

Punitive Justice and the Victims' Movement

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In the past 20 years the plight of victims of street crime and interpersonal violence has been front and centre in the debate over the form and utility of criminal justice responses to social conflict and questions of order. Unfortunately, the plight of victims of crime has been appropriated by the political right as “a stalking horse of repression”, with the needs of victims (see Morris) transformed into political ammunition and reactionary cant. In this context, the designation “victim” is selectively applied to those cases and victims which reinforce rightwing punitive justice ideology and serve to forward that agenda (Elias, 1993). This selectivity is evident in most arenas where the “designated crime victim” is allowed to play a role. An initial problem is therefore to identify and distinguish the dominant ideological utilization of the “victim” designation, and to analyse its usage and referents. For example, in the application of the Son of Sam Laws¹ in the USA, Bernard Goetz, the celebrated Wilsonite vigilante, who shot four young Afro-Americans in the New York subway, was not defined as a criminal predator by the New York Crime Victim Board. Rather, his conviction for possession of a firearm was deemed a “victimless crime” and therefore the young blackmen he shot (the dominant stereotype of the urban predator) were not assigned the victim designation (Timmons, 1995).

As the contributors to this issue illustrate, we need to relocate the discourse on victimization, to broaden its parameters to include violent victimization by the state and by the market economies of modern capitalist societies (i.e., distributive injustice). Victimization by the state is of particular significance for the criminalized, incarcerated, and their families and relations, as well as for victims of crimes processed by the penal justice system. A common referent of the concept “victim” in the 1960's and 1970's was victimization by distributive injustice, reproduced in the cycles of criminalization and incarceration of the marginalized and disenfranchised (Sennet & Cobb, 1972; Ryan, 1976). An initial focus of the women's movement in cases of sexual assault was dealing with post assault trauma and preventing the continuing victimization of the assaulted **by** the criminal justice institutions involved. These aspects are obscured or denied within the current hegemonic discourse on criminal victimization.

What of the recipients of repressive and injurious state punitive justice activities? Do they qualify as victims? Certainly the First Nations

Peoples of North America have cause to claim victimization by the state, as do urban youth who experience the invasion of their communities by armed and dangerous agents of social control (Taylor, 1995 p.10-11; Pedicelli, 1998). The declaration of “War” against crime and drugs has equated to a justification for the terrorization of selected groups of citizens who have been designated the “commodities” of the expanding crime control industry. Are those transformed into carceral commodities “victims”? (Christie, 1993; Wright, 1995a, 1995b; Burton-Rose, 1997)

In this issue our contributors address the political usage and selective application of the victim designation in criminal justice discourse and practice. In doing so, the authors elucidate the political utility of this selective application, and its role in dissuading, indeed denying, the need to discuss the criminal predation of agents of the state (Churchill & Vander Wall, 1988, 1992; Burton-Rose, 1997; Pedicelli, 1998) and the inherent violence of the retributive stance of the reactionary right.

Paul Wright in “Victims’ Rights As a Stalkinghorse of State Repression” draws our attention to the selective application of the victim status and the political use of both crime victims’ concerns and societal empathy for their plight. He notes that this political appropriation of the victim designation ill serves both the victim and the defendant. In unravelling the strategic application of the victim designation he alerts us to what types of victims of criminal action are ignored or denied. For example, Wright argues that not all victims of violent crime are equal, as illustrated by the 19 murder victims of Mafia informer Sammy Gravano whose families were not consulted in arranging the five year plea bargain sentence he received. Similar Canadian examples are not difficult to find. In Montréal, the plea bargain deal with biker turned informer Yves Trudeau, consisted of a definitive seven year sentence for his principal part in 43 homicides (Doyle, 1988). I do not think that the families of Jeanne Desjardins, Robert Morin, or William Weichold, who were “innocent” bystanders of Trudeau’s gangland killings were invited to join Victims of Violence, to add their injustice to this group’s protest against lenient sentences awarded to “vicious murderers”.

Victims of police and prison brutality who die in the street or in custody at the hands of state authorities are denied victim status, their deaths most often explained away as products of their own doing, despite evidence to the contrary. For example, the police beating of Richard Barnabé in December 1993 in Montréal (Pedicelli, 1998) mirrored the attack on Rodney King in Los Angeles. Richard Barnabé subsequently

died from his injuries, with no one found responsible. One of the police officers involved actually testified that Barnabé tore out his own hair (*Montréal Gazette*, May 31, 1995). The eloquent rage of Hakim Al-Jamil in “Who Killed McDuffie?” (1993, pp. 115-116) captures this state of affairs

his brain was bashed
 cranium crashed
 skull fractured/broken
 all the way around
 but they say those that beat him
 didnt kill him
 so who killed mcduffie?

 maybe it was one of those
 seizures unexplainable where he
 beat himself to death
 it wouldnt be unusual
 our history is full of cases where we
 attack nightsticks & flashlights with
 our heads
 choked billyclubs with our throats till
 we die
 jump in front of bullets
 with our backs
 throw ourselves into rivers with
 our hands and feet bound
 and hang ourselves on trees
 in prison cells
 by magic

For prisoners, victimization by the crime control industry may start at the moment of arrest and continue throughout their incarceration and after their release. Of particular concern for prisoners is the constant and impending threat of violence posed by staff. Peggy Chrisovergis’ (1997:61) study of deaths in custody in Ontario indicates that from 1986 through 1995 there were 258 such deaths (1997:61), many under questionable circumstances. The recent scandal concerning shooting deaths (24) and injuries (175) of prisoners by staff in California State Prisons (1989-94), including 12 deaths and 32 wounded since, clearly

suggests staff collusion in the delivery of pain and death in that jurisdiction (Arax, M. & Gladstone, M. 1998). This threat of violence is part of the traumatic experience of incarceration that deculturates, brutalizes and debilitates the prisoner, affecting them during their incarceration and pursuing them after release.

It is difficult for prisoners to accept that the degrading and brutalizing conditions of their lives are not purposefully created (Shep, 1995; Huckelbury, 1997). Public demand for harsher conditions and penalties as expressed by the reactionary right, agents of social control and their “victims’ movement” are currently played out in executions (Ainsworth, 1995. 1997a. 1997b; Allridge, 1995a. 1995b. 1997; Byrd, 1995), and the purposeful destruction of prisoners, especially the “right guy”, politicized leadership, via marionization and behaviour modification. There can be little doubt of the intend of these panoptic control units and their eventual results (Jackson, 1983; Morgan & Reed, 1993; Churchill & Vander Wall, 1992; Burton-Rose, 1997). Testimony in the Federal Court of Canada in a 1975 challenge to CSC use of solitary confinement revealed;

Dr. Korn, drawing on his own experience as assistant warden in the New Jersey State Penitentiary testified that it was to ‘break their morale, to break down their capacity to resist, to get them into a submissive state, that is the objective ... I thought it was either them or us, and unless we could break them down psychologically and make them submissive they were unsafe to us and the community’.

Dr. Fox, in defining what he understood to be the purposes behind the regime in SCU [Control Unit], stated that ‘it is designed, I believe, not so much for security purposes but to reduce the individual to that condition where there is no conceivable human resistance, where they represent essentially nothing’.

... the effect of this was to reduce the prisoner to a state where he had no self-respect, no identity, no dignity. However, ‘to relinquish, to admit to the psychological suicide of non-identity, is essentially to violate all conceivable meaning in the evolution of mankind To come to have no meaning, to come to be nothing, is essentially the greatest human suffering, that is to say, it ultimately leads to insanity and suicide’.

Dr. Korn, in assessing the process which he had helped initiate in New Jersey ... told the court, 'This process is fool-proof. If you keep it up long enough, it will break anybody, the more heroic they are, and the more they resist, the more determined you get ... We kept them there for years and when they were finally broken down, we let them out Then I began to see what I was doing ... and said, We must stop this, the ends do not justify the means, this is a form of murder, it has to stop'. (Jackson, 1983 pp. 72-73)

In this issue, Charles Huckelbury extends the critique of the strategic designation of victim status by analysing the mythic distinction between victim and criminal rights assumed by the reactionary right. Huckelbury argues that such distinctions deny a fundamental strength of the republic; that is, constitutional rights are to be universally applied as guaranteed by the USA Constitution. The current trend represents a retreat from the realization of these guarantees.

The formal denial of the rights of the criminalized furthers the current fashion of scapegoating designated "criminals" for the ills of modern society. The panacea of public retribution as played out in the commercial productions of the "crime media" provides a consistent image of who constitutes a threat to the social order, and what response is required. The current "great confinement" of working class youth, especially those from Afro American and Hispanic communities in the USA, and Aboriginal communities in Canada, attests to the extent that this scapegoating has taken hold. If we consider factors such as distributive injustice (see Morris) in selective criminalization, it is difficult not to heed the critical claims of the leaders of these communities. This overrepresentation of the poor, minorities and marginalized as commodities in the crime control industry is most apparent at the door of the penitentiary (Reiman, 1979; Churchill & Vander Wall, 1992; Taylor, 1995; Burton-Rose, 1997). Steven King Ainsworth in "The Prize of the Poor" argues that because of the selective application of capital punishment in the USA, state execution is also largely the providence of the poor (see also, Ross, 1995). Indeed, prosecutors play to public fury and demand the death penalty with an eye toward successful career advancement consequent upon securing a conviction and the penalty of death.

The contributors to this issue, like Victor Hassine in “When Victims Knead Victims” acknowledge the suffering and trauma of victims of crime and their consequent needs. However, the current crime victim movement has been fashioned as an ideological tool for affirming the public desire for vengeance and retribution, not for restorative or transformative healing (Morris, 1995). Hassine illustrates how this plays out in the involvement of crime victims in the calculus of pain, which serves neither the designated crime victims nor the criminalized, incarcerated and their families. Most current involvement of crime victims in formal sentencing and release decisions serves to perpetuate the cycle of violence and does not lead to closure for the participants. Like Merton’s structural functionalist analysis of the never ending boundaries of capitalist greed, in the current zeitgeist of dislocation anxiety, the punishment is never enough. (Huckelbury, 1997)

To understand prisoners’ accounts of this issue it is necessary to locate their analyses within their experience of criminalization and carceral life. Wayne Carlson discusses the brutality and faint hope existence of carceral culture as a victimizer of both prisoners and staff. Contrary to Correctional Service of Canada (CSC) ideology (e.g., Solicitor General, 1988; Porporino, 1991) of “blaming the victim” of carceral brutality, the organization and culture of the prison dictate the social relations that occur within its walls (Cressey, 1961; Goffman, 1961; Cohen & Taylor, 1972; Haney et.al., 1973; Gaucher, 1974; Hassine, 1995a; Reed & Denisovich, 1995). What Porporino and other CSC apologists conveniently leave out of their Clemmer (1938) style account of the prison and “prisonization”, is that the prison culture the new prisoner is swallowed up and transformed by, precedes and outlasts him. The great carceral cesspool into which the prisoner is socialized serves to create the delinquent in body and soul (Foucault, 1979), and serves as a finishing school for the marginalized underclass as a recyclable commodity of the crime control industry (see Mathiesen, 1974; re: functions of imprisonment). As Carlson points out in this issue, the processes of deculturation and social debilitation of the total institution affects all who engage it, producing convicts who can neither forgive nor forget, and prison guards who hold grudges and are as “prisonized” as their charges.

Dan Cahill in “Victimization” speaks for many older prisoners who, through hard experience, have come to understand the effects of criminalization and carceral existence. The depths and extent of the attack

on being and self, perpetrated in the name of punitive justice, has been recognized in the vast body of prison literature of the past (e.g., Dostoevsky, 1951, 1972, 1985; Serge, 1977; Davies, 1990). A common thread between many of these accounts is the sense of being "overpunished": the experience of having one's life seized, and transformation into the degraded and destructive being of a convict (Hassine, 1995b; Huckelbury, 1997). For those who have developed a social and political consciousness within these experiences, their victimization is apparent and something to resist. (Cohen and Taylor, 1972; Churchill & Vander Wall, 1992; Morgan & Reed, 1993; Morse, 1995; Rivera, 1995; Dana & McMonagle, 1997; Burton-Rose, 1997). As illustrated in this issue by Cahill's forthright portrayal of his experience as a "career criminal/convict" the sense of victimization of the prisoner is heightened by the realization of the wastefulness and futility of the punitive response and their own active participation within it.

Cahill also notes that the prisoner's struggle for survival within the prison involves emotional and psychological survival as well as physical survival (see also, Cohen and Taylor, 1972). Victor Hassine in "Monochromes From Over a Prison's Edge" uses his delicate pen to tease out the process of his own awakening to the psychological and emotional dangers of life in the penitentiary. Hassine vividly portrays "madness" as a common response to imprisonment and the lurking specter of madness in the lives of all longterm prisoners.

In the current selective application of the victim designation, victimization by the state, in the name of the public (i.e., scapegoating rituals), is denied and ignore as just deserts required to protect society. The refusal to recognize the prisoner as a human being allows the consequences of state oppression to also be denied. Indeed, the end result of punitive justice practices (e.g., longterm warehousing) are looped back to substantiate the original criminal designation.

Not surprisingly, the recognition of the traumatizing effects of carceral life and social relations is apparant in CSC analysis of staff problems and needs (CSC, 1990; 1991; 1992;). Lois Rosine's (1992) study of CSC staff exposure to stress producing "critical incidents" indicates that "17 percent of officers in the study experienced effects severe enough to be clinically diagnosed as suffering from PTSD (Post Traumatic Stress Disorder)." A further 57 percent of the sample presented a variety of debilitating stress symptoms (p. 33). So what does constant exposure (without the ability to retreat) to critical incidents do to

prisoners? What are the lasting effects of such traumatization of prisoners, and how does it affect their behaviour in prison and after release?

If prison staff are traumatized by their experiences of prison life and the routine critical incidents that characterize it, what of prisoners who are often forced to endure post critical incident terrorization at the hands of traumatized staff. For example, in the aftermath of the horrific Kingston Penitentiary riot of 1971, the prisoners transferred to the new and speedily opened Millhaven maximum security penitentiary were forced to run a gauntlet of armed staff and then endure years of terrorization at their hands. These terrorist attacks included regimes of isolation and attendant sensory deprivation, psychological and physical attacks. (see Swackhammer, 1973; MacGuigan, 1977; McNeil and Vance, 1978; Culhane, 1979, 1985). Eventually Millhaven prisoners' resistance to this oppression coalesced in the Odyssey Group's non-violent Prison Justice Day response to institutionalized terror (Gaucher, 1991).

In "Unity Walk", Jon Marc Taylor presents an account of prisoners' attempts to transform a situation ripening toward rebellion, into a peaceful, and socially responsible demonstration of prisoners' grievances and solidarity. In Taylor's account, the role and calming influence of older convicts, (many whom had educated themselves while in prison) created the consensus needed to produce a responsible and non-violent response to increasing repression. The aggressive response of the Indiana State Reformatory's administration and the Indiana Department of Corrections reveals an important contradiction in the prisonocrats justificatory ideology. The official designation of the older, moderate convicts as "criminal predators", and their subsequent segregation and isolation from the more volatile youthful population suggests an institutional interest in maintaining a threatening and violent prison atmosphere. That is, an interest in maintaining an environment which will justify the periodic unleashing of their own traumatized and prisonized staff to terrorize the prisoners they control. These are the **same type** of convict "criminal predator" routinely isolated by prisonocrats under conditions of "marionization", and this belies the justification for "marionization" put forth by the likes of Norm Carlson and Bruce Ward (Gaucher, 1995 pp. 3; Kisslinger, 1996). It reveals that "marionization" is utilized as a tool for domination of those prisoners who have survived the carceral experience and emerged as socially conscious and responsible people.

Taylor also illustrates the “rehabilitative” qualities of higher education and highlights the current warehousing industrial model’s elimination of such opportunities. (see also, Taylor, 1997).

In contemporary penological discourse the importance of the prisoner’s family and friends is largely ignored, though they often play a major part in the prisoner’s experience of criminalization, incarceration, and eventual reintegration into society. If considered at all, their involvement is often negatively framed as a threat to the security and good order of the institution. Certainly the victim designation is not readily available to the family and friends of the prisoner, despite their experiences of victimization at the hands of the state. In this issue Amy Friedman Fraser and Arlene Leigh Squiers forcibly argue that as a consequent of the criminalization and incarceration of the prisoner, family members experience social dislocation and disequilibrium which is exacerbated by prison authorities’ negative actions towards them. The public degradation of the criminalized in the mass media and in criminal proceedings is firmly stamped upon their family members and friends. The analysis of Fraser and Squiers indicates that the family of the prisoner come to share their discredited social identity which heightens their shared experience of social exclusion and alienation.

In the mid 1980’s, amidst a televised (C.B.C.) public debate over the reinstatement of capital punishment in Canada, a number of people in the studio audience referred to the shooting death of an Ottawa police officer as the type of homicide for which the death penalty was suitable. The mother of the young man convicted of the crime quieted the audience and changed the direction of debate by noting that she had three other children who would be strongly affected by the execution of their brother (see also Allridge, 1995a; 1997). What of the waves of pain and trauma that crash over the family of the executed and incarcerated? Are their interests to be ignored in the quest for retribution?

In line with Cahill’s call for a restitutive and restorative response to crime, and Taylor’s illustration of the benefits of rehabilitative opportunities, Fraser and Squiers note the essential role and shared societal goals of family and friends in the rehabilitation and successful reintegration of many prisoners. Fraser and Squiers argue that despite the importance of their role and contrary to CSC claims, the family of prisoners are defined and treated negatively by prison authorities. As a result, their ability to assist in the rehabilitation and reintegration of their family member is compromised.

The experience of selective criminalization and incarceration, and its attendant brutalities and consequent injustices does little to rehabilitate or restore the prisoner. The current trajectory, with its escalating demands for harsher punishment can only fuel the crime control industry and its cycles of vengeance and retribution, fear, hatred, and division. Ruth Morris in responding to the articles in this issue identifies the essential needs of crime victims, noting that vengeance is not one of them.

In "Two Kinds of Victims: Meeting Their Needs" Morris relocates the concept "victim" within a broader conceptualization of the experience of injustice. In this formulation, victimization is also a consequence of distributive injustice. Ruth Morris' analyses and work has consistently drawn us away from the state as the method of resolving community conflict and righting injustices. (see also Morris, 1995). For Morris, the way out of the cycles of violence and injustice perpetuated by the criminal justice system is found in the nexus of "community" relations and community control. It is in their communities that the victims of crime and all types of injustices are best served and healed. This need for **transformative justice** is revisited in the current debate on crime prevention and in some left realist analysis which addresses social conditions as essential factors in the reproduction of crime/social problems in western societies. (see Currie, 1993).

However, in light of the **war measures** mentality of contemporary angst, it seems clear that societal fears and insecurities will continue to be played out in the scapegoating rituals of punitive criminal justice. Growing inequalities, enforced by paramilitary models of surveillance, control and confinement, suggests that the rich have indeed declared war on the poor and are in the process of rationalizing the crime control industry as a means of furthering it. (Christie, 1993). The self interested, political usages of the pain and trauma of crime victims by the organized reactionary right, epitomizes the current vituperate approach and its success.

As exemplified in the traffic in narcotics, once established, the dynamic of supply and demand is difficult to dislodge (Currie, 1993). The growth of the crime control industry in the past two decades should be triggering alarm bells, as it gathers more and more working class and minority youth into its clutches. What will be the impact of this form of distributive injustice on the communities from which these carceral commodities are drawn ? How many generations will it take to repair and

heal the harm done to these communities by the actions of the state? Certainly the long difficult road to recovery facing Canada's First Nations illustrates the extent of the damage the coercive actions of the state are capable of producing.

The formal absorption of crime control and the delivery of pain by the capitalist market economy serves to further entrench the economy of the prison in widely dispersed locations (Moore, 1994). The current industry definition of the carceral subject as a carceral commodity formalizes this transformation. This societally shared desire to inflict violence on others (regardless of how it is legitimated) like dependency on narcotics, once established is not easily put aside. The growing surplus labour components of capitalist societies guarantee a ready supply of carceral commodities and the economic rewards of the industry guarantee that orchestrated public demands for penal retribution will be answered. If this slide towards "gulags western style" is to be halted, the essential social philosophy of societies will have to change. If we are to break the cycle of violence and revenge, we will have to move towards a more inclusive and less competitive social order. A social order in which we share rights and responsibilities, as individuals and communities, and therefore share an interest in righting distributive injustices upon which current punitive justice approaches feed.

Unfortunately, the current climate suggests a drift towards fascism (Gross, 1982; Churchill, 1992) that will not be easily deflected. As Richard Cobden (1999) in an opinion piece in the Washington Post recently observed, the ready acceptance of police brutality and wrongful convictions, and the enthusiastic support for capital punishment in the U.S.A. "... suggest not that the authorities are out of control, but what they are doing is precisely what we want." This trend is fraught with danger for everyone in civil society. As Hakim Al-Jamil (1993) warns us

....

so for your own safety,
you should know the pedigree of
who killed mcduffie
you should know the reason of
who killed mcduffie
you should remember all those
forgotten
who died of the disease nobody

makes claim to
so we wont be here asking
who killed you

ENDNOTE

1. The "Son of Sam Laws" refer to USA legislation which focuses upon the seizing of monies derived from the relating of criminal or suspected criminal involvement by the suspect/convicted, for profit. The first such legislation was passed in New York State in 1977 in response to rumours that David Berkowitz (Son of Sam case), was being offered large sums of money by the mass media to sell his story of murder and mayhem. Subsequently, similar legislation was passed federally and in 42 States in the USA. In New York State, the Crime Victim Board has the power to determine in what ways and to whom the legislation (Executive Law 632-a) applies. The publishing house of Simon & Schuster challenged the New York law in 1987, and eventually in the USA Supreme Court, where it was overturned in 1991. In 1998, the Canadian Standing Senate Committee on Legal and Constitutional Affairs rejected a similar Bill (C-220) which had been quickly passed and unduly considered by the Canadian House of Commons (see also, "Editor's Note").

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