

## **Justice as Healing**

A Newsletter on Aboriginal Concepts of Justice

### **Promises Worth Keeping**

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Intrinsic to colonial justice is the concept of punishment. This idea has roots in English history. The earliest written laws of England are contained in Aethelberht's code. Aethelberht I of Kent was supposedly converted to Christianity by St. Augustine in about 600 A.D. Upon conversion Aethelberht drafted a code wherein instead of resorting to the feud to settle disputes, the parties had an option of settling for fixed sums of money. If one killed another, the deceased's kin, house or church could demand a code determined amount in proportion to the worth of the deceased. This early option to the feud and private dispute settlement was encouraged by the Christian church, not only because the church had a problem fighting a feud and simultaneously upholding Christian values, but also because it was a windfall for the church. Aethelberht's code demanded the highest payments for dead priests and actions against the church.

The Christian concept of penance played a huge role in the development of a concept of criminal law. A wrongdoer should pay penance to cover the sin of his crime. The shift was subtle but evolutionary. The penance was of course paid, not to the kin of the victim, but to the church. The rewards of processing criminals led to the church establishing its own courts. The concept of a fine was well established in the ecclesiastical courts and in canon law when the King took over those courts and claimed the proceeds for himself.

Today of course all fines are paid to the Crown. The victims and their families are forgotten in the modern machinery of the Criminal Justice system. The ideological constructs of the criminal justice system have evolved only slowly from penance to punishment which continues to be the major factor in sentencing principles. However, the dominant underlying motivation remains economics.

Aethelberht may have set in motion the economically motivated evolution of state jurisdiction over the criminal thereby taking away from the community. But, later generations perfected the system. With the development of capitalism the criminal law underwent a major revolution. The factory and the penitentiary are very similar institutions. Each operate according to strict rules of conduct and authority. Each operate under strict rules of time. The factory processes materials and the penitentiary processes Indians.

Economics dominates thought in this century. With the recent collapse of the Soviet Socialist, cowboy capitalism was left to dominate the world agenda. There are no imagined alternatives. The political right dominates and the left, if not dead, is stalled. The criminal justice system, like all other systems in the industrial world, is affected by the move to the right. The only arguments that are listened to when discussing the criminal justice system are economic arguments. "It costs 'X' to keep an Indian in jail for a year."

Treaties No. 6 and No. 7 hold a promise of Indian maintenance of peace and good order. That Indians "aid and assist the officers of Her Majesty in bringing to justice and punishment any Indian," requires the Indians to participate in the economics of the criminal justice system. If the Indians participate by aiding and assisting the officers of her Majesty they undermine their ability to maintain peace and good order amongst themselves. Indians processed in the industrial penal institutions, upon release, require community resources to return them to a state where they can participate in peace and good order.

The more the Indians aid and assist, the more they destroy their ability to maintain peace and good order. When the point is reached where the Indians are no longer able to maintain peace and good order they are completely wed to aiding and assisting the officers of Her Majesty in bringing to justice and punishment. In order to re-achieve peace and good order the Indians must cease aiding and assisting the

officers of Her Majesty. The Indians must cease participating in the economics of justice and punishment and focus their limited resources on maintaining peace and good order.

Peace and Good Order cannot compete with Justice and Punishment in the economic arena. They are diametrically opposed principles. Ultimate Peace and Good Order can only be achieved in an anarchy. Justice and Punishment are underlying values of a hierarchy. Anarchy exists without hierarchy of any kind. It is the living together of people without oppression. The argument against anarchy of course is that without authority, anarchy would deteriorate into chaos of competing interests. Nevertheless, if anarchy could be maintained without deterioration it would, until deterioration, be ultimate Peace and Good Order. Whereas the imposition of any hierarchy, whether benevolent democracy, despotic tyranny, or economic democracy results in some form of oppression. It is necessary to oppress to achieve a semblance of peace and good order through the imposition of justice and punishment.

Peace and Good Order cannot exist in an oppressive state. The act of oppressing, by imposing punishment, destroys the peace. It is not good order to use violence to maintain a semblance of order. Punishment is violence. Incarceration is violence. The violence of incarceration maintains and is maintained by the economic system of the industrial capitalist criminal justice system.

We are left with the problem of participating, aiding and assisting, or attempting to re-create peace and good order. The criminal justice system's use of violent punishment has decimated our communities. Do we break our Treaty promise to keep peace and good order, or do we break our treaty promise to aid and assist? The answer is of course economical. If we are denied the resources to heal the incarcerated we will not be able to maintain peace and good order.