

CRIME, PAIN AND DEATH

by Nils Christie

Some of you know of my writing; some of you do not. It might be a bit difficult to find a balance between these two groups, but I will try. Two of my works in English relate to a common interest today. My little article on conflicts as property can be summarized quickly. It just says that conflicts are a very good thing in society, a sort of gasoline for getting social systems to go. You must not take conflict away from people because if you do, you take away possibilities for clarification, for crystallization of values and norms, all of which are important tasks. Yet there are many persons, especially professional persons, who are determined to take conflicts away. In this article I say nasty things about lawyers; I call them professional thieves because they are stealing other people's conflicts.

The small book *Limits to Pain* grew out of my experience over the years. When I started in the 1950s I was curious about all the talk about treatment; the challenge was to write about treatment and false education as well as abuses carried out in the name of treatment. Later on, when the ideology of treatment had died, other ideologies such as the ideology of deterrence came in. They also provided a challenge to try to understand their implications.

During my life as a scholar I have observed the movement of a pendulum between treatment on one pole and deterrence or, as we call it in Scandinavia, general prevention on the other pole. In the 1960s we were able to show that treatment is not a useful way of coping with crime. Since that time general deterrence theories have taken its place.

Deterrence theory has at least one good aspect. It is honest in recognizing that it is not goodness that we are delivering but punishment. Persons delivering treatment could argue that, in spite of other things, at least prisoners were getting treatment. Since with deterrence the emphasis is on deterring other people, it is harder to hide the fact that it has to do with punishment.

And what is punishment? The standard definition is that it is an evil intended as evil. So it is intended suffering or, as I prefer to call it, intended pain.

That reality is clarified with general prevention or deterrence. In this country (Canada) as well as mine there is a strong movement to recognize that what we are doing is not treatment, that perhaps prevention could be used as a reason for what we do with criminals. So there is enormous interest in regulating evil carried out by society.

And here we have a system of neo-classicism, as exemplified in American writing such as the Quaker's *Struggle for Justice* and more recent books as well. In a way I have been a traitor. I am a great disappointment to several of my colleagues since I was relatively active in killing or showing the falsification in these ideas. They expected that I would be in favor of neo-classical thinking, but I am not. As I tried to outline in *Limits to Pain*, the neo-classical way of handling criminals is so oversimplified that it can not be lived with.

What do I mean by saying it is oversimplified? It assumes a relationship between acts and pain. Neo-classicism reasons that to reduce the injustices inherent in treatment you have to regulate the time in prison, the pain, according to the market. And what should be the currency in that market? There are two commodities to be exchanged: the evil of the act and the degree of pain. That is the basis of the neo-classical theory as I see it. You have to grade the acts — 1, 2, 3, 4 — and then you grade the pain in the same way — 1, 2, 3, 4. If you commit an act number 2, it must be absolutely certain that you are inflicted with pain number 2. That is the basic logic of the neoclassical approach.

There are two major reasons why this is not acceptable to me. First, it gives too much emphasis to the phenomenon of crime. To say that crime and crime alone should decide what should happen later is to ignore many other values in society. It is to over value the importance of crime. It is to assume that crime is so fantastic, so important, that it should overrule all other considerations. What happens when it is a hungry man who stole? Is the theft of bread all that need be known? Is it irrelevant whether the thief was hungry or not, whether he was poor or rich, whether he had suffered much or little? Neo-classicism makes the simplistic assumption that crime is all-

important. That is my first objection. The second is that focusing only on the crime results in an ethic that is really below the dignity of our society. In spite of the swing of the pendulum to neo-classicism, there is some uneasiness with punishment or with what I like to call 'pain delivery'. People do not like to talk about themselves as delivering pain. In fact, they would be most surprised and offended if people stressed this. Thus people involved have a tendency to underplay this. So there are few areas of social life which contain so much dishonesty as do penal law institutions. You can see this clearly exemplified in the language used here in North America: the term 'correctional institutions' is still in use, but we know that they do not correct. We have known that since 1960. It has been clear to all scientific workers in the field. They do not correct. So why do people call them correctional institutions? We talk about sending people into treatment facilities. This is the gravest dishonesty.

In my country we do not have prisoners. We have only inmates. We do not have prison guards. We have servants. And there is no director of the whole system. The director of the institution designed to take care of delivering pain is viewed as a director of social service delivery. It is all very interesting and illustrates, I think, the problems of living in a pain-producing society.

I have suggested the movement of a pendulum between two poles — that of treatment and that of general prevention or deterrence. Generally these are seen as opposing viewpoints, constantly trying to defeat each other. In my view, however, they are much more similar to one another than they are dissimilar. That is one reason why it is possible to move back and forth between the two positions. You see that when you notice how some of the people on one side move with the pendulum to the other side. That is the nature of positivistic research that measures behavior. First, it tries to measure the effects of treatment and finds either no effect or negative effects. Then it moves to the other side but uses the same methods and does not work. Or at least not within the variations that judges can apply.

My point is that maybe the two poles are in fact very similar. Maybe they both belong on the same side of the pendulum. What they have in common is that they have the same basic premise for what they are doing: the delivery of pain with a purpose. There is purpose behind what they are doing: to change the criminal.

Both are, in other words, utilitarian approaches. I suppose it is natural in our utilitarian society to employ utilitarian thinking about the delivery of pain. It must, after all, be good for something. That explains much of the history of punishment theory — we had to find a reason. We must have a reason.

But what if we did not take as a point of departure the assumption that punishment has utility, that punishment has a good purpose? How would the world look then? That is what I would like to explore. I warn you, though, that what I am saying now is probably not very solid and I may regret having said it, but let me try. These are things I'm working with and since you were courageous enough to invite me, I will share them with you.

I want to look into a phenomenon I would call 'loss'. I could choose the death of a love relationship or some other example for this analysis, but here I will look at crime.

In doing that, I want to look at phenomena such as institutionalization, reactions to death, at sorrow, at anger. It seems to me that modern industrialized societies have focused less on death and more on crime. They have also had less place for sorrow and for anger. This may sound strange, but I will try to defend this view. I think it is easy to argue that there is less place for death. Death in modern societies overwhelmingly takes place in public organizations or institutions but nevertheless is hidden from public view. It takes place in hospitals, nursing homes, etc., but not in homes. Death is hidden from the surroundings, but at the same time it is hidden from the person who is dying. Why do I say this? Death is hidden because it has been converted into a professional task. Whether one should tell the patient and the relatives that he is to die is often considered an interesting professional debate. It might even be complicated to tell when a person has died. In the old days you either died or you did not, but now it is a question; there is much medical debate about when a person is really dead and when one can take away his kidneys, for example. Furthermore, even if the doctors would like to tell a dying person they can't because the dying person is drugged when he dies. He is intoxicated meeting death.

We do not need much historical knowledge to know that this is enormously different from public loss. It was important in medieval times to die consciously; nothing should come between you and the next existence.

And you were important when you died. You died in the circle of acquaintances and to them and to yourself it was important how you died. You should do it with a certain style. But it was also important that you were really at the center of attention. Perhaps you had not been during your life, but this was your day.

You could argue that in some ways death is more open today because there is so much killing on television. But I would argue that that is in a way to make even less of death because it is a death that is so unreal. It's not here. It's on television. It's not among real people. And it is presented in non-ceremonial situations — while we are playing with the children or eating dinner or whatever.

With crime it is different. This is an important point and so I will go into some detail.

The classification and definition of acts is dependent upon attributes surrounding these acts. Certain social systems create certain definitions of acts. Other social systems create other types of definitions.

My hypothesis is that in complex social systems or systems where people do not have a lot of knowledge about each other, the knowledge of other persons is more segmented. This will be most likely to happen when societies or social systems are relatively large, where there are many people to meet each other but so many that you do not know everything about everybody. You know them only in small segmented samples. You know your workmate as a workmate. You know the teacher as a teacher, but maybe only as a teacher. Perhaps you even know them not so much as a teacher but as a teacher of mathematics or even a special part of mathematics. You know the doctor as a doctor and only as a doctor. The minister is known as a minister and only as a minister. So the totality of that person is unknown. Many people you only know by name.

My point is that in such a society you often apply relatively simple moral categories because you do not have many others to use. But in social systems where you have much information about the other people who surround you, you classify behavior differently. In these systems where knowledge of persons is not segmented, you know so much that the simplified moral categories are of limited usefulness. So in large social

systems that we often call complex systems we use simple moral categories while in small systems that we call simple, we use complicated moral categories.

My favorite example is actually myself. I do not claim that I have deep insights into my own life and personality, but I know rather more about myself than about those I pass in the streets or about any of you here, including even my wife. The same is true for you. It is seldom that you or I apply simple moral categories to ourselves. We know too much, and it is not helpful. It is below the dignity of our intellect to use these simple categories on ourselves or our children, on persons that we know so much about. To describe myself I would need a whole book, and I would not feel it intellectually satisfying to apply the label 'criminal' to myself, even though some people may think that the correct thing to do. Nor would I tend to use this label to identify the individual acts I might carry out.

This has been exemplified many times, for example in Cressey and Sutherland's well-known textbook. Many years back Don Cressey made a study of embezzlement. He went into a U.S. prison to interview embezzlers. But he didn't find any. Of course he found a lot of people who had borrowed money. They subsidized their shamefully low salaries or they had other complicated descriptions of what they had done.

My point here is that by changing elements in our social organization as we have done in modern industrialized societies, we have acquired more crime. That does not imply that more crime is committed; that would be to oversimplify. I do not know what crime is, and I do not know how to count it. I only say that by changing the social organization we produce a social situation where more acts are defined as criminal. That is a key, I think, to many of our problems.

So I am saying that today we have less emphasis on death and more on crime. Yet we can assume that people are dying off at about the same rate as earlier. So it must have something to do with social organization.

Some of you would protest that we are not dying as much as earlier. I have heard that during my travels in the U.S. and this optimism about death surprises me. It is not true. The death expectancy today is very close to what it was forty years back. I think this is taken for granted in my country,

but here people believe that people are getting older and older, which is completely untrue. Small children die a bit less frequently. But if you calculate the death expectancies of person above 10-15 years old, the reality is that expectancies are going down a bit. A person in North America today will probably live a slightly shorter life than his father.

Things have changed, though. I can't see one single symbol around this room that any of you are in grief, for example the deep sort of grief from having lost a relative. Fifty years ago, two or three of you would certainly have shown some indicator of sorrow, publicly expressed. We have reduced the expression of sorrow in our society.

This is true for the institution of death. Funerals have become smaller. I do not know that anyone has made a study of it, but a number of advertisements tell us that the funeral has taken place — a very interesting way of getting away from it all. This can be described through the number of participants in funerals and probably also by studying the length of funeral ceremonies.

In our society we do not symbolize sorrow externally. There are studies showing that there are great taboos against expressing too much sorrow. You should express some, but just about the right amount — not too much. Nevertheless, there is a ritual involved. Some response is legitimate and even expected when death has hit a close relative, for example.

Let me move on to anger. I come with a small confession — the confession of a liberal scientist within the area of criminal policy. I have recently come to see myself as slightly guilty of doing what it is said that everyone attempts to do with the poor widow, namely to restrict the legitimization of her expression of sorrow. It might be that I and you have taken part in something of the same in regard to victims. Here the loss has been converted to being defined as a crime. Then there is an angry person around and in criminal policy, what is the tendency? The tendency is, as I have described in my article on conflicts as property, to steal the conflict. The victim is locked out of the procedure. He is not informed very often. If he is informed, it is to introduce him as a witness. As a witness whose credibility the defence attorney tries to degrade. Is it sure that this offence happened? Is it certain that your property was that valuable? Why did you go into the bar alone when you had that tight fitting clothing on? Shouldn't you expect to be raped as a result? Or, having been sort of an outsider in the process, she or

he will meet politicians of the liberal type who say, 'Well, after all, you have so much property, you shouldn't be that angry. You must remember that the criminal was probably young or poor and needed your property more than you needed it, so control yourself.'

So in many ways the victim is not allowed to express his anger. He is also pushed outside the system. And he is cheated. He is not involved in what happens to the person who has created his anger.

Remember what I mentioned earlier about the great falsification that is carried out within the penal law system. I said that in a pleasure seeking society, all the major functionaries pretend it is not pain they are delivering. Prisoners become inmates. Pain delivery becomes caretaking. A facade is put up as if what happened to the criminal were not painful.

So it is not surprising that the angry victim is not exactly calmed down. It is claimed that the criminal gets treatment while the victim gets nothing, or it is claimed that nothing happens, which is often true. Or if it is claimed that something happened, the criminal, who wants to be a 'real man,' says 'Well, it wasn't so bad.' So we have a situation where an act is defined as criminal and an angry person who is feeling that nothing is happening with the source of his frustration. And this angry person, at least in my system, directs his anger the only direction he can — into the general criminal political debate. He says, 'I want them hanged, tortured, anything. I can't accept this.' And some politicians are sensitive to this demand.

Then we are in a paradoxical situation: those given the mandate to deliver pain to criminals actually see themselves and function as the prisoners' defenders. They see the very punitive situation, demanding more and more pain delivery, and become concerned to try to protect the prisoners. This in turn makes it very easy to forget what they are in reality doing. While delivering pain, they perceive themselves as defenders.

This situation is in many ways unhealthy for a social system and ought to be changed. How could we try to change it? Let me only try to introduce some general categories.

I would like to discriminate between two types of societies and two types of social relationships. I will call the one identity and the other interest. Those of you trained in the social sciences will see some of the old-fashioned dichotomy between *Gerneinschaft* and *Gesellschaft*, but it is not quite the same.

A prime example of an identity relationship would be *Romeo and Juliet*. This was a love relationship. When something goes wrong in the relationship, disappointments and anger are the natural, usual reaction. When it comes to relationships based on interests it is not exactly the same. Interest relationships are based more on rationality: often it is the exchange of money rather than the exchange of emotions. The market is the place where much of this is carried out. With interest relationships people can be easily exchanged while identity relationships cannot be dissolved without anger. I think it can be argued that anger and the need for some sort of system to take care of angry victims is particularly pronounced where identity relationships are at stake. Sorrow and anger are especially typical here. Thus the demand for punishment or pain delivery may be most prevalent where identity relationships are at stake.

Interest relationships are governed by the state. The state governs in a rational way and cannot heal sorrow. So we can eliminate some problems very simply by reducing the number of identity relationships and dealing with most relationships as if they were in the market. This would be like a business relationship where you pay something extra if you break the contract. This is related to mediation. You who are working in the field can see that: it is not difficult to get two parties to agree. We split it in half and maybe each pays part. There are not great emotions around it and mediation is possible.

This would be the case for a person who did not pay his railway ticket. But very often the railway company will attempt to act as if it were an identity relationship. This might be strategic in a fight between two parties. It might be strategic in an attempt to control a person to act as if an identity relationship were involved. Insurance companies in my country try to say that those who cheat insurance companies break the trust and cause all of us to pay.

So we could try to make these relationships into market relationships. But would it be worthwhile living? What about moral and emotional factors? Many of us would fight for a society which was just the opposite — a society that had more identity relationships and fewer market relationships. That would be a goal for many of us. But when we do that we also construct a society where there will be more angry people when norms are broken. So we are in a dilemma.

But at least we can approach that dilemma by seeing it. Certain avenues are closed to us. We cannot make, and can never expect to make, our reaction to those who break our norms into a purely technical affair that has to do purely with compensation in money. We cannot make it a purely business affair.

There is something else at stake. We are forced to confront the angry person, the person angry because norms have been broken in a trusted relationship based on identity. Now we should come back again to the question of death and crime. Can we learn from death rituals something about how to cope with crime? What I am doing by raising the question like this is to look at criminal law as a ritualistic system that has gone astray by being captured by lawyers. I am trying to ask, 'What can we do now?' And I am trying to set forth three major lessons from the death side of the blackboard.

What can we learn by looking at death as a ritual? We learn, first of all, that it has to do with emotions. And we learn that this emotional element is legitimate. A funeral is one of the few places where people are allowed, even if they find it painful, really to express their deepest emotions. People are allowed to be sorry at a funeral. We could learn something here about those who are angry. It seems to me that they should be given a sort of regulated outlet for anger.

Second, the funeral is one place where participation takes place. We would not dream of sending a representative to a funeral, even in this country. You cannot pay your way out of attending. So either you are there or you are not.

Third, the funeral is a non-utilitarian occasion. Does a funeral deter people from dying? Perhaps. I think some people would die at other times than they do if we had not taken away the dignity of dying. So in that regard perhaps it does. But what I had in mind was a project in which one might go to the American Cancer Society and ask if they would use the funerals a bit more efficiently. They could put up huge slogans ready-made, of course, as is suitable for an industrialized society. For example, one slogan might be, 'If he hadn't smoked so heavily, he and we wouldn't have been here now in the crematorium.' You see immediately how impossible that idea is. We don't use death occasions for such utilitarian goals. Perhaps we do a little; the minister might use the chance, for example. But generally not. So it is a non-utilitarian event.

This does not mean that it will not have a bad effect to avoid going to a funeral. I can as a scientist say that it will have certain consequences not to have a funeral. But people do not go to funerals with these consequences in mind. They do not go there to escape the bad consequences of not going. They go because they go. They are non-utilitarian.

What all this adds up to is an angry person participating in a process with no good purpose. An angry person may want to meet and hurt an offender or victim. But I think there is another possibility. Perhaps the assumption that victims are intent upon delivering pain to the offender is exaggerated, possibly by those persons who now monopolize the delivery of pain. They get a falsely-acquired impression of the victim's anger. The victim has no outlet for that anger (and that leads us back to the politicians). So the professions think the victim will be angry and vindictive.

Yet if the victim is allowed to get to know the person and to know the act, some doubt about the simplified concept of the crime, of the happening, is created. Is it a 'crime' or not? All these human processes will take place in the situation. That generalized anger so eagerly received by politicians will be a specified anger expressed through emotions in a situation of participation with no claim or guarantee that it has any other goal except its expression. In that situation it is my hypothesis that we will get an immense reduction in the amount of 'pain delivery' in our societies.

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