

# Criminals Owe Debt to Victims, Not Society

WENDY McELROY

**M**OST people realize that the court and penal systems in North America are seriously broken and must be fixed. With the possible exception of China, the United States currently imprisons more of its population than any other nation: the US Bureau of Justice Statistics reports 2,033,331 imprisoned as of December 31, 2002.

And the tax burden for doing so is staggering. The answer to both problems may lie in one word: restitution.

Or two words—victim's rights.

Solutions to the expense and other social costs of imprisonment abound, including 'private' prisons and the repeal of victimless crimes.

Without dismissing those approaches, I would like to challenge a basic concept in the law. Namely, that criminals owe a debt to society. I believe an individual who commits a crime owes a debt—that is, restitution—to the individual who has been harmed.

For years, I've argued against the idea that categories of people commit crime—e.g. 'men' are rapists, 'men' commit domestic violence, 'whites' oppress minorities. Equally, I reject the idea that a category such as 'society' can be a victim in any legally meaningful sense. Categories do not swing fists, rape, and murder: individuals do. Categories are not battered, violated, and killed: individuals are. The real victims deserve to be the focus of law.

Repaying individuals for their injuries is associated with the civil courts, which traditionally handle private and non-violent matters such as contract disputes. Civil judgments

attempt to restore to individuals what they have lost or, at least, to provide whatever compensation is possible. Often, court costs can be assessed against those found 'guilty.'

Repaying society is associated with the criminal courts, which handle violence such as rape and murder. Criminal judgments do not attempt to compensate the individuals harmed except, perhaps, by providing the satisfaction of seeing someone punished. Indeed, as taxpayers, the victims themselves pay for that satisfaction by supporting an expensive judicial and prison system.

I believe both civil and criminal court systems should aim at compensating the victim.

What would a criminal system organized around restitution look like? No one knows. The current system has evolved, for better or worse, over centuries and circumstances. Any other system would do the same. But it is possible to sketch a working hypothesis that gets the discussion rolling.

A criminal court that focused on restitution would force those convicted to repay their victims not only for direct financial losses but also in compensation for emotional trauma. Criminals would bear the cost of court proceedings and of collecting any restitution that is not rendered voluntarily. If criminals did not have the means to pay a judgment or could not be trusted to do so over time, they could be monitored or confined to an institution for the sole purpose of working to earn that compensation and to pay the cost of confinement. The taxpayer would be taken out of the loop.

Objections immediately arise: for example, some categories of crime are so heinous that they do not seem to allow restitution. How can you compensate a victim of rape or murder?

The fact that there may be no perfect or adequate form of restitution is not an argument against providing whatever repayment is possible. A rapist cannot restore a victim's sense of safety but he or she can be made to pay such items as medical bills, the cost of counselling, and compensation for emotional trauma. A murderer cannot repay his debt to the dead but he can be forced to earn money to pay in perpetuity the expenses of a victim's family.

Another objection: what happens to the healthy desire for vengeance? That desire would have to be satisfied by the penalties imposed. The justified rage of victims cannot become the foundation of jurisprudence if courts are to preserve objectivity.

And what of the repeat and violent offender? A criminal who chooses repeatedly to rape (for example) is the Achilles heel of most systems of justice, including one based on restitution. But these extreme cases should not dictate how the overwhelming majority of offences are handled.

Justice built on restitution has at least three advantages over others: the victim is the beneficiary; the prison population is reduced; and, taxpayers do not literally pay for crimes they have not committed.

*Wendy McElroy is Research Fellow at The Independent Institute and editor of the Institute books, Freedom, Feminism and the State and Liberty for Women: Freedom and Feminism in the Twenty-first Century.*

**I P A**