

Dispute Settlement Among the Naidanac

Leroy Little Bear

Native American Studies
University of Lethbridge

The social scientist has become so familiar with the diversity of ways in which different people behave in similar situations, that he is not apt to be surprised by even the most exotic customs and rituals. In fact, if all the logically possible combinations of behaviour have not been found somewhere in the world, he is apt to suspect that it must exist in some as yet unknown or undescribed tribe in the world. In this light, the ritual and ceremonial practices of the Naidanac present such unusual aspects that it seems desirable to describe them as an example of the extremes to which human behaviour can go.

The Naidanac is a North American tribe, of which little is known, in spite of numerous attempts by social scientists to trace its origin. Social scientists have had no greater success than to conclude that this tribe came from the east. The Naidanac themselves trace their origin to a warrior hero who floated across the seas on a birch bark canoe. This warrior hero was in search of salt and lost his way.

The Naidanac culture is characterized by a highly developed trading economy that has evolved because of a rich natural habitat, though they boast that this success is due to sweat of the brow and aching backs. A ramification of this success at administering a market economy is that not all members of the tribe are engaged in food production and survival. This in turn has allowed most men to specialize in certain occupations. They prostitute these specialties in return for the necessities of life. It must be noted that being a specialist is highly regarded in Naidanac social circles, so much so that whenever a tribesman is asked what he is, he always answers in terms of some specialty, never a Naidanac or a human being.

One of the areas of specialization revolves around the settling of disputes between individuals or between an individual and the tribe. This second category is made possible by the belief of the Naidanac that certain types of wrongful behaviour are so serious that even if committed by one tribesman against another, they are considered to be a wrong done to the whole tribe.

I would like to relate my observations of the Naidanac in regards to the settling of a dispute between an individual and the tribe. The seriousness of tribal crimes can be illustrated by the great efforts taken by the chiefs of the tribe to inscribe on birch bark, by means of scratch marks, the sacred code of the tribe. These inscribed barks have become so numerous that there are special lodges in which they are kept for safekeeping. The reason for the ever-expanding number of inscribed barks is that there is an almost religious concern by the chiefs of the Naidanac to have an existing inscription for every possible type of behaviour. One of the chiefs being asked why he was so preoccupied with inscribing, answered, "So that future generations will never forget how we behave." The birch bark code apparently is the sole

guide for social behaviour among the tribal members. The writer detected a noticeable absence of customs to guide their relationships. According to my most reliable informers, if it is not inscribed on birch bark, any kind of action can be engaged in. Only if a tribal law specifically forbids an act is one obliged to refrain from that act. These sacred code lodges are accessible to any tribesman who hungers and thirsts for the knowledge and wisdom infused into the sacred birch barks by the chiefs. But few and far between are the tribesmen who take advantage of such an opportunity. For most, there are better things to do ... such as trading. They leave it up to dispute settlement specialists to engage in such noble activity.

Another indicator of the seriousness and respect the tribe accords the sacred code, is the fact that a secret society exists to ensure a minimum of transgressions of the code. This secret society calls itself Spok. They take it upon themselves to patrol the camps to guard against possible transgressions. The apprehension of a transgressor marks the start of a dispute settlement ritual. A transgressor, when caught, is brought to a secluded lodge to wait his turn for a ritual. The secluded lodge is sometimes referred to by the tribesmen as a penitential lodge. The ritual as a whole is very similar to a rite of passage. In this case, the ritual, from start to finish, supposedly transforms a bad guy into a good guy. It is interesting to note that Naidanac do not forget easily because they keep a record of all those who have ever transgressed the sacred code. This has other ramifications, which we do not have time to go into. This recordkeeping of the Naidanac seemingly conflicts with the purpose of the dispute settlement ritual, which is supposed to renew a man, by keeping him on a kind of black list.

The Naidanac have a very unique way of settling disputes. They settle disputes by a talking battle between two talking specialists. This talking battle is not done in terms of trying to outshout the opponent but by manipulating verbally the sacred code. One tribesman related to the writer that some visitors from a faraway tribe suggested to them a different ritual for settling disputes. But the Naidanac, after long council meetings, decided that the talking battle was still the best way of settling disputes. The main reason given was that they simply like to talk. Physical violence is seldom, if ever, resorted to as a means of settlement. It is of interest to note the existence of compensation or compromise for wrongs among the Naidanac. The existence of compensation for wrongs in lieu of strict retaliatory action in a society is generally agreed to by most social scientists as an indication of some advanced step toward an increasing interest in, and social control over, members of that society. This is pointed out as a mark of legal development. Among the Naidanac, examples are numerous to indicate that in the tribe, the law of strict retaliation for wrongs suffered is almost non-existent and that compromise by some substitutive payment is almost the sole means of righting a wrong. The one offense in which substitution seems to have been at least frequently resorted to is adultery; this is perhaps due to the lack of thorough information or to the offense itself, which by its very nature, makes compensation very difficult.

A number of specialists participate in the dispute settlement ritual. The most important is the dispute shaman. He plays a major role in the dispute settlement. He is the authoritative body or person, representing the entire society, which or who is responsible for bringing about the chastisement of transgressors. As the representative of the tribe, he can do no wrong. He is seen as the ultimate in knowledge and wisdom.

The dispute shaman does not really participate in the talking battle but acts as a referee between the two opposing sides to ensure fairness. If he summons tribal listeners to help him in a dispute, he does only the refereeing, but if he does not summon these listeners, then he

does both the listening and the refereeing. He is accorded great respect by all. In reality, this respect is mandatory. One must always address him by a sacred name and bow to him before he can talk to him. If he senses any disrespect, he is capable of administering legal curses. One becomes a shaman by going away for many moons to a special ceremonial chamber, usually in another part of the tribal territory, where he apprentices as a talking specialist under teaching shamans. It is only after one has become a very experienced talking specialist and renowned as such, that the chief of the tribe would appoint him as a dispute shaman.

The talking specialists are another group who participate in the ritual. The talking specialists go through the same training as the dispute shaman. It is the dream of every talking specialist to someday become a dispute shaman, mainly because of the social status and respect accorded to a dispute shaman. This serves as an incentive for these apprentices to work and study hard. But most do not make it because in the course of their apprenticeship they are strictly required to look at only the sacred birch barks and to memorize every scratch made on them. One must not have any other "see." To have a "see" is not highly regarded. But if you can have bees without getting stung, it is a sign of success. After many moons in the sacred chamber, they become full-fledged talking specialists and are admitted to the talking society. One must be a member of this society to be able to participate in a ritual.

The talking specialists are considered indispensable to the settlement ritual. So much so that a dispute shaman can appoint one for an accused if he cannot hire one on his own. In spite of this seeming necessity for talking specialists, most of the tribesmen do not trust them. But, still, they are considered indispensable in the same sense as some tribes who, because of their love of warfare, after having demolished an enemy, will turn around and help him recover so that the warfare can be resumed with intensity.

The shaman has a crier, who is his slave. The crier follows the shaman everywhere he goes, announcing his presence.

Another important group that participates in the ritual, unless the accused does not want them, is the tribal listeners. These listeners are not specialists but are members randomly picked and requested by the shaman to listen to the talking battle. They decide who is telling the truth.

The dispute settlement chamber is usually part of a bigger temple lodge. It is rectangular in shape and rather plain and bare. On one wall can be seen the painting of a former chief. In one room's corner can also be seen a painted buckskin hide hanging on a lodge pole, which serves as a symbol of the tribe. In the fore half of the room there is a large altar from which the dispute shaman conducts the ritual. In front and to each side are smaller altars, one for each of the parties who will engage in the talking battle. To one side is an open chamber from which the tribal listeners do their listening. These fixtures are separated from the aft half of the room by an altar railing. The aft half is just an open theatre provided for interested onlookers. The Naidanac believe that watching a ritual has great deterring effects in regards to would-be transgressors.

There are numerous and miscellaneous preparatory rituals and purification ceremonies engaged in by the different parties before the main ritual. These include a very brief appearance by the transgressor before the dispute shaman for a formal accusation and a chance to admit the charge or refute it. If he admits it, at this stage, the shaman pronounces a punishment on the transgressor; if he refutes it, the stage is set for a talking battle.

At a predetermined time, the accused is brought from the penitential lodge to the dispute settlement chamber. The dispute shaman's crier goes out and announces the beginning of a ritual to the general members, who come in and fill the aft half of the chamber in a little while. Those directly participating station themselves in their appropriate places and await the appearance of the shaman. Without any prior warning, the crier of the chamber, in a loud voice, announces the entry of his master. Upon his appearance on the scene, everybody stands and takes a bow. Everybody remains standing till he takes his place on the main altar. On his altar is a short wand made of dry sagebrush stem, which he uses to pound on the altar to command attention when things get out of hand. The altar has a deep groove in it from the many poundings of a long chain of shamans.

The shaman pounds on the altar to get everybody's attention and to signify the start of the ritual. He calls forth the accused and randomly selecting from a number of inscribed barks on the altar, tells the accused that he has been charged with a transgression of the sacred code. He then calls on the talker for the tribe to prove his accusations. Each talker, usually through prearrangement, brings to the chamber a number of supporters whom he calls on to support his side of the story. Each of these supporters is called up to stand alongside the main altar and required to tell how he saw the act of transgression committed. Before each supporter starts his story, he usually goes through a truth-telling ceremony, which consists of having the crier hold a piece of birch bark in front of him and asking him whether he intends to tell a false story or a true story. Nobody ever admits to telling a false story. Once a person goes through this ceremony, it is taken for granted that the person will tell the truth, for it is a serious offense to lie in front of birch bark. Throughout the presentation of each side's story, the opposing talker for each side usually jumps up every once in a while and complains to the shaman about the unfairness of the other talker. It is necessary to mention here that the Naidanac have rules concerning information that can be brought out in front of the listeners. A talker can win a battle on the basis of these rules. Sometimes one talker breaks one of these rules and angers the shaman who terminates the ritual on that basis, without any reference to whether the accused did in fact or did not in fact break the code. If there is no disagreement on arguing rules, then a decision is usually made on the substantive issues involved. One must remember that because of the sole resort to oral communication during the ritual, the talkers must display an unusual amount of verbal skill in interpreting the code, arguing rules and events. The shaman seldom engages in the battle. He prefers to be above it. From all the verbiage, the listeners are expected to sort out all the information and establish exactly how things really happened. The battle ends after everybody runs out of things to say. At this stage, the listeners are escorted into a secret chamber. What goes on in that chamber, no one knows. But they usually emerge with a decision as to which side was telling the truth. The shaman, upon the announcement, says "hear ye, hear ye, you have heard the listeners speak." If the decision is in favour of the accused, he is set free. If it is against him, the shaman orders him to pay, usually with property, or if he is a man of no means, he is sent back to the penitential lodge for a specified number of moons for purification purposes.

The crier, at this stage, calls attention to the shaman, who pounds on the altar a final time and leaves the chamber. Again, everybody must stand and bow for his exit. Everybody then leaves, except the crier who must stay and conduct a purification ceremony for the chamber to get it ready for the next ritual.

The types of disputes brought to the chamber vary. They range from a dispute over who owned a house along a road to having too many wives. An observation that this writer still cannot understand is that numerous specialists are involved in the settlement process, but at the end, it is nonspecialists, the listeners, who decide the dispute, which leads the writer to conclude that the Naidanac are certainly an interesting tribe and are deserving of further study.

The Naidanac, as a whole, are quite proud of their dispute settlement ritual for the simple reason that they consider it economical and efficient. However, the outsider may note conflicts between these concepts and the system as practised.

Any analysis of a social institution requires some explanation of the beliefs and mythological premises upon which that institution is based. The writer will, therefore, attempt to bring out the beliefs and myths upon which the dispute settlement ritual is based, keeping in mind that the writer cannot fully divorce himself from his own culture.

In spite of many conflicting interests, the Naidanac are quite cohesive. This cohesiveness is based on a mythical agreement among the ancestors of the Naidanac in which they all agreed, as individuals, to live together as a tribe. In this agreement, each individual supposedly gave up a little of himself in the tribal entity. The belief in the tribe as opposed to the individual has been carried a step further by the Naidanac by identifying the entity with the tribal territory. The strength of this entity is symbolized by the buckskin hide on the lodgepole. The chief's role is to enforce cohesiveness by making rules for the orderly relationship of the tribesmen, hence the sacred code. A belief in this system is that it is better to have someone specialize in rule making so that the "rest of us do not have to bother — as there are better things to do, such as trading."

The rather mythical beliefs of the Naidanac have many ramifications, including the number of institutions that have evolved and, in one way or another, aim at maintaining and strengthening the tribal entity. One of these institutions is the dispute settlement ritual. From this it is not difficult to see how the Naidanac came up with the concept of a wrong to the tribe, even though a specific wrong may have been committed against an individual.

The basic aim of the dispute settlement ritual is to bring about justice and to compensate a wronged party, usually the tribe, by having the transgressor pay a penalty. As mentioned earlier, if a tribesman cannot pay the penalty, he is made to stay in the penitential lodge for a specified number of moons. It came as a surprise to the writer to find out that the penitential lodge is kept at tribal expense. In other words, the wronged party expends its resources to keep alive the many penitents in the lodge! Many tribesmen have long ago learned to take advantage of this system. For example, one tribesman told this writer that he always pretends to be poor and unable to make a penalty payment so he will be sent to the penitential lodge where he receives free food and a buffalo robe to sleep on. By going to the lodge, he does not have to give up any of his hard-earned belongings. The only countervailing force to this not-very-punishing penal system is that a person who has been in a penitential lodge is not highly regarded in Naidanac social circles.

The Naidanac believe that the best and only way to bring about justice is through the verbal battle. This is a fight theory of justice that assumes a disputatious and contentious transgressor. The Great Spirit knows they are not! It assumes that in a dispute settlement each tribesman, in the sacred chamber's competitive strife, will, through his talking specialist, intelligently and energetically use the evidence to present a story favourable to him and

unfavourable to his opponent; and thereby the dispute shaman and the tribal listeners will discover the truth. The shaman will then apply tribal social policies embodied in the sacred birch bark code to the actual facts and somehow miraculously avoid the application of the sacred code to a mistaken version of the facts.

The Naidanac “fight theory of justice” is reminiscent of three other primitive tribal judicial approaches, which have differing versions of the same theme. In all of these versions, a feud is resolved by essentially leaving it up to the great spirits to decide who was right. The respect and aura surrounding the shaman in the case of the Naidanac is comparable to the role of supernatural beings under this version. The first method, trial by actual physical battle, of course, is the old time-honoured way. It is predicated on the theory that the righteous will win. The verbal battle of the Naidanac has similar basic assumptions. The second approach makes use of a fearful oath, in which the people involved in a dispute are satisfied that the Great Spirit will surely punish liars. It will be recalled that supporters who come up to tell a story go through a truth-telling ceremony in front of birch bark. The third approach is the test approach, in which a shaman devises a test ordeal. He who fails the test must surely be the guilty party. The dispute settlement ritual, as a whole, is quite an ordeal. It is not uncommon for a transgressor to fail to go through the ceremony. In many cases, an accused tribesman would rather confess to guilt than to go through the ritual. If the reader, from this writing, cannot imagine the tragedy of the ritual, it is only because the writer has not the literary capacity to bring about full appreciation . . . you have to be a Naidanac to fully understand and appreciate the bitter experience of a dispute settlement ritual and its “fighting” characteristics.

A policy or practice of the Naidanac that has some ramifications for the dispute settlement ritual and the separation of religious beliefs from other types of practice, is the unusual fact that the Naidanac regularly deal with the dead. Economic wealth is a high social value among this tribe. During the course of their history, the Naidanac have learned to put a value on everything and anything . . . even the worth of a wife. A tribesman while alive can make his own private code through which he directs who will get his property after he dies. The length of time of his after-death control by a dead person is limited to “a life in being plus twenty-one years” with the possibility of extending it a further nine months. A private code, once in the sacred hands of a dispute shaman, has the same force and effect as the birch bark code.

In relation to the total situation of the Naidanac, the dispute settlement ritual is predicated on rather primitive and backward philosophical premises. If justice is one of the basic aims of the ritual, it is the firm belief of this writer that it cannot be achieved through an antithesis such as a fight. If the truth is a basic aim, it is clear that the truth never really comes out. What comes out is a compromise. If righting a wrong is its basic goal, it was obvious to this writer that many tribesmen never have the opportunity of taking their case to a dispute shaman because they cannot afford a talking specialist — it takes a lot of wampum to win.

Assuming that justice, truth, and righting wrongs are basic goals of the ritual, it does not take much probing by an outsider to be able to look past the buffalo robe worn by the dispute shaman, the artful verbal manipulation of the talking specialists, and the sacred aura of the birch bark code to discover that these worthwhile goals of the ritual are myths. The ritual in reality serves a totally different purpose — namely, maintaining a sacred birch bark aristocracy. The aristocracy maintains its status in the tribe by making membership difficult

to attain and by discouraging general knowledge of the code. In other words, the aristocracy made the code in such a way so that more people would depend on them for their specialty.

In view of the Naidanac's ability to artfully camouflage the true nature of their social institutions, the writer will attempt to point out some of the weaknesses and myths upon which the ritual is predicated. One of the major weaknesses of the ritual stems from the habitual thought of the Naidanac. Habitual thought means the philosophical premises that are basic to Naidanac culture; premises that the society uses to relate to the world. The habitual thought of the Naidanac is very linear and singular. A good example of linear thinking is the Naidanac's concept of time. Time is conceptualized as a straight line. If a Naidanac attempted to picture "time" in his mind, he would see something like a river flowing toward and past him. What is behind would be the past. What is immediately around him would be the present. The future would be upstream because of a waterfall, the waterfall symbolizing the barrier to knowing the future. This line of time is conceptualized as quantity, especially as lengths made of units. A length of time is envisioned as a row of similar units.

A logical and inherent characteristic of the concept of time is that once a unit of the river of time flows past a Naidanac it never returns — it is gone forever. This characteristic lends itself to other concepts such as "wasting time," "making up time," "buying time," "being on time," which are unique to the Naidanac. Another characteristic is that each unit of time is totally different and independent of similar units. Consequently, for the Naidanac, each day is considered to be a different unit, and thus a different day; every year, a new year. From this the reader can readily understand why there is a need among the Naidanac to have names for days and months and numbers of years.

Linear thinking has long been discarded among the philosophically advanced tribes. It was long ago recognized by these tribes that straight line thinking spells doom. A line has a beginning and it has an end. Sooner or later, one comes to an end. Consequently, the more sophisticated think in terms of cyclicity. Time is not a straight line, but a circle. Every day is not a new day, but the same day repeating itself. There is no need to name each day a different name. You need only one name: day.

A cyclical philosophy is a much more advanced philosophy, not in terms of complexity, but in terms of being realistic and conforming to the macrocosm. The sun is round; a day is a cycle — daylight followed by darkness; the seasons follow a cycle. Another characteristic of cyclical thinking is that it is much more wholistic and complete. Linear thinking concerns itself with singular aspects of a whole that results in fragmentation and unevenness. Linear thinking results in polarity. The Naidanac have many polarized concepts: good and bad, saint and sinner, sacred and profane. As mentioned earlier, "there is only one great spirit," "only one true rule," "only one true answer." These philosophical ramifications of Naidanac habitual thinking result in misunderstanding the meaning of any total event. They relate themselves to only one aspect of the whole at a time.

The Naidanac's polarized concepts cause them to think in terms of an accused being either guilty or not guilty, never partly guilty or partly innocent. A person is either a "good guy" or a "bad guy." Another ramification is that there is an attempt to name, identify, and distinguish every possible type of behaviour or combinations of behaviour. This results in a rather complex and voluminous birch bark code of linear behaviour patterns. When an accused is brought before the dispute shaman, the ritual actually consists of determining whether the accused's behaviour pattern squares with one of those in the code. If he does, he

is guilty; if he does not, he is innocent. An effect of polarity and singularity is a need for specificity and specialization.

Specificity or specialization results in narrowing of an individual's knowledge and abilities, while at the same time increasing his dependence on others for everything else that may be outside his own specialty. To analogize and compare, consider the fish and the human being. Both can swim and live in water. The fish specialized in swimming and living in water. The fish specialized to such an extent that he is now limited to his specialty. You could not find a better performer than the fish within the confines of his specialty and environment, but removed from those confines, he does not last very long. The human being has not specialized in swimming and living in water, but can do so to a certain extent. He has remained a generalist. The secret to his dominance over other animals has been his ability to adapt to different situations.

The Naidanac, by emphasizing specificity and specialization, are going down a similar path to the fish. The specialization of the sacred birch bark aristocracy limits and narrows their human experience. Though you could not find better performers within the confines of their specialty, they are actually out of touch with most of reality — the dispute settlement ritual is only one small part of the Naidanac reality. That part of the Naidanac reality that is outside of the confines of the dispute settlement ritual is ignored or never experienced by the ritual specialists because of the limitational effects of specialization. If an institution loses touch with reality, it then exists for its own sake and ceases to serve those purposes for which it was originally instituted. A de-emphasis on specificity will have several beneficial results, which may not be readily discernable to the Naidanac.

One beneficial result of a de-emphasis on specificity would be a sharp decrease in the need for a sacred birch bark coding. There is nothing wrong with coding. However, there is a significant amount of the not-too-plentiful Naidanac time wasted on trivia — that is, attempting to encode every possible type of behaviour and combination thereof. If generality is stressed, less time would be wasted on coding trivia and short-lived rules. More time and more thought can be given those rules that do become coded. Tribes where cyclical philosophy is followed have a very general code. The generality of the code means that everyone within the tribe knows the code, so there is no need for specialists. Only in exceptional cases is a specialist sought out. An absence of specialists means less probability that tribesmen will take advantage of each other. A talking specialist may take advantage of and exploit a non-talking specialist but he may be exploited when he requires a service of a different specialty. A chief of a tribe justified this system by saying "it all balances out at the end." However, this seems to be in conflict with the virtues of justice and equality that are referred to so often in the sacred birch bark code.

An emphasis on generality would decrease the necessity for the secret society Spok. In those tribes without a written code, because everybody knows the code, a person who may have mischievous longings certainly is deterred much more efficiently because everywhere he goes there are eyes on him; there are people who know just as much about the code as he does. He certainly cannot argue his way to freedom due to a superior knowledge of the code as is done on numerous occasions in the case of the Naidanac. Put another way, every tribal member is a member of the Spok.

An economic benefit can be realized by the Naidanac if generality is stressed. For the reader's benefit, a little bit of background. In a roundabout way, the stingiest Naidanac has

the most prestige. High social value among the Naidanac is placed on economic worth in terms of wampum. The individual Naidanac, in trying to attain a high economic worth, usually hoards and does not share. Each year (another strange practice), the tribe charges each member for living within the tribe. It uses the wampum it gets from the members to pay for the services of the Spok. Now, for an economically conscious tribe, it would seem that a decrease in the need for specialists such as the Spok, would proportionally decrease the outlay of wampum from one's coffers thereby increasing one's economic worth and the prestige that goes with it.

Many other examples of benefits which would flow from generality and a cyclical philosophy can be mentioned, but if no other benefit suffices as being worthy of note, then the following should at least make a birch bark encoder think twice; a decrease in the need for coding which would result from generality will end the needless and wasteful killing of birch trees!

From the above, I hope the reader can see the many weaknesses and myths of the dispute settlement ritual. Many other ramifications can be pointed out as results of the Naidanac's linear and singular thinking. If a reader can do this, it will be much easier to look past the surface niceties of Naidanac culture and see the primitiveness of the premises upon which the dispute settlement ritual is based; why it does not fulfill its worthwhile goals; why it serves almost a wholly different purpose.

One shaman explained the primary function of the ritual as follows: "It is to render specific decisions about specific disputes, in order to bring about their orderly settlement, so as to prevent brawls which may cause social disruptions." The ritual is thus a peace-preserving device. It stops aggression and keeps the peace. It meets crises by peaceful adjustment of conflicts. It is a substitution for war. If it were only so!

QUESTIONS

1. Do you know in which part of North America this tribe is to be found?
2. How effective is Little Bear's strategy of inverting the subject-object relationship, the observer and the observed? Does it suggest that perspective and interpretation are, perhaps, even more important than reality?
3. Do the hierarchy and absurdity that Little Bear has highlighted in the Canadian legal system worry you? Within the essays by both Monture and Little Bear, can you identify elements of what a First Nation's jurisprudence and legal system might look like? What norms would prevail? Would there be a role for law and economics?
4. Would it be possible to have more than one legal system operating in the Canadian jurisdiction? Would that not result in differential treatment and therefore inequality? Or does equality necessitate differential treatment? What type of equality do you have in mind?
5. Little Bear admits that in his observations he "cannot divorce himself from his own culture." Do lawyers always have such a strong sense of the inevitability of being partial?