

LAW AND ORDER IN TRADITIONAL ABORIGINAL SOCIETY

Like any other society, traditional Aboriginal society had issues of crime and punishment, except that there were of course no prisons. People who transgressed the law were therefore dealt with by a variety of sanctions appropriate to the seriousness of the offence. This might start at a simple ticking off then move to time out from the tribe, or to a sliding scale of increasingly serious physical punishment. The most serious crimes resulted in summary execution.

As an example of the first situation, Billibellari, the Woiwurung Headman from 1836 to 1846, was also the Traditional Keeper of the flint axe mine at Mount William near Lancefield. When some young Geelong men took some flint without permission, they were brought before Billibellari and their Elders and roundly admonished. Had they not apologised and shown proper remorse, they would most likely have had to face trial by combat.

It is important to note that trial by combat could be graduated from one on one, to one against many, but this always included the right to defend yourself. This contrasted sharply with for instance the British custom of severe public floggings, sometimes involving hundreds of lashes.

This was graphically illustrated after the First Fleet had landed in 1788, when a convict was found to have deliberately provoked conflict with the tribe. The local Elders were accordingly invited to witness his punishment and he was duly whipped unmercifully, whilst tied to the flogging post. The Elders were mortified at such uncivilized behaviour. They could not comprehend why the defendant had been denied the basic right to physically defend himself, no matter how many men he might have had to face.

What is implied by a defendant facing a variable number of opponents is that in reality, the defendant's degree of culpability was decided by the Elders before any trial by combat. The combat was therefore only the public acting out of the decision already made. If you were judged to be only marginally blameworthy you would have to stand up the end of a field and have say, five people throw spears at you in turn. If you were highly blameworthy you would have to face say, twenty people throwing spears at you in turn, and it only ended when you were wounded.

If however your crime is such that you are sentenced to death, then this sentence is carried out by the tribal executioner, known as the Kidney-Fat Man. You only get this job only if you are the best hunter, tracker and fighter in the tribe and also have the stomach to garrotte your victim and surgically remove their kidneys.

On taking this office you become a mythical, almost immortal being with a separate identity, something like Clarke Kent and Superman. You continue to live an ordinary life in your

normal identity, but everyone knows you have this alter-ego. So when you are given an assignment to execute someone, you become effectively invisible and people will even deny having seen you.

If someone has been sentenced to death the only way to escape the sentence is by banishing yourself to a distant, unrelated tribe and hope that they accept you. However if anyone learns that you are under sentence of execution by the Kidney-Fat Man, you will immediately be shunned. This is because it is in itself a capital offence to aid anyone under such a sentence.

Civil disputes were mostly handled within the system of payback and the Elders only intervened if the payback escalated to a degree that it threatened tribal or intertribal harmony. For instance if an issue of domestic violence occurred, the errant husband would be visited by his brothers-in-law from the neighbouring tribe. If their treatment of him was considered too harsh by the husband's family, it might prompt retaliatory payback and lead to simmering intertribal tensions that look like getting out of hand.

In such a situation, a delegation of Elders would call on the neighbouring Elders to discuss 'Jindy Worobak', which is the process of coming together after a dispute and restoring harmony. It might for instance be decided to have a pitched battle so everyone can get it out of their system. The battle would end, for instance when the first man falls over wounded and bleeds on the ground. A date, time and location is then decided and when both sides line up on the day, there is a head count. This is to make sure that one side does not outnumber the other, so any extra numbers become spectators with the women, children and elderly, to barrack for their team.

At a signal from the presiding Elder the battle commences, and as soon as someone falls down injured, the Elder calls a halt. Any injuries are then treated whilst a big mutual celebration is held and all past grievances are forgotten. The point is that everyone is fully aware that any continuation of payback after such a ceremonial resolution, is punishable by death, and the sentence is of course carried out with brutal efficiency by the Kidney-Fat Man.