



A Human Future

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AN E-QUARTERLY CONTRIBUTION TO THE PUBLIC CONVERSATION ABOUT VALUES AND THE COMMON GOOD. SUBSCRIBE



● Craig Jones is the Executive Director of The John Howard Society of Canada, an NGO based in Kingston whose mission statement is "effective, just and humane responses to the causes and consequences of crime." He holds a doctorate in political economy from Queen's University and before coming to the Society was a researcher in the Faculty of Health Sciences and the Centre for the Study of Democracy (both at Queen's) as well as a teacher and lecturer at Queen's, RMC, St. Lawrence and Loyalist Colleges. He has published on drug policy, public policy, crime and mental illness.

Punitive or Rehabilitative: What do we want for our Criminal Justice System?

An Interview with Craig Jones of the John Howard Society

News in recent months has alluded to legislative changes and proposed changes to the criminal justice system. We think this is a matter for urgent public debate. In this issue, Craig Jones' thought-provoking responses are accompanied by related materials including Harley Eagle's reflection on Restorative Justice. *ed.*

Beth Porter: You've been interviewed in the media lately on the subject of changes to the criminal justice system.

What should concern Canadians about these changes?

Craig Jones: The lack of deliberation by which these legislative amendments are being introduced. As a mature democracy, one of the most successful in the world, we are obligated to make public policy changes of this kind on the basis of evidence, jurisprudence, principles and values, and to attempt to educate public opinion so that public policy is not driven by short-term electoral considerations, fear mongering and scare-tactics.

The media, even those that try to penetrate beneath the surface and explain, for instance, why ending pensions for prisoners might involve carving out a special exemption in the Charter of Rights and Freedoms, lack space or time to adequately explore these matters. So policy comes to be driven, to some extent, by headline-grabbing names like Clifford Olson, Graham James or Karla Homolka. These names and the emotions

attached to them tend to frame a particular issue in a black and white manner. The exceptionality of these individuals and crimes is obscured by the emotionality they provoke. Ordinary people who don't have the time, inclination or training to understand the issues in their complexity assume that these kinds of offenders and crimes are prevalent, maybe increasing, and that they should be dealt with very harshly. We can demonstrate empirically that the more people actually know about the criminal justice system and about these offenders and kinds of crimes, and about the rate of crime in Canada, the more inclined they are to moderate their views because they understand what a bad idea it is to make public policy on the basis of these rare and exceptional cases.

What are key facts that the public needs to know to engage this topic?

Number one is that crime rates have been trending downward in Canada since the early 1990s, as they have across all the coun-

L'Arche Canada
10265 Yonge Street
Richmond Hill, ON L4C 4Y7

Tel: 800-571-0212,
Ed: eporter@larche.ca
www.larche.ca

Charitable number:
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tries of the Organization of Economic Cooperation and Development. And they have been trending downward irrespective of the specific policies that individual jurisdictions have enacted. For example, some years ago a New York Chief of Police named Bratton introduced a new policing policy and a sophisticated computer system called CompStat and claimed to produce a dramatic decline in the rate of crime. What was lost in the celebration was the fact that crime rates had actually been in decline before these policies were introduced and declined in jurisdictions that did not practice this new mode of policing and CompStat methodology. Crime has been in decline for a number of reasons. In the larger cities it is thought to be driven by the stabilization of the crack cocaine market.

Second, people should know that criminal justice legislation has little-to-no effect on reducing the rate of crime because the criminal justice system kicks in after the fact. In the academic literature this has been known for a long time, and government-commissioned reports openly admit this. If you want to change the rate of crime, it's a long-term proposition that requires fundamental changes at the level of the social determinants of health. Sustainable crime reduction starts with infant and maternal care. But the problem with that is that it takes 20 or 25 years before you see the results and our electoral system preferences short-term political action

The Social Determinants of Health

- early life • education • employment and working conditions • food security • gender • health care services • housing • income • social safety net • social exclusion • unemployment and employment security.

A new study from York University: "Social Determinants of Health: The Canadian Facts," May 2010. [Click here.](#)

which is more symbolic than substantive. We need to pay much more attention to creating robust, resilient, healthy children and communities rather than tinkering with the criminal justice system at the back end.

And when we do succumb to tinkering with the criminal justice system, we should be thoughtful and deliberative about it – not reactive and emotional.

Canada was the first country in the modern world to produce a policy statement on the social determinants of health as the foundation of good social policy. It was Marc Lalonde's white paper as Minister of Health back in the Trudeau government that gave us the first formulation of social policy grounded on the determinants of health. It set the model for virtually every other country that paid attention to the conditions in which people live as a determinant of crime and social well-being. And it has implications across the board – for education, productivity, economic growth, old age, public health, and just about every aspect of social policy.

"Fear-Driven Policy"

"In a country with an aging demographic such as ours, politicians are fully aware that older citizens (who are also prime voters) are afraid of crime and criminals and are generally convinced that life is getting more dangerous despite Statistics Canada data from 2009 showing the fifth consecutive annual decline in police-reported crime and crime rates overall in Canada that we have not seen since the 1970s. [This attitude, common among Conservatives] is now spreading to traditional Liberal and NDP supporters as well.... Public discussion of this issue is urgently required. Without it, recommendations with draconian implications for the protection of human rights, public safety and the public purse are being presented as the future of federal corrections in Canada."

From "Fear-Driven Policy: Ottawa's harsh new penal policies won't make us safer, just poorer and less humane," by Michael Jackson and Graham Stewart, *Literary Review of Canada*, May 1, 2010. (For background on the hastily put together "Roadmap" being used by Correctional Services of Canada for current legislative changes, see page 2 of this essay.)



A third fact that Canadians should be aware of is that the policy of drug prohibition that we practice here and in the U.S. and, though less so, in Europe, actually produces crime. Our drug laws create crime. Those who know the history of Prohibition in the 1920s and 30s, when the manufacture, transport, import, export, and sale of alcohol was prohibited, will know the utter failure of this policy which served to give a very lucrative income to gangsters and criminals. When the policy was eventually abandoned, related crime dried up. But people easily misunderstand this issue and it's very difficult to get our elected politicians to talk about it. Prohibition of drugs should be replaced by re-regulation according to criteria derived from science about their actual harm. I have written about this on my [blog](#).

What would you say about the fact that a disproportionate number of young First Nations people end up in the criminal justice system?

Canadians need to acknowledge that we created the situation First Nations people live in through our social policies in the 19th and 20th centuries and turn our attention to repairing the social determinants of life in communities where there are large aboriginal populations.

In terms of the contribution that aboriginal people can make, there is a strain of justice called restorative

Superjails: Bad Policy in Action?

Ontario's Roy McMurtry Youth superjail opened last summer, flying in the face of prior studies that concluded that small community-based settings are preferable. Youth from 12 years to under 18, mostly from Toronto, who were previously housed mainly in small fully-supervised group-home-like settings in the city, where family, social workers and lawyers could readily visit them, are now housed together in this outlying facility. The new megajail has been marked by mismanagement and the brutalization of youth by guards and other detained youth. Irwin Elman, Ontario's Advocate for Children and Youth, has expressed serious concern. [Read more: Toronto Star, Nov. 9/09; Dec. 21/09; Mar. 30/10](#)

Note: The federal government just announced the need to create several more expensive adult superjails to house those who will now serve longer sentences because of changes in legislation.

justice that aboriginals have practiced since time immemorial and as much as possible we should be incorporating that kind of justice into our justice system where appropriate. There is evidence here and from other jurisdictions – New Zealand, Australia – that restorative justice can have good results, particularly with young people before they come into contact with the criminal justice system. The Mennonite Central Committee runs restorative justice programs in many locales. In fact, anything that diverts people away from

Restorative Justice seeks to...

1. focus on the harms of wrongdoing more than on the rules that have been broken;
2. show concern and commitment to victims and offenders, involving both in the process of justice;
3. work toward the restoration of victims, empowering them and responding to their needs as seen by them;
4. support offenders while encouraging them to understand, accept and carry out their obligations;
5. recognize that while obligations may be difficult for offenders, they should not be intended as harms and they must be achievable;
6. provide opportunities for dialogue – direct or indirect – between victims and offenders as appropriate;
7. involve and empower the affected community through the justice process, and increase its capacity to recognize and respond to community causes of crime;
8. encourage collaboration and reintegration rather than coercion and isolation; and
9. show respect to all parties including victims, offenders and justice colleagues.

Restorative justice is not an easy way out. All parties involved must be willing to actively engage in this process.

From the Alberta MCC Restorative Ministries website

the criminal justice system per se is good, because the criminal justice system produces such bad outcomes. The criminal justice system should always be the last resort and prison should be the last resort of the last resort.

You recommended recently the reconstitution of the Law Reform Commission. Why?

The Law Reform Commission was a panel of experts, jurists, philosophers, public policy experts, criminologists, penologists – people with expertise in all aspects of criminal justice and corrections. Their role was to assemble evidence on a given issue. For example, how we can drive down a rate of re-offending. The commission had the benefit of educating public opinion at the same time, and it produced high quality public policies

that spoke to the key issues. Much of what it produced was enacted in law and is currently being dismantled.

There used to be a kind of silent acknowledgement among political elites that the criminal justice system was too important to be a plaything for short-term political advantage. That began to erode as the sentencing commissions were winding down. We're talking the last 10 years. This accelerating process of tinkering with the sentencing process and the mandatory minimum sentences and the guidelines and so forth is fracturing the coherence of our sentencing structure and moving us steadily away from a rational, predictable, common sense approach to sentencing that the public can understand. That's why it's time to reconstitute a sentencing or law reform commission. ■

Prisons and the Pre-Contact Worldview of the Peoples of Turtle Island



● Harley Eagle is of the Dakota/Salteaux First Nations, enrolled in the Wapaha Ska Dakota First Nations Reserve, in Saskatchewan, Canada. He and his wife Sue share a position in Winnipeg as co-coordinators of Mennonite Central Committee Canada's work with Indigenous people. In addition, Harley is a Circle facilitator and Dismantling Racism trainer. He has co-facilitated workshops for the Center for Restorative Justice and Peacemaking in Minnesota, with a Tribal Judges Symposium in Montana, with the Black Feet Tribal Courts, and in numerous other locales.

By Harley Eagle, Restorative Justice facilitator

Foundational to the life ways of Indigenous* peoples, to the cultures of Turtle Island* prior to contact with Europeans, was the need to maintain a respectful, balanced existence in all relationships, including our relations with the land, plants, and animals. There was no need to dominate, control, conquer or eradicate the life around them. What resulted was the development of complex societies that helped maintain long-term sustainability and diversity within the natural cycles of the entire environment, rather than just for humans or a select few humans.

Of course individuals or even groups strayed from this worldview way of life from time to time. Ways of dealing quickly with such situations were needed so that the community could get back on track. The processes used by Indigenous peoples were based on the comprehensive participation and voice of all affected. They focused on those harmed, on communal rights and responsibilities, on the accountability of the harmer to make things right to all affected, and to the best of everyone's ability, the restoration of relationships.

Prisons, in the modern sense of behavioral correction by confinement for the breaking of certain laws of the land, did not make sense for several reasons. Each member of the community had roles to fulfill in the maintenance of the way of life. The time and energy consumed constructing jails and guarding and caring

Canadian aboriginal citizens are disproportionately represented in our prison population: In 1997, aboriginal people represented close to 3% of the total population but 12% of the federal prison population. In 2007, this proportion had increased to 19.6% of federal prisoners. *Fear-Driven Policy, CLR, May '10*

Jean Vanier

I am always amazed by the similarities between people in prison and people with intellectual disabilities [in institutions]. Most have never known a happy, warm, secure family life. All the time they carry around with them the stigma of being who and what they are. This leads to the development of deep wounds in their hearts, and these in turn lead some to become aggressive and violent, others depressive and closed in on themselves, filled with violence which they direct against themselves. (*Our Journey Home* by Jean Vanier, p. 11.)

We thank readers who replied to our survey about A Human Future. Responding to suggestions, we are experimenting with a new format that will permit us to explore our topic in greater depth. We would be happy to receive your feedback. Write: eporter@larche.ca.

for prisoners would not be practical for communities where ease of movement and communal responsibility were paramount. Correction of aberrant behaviors was vital – but not by way of the present day formal justice system, which is designed to fit the worldview of the dominate society.

One of the frustrations that I often hear from Indigenous communities where restorative process are being encouraged by the Federal justice system, is that there is a lack of understanding of these basic worldview conceptual differences. Indigenous understandings of restorative justice make sense when the surrounding worldview supports it. Where there is a lack of support from the foundational worldview, restorative justice runs the risk of becoming just another program. So how do we remedy this worldview difference or make sense of using restorative justice in today's dominate society, especially for Indigenous peoples? More and more, folks involved in the process of restorative justice, whether as clients, advocates or supporters, recognize that for authentic restoration to take place, the entire surrounding worldview must also change.

Some years ago while trying to use restorative justice processes to deal with conflict in an Indigenous community rife with social problems – high unemployment, overcrowded homes, and lack of infrastructure – I had to sit back and ask myself, What is the use? What is it I am helping folks to be restored too? Restoration back in to an unhealthy community was not making sense to me. But upon further reflection I realized that I was involved in the restoration of a culturally appropriate restorative process whereby folks could get some sense of the genius and brilliance of our ancient ways. With this understanding, we are planting a seed of hope for breaking free of the patterns of oppression that lead to unhealthy people and communities, and the prisons that have captured our minds and spirits. ■

* A note on terminology: I use predominately the word “Indigenous” to describe native peoples and communities. I find that it is a bit more inclusive of all the various groups than is the term First Nations, which is more of a Canadian political term to denote those that have federal “Indian” recognition. The current international borders are more recent developments, of course, in the long history of this land. “Turtle Island,” a term used by native rights activists, helps to decolonialize the notions of this part of the globe by its reference to its Indigenous peoples’ creation stories. In the ancient stories, Turtle helps to create land by swimming down to collect soil from the ocean bottom, or land is created on the back of Turtle. *H.E.*

[Click here for a website of interest.](#)

www.larche.ca/en/inspiration

The L’Arche movement was founded by Jean Vanier, in France in 1964. Today there are 137 communities of L’Arche on six continents, 29 in Canada. In L’Arche, people with intellectual disabilities and those who come to assist them share life together.