VICTIM REDRESS AND VICTIM-OFFENDER RECONCILIATION IN THEORY AND PRACTICE: SOME PERSONAL REFLECTIONS

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I. INTRODUCTION

For many centuries, redress to the victim has been the primary, even the sole, objective of justice. Restorative justice continues to be the dominant practice in small, rural, agrarian societies and in cultures that have not been influenced by the religious principles of Judaism, Christianity and Islam. Anthropologists who studied the mechanisms of conflict resolution in non-state societies have observed a development that seems to be universal. The primitive and rather instinctive reactions of vengeance and retaliation, which inevitably result in weakening the group and eternalizing the feud, always gave way to the constructive and reconciliatory practices of composition, restitution and compensation. In these societies, untouched by western thought and practices, punishment for the sake of punishment, as a means of atonement and expiation, is totally unknown. Justice has utilitarian goals.

Indigenous populations in countries that were colonized by the powers of western Europe : Australia, Africa, North and South America, had a long tradition of restorative justice and continue to opt for healing practices over punitive sanctions. Western societies are beginning to recognize the superiority of restorative justice over retributive justice, and it seems likely that the paradigm shift in criminal justice will occur quite early in the next millennium.

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In an article I wrote few years ago for a Festschrift honouring Prof. Koichi Miyazawa, I tried to compare the two paradigms and it was obvious at the end of the comparison that restorative justice is the way of the future, because it is the natural way of doing justice.

I was converted to restorative justice early in my academic career. In the early 1970's, I was a visiting professor at the University of Abidjan in the Ivory Coast when I decided to do a comparative study of criminal homicide in Africa and North America. Once I started examining the official statistics and started studying police files, I was intrigued by the finding that there were very few homicide cases in rural and remote areas of the country. I wondered if they were peaceful communities, free from conflict?

Unfortunately, this was not the case. It turned out that there were two parallel systems of justice operating in the Ivory Coast: the formal punitive/retributive system imposed by France (the colonial power) and the tribal/restorative system that solved conflicts and settled disputes using the traditional, customary practices of reparation, compensation and reconciliation. The kinship of homicide victims, getting no satisfaction from the retributive practices of execution and incarceration, deliberately abstained from reporting the homicides to the police and preferred to have them dealt with within the tribe or the community. This was an eye opener that confirmed my long-held belief in the superiority of restorative

justice over the destructive and futile system of punishment.

II. FROM RESTITUTION TO RETRIBUTION AND FROM REDRESS TO PUNISHMENT: THE HISTORICAL EVOLUTION

The origins of criminal law can be traced to the attempts by the kings and feudal lords to consolidate their authority, to enhance their powers and generate revenue for themselves and their estates, by imposing fines and by seizing the lands and property of convicted persons. As the common law developed, criminal law became a distinct branch of law. Numerous antisocial acts were seen to be 'offences against the state' or 'crimes' rather than personal wrongs or torts. This tendency to characterize some wrongs as 'crimes' was encouraged by the practice under which the lands and property of convicted persons were forfeited to the king or feudal lord; fines, as well, became payable to feudal lords and not to the victim. The natural practice of compensating the victim or their relatives was discouraged by making it an offence to conceal the commission of a felony or convert the crime into a source of profit. In time, fines and property that would have gone in satisfaction of the victim's claims were diverted to the state.

Compounding an offence (that is, accepting an economic benefit in satisfaction of the wrong done without the consent of the court or in a manner that is contrary to the public interest) still remains a crime under the Canadian Criminal Code and discourages private settlement or restitution. It would now seem that historical developments, however well intentioned, effectively removed the victim from sentencing policy and obscured the view that crime was social conflict.

A. Crime is Not Different From Tort

Parker's (1977, p28) account of the historical development that led to the emergence of criminal law shows that the differentiation between crimes and torts is of relatively recent origin. Parker states:

> *At this stage of legal development there was no differentiation between what we know as crime or criminal law and tort or civil liability for damage inflicted. All injuries to persons of property were considered as 'wrongs.' The seriousness of the wrong depended upon the disruption caused to the community or the actual or perceived affront to the injured parties. Slowly, a distinction emerged between wrongs which were private disputes and required payment to the injured party or his kin and wrongs which had a public quality and required compensation to the whole group.*

This historical fact is often ignored by those who claim that crime is a unique, exceptional or distinct category of harmful behaviour. In the not too distant past, all harmful injurious behaviours were civil torts treated in more or less the same manner. The emergence of the criminal law saw the creation of a new category of behaviour believed to be deserving of punishment. The selection of behaviours to be brought under the realm of the criminal law was guided by political, historical and religious considerations, and not by the unique qualities of the behaviours that came to be defined as crimes. As a result, the distinction between crime and tort, between the criminal and the civil code, is both artificial and arbitrary, and the demarcation line separating the two is blurred. Very frequently the same act is both a crime and a tort. And yet, as Morris and Hawkins (1969, p46) point out:

No research projects have been conducted to search for the primary cause of tort..., no one inquires what social or psychological pathologies underlie the incidence of tort in our society, [and] no one has suggested that those who commit torts are biologically inferior to their fellows.

They add that a large part of criminal behaviour is perfectly 'normal,' both in the statistical sense and in the sense that it occurs naturally.

B. Criminal Behaviour is Not Qualitatively Distinct

Punitive /retributive justice is based on an erroneous premise (that crime is a distinct or exceptional category of behaviour) and on a false dichotomy between the so-called crimes and civil wrongs. This is a faulty premise because a comparison of acts made illegal by the criminal code or by statutes with similar behaviours that are unregulated by the criminal law suggests that there is no qualitative difference between criminal and non-criminal behaviour.

For every behaviour defined as criminal and sanctioned by law, there are identical or similar types of behaviour that are neither illegal nor punishable. Even acts that may, at first glance, appear to be morally heinous, socially harmful, and, therefore, condemnable are generally condoned in certain circumstances and are required or encouraged in specific conditions. The act of killing is not invariably criminal. Killing the enemy in war is not a crime (in fact, refusal to do so may be a criminal offence); it is an act of courage and heroism. The killers are not punished; they receive medals, decorations, awards and citations. Executing a convicted murderer is considered by many as an act of 'justice' or a 'proper' measure of social protection. It enjoys the support of a majority of the population and was once so popular that public executions drew huge crowds to the places where hanging or beheading took place. Killing a prison inmate trying to gain freedom or a hold-up man attempting to escape is considered a justifiable or excusable homicide in many jurisdictions. But killing in most other circumstances is regarded as a very serious, perhaps the most serious, crime. The difference does not lie in the nature of the act itself. Killing is killing. But killing is only defined as a crime if it is committed under certain conditions or against certain victims. Shooting and killing East Germans trying to flee to the West by crossing the Berlin wall was a legal act under the laws of the former German Democratic Republic. After the reunification in 1989, and the replacement of the East German Code by the Criminal Code of the Federal Republic of Germany, these killings are being prosecuted as murders, and the shooters are now charged with the deliberate taking of a human life.

Until a few years ago, the Canadian Criminal Code and many others did not define forcible sexual intercourse with one's own wife as a crime. But the same act perpetrated on a woman who is not the man's wife did qualify as a serious crime punishable by imprisonment for life. Although the behaviour in the two cases is identical, in one case it is criminal; in the other, it is not. depending on whether the two parties are bound by marriage or not. The same can be said of statutory rape, where an arbitrarily determined age is the deciding factor whether the behaviour is criminal or not, is punishable or not.

Not all types of violent, aggressive, or assaultive behaviour are made criminal by the law. Many forms of violence are condoned and tolerated to the extent that become culturally legitimate. Until recently, use of the strap in school for misconduct, using violence to discipline or

control the behaviour of inmates in penal institutions, and flogging offenders guilty of certain crimes were all seen as legitimate forms of violence, and those on whom such punishments were inflicted were seen as deserving targets. Milder forms of violence within the family are not criminal in most jurisdictions. Children are considered legitimate targets for the use of physical force in the process of training and control, and for a long time, husband-wife violence was regarded as legitimate by both the police and courts.

The absence of a qualitative difference between behaviour defined as criminal and behaviour that is not can also be observed in the areas of property and traffic offences, where the line between what is legal and what is illegal is often quite arbitrarily drawn. Offences like speeding and impaired driving are determined by speed limits and blood-alcohol levels set up in an arbitrary fashion. And the line separating the criminal offences of theft and fraud from what are normally referred to as 'sharp business practices' is exceptionally thin.

If crime is not qualitatively different from civil torts or civil wrongs, then why is it that we accept redress to the injured or harmed party in the latter but would not settle for anything less than criminal sanctions for the former? And why is it that in the case of civil torts the damages ordered by the court go to the victim whereas in criminal offences the penal fine goes to the public treasury?

C. The Crisis in Penal Law

The penal law in modern industrialized societies is in a state of deep crisis. It is lagging behind the times. The malaise is felt by scholars and practitioners alike. The commissions of reform established in many countries on a temporary or permanent basis are the proof that something must be done. The needed reform has to be sweeping and radical. The stage seems to be set for a scientific revolution or a paradigm shift in the sense proposed by Thomas Kuhn (1970). This is because most of the current problems can be traced directly to the old paradigm. As Barnett (1977) points out, many, if not most, of the ills of the present system stem from errors in the underlying paradigm. Thus any attempt to correct these symptomatic debilities without a reexamination of the theoretical underpinnings is doomed to frustration and failure (p.245).

The last fifty years have witnessed major changes in many branches of law: corporate law, labour law, insurance law, etc, to keep pace with the rapid changes that were taking place in society. The same could not be said for penal or criminal law. It is one branch of law that is least susceptible to change. As a result, penal law in most countries has not kept up with social evolution, it is lagging behind the times. It is in a state of crisis and is in urgent need of reform and modernization.

The Canadian Criminal Code (enacted in 1892), and many others, date back to the nineteenth century. The kindest thing that could be said about all these penal codes is that they are historical documents that mirror the mentality of the era in which they were enacted. The piecemeal changes that they have undergone since they were passed reflect various social and political circumstances occurring over a century. The fact that these codes have neither been overhauled nor replaced by new modern ones speaks eloquently to the criminal law's unmitigated resistance to change. That all the fundamental principles, all the basic notions of the criminal law of today, have been borrowed from the philosophy and theology of the 18th and 19th centuries is hard to understand. Such are the notions of evil, wickedness, malice, guilt,

culpability, retribution, expiation, atonement, to name but a few.

The time has come to ask whether notions such as 'free will', 'moral responsibility', 'criminal intent', '*mens rea*', 'premeditation', 'malice aforethought', as well as many others, do have a place in a modern, secular, socially oriented criminal law, like the one we would like to have in the 21st century. It is time we ask whether legal concepts such as 'insanity', 'diminished responsibility' etc, could withstand the test of science or whether notions such as retribution, punishment, just deserts and so forth, have a place in a modern, scientific and secular criminal policy.

D. The Crisis in Penal Policy

Early in the 20th century, the philosophical notion that punishment is a means to pay a debt to society generated by the offence, and the theological view of punishment as a means of inflicting pain and suffering to atone for, or expiate, a moral fault, were largely discredited and practically abandoned. Treatment and rehabilitation of offenders, re-education, re-socialization and reintegration in society became the key goals of penal policy. The word *corrections*, used to designate the probation, prison and parole systems, was used everywhere to emphasize the non-punitive features and goals of the new policies.

The liberal and progressive ideas of the 1960's and 1970's gradually lost ground and were fiercely attacked by the new conservatives who came to power in the 1980's: Margaret Thatcher in England, Brian Mulrony in Canada, Ronald Reagan in the United States. The manifest failure of treatment and rehabilitation programs to reduce crime or to prevent recidivism provided right wing politicians with the necessary ammunition to discredit corrections and to advocate a return to the harsh punitive policies of the past. Punishment, as a means of retribution and as an instrument of deterrence, was being pushed to its absolute limit. In the 1980's, both traditionally repressive countries, such as England and the US, as well as traditionally progressive countries, such as Holland, have seen their prison populations increase, sometimes to new records. And yet, none of the salutary effects promised by right wing politicians materialized. The bankruptcy of these punitive and highly expensive policies can no longer be denied and has been at tremendous social, human and financial cost.

In addition to the manifest failure of present policies to curb crime or to reduce crime rates, there are several other realities that illustrate the inconsistencies and deficiencies of the present system:

- As a result of gross under reporting most of the cases that the system is supposed to deal with are handled outside the system.

- As a result of ridiculously low clearance rates and of the attrition in the criminal justice process, only a tiny minority of all those who commit criminal offences face charges before the courts and an even smaller minority is punished. Estimates range between 5 and 10 percent.

- As a result of the widespread practice of plea bargaining (common in Anglo-Saxon countries) most of those who are punished are punished for offences other than the ones they have committed, or are offered a lenient sentence in exchange for a guilty plea. Ranish and Shichor's (1985) estimate that 90% of criminal cases in the US are disposed of

thorough plea bargaining gives some idea of the magnitude of the problem.

A criminal law system that uses 'the ability to distinguish right from wrong' as the prerequisite for criminal responsibility must rely on psychiatric evidence and calls upon the forensic psychiatrist to play an important role in the judicial process. It is the psychiatrist who supposedly enlightens the court on issues such as insanity, partial or diminished responsibility, mental disorder, psychiatric disability, dangerousness, and so forth. Psychiatry, however, is not an exact science and is, in fact, one of the least developed branches of medicine.

With the 21st century fast approaching, many countries are in the process of changing and modernizing their criminal law. While none of the new codes has abandoned the old paradigm (moral guilt/ moral responsibility/ punishment/ retribution) in favour of the new one (harm/ social responsibility/ restitution/ compensation), they are deviating more and more from the old paradigm and introducing more and more elements of the new one. This is particularly evident in the way strict liability is replacing moral responsibility. It is also visible in some areas where it was imperative to move from a guilt orientation to a consequence orientation, such as the areas of negligence and endangerment. Not only is the time ripe for a paradigm shift in the criminal law, but there are also specific political and social developments that are creating a context conducive to a successful shift. Two developments in particular, are worth noting:

1. Overwhelming Recourse to Insurance as a Means of Risk Coverage

One dominant feature of life in a modern, industrial, technological, highly, mechanized society, and of the social policy of the welfare state, is the overwhelming recourse to insurance (public and private) as a means of risk reduction and risk coverage. Recent criminological literature increasingly stresses the fact that the risk of criminal victimization is a 'natural' hazard of modern life, of social interactions. There is also a growing awareness of a strange anomaly that currently exists: whereas most other risks are covered by some insurance (public or private), the risk of criminal victimization is not. Actually, one of the ironies of the present system is that those who face the greatest risks of criminal victimization are the ones who can least afford the insurance, and the ones most frequently denied coverage by private insurance companies. Joutsen (1987) deplores the fact that state insurance schemes are rarely designed to cover crime risks. Instead, they generally cover losses or injuries incurred in certain risky fields of activity, regardless of the cause of this loss or injury, the most notable example being mandatory traffic insurance schemes. The insurance covers risks caused not only by traffic offences *per se* but also by any traffic accident. Joutsen adds that there is usually a national fund covering parties to a traffic accident who are not covered by insurance.

Slowly but surely, we are coming to realize that the distinctions that are made between victimization by crime and other victimizations, between the risk of crime and other social risks, are not only meaningless but also unfair to those who are victimized by actions that happen to be included in the criminal code. This paves the way for a new paradigm whose primary focus is restitution and compensation to the victim.

2. The Victim Movement

First espoused by the women's movement and then by the politicians of the new right, the cause of victims of crime

has led to the emergence of a powerful pressure group, the victim lobby. Active in many countries, including the US and Canada, the victim movement has focused attention on the plight of crime victims and demanded the re-examination of criminal and penal policies to render them more responsive to the needs of the victims. Persistent efforts at the national and international level culminated in the United Nations Declaration on the Basic Principles of Justice for Victims of Crime and the Abuse of Power which was adopted by the General Assembly on 11 of December 1985. The Declaration contains 21 paragraphs, at least 3 of which (8,9 and 10), are devoted to restitution. The three paragraphs exemplify the growing acceptance of at least two basic elements of the new paradigm: harm and restitution. Paragraph 8 addresses restitution from the offender or responsible third parties. It declares that:

> *Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependents. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.*

Paragraph 9 of the Declaration recommends the use of restitution as a sanction in its own right. It proposes that:

> *Governments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.*

Joutsen (1987) draws attention to the confusing wording of this paragraph in that it first calls for restitution as an option and then states that this option should be "in addition to other criminal sanctions". He also points out that, at present, few European countries provide for the possibility of restiution as the only sanction in criminal cases, whereas most allow the courts to order the offender to pay restitution in addition to the main criminal sanction.

Paragraph 10 of the Declaration recognizes the substantial harm that may be caused by environmental offences and the primacy of restitution in cases of this type. It stipulates that:

> *In cases of substantial harm to the environment, restitution, if ordered, should include as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community.*

Joutsen (1987) explains that an environmental offence may be so serious that the community cannot continue to exist in the same place. The air or water may be so polluted as to cause a danger to health, or may seriously hamper the livelihood of the whole community. We might add that it is precisely these extremely harmful, injurious actions (Bhopal, Chyrnoble, Exxon Valdez, etc) which very well illustrate the obsolescence of the old paradigm of the criminal law and the total inadequacy of conventional punishments (whether imprisonment or death) as a social reaction or a criminal sanction to these behaviours.

Christie (1977) has observed that the key element in a criminal proceeding is that the proceeding is converted from something

between the concrete parties into a conflict between one of the parties and the state. He points out that in the modern trial two important things have happened. First, the parties are being represented. Secondly, the one party that is represented by the state, namely the victim, is so thoroughly represented that she or he, for most of the proceedings, is pushed completely out of the arena, reduced to the trigger-off of the whole thing. The victim, Christie argues, is a double loser; first *vis a vis* the offender, but secondly and often in a more crippling manner, by being denied rights to full participation in what might have been one of the more important rituals encountered in life. The victim has lost the case to the state.

The criminal law, which does not cease to broaden its mandate and extend its boundaries, has declared a monopoly on every conflict or dispute falling under its jurisdiction. Joutsen (1987) cites many factors which speak in favour of informal, private settlements. These generally provide a quick decision at low cost. The individual features of the conflict can be studied to an extent not possible for the authorities of the criminal justice system, and there is considerably more discretion in deciding on the proper solution.

Instead of the 'all or nothing' decision that is often the only option for the criminal justice system (and in which one party is usually held to be the guilty offender, the other, an innocent victim), informal settlement can seek a compromise decision that fits the unique features of the case at hand and the parties to the conflict. Joutsen notes further that the parties can be directly involved in the search for the proper outcome to an extent that is not possible in formal criminal proceedings.

Finally, he points out that private settlements avoid the legal formalism that typifies criminal procedure. Rather than the black and white approach which characterizes the rules of criminal procedure, the mediation approach allows a more far-ranging view of the broad circumstances underlying the alleged offence, on the side of both the victim and the offender. He concludes that the trend towards private settlements will, in many cases, provide an alternative form of conflict resolution that can be of more assistance to the victim than can the criminal justice system.

Since current criminal law is centered upon punishment and retribution, and because of its avidity to extract revenue from the wrongdoers (in the form of fines), it naturally shuns any initiative for dispute settlement or conflict resolution especially when it is done outside the system. As a result, the criminal justice system has missed a golden opportunity to reduce its case load and to stop the repetition of certain offences through the reconciliation of the feuding parties.

Jobson (1977) asserts that the criminal justice system has overextended itself into conflict situations that are not adequately solved by existing processes. He estimates that almost fifty percent of crimes against persons and crimes against property prosecuted in the courts are characterized by an ongoing relationship between the offender and the victim. These crimes, argues Jobson, are not committed by strangers but by family members, neighbours, tenants or landlords, or within a customer-seller relationship.

Barnett (1977, 1981) insists that the paradigm of punishment is in a "crisis period". This, he believes, is as much because of its practical drawbacks as the uncertainty of its moral status. He further suggests that the alleged absolute justice of repaying evil with evil is really an empty

sophism since Christian moralists have always preached that an evil is to be put right only by doing good. Barnett concludes by admitting his inability to find any theory which justifies the deliberate, forceful imposition of punishment within or without a system of criminal justice. To replace the punishment paradigm, Barnett offers the restitution paradigm. This new paradigm views crime as an offence by one individual against the rights of another. The victim has suffered a loss and justice consists of the culpable offender making good the loss s/he has caused. This new paradigm, argues Barnett, calls for a complete refocusing of our image of crime along the lines of what Thomas Kuhn calls a "shift of world view":

> *Where we once saw an offence against society, we now see an offence against an individual victim. In a way, it is a common sense view of crime. The armed robber did not rob society: he robbed the victim. His debt, therefore, is not to society; it is to the victim (1981, p251).*

Barnett proposes two types of restitution: punitive restitution and pure restitution. He also outlines six advantages that a restitution system has over a system of punishment. These are:

(a) The first and most obvious advantage is the assistance provided to victims of crime.
(b) The possibility of receiving compensation would encourage victims to report crimes and to appear at trial.
(c) Restitution would aid in the rehabilitation of criminals because it is something the offender does, not something done for or to him/her.
(d) Restitution is a self-determinative sentence.
(e) Savings to tax payers would be enormous.
(f) Crime would no longer pay.

One big advantage of a system centered upon restitution is that it would enjoy the unqualified support of most victims. There is, in fact, overwhelming empirical evidence indicating that victims prefer reparative sanctions (such as restitution) to punitive sanctions such as imprisonment or fines.

III. THE RESTORATIVE JUSTICE PARADIGM

Justice paradigms have to change with social evolutions in order to remain in harmony with current belief systems and to take stock of whatever advances and discoveries are made in the fields of criminology and penology. It seems rather clear that the abstract goals of expiation and atonement are no longer in harmony with the realities of the secular, post-industrial society of the 21st century that is dawning upon us. In the modern, secular societies of today, the notions of risk and harm are gradually replacing those of evil, wickedness, malice, and are bound to become the central concepts in social and criminal policy of the future.

Future policies of crime control will be largely based on risk assessment, risk management, risk coverage, risk reduction, and risk prevention. The measurement of harm will become a central component of social reaction to crime, and the primary aims of such a reaction will be redress, reparation and compensation. My guess is that the artificial distinction between crime and civil torts will disappear and that the artificial boundaries that have been erected over the years between criminal courts and civil courts will be removed. All harmful actions will generate an obligation to redress, coupled with endeavours to prevent their future occurrence. This will

be the era of restorative justice.

It is not easy to define restorative justice. It means different things to different people. It is a *leit-motiv* for various policies and models which can be implemented in practice in many different ways and forms. To me personally, restorative justice offers a radically different (and rather refreshing) view of the criminal act. The act is no longer viewed as an offence against deity or divinity, nor an offence against the King or the Sovereign, not even as an offence against society. It is rather seen for what it really is: harmful, injurious behaviour that causes death, injury, loss, pain and suffering to the victim. Crime is regarded as one of the many risks to which we are daily exposed in the industrial, technological, mechanized and motorized society in which we live.

IV. IS PUNISHMENT NECESSARY?

If punishment has failed in achieving any of the utilitarian goals assigned to it, and empirical research provides ample proof of this failure, the question is whether punishment is necessary. The theological notions of expiation and atonement are inculcated in the minds of children in their tender age: if you commit sin you will go to hell, if you misbehave you will be caned, if you hit your sister you will spanked, if you commit crime you will go to prison. Later on it becomes extremely difficult to break this strong association between crime and punishment. It becomes almost impossible, particularly for the average citizen, to conceive of a non-punitive society, a society without prisons, a community that does not respond to harmful actions by the infliction of pain and suffering. Advocating and gaining acceptance for an alternative, non-punitive, justice paradigm becomes extremely difficult because the notion of a punishment that has to follow the fault, the wrongdoing, is too deeply anchored in the minds of most individuals. The idea of doing away with punishment altogether is not even acceptable to most criminologists. In her presentation of a feminist vision of justice, Kay Harris (1991, p94) questions this unshakeable faith in the need for punishment. She writes:

> *Indeed, we need to question and rethink the entire basis of the punishment system. Virtually all discussion of change begins and ends with the premise that punishment must take place. All of the existing institutions and structures- the criminal law, the criminal processing system, the prisons - are assumed. We allow ourselves only to entertain debates about re-arrangements and re-allocations within those powerfully constraining givens... The sterility of the debates and the disturbing ways they are played out in practice underscore the need to explore alternative visions. We need to step back to reconsider whether or not we should punish, not just to argue about how to punish.*

V. DO CRIME VICTIMS WANT REVENGE?

There is no evidence to support the claim that crime victims want revenge or that nothing other than the punishment of the offender will satisfy their thirst for justice. If anything the evidence clearly shows that victims are not as vindictive or as blood thirsty as some victim groups would want us to believe. Healing, recovery, redress, and prevention of future victimization are the foremost objectives of most crime victims (Fattah, 1997, p270). Studies by Boers, by Sessar, by Pfeiffer in Germany, by Umbreit in the United States, and by many others, show that victims' primary concern is to have redress: to have the stolen property returned, the broken

window fixed, the vandalized car repaired, the destroyed bike replaced. Their expectations and their demands are realistic, not moralistic (Fattah, p265). But what about victims of violence? One has to keep in mind that a high percentage of violent crime is committed between people who know each other or who are related by some family or other personal relationship.

Punitive justice ruptures social and familial bonds and destroys the chance for reconciliation. It widens the gap that separates the doer and the sufferer, generates further animosity and antagonism, and engulfs the parties in bitter, never-ending hostilities. It also forces others to take sides, thus contributing to the widening and perpetuation of the conflict (Fattah, 1995, p307). This fact alone shows how essential it is to have a conflict-resolving mechanism that settles the dispute and prevents further violence while maintaining those vital relationships intact. Moreover, the punitive, stigmatizing, and ostracizing nature of criminal sanctions prevents many victims from reporting their victimization to the police and from mobilizing a justice system that will expropriate the conflict and take no account of the victim's wishes. The result is that they continue to suffer in silence and try to cope on their own.

Even victims of the most serious and most heinous crimes of violence are not as vengeful as they are usually portrayed in the media or in the manifestos of right wing parties. The powerful television documentary *From Fury to Forgiveness*, the experiences of M. Umbreit in the United States and Ivo Aertsen in Belgium demonstrate in a vivid and deeply moving fashion that even victims who lose their young children or close relatives to homicidal killers can show genuine forgiveness and can plead with the justice system for the lives of their victimizers.

The fatal defect of the punishment paradigm is that it responds to harm with harm, to pain with pain, and its attempt to alleviate victims' suffering by inflicting yet more suffering on the offender. The flaw in this logic is best summarized in Ghandi's famous phrase: "an eye for an eye makes the whole world blind!". Or as Martin Wright said "responding to harm with harm doubles the amount of harm in society". In punitive justice systems there are at least two losers: the offender gets the punishment and the victim gets nothing.

Punitive justice neither serves the interests of crime victims nor does it satisfy their most obvious needs. Todd Clear (1994) affirms that penal harm does not actually help the victim. While punishment might be a public statement that the victim deserved better, it does little else. Clear insists that while penal harm cannot make the victim whole again, the focus on getting even with the offender could in some ways divert the victim from his or her personal path of recovery. He adds:

> *In this way, the emphasis on penal harm may actually be a disservice to the victim, in that it promises that if the State is only able to impose a penalty severe enough, the victim will be able to overcome the crime. The focus is placed on what happens to the law violator, not what happens with the victims. The victim's victory at sentencing is eventually exposed as a pyrrhic conquest, for the problem faced by the victim does not centre on the offender (1994, p173).*

IX. CONCLUSION

Attempts to exploit the cause of crime victims for political ends, and to sell the

policies of law and order under the pretext of doing justice to victims, often required the portrayal of victims as vengeful, vindictive, retributive, and even bloodthirsty. Those claiming to represent and speak on behalf of victims gave the impression that concern for crime victims invariably requires harsh, punitive justice policies. While the distress of some victims might be so overwhelming that they will demand the harshest possible penalty for their victimizer, this could hardly be said of the majority of victims. Healing, recovery, redress, and prevention of future victimization are the primary objectives of most crime victims.

If the primary purpose of social intervention is to restore the peace, redress the harm, heal the injury, and stop the repetition of the offence, then it is easy to understand how and why the restorative system (based on mediation, reconciliation, restitution, and compensation) succeeds where the punishment system fails.

Mediation and reconciliation bring the two parties together, face-to-face, and ensure that they see each other as human beings in a state of distress. When faced with the victim, it becomes impossible for the victimizer to deny the victim's existence or the injury or harm caused. They can no longer depersonalize, deindividuate, objectify or reify the victim. They can no longer avoid post-victimization cognitive dissonance. The confrontation between the offender and the victim in a mediation situation is the surest and most effective means of sensitizing them to the victim's plight, of countering and reversing the mental process of desensitization that s/he has gone through in order to avoid guilt feelings or bad conscience (Fattah, 1991a).

The mediation process, when done properly, can be very effective in awakening and activating any positive emotions the offender might have lying beneath their cruel and indifferent façade. Emotions such as pity, sympathy, empathy, compassion, commiseration, can all be brought to the surface and reinforced.

On the side of the victim, the mediation situation can also have salutary effects. The feared, strong, cruel and unemotional victimizer is bared to their weak and often helpless being, a being that evokes more pity than fear, more compassion than anger. Distorted but long held stereotypes disappear when checked against the real offender. Both parties end up by gaining a realistic view of one another and reconciliation becomes possible (Fattah, 1995, p312)

Thus in the long run, the interests of crime victims and of society at large are best served by humanity, empathy and compassion, by tolerance and forgiveness, by the development of conciliatory and forgiving communities rather than hostile and vengeful ones (Fattah, 1986, p13). Constructive healing, not destructive punishment, should be the primary and foremost goal of both victim policies and victim services.

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