language is still spoken frequently within Aboriginal communities. There is also the matter of poor health to contend with.

Although there is no one solution to the problem of crime, we have to try a combination of what is working in some areas. We need circles accompanied by cultural programs and specialist counsellors to help our people deal with dual diagnosis and trauma. Men's group programs such as Red Dust Healing (<http://www.thereddust.com>) and Rekindling the Spirit (<http://www.rekindlingthespirit.org.au>) are very effective. The Waminda women's organisation health and wellbeing program is also very effective for Aboriginal women.⁵ We need to promote pride in Aboriginal identity and culture, based on the belief that this is central to the health and wellbeing of our people and that knowing who you are as an Aboriginal person is central to any positive life. We also need to forge strong partnerships between organisations and agencies so that our clients don't fall through the gaps.

Conclusion

When we lost our lore and important cultural and traditional way of life, we reached a point where we began to normalise abnormal behaviour such as substance misuse. This is not our traditional way. It is happening mainly because we have lost our structural system of learning and control. Circle sentencing operates on the understanding that the underlying causes of crime are often broader than a single incident and that they need the active participation of the whole community to fix them.

Circle sentencing highlights a need to develop effective cultural programs that educate our people about the positive aspects of our culture and Aboriginality and enable us to take pride in ourselves. These programs should improve the overall health standards of our people by promoting social and emotional wellbeing, acknowledging culture and identity as pivotal in reaching positive outcomes, and prioritising wellbeing as a vital foundation for belonging and identity. Service providers also need to be educated about Aboriginal communication styles, to ensure equality of access to justice and health services. Courts in NSW have developed a program to overcome this problem at a grassroots level, by employing Aboriginal client service specialists in local courts to service Aboriginal clients directly at the counter, in the registry and in the courtroom. Their most important and demanding task is interpreting court rulings. Only when all of these initiatives are put in place will the statistics on our people coming into contact with the criminal justice system begin to decrease.

Above all, the circle teaches us the need to recognise that the past still affects us today. The trauma and dispossession of colonisation compound the harmful

effects on our health and culture. The summary statement of the International Symposium on the Social Determinants of Indigenous Health identified colonisation of Indigenous peoples as a central and undeniable causal factor in ill health.⁶ Colonisation has resulted in the decimation of much traditional Indigenous culture and customary practices, rituals and systems, particularly for Aboriginal people living in urban and regional areas (Mary Goslett, Masters student, Australian College of Applied Psychology, unpublished research paper).⁷

We are behind the eight ball when it comes to economic and social status. It is only very recently that our culture has begun to be celebrated and accepted to an extent that will assist our next generation to take pride in themselves as Aboriginal people of this country. Reconciliation is the way forward for us, but it will take time and a lot of effort on both sides to reconcile our differences. Circles, I believe, are reconciling our differences within the criminal justice system. Thoughtful and intelligent people from all walks of life will continue to make true reconciliation happen in this country.

- 1 Campbell K. When magic made the rains come. *South Coast Register* 2011; 23 Sep: 6.
- 2 Flies-Away JT, Garrow CE. Healing to wellness courts: therapeutic jurisprudence. *Mich St L Rev* 2013; 403. <http://www.msulawreview.org/healing-to-wellness-courts-therapeutic-jurisprudence> (accessed Jun 2014).
- 3 Indig D, Vecchiato C, Haysom L, et al. 2009 NSW Young People in Custody Health Survey: full report. Sydney: Justice Health and Juvenile Justice, 2011. <http://www.justicehealth.nsw.gov.au/about-us/publications/ypichs-full.pdf> (accessed Jun 2014).
- 4 National Indigenous Drug and Alcohol Committee. NIDAC report release [media release]. 4 Feb 2013. http://www.nidac.org.au/images/PDFs/MediaReleases/nidac_report_release.pdf (accessed Jun 2014).
- 5 Live Longer. A healthy approach! 23 Jul 2012. <http://livelonger.health.gov.au/2012/07/23/a-healthy-approach> (accessed Jun 2014).
- 6 Mowbray M. Social determinants and Indigenous health: the international experience and its policy implications. Report on specially prepared documents, presentations and discussion at the International Symposium on the Social Determinants of Indigenous Health Adelaide, 29-30 April 2007 for the Commission on Social Determinants of Health (CSDH). http://www.who.int/social_determinants/resources/indigenous_health_adelaide_report_07.pdf (accessed Jun 2014).
- 7 Colquhoun S, Dockery AM. The link between Indigenous culture and wellbeing: qualitative evidence for Australian Aboriginal peoples. Perth: Centre for Labour Market Research, Curtin University, 2012. https://business.curtin.edu.au/files/2012.01_LSIC_qualitative_CLMR1.pdf (accessed Jun 2014). □

