

# THE BRITISH JOURNAL OF CRIMINOLOGY

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Vol. 17

January 1977

No. 1

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## CONFLICTS AS PROPERTY\*

NILS CHRISTIE (*Oslo*) †

### *Abstract*

CONFLICTS are seen as important elements in society. Highly industrialised societies do not have too much internal conflict, they have too little. We have to organise social systems so that conflicts are both nurtured and made visible and also see to it that professionals do not monopolise the handling of them. Victims of crime have in particular lost their rights to participate. A court procedure that restores the participants' rights to their own conflicts is outlined.

### *Introduction*

Maybe we should not have any criminology. Maybe we should rather abolish institutes, not open them. Maybe the social consequences of criminology are more dubious than we like to think.

I think they are. And I think this relates to my topic—conflicts as property. My suspicion is that criminology to some extent has amplified a process where conflicts have been taken away from the parties directly involved and thereby have either disappeared or become other people's property. In both cases a deplorable outcome. Conflicts ought to be used, not only left in erosion. And they ought to be used, and become useful, for those originally involved in the conflict. Conflicts *might* hurt individuals as well as social systems. That is what we learn in school. That is why we have officials. Without them, private vengeance and vendettas will blossom. We have learned this so solidly that we have lost track of the other side of the coin: our industrialised large-scale society is not one with too many internal conflicts. It is one with too little. Conflicts might kill, but too little of them might paralyse. I will

\* Foundation Lecture of the Centre for Criminological Studies, University of Sheffield, delivered March 31, 1976. Valuable comments on preliminary drafts of the manuscript were received from Vigdis Christie, Tove Stang Dahl and Annika Snare.

† Professor of Criminology, University of Oslo.

use this occasion to give a sketch of this situation. It cannot be more than a sketch. This paper represents the beginning of the development of some ideas, not the polished end-product.

*On Happenings and Non-Happenings*

Let us take our point of departure far away. Let us move to Tanzania. Let us approach our problem from the sunny hillside of the Arusha province. Here, inside a relatively large house in a very small village, a sort of happening took place. The house was overcrowded. Most grown-ups from the village and several from adjoining ones were there. It was a happy happening, fast talking, jokes, smiles, eager attention, not a sentence was to be lost. It was circus, it was drama. It was a court case.

The conflict this time was between a man and a woman. They had been engaged. He had invested a lot in the relationship through a long period, until she broke it off. Now he wanted it back. Gold and silver and money were easily decided on, but what about utilities already worn, and what about general expenses?

The outcome is of no interest in our context. But the framework for conflict solution is. Five elements ought to be particularly mentioned:

1. The parties, the former lovers, were in *the centre* of the room and in the centre of everyone's attention. They talked often and were eagerly listened to.

2. Close to them were relatives and friends who also took part. But they did not *take over*.

3. There was also participation from the general audience with short questions, information, or jokes.

4. The judges, three local party secretaries, were extremely inactive. They were obviously ignorant with regard to village matters. All the other people in the room were experts. They were experts on norms as well as actions. And they crystallised norms and clarified what had happened through participation in the procedure.

5. No reporters attended. They were all there.

My personal knowledge when it comes to British courts is limited indeed. I have some vague memories of juvenile courts where I counted some 15 or 20 persons present, mostly social workers using the room for preparatory work or small conferences. A child or a young person must have attended, but except for the judge, or maybe it was the clerk, nobody seemed to pay any particular attention. The child or young person was most probably utterly confused as to who was who and for what, a fact confirmed in a small study by Peter Scott (1959). In the United States of America, Martha Baum (1968) has made similar observations. Recently, Bottoms and McClean (1976) have added another important observation: "There is one truth which is seldom revealed in the literature of the law or in studies of the administration of criminal justice. It is a truth which was made evident to all those involved in this research project as they sat through the cases which made up our sample. The truth is that, for the most part, the business of the criminal courts is dull, commonplace, ordinary and after a while downright tedious".

But let me keep quiet about your system, and instead concentrate on my

own. And let me assure you: what goes on is no happening. It is all a negation of the Tanzanian case. What is striking in nearly all the Scandinavian cases is the greyness, the dullness, and the lack of any important audience. Courts are not central elements in the daily life of our citizens, but peripheral in four major ways:—

1. They are situated in the administrative centres of the towns, outside the territories of ordinary people.

2. Within these centres they are often centralised within one or two large buildings of considerable complexity. Lawyers often complain that they need months to find their way within these buildings. It does not demand much fantasy to imagine the situation of parties or public when they are trapped within these structures. A comparative study of court architecture might become equally relevant for the sociology of law as Oscar Newman's (1972) study of defensible space is for criminology. But even without any study, I feel it safe to say that both physical situation and architectural design are strong indicators that courts in Scandinavia belong to the administrators of law.

3. This impression is strengthened when you enter the courtroom itself—if you are lucky enough to find your way to it. Here again, the periphery of the parties is the striking observation. The parties are represented, and it is these representatives and the judge or judges who express the little activity that is activated within these rooms. Honoré Daumier's famous drawings from the courts are as representative for Scandinavia as they are for France.

There are variations. In the small cities, or in the countryside, the courts are more easily reached than in the larger towns. And at the very lowest end of the court system—the so-called arbitration boards—the parties are sometimes less heavily represented through experts in law. But the symbol of the whole system is the Supreme Court where the directly involved parties do not even attend their own court cases.

4. I have not yet made any distinction between civil and criminal conflicts. But it was not by chance that the Tanzania case was a civil one. Full participation in your own conflict presupposes elements of civil law. 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. So, in a modern criminal 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 triggerer-off of the whole thing. She or he is a sort of double loser; first, *vis-à-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 ritual encounters in life. The victim has lost the case to the state.

#### *Professional Thieves*

As we all know, there are many honourable as well as dishonourable reasons behind this development. The honourable ones have to do with the state's

need for conflict reduction and certainly also its wishes for the protection of the victim. It is rather obvious. So is also the less honourable temptation for the state, or Emperor, or whoever is in power, to use the criminal case for personal gain. Offenders might pay for their sins. Authorities have in time past shown considerable willingness, in representing the victim, to act as receivers of the money or other property from the offender. Those days are gone; the crime control system is not run for profit. And yet they are not gone. There are, in all banality, many interests at stake here, most of them related to professionalisation.

Lawyers are particularly good at stealing conflicts. They are trained for it. They are trained to prevent and solve conflicts. They are socialised into a sub-culture with a surprisingly high agreement concerning interpretation of norms, and regarding what sort of information can be accepted as relevant in each case. Many among us have, as laymen, experienced the sad moments of truth when our lawyers tell us that our best arguments in our fight against our neighbour are without any legal relevance whatsoever and that we for God's sake ought to keep quiet about them in court. Instead they pick out arguments we might find irrelevant or even wrong to use. My favourite example took place just after the war. One of my country's absolutely top defenders told with pride how he had just rescued a poor client. The client had collaborated with the Germans. The prosecutor claimed that the client had been one of the key people in the organisation of the Nazi movement. He had been one of the master-minds behind it all. The defender, however, saved his client. He saved him by pointing out to the jury how weak, how lacking in ability, how obviously deficient his client was, socially as well as organisationally. His client could simply not have been one of the organisers among the collaborators; he was without talents. And he won his case. His client got a very minor sentence as a very minor figure. The defender ended his story by telling me—with some indignation—that neither the accused, nor his wife, had ever thanked him, they had not even talked to him afterwards.

Conflicts become the property of lawyers. But lawyers don't hide that it is conflicts they handle. And the organisational framework of the courts underlines this point. The opposing parties, the judge, the ban against privileged communication within the court system, the lack of encouragement for specialisation—specialists cannot be internally controlled—it all underlines that this is an organisation for the handling of conflicts. *Treatment personnel* are in another position. They are more interested in *converting the image of the case from one of conflict into one of non-conflict*. The basic model of healers is not one of opposing parties, but one where one party has to be helped in the direction of one generally accepted goal—the preservation or restoration of health. They are not trained into a system where it is important that parties can control each other. There is, in the ideal case, nothing to control, because there is only one goal. Specialisation is encouraged. It increases the amount of available knowledge, and the loss of internal control is of no relevance. A conflict perspective creates unpleasant doubts with regard to the healer's suitability for the job. A non-conflict perspective is a precondition for defining crime as a legitimate target for treatment.

One way of reducing attention to the conflict is reduced attention given to the victim. Another is concentrated attention given to those attributes in the criminal's background which the healer is particularly trained to handle. Biological defects are perfect. So also are personality defects when they are established far back in time—far away from the recent conflict. And so are also the whole row of explanatory variables that criminology might offer. We have, in criminology, to a large extent functioned as an auxiliary science for the professionals within the crime control system. We have focused on the offender, made her or him into an object for study, manipulation and control. We have added to all those forces that have reduced the victim to a nonentity and the offender to a thing. And this critique is perhaps not only relevant for the old criminology, but also for the new criminology. While the old one explained crime from personal defects or social handicaps, the new criminology explains crime as the result of broad economic conflicts. The old criminology loses the conflicts, the new one converts them from inter-personal conflicts to class conflicts. And they are. They are class conflicts—also. But, by stressing this, the conflicts are again taken away from the directly involved parties. So, as a preliminary statement: Criminal conflicts have either become *other people's property*—primarily the property of lawyers—or it has been in other people's interests to *define conflicts away*.

#### *Structural Thieves*

But there is more to it than professional manipulation of conflicts. Changes in the basic social structure have worked in the same way.

What I particularly have in mind are *two types of segmentation* easily observed in highly industrialised societies. First, there is the question of segmentation *in space*. We function each day, as migrants moving between sets of people which do not need to have any link—except through the mover. Often, therefore, we know our work-mates only as work-mates, neighbours only as neighbours, fellow cross-country skiers only as fellow cross-country skiers. We get to know them as *roles*, not as total persons. This situation is accentuated by the extreme degree of division of labour we accept to live with. Only experts can evaluate each other according to individual—personal—competence. Outside the speciality we have to fall back on a general evaluation of the supposed importance of the work. Except between specialists, we cannot evaluate how good anybody is in his work, only how good, in the sense of important, the role is. Through all this, we get limited possibilities for understanding other people's behaviour. Their behaviour will also get limited relevance for us. Role-players are more easily exchanged than persons.

The second type of segmentation has to do with what I would like to call our re-establishment of caste-society. I am not saying class-society, even though there are obvious tendencies also in that direction. In my framework, however, I find the elements of caste even more important. What I have in mind is the segregation based on biological attributes such as sex, colour, physical handicaps or the number of winters that have passed since birth. Age is particularly important. It is an attribute nearly perfectly synchronised to a modern complex industrialised society. It is a continuous variable where

we can introduce as many intervals as we might need. We can split the population in two: children and adults. But we also can split it in ten: babies, pre-school children, school-children, teenagers, older youth, adults, pre-pensioned, pensioned, old people, the senile. And most important: the cutting points can be moved up and down according to social needs. The concept "teenager" was particularly suitable 10 years ago. It would not have caught on if social realities had not been in accordance with the word. Today the concept is not often used in my country. The condition of youth is not over at 19. Young people have to wait even longer before they are allowed to enter the work force. The caste of those outside the work force has been extended far into the twenties. At the same time departure from the work force—if you ever were admitted, if you were not kept completely out because of race or sex-attributes—is brought forward into the early sixties in a person's life. In my tiny country of four million inhabitants, we have 800,000 persons segregated within the educational system. Increased scarcity of work has immediately led authorities to increase the capacity of educational incarceration. Another 600,000 are pensioners.

Segmentation according to space and according to caste attributes has several consequences. First and foremost it leads into a *depersonalisation* of social life. Individuals are to a smaller extent linked to each other in close social networks where they are confronted with *all* the significant roles of the significant others. This creates a situation with limited amounts of information with regard to each other. We do know less about other people, and get limited possibilities both for understanding and for prediction of their behaviour. If a conflict is created, we are less able to cope with this situation. Not only are professionals there, able and willing to take the conflict away, but we are also more willing to give it away.

Secondly, segmentation leads to destruction of certain conflicts even before they get going. The depersonalisation and mobility within industrial society melt away some essential conditions for living conflicts; those between parties that mean a lot to each other. What I have particularly in mind is crime against other people's honour, libel or defamation of character. All the Scandinavian countries have had a dramatic decrease in this form of crime. In my interpretation, this is not because honour has become more respected, but because there is less honour to respect. The various forms of segmentation mean that human beings are inter-related in ways where they simply mean less to each other. When they are hurt, they are only hurt partially. And if they are troubled, they can easily move away. And after all, who cares? Nobody knows me. In my evaluation, the decrease in the crimes of infamy and libel is one of the most interesting and sad symptoms of dangerous developments within modern industrialised societies. The decrease here is clearly related to social conditions that lead to increase in other forms of crime brought to the attention of the authorities. It is an important goal for crime prevention to re-create social conditions which lead to an increase in the number of crimes against other people's honour.

A third consequence of segmentation according to space and age is that certain conflicts are made completely invisible, and thereby don't get any

decent solution whatsoever. I have here in mind conflicts at the two extremes of a continuum. On the one extreme we have the over-privatised ones, those taking place against individuals captured within one of the segments. Wife beating or child battering represent examples. The more isolated a segment is, the more the weakest among parties is alone, open for abuse. Inghel and Riemer (1943) made the classical study many years ago of a related phenomenon in their book on incest. Their major point was that the social isolation of certain categories of proletarianised Swedish farm-workers was the necessary condition for this type of crime. Poverty meant that the parties within the nuclear family became completely dependent on each other. Isolation meant that the weakest parties within the family had no external network where they could appeal for help. The physical strength of the husband got an undue importance. At the other extreme we have crimes done by large economic organisations against individuals too weak and ignorant to be able even to realise they have been victimised. In both cases the goal for crime prevention might be to re-create social conditions which make the conflicts visible and thereafter manageable.

#### *Conflicts as Property*

Conflicts are taken away, given away, melt away, or are made invisible. Does it matter, does it really matter?

Most of us would probably agree that we ought to protect the invisible victims just mentioned. Many would also nod approvingly to ideas saying that states, or Governments, or other authorities ought to stop stealing fines, and instead let the poor victim receive this money. I at least would approve such an arrangement. But I will not go into that problem area here and now. Material compensation is not what I have in mind with the formulation "conflicts as property". It is the *conflict itself* that represents the most interesting property taken away, not the goods originally taken away from the victim, or given back to him. In our types of society, conflicts are more scarce than property. And they are immensely more valuable.

They are valuable in several ways. Let me start at the societal level, since here I have already presented the necessary fragments of analysis that might allow us to see what the problem is. Highly industrialised societies face major problems in organising their members in ways such that a decent quota take part in any activity at all. Segmentation according to age and sex can be seen as shrewd methods for segregation. Participation is such a scarcity that insiders create monopolies against outsiders, particularly with regard to work. In this perspective, it will easily be seen that conflicts represent a *potential for activity, for participation*. Modern criminal control systems represent one of the many cases of lost opportunities for involving citizens in tasks that are of immediate importance to them. Ours is a society of task-monopolists.

The victim is a particularly heavy loser in this situation. Not only has he suffered, lost materially or become hurt, physically or otherwise. And not only does the state take the compensation. But above all he has lost participation in his own case. It is the Crown that comes into the spotlight, not the victim. It is the Crown that describes the losses, not the victim. It is the Crown

that appears in the newspaper, very seldom the victim. It is the Crown that gets a chance to talk to the offender, and neither the Crown nor the offender are particularly interested in carrying on that conversation. The prosecutor is fed-up long since. The victim would not have been. He might have been scared to death, panic-stricken, or furious. But he would not have been uninvolved. It would have been one of the important days in his life. Something that belonged to him has been taken away from that victim.<sup>1</sup>

But the big loser is us—to the extent that society is us. This loss is first and foremost a loss in *opportunities for norm-clarification*. It is a loss of pedagogical possibilities. It is a loss of opportunities for a continuous discussion of what represents the law of the land. How wrong was the thief, how right was the victim? Lawyers are, as we saw, trained into agreement on what is relevant in a case. But that means a trained incapacity in letting the parties decide what *they* think is relevant. It means that it is difficult to stage what we might call a political debate in the court. When the victim is small and the offender big—in size or power—how blameworthy then is the crime? And what about the opposite case, the small thief and the big house-owner? If the offender is well educated, ought he then to suffer more, or maybe less, for his sins? Or if he is black, or if he is young, or if the other party is an insurance company, or if his wife has just left him, or if his factory will break down if he has to go to jail, or if his daughter will lose her fiancé, or if he was drunk, or if he was sad, or if he was mad? There is no end to it. And maybe there ought to be none. Maybe Barotse law as described by Max Gluckman (1967) is a better instrument for norm-clarification, allowing the conflicting parties to bring in the whole chain of old complaints and arguments each time. Maybe decisions on relevance and on the weight of what is found relevant ought to be taken away from legal scholars, the chief ideologists of crime control systems, and brought back for free decisions in the court-rooms.

A further general loss—both for the victim and for society in general—has to do with anxiety-level and misconceptions. It is again the possibilities for personalised encounters I have in mind. The victim is so totally out of the case that he has no chance, ever, to come to know the offender. We leave him outside, angry, maybe humiliated through a cross-examination in court, without any human contact with the offender. He has no alternative. He will need all the classical stereotypes around “the criminal” to get a grasp on the whole thing. He has a need for understanding, but is instead a non-person in a Kafka play. Of course, he will go away more frightened than ever, more in need than ever of an explanation of criminals as non-human.

The offender represents a more complicated case. Not much introspection is needed to see that direct victim-participation might be experienced as painful indeed. Most of us would shy away from a confrontation of this character. That is the first reaction. But the second one is slightly more positive. Human beings have reasons for their actions. If the situation is staged so that reasons can be given (reasons as the parties see them, not only the selection lawyers have decided to classify as relevant), in such a case maybe the situation would not be all that humiliating. And, particularly, if the situa-

<sup>1</sup> For a preliminary report on victim dissatisfaction, see Vennard (1976).



tion was staged in such a manner that the central question was not meting out guilt, but a thorough discussion of what could be done to undo the deed, then the situation might change. And this is exactly what ought to happen when the victim is re-introduced in the case. Serious attention will centre on the victim's losses. That leads to a natural attention as to how they can be softened. It leads into a discussion of restitution. The offender gets a possibility to change his position from being a listener to a discussion—often a highly unintelligible one—of how much pain he ought to receive, into a participant in a discussion of how he could make it good again. The offender has lost the opportunity to explain himself to a person whose evaluation of him might have mattered. He has thereby also lost one of the most important possibilities for being forgiven. Compared to the humiliations in an ordinary court—vividly described by Pat Carlen (1976) in a recent issue of the *British Journal of Criminology*—this is not obviously any bad deal for the criminal.

But let me add that I think we should do it quite independently of his wishes. It is not health-control we are discussing. It is crime control. If criminals are shocked by the initial thought of close confrontation with the victim, preferably a confrontation in the very local neighbourhood of one of the parties, what then? I know from recent conversations on these matters that most people sentenced are shocked. After all, they prefer distance from the victim, from neighbours, from listeners and maybe also from their own court case through the vocabulary and the behavioural science experts who might happen to be present. They are perfectly willing to give away their property right to the conflict. So the question is more: are *we* willing to let them give it away? Are we willing to give them this easy way out? <sup>2</sup>

Let me be quite explicit on one point: I am not suggesting these ideas out of any particular interest in the treatment or improvement of criminals. I am not basing my reasoning on a belief that a more personalised meeting between offender and victim would lead to reduced recidivism. Maybe it would. I think it would. As it is now, the offender has lost the opportunity for participation in a personal confrontation of a very serious nature. He has lost the opportunity to receive a type of blame that it would be very difficult to neutralise. However, I would have suggested these arrangements even if it was absolutely certain they had no effects on recidivism, maybe even if they had a negative effect. I would have done that because of the other, more general gains. And let me also add—it is not much to lose. As we all know today, at least nearly all, we have not been able to invent any cure for crime. Except for execution, castration or incarceration for life, no measure has a proven minimum of efficiency compared to any other measure. We might as well react to crime according to what closely involved parties find is just and in accordance with general values in society.

With this last statement, as with most of the others I have made, I raise many more problems than I answer. Statements on criminal politics, particularly from those with the burden of responsibility, are usually filled with

<sup>2</sup> I tend to take the same position with regard to a criminal's property right to his own conflict as John Locke on property rights to one's own life—one has no right to give it away (*cf.* C. B. MacPherson (1962)).

answers. It is questions we need. The gravity of our topic makes us much too pedantic and thereby useless as paradigm-changers.

### *A Victim-Oriented Court*

There is clearly a model of neighbourhood courts behind my reasoning. But it is one with some peculiar features, and it is only these I will discuss in what follows.

First and foremost; it is a *victim-oriented* organisation. Not in its initial stage, though. The first stage will be a traditional one where it is established whether it is true that the law has been broken, and whether it was this particular person who broke it.

Then comes the second stage, which in these courts would be of the utmost importance. That would be the stage where the victim's situation was considered, where every detail regarding what had happened—legally relevant or not—was brought to the court's attention. Particularly important here would be detailed consideration regarding what could be done for him, first and foremost by the offender, secondly by the local neighbourhood, thirdly by the state. Could the harm be compensated, the window repaired, the lock replaced, the wall painted, the loss of time because the car was stolen given back through garden work or washing of the car ten Sundays in a row? Or maybe, when this discussion started, the damage was not so important as it looked in documents written to impress insurance companies? Could physical suffering become slightly less painful by any action from the offender, during days, months or years? But, in addition, had the community exhausted all resources that might have offered help? Was it absolutely certain that the local hospital could not do anything? What about a helping hand from the janitor twice a day if the offender took over the cleaning of the basement every Saturday? None of these ideas is unknown or untried, particularly not in England. But we need an organisation for the systematic application of them.

Only after this stage was passed, and it ought to take hours, maybe days, to pass it, only then would come the time for an eventual decision on punishment. Punishment, then, becomes that suffering which the judge found necessary to apply *in addition to* those unintended constructive sufferings the offender would go through in his restitutive actions *vis-à-vis* the victim. Maybe nothing could be done or nothing would be done. But neighbourhoods might find it intolerable that nothing happened. Local courts out of tune with local values are not local courts. That is just the trouble with them, seen from the liberal reformer's point of view.

A fourth stage has to be added. That is the stage for service to the offender. His general social and personal situation is by now well-known to the court. The discussion of his possibilities for restoring the victim's situation cannot be carried out without at the same time giving information about the offender's situation. This might have exposed needs for social, educational, medical or religious action—not to prevent further crime, but because needs ought to be met. Courts are public arenas, needs are made visible. But it is important that this stage comes *after* sentencing. Otherwise we get a re-emergence of

the whole array of so-called "special measures"—compulsory treatments—very often only euphemisms for indeterminate imprisonment.

Through these four stages, these courts would represent a blend of elements from civil and criminal courts, but with a strong emphasis on the civil side.

#### *A Lay-Oriented Court*

The second major peculiarity with the court model I have in mind is that it will be one with an extreme degree of lay-orientation. This is essential when conflicts are seen as property that ought to be shared. It is with conflicts as with so many good things: they are in no unlimited supply. Conflicts can be cared for, protected, nurtured. But there are limits. If some are given more access in the disposal of conflicts, others are getting less. It is as simple as that.

Specialisation in conflict solution is the major enemy; specialisation that in due—or undue—time leads to professionalisation. That is when the specialists get sufficient power to claim that they have acquired special gifts, mostly through education, gifts so powerful that it is obvious that they can only be handled by the certified craftsman.

With a clarification of the enemy, we are also able to specify the goal; let us reduce specialisation and particularly our dependence on the professionals within the crime control system to the utmost.

The ideal is clear; it ought to be a court of equals representing themselves. When they are able to find a solution between themselves, no judges are needed. When they are not, the judges ought also to be their equals.

Maybe the judge would be the easiest to replace, if we made a serious attempt to bring our present courts nearer to this model of lay orientation. We have lay judges already, in principle. But that is a far cry from realities. What we have, both in England and in my own country, is a sort of specialised non-specialist. First, they are used *again and again*. Secondly, some are even *trained*, given special courses or sent on excursions to foreign countries to learn about how to behave as a lay judge. Thirdly, most of them do also represent an extremely *biased sample* of the population with regard to sex, age, education, income, class<sup>3</sup> and personal experience as criminals. With real lay judges, I conceive of a system where nobody was given the right to take part in conflict solution more than a few times, and then had to wait until all other community members had had the same experience.

Should lawyers be admitted to court? We had an old law in Norway that forbids them to enter the rural districts. Maybe they should be admitted in stage one where it is decided if the man is guilty. I am not sure. Experts are as cancer to any lay body. It is exactly as Ivan Illich describes for the educational system in general. Each time you increase the length of compulsory education in a society, each time you also decrease the same population's trust in what they have learned and understood quite by themselves.

Behaviour experts represent the same dilemma. Is there a place for them in this model? Ought there to be any place? In stage 1, decisions on facts, certainly not. In stage 3, decisions on eventual punishment, certainly not. It is too obvious to waste words on. We have the painful row of mistakes from

<sup>3</sup> For the most recent documentation, see Baldwin (1976).

Lombroso, through the movement for social defence and up to recent attempts to dispose of supposedly dangerous people through predictions of who they are and when they are not dangerous any more. Let these ideas die, without further comments.

The real problem has to do with the service function of behaviour experts. Social scientists can be perceived as functional answers to a segmented society. Most of us have lost the physical possibility to experience the totality, both on the social system level and on the personality level. Psychologists can be seen as historians for the individual; sociologists have much of the same function for the social system. Social workers are oil in the machinery, a sort of security counsel. Can we function without them, would the victim and the offender be worse off?

Maybe. But it would be immensely difficult to get such a court to function if they were all there. Our theme is social conflict. Who is not at least made slightly uneasy in the handling of her or his own social conflicts if we get to know that there is an expert on this very matter at the same table? I have no clear answer, only strong feelings behind a vague conclusion: let us have a few behaviour experts as we dare to. And if we have any, let us for God's sake not have any that specialise in crime and conflict resolution. Let us have generalised experts with a solid base outside the crime control system. And a last point with relevance for both behaviour experts and lawyers: if we find them unavoidable in certain cases or at certain stages, let us try to get across to them the problems they create for broad social participation. Let us try to get them to perceive themselves as resource-persons, answering when asked, but not domineering, not in the centre. They might help to stage conflicts, not take them over.

### *Rolling Stones*

There are hundreds of blocks against getting such a system to operate within our western culture. Let me only mention three major ones. They are:

1. There is a lack of neighbourhoods.
2. There are too few victims.
3. There are too many professionals around.

With lack of neighbourhoods I have in mind the very same phenomenon I described as a consequence of industrialised living; segmentation according to space and age. Much of our trouble stems from killed neighbourhoods or killed local communities. How can we then thrust towards neighbourhoods a task that presupposes they are highly alive? I have no really good arguments, only two weak ones. First, it is not quite that bad. The death is not complete. Secondly, one of the major ideas behind the formulation 'Conflicts as Property' is that it is neighbourhood-property. It is not private. It belongs to the system. It is intended as a vitaliser for neighbourhoods. The more fainting the neighbourhood is, the more we need neighbourhood courts as one of the many functions any social system needs for not dying through lack of challenge.

Equally bad is the lack of victims. Here I have particularly in mind the lack of personal victims. The problem behind this is again the large units in

industrialised society. Woolworth or British Rail are not good victims. But again I will say: there is not a complete lack of personal victims, and their needs ought to get priority. But we should not forget the large organisations. They, or their boards, would certainly prefer not to have to appear as victims in 5000 neighbourhood courts all over the country. But maybe they ought to be compelled to appear. If the complaint is serious enough to bring the offender into the ranks of the criminal, then the victim ought to appear. A related problem has to do with insurance companies—the industrialised alternative to friendship or kinship. Again we have a case where the crutches deteriorate the condition. Insurance takes the consequences of crime away. We will therefore have to take insurance away. Or rather: we will have to keep the possibilities for compensation through the insurance companies back until in the procedure I have described it has been proved beyond all possible doubt that there are no other alternatives left—particularly that the offender has no possibilities whatsoever. Such a solution will create more paper-work, less predictability, more aggression from customers. And the solution will not necessarily be seen as good from the perspective of the policyholder. But it will help to protect conflicts as social fuel.

None of these troubles can, however, compete with the third and last I will comment on: the abundance of professionals. We know it all from our own personal biographies or personal observations. And in addition we get it confirmed from all sorts of social science research: the educational system of any society is not necessarily synchronised with any needs for the product of this system. Once upon a time we thought there was a direct causal relation from the number of highly educated persons in a country to the Gross National Product. Today we suspect the relationship to go the other way, if we are at all willing to use GNP as a meaningful indicator. We also know that most educational systems are extremely class-biased. We know that most academic people have had profitable investments in our education, that we fight for the same for our children, and that we also often have vested interests in making our part of the educational system even bigger. More schools for more lawyers, social workers, sociologists, criminologists. While I am *talking* deprofessionalisation, we are increasing the capacity to be able to fill up the whole world with them.

There is no solid base for optimism. On the other hand insights about the situation, and goal formulation, is a pre-condition for action. Of course, the crime control system is not the domineering one in our type of society. But it has some importance. And occurrences here are unusually well suited as pedagogical illustrations of general trends in society. There is also some room for manoeuvre. And when we hit the limits, or are hit by them, this collision represents in itself a renewed argument for more broadly conceived changes.

Another source for hope: ideas formulated here are not quite so isolated or in dissonance with the mainstream of thinking when we leave our crime control area and enter other institutions. I have already mentioned Ivan Illich with his attempts to get learning away from the teachers and back to active human beings. Compulsory learning, compulsory medication and compulsory consummation of conflict solutions have interesting similarities.

When Ivan Illich and Paulo Freire are listened to, and my impression is that they increasingly are, the crime control system will also become more easily influenced.

Another, but related, major shift in paradigm is about to happen within the whole field of technology. Partly, it is the lessons from the third world that now are more easily seen, partly it is the experience from the ecology debate. The globe is obviously suffering from what we, through our technique, are doing to her. Social systems in the third world are equally obviously suffering. So the suspicion starts. Maybe the first world can't take all this technology either. Maybe some of the old social thinkers were not so dumb after all. Maybe social systems can be perceived as biological ones. And maybe there are certain types of large-scale technology that kill social systems, as they kill globes. Schumacher (1973) with his book *Small is Beautiful* and the related Institute for Intermediate Technology come in here. So do also the numerous attempts, particularly by several outstanding Institutes for Peace Research, to show the dangers in the concept of Gross National Product, and replace it with indicators that take care of dignity, equity and justice. The perspective developed in Johan Galtung's research group on World Indicators might prove extremely useful also within our own field of crime control.

There is also a political phenomenon opening vistas. At least in Scandinavia social democrats and related groupings have considerable power, but are without an explicated ideology regarding the goals for a reconstructed society. This vacuum is being felt by many, and creates a willingness to accept and even expect considerable institutional experimentation.

Then to my very last point: what about the universities in this picture? What about the new Centre in Sheffield? The answer has probably to be the old one: universities have to re-emphasise the old tasks of understanding and of criticising. But the task of training professionals ought to be looked into with renewed scepticism. Let us re-establish the credibility of encounters between critical human beings: low-paid, highly regarded, but with no extra power—outside the weight of their good ideas. That is as it ought to be.

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