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Keep 'closure' out of the courts

Justice shouldn't be about helping victims of crime 'come to terms' with what happened to them.

Douglas Brown, a former teacher at the elite Upper Canada College (UCC) in Toronto, Canada, was recently sentenced to three years in prison. In an earlier trial that garnered national attention, he was convicted of nine counts of indecent assault against six students ranging in age from 10 to 13. Brown, 55, is heading to jail for crimes that date back some 30 years; the boys are now men in, or approaching, their forties.

The presiding judge, Justice Harry LaForme, said that Brown 'stole from them that which can never be retrieved…their innocence', and that the molestation is partly responsible for the victims' ongoing psychological difficulties. Outside the court, as a shackled Brown was being led away, the Crown prosecutor said that the sentence may not 'solve the problems' of the victims but that 'at least they can put it behind them at this point'.

Brown's was one of those messy, high-profile media cases in which some of the accusers spoke openly and angrily of how the alleged events had caused everything from relationship failures and career disappointments, to lives of alcoholism and crime. In the background was a $62million dollar class action lawsuit against Brown and the prestigious (and prosperous) UCC, with counselling costs as part of the deal.

In our present therapeutic culture, we assume that, for victims, putting things behind them, even musty memories from decades ago, is part of some essential psychological healing process. So we believe that, along with financial settlements and counselling, throwing ageing ex-teachers and de-frocked priests in jail is justified because it somehow brings 'closure'.

'Closure' is a buzzword in and around courts these days. It is often used to justify harsh sentences - as in the Brown case, and in countless other criminal cases across the Western world.

In the USA 'closure' rationalises not only jail time but even death. Timothy McVeigh was convicted for his role in the 1995 bombing of the federal buildings in Oklahoma City that left 168 dead and many more horribly injured. When he was sentenced to death by lethal injection, many of the survivors, victims' relatives and friends, and those declared as 'secondary victims', petitioned US Attorney General John Ashcroft for their right to witness the execution. It would bring closure, they claimed. In fact, so many wanted closure that there was talk of televising his execution.

Just before Christmas 2004, when the jury that had earlier convicted Scott Peterson of murder for the gruesome deaths of his young wife and their unborn child, recommended the death penalty, that same mantra again rang loud and clear. Amid the nationally televised ghoulish cheers of spectators, the pundits argued that, for Lacy Peterson's family and for all the Americans mourning her tragic end, it would bring 'closure'.

In the recent book *The Death Penalty on Trial: Crisis in American Justice*, Bill Kurtis, whose role as host of the long-running US television A&E series *Investigative Reports* has brought him close to the death chamber, argues that the death penalty should be abolished, not just because innocent people are sometimes killed but because it's barbaric. He suggests that if Americans are to let go of the death penalty they first have to get over this belief that it brings some kind of closure for the families. 'The only reason the death penalty is still there', he says, 'is that we want to do something for the victims'.

Even in nations like Canada where the death penalty has been abolished, there remains a belief that imposing long prison terms is somehow good for the victims. Judges all too often impose sentences that make sense only if one believes in the mystical power of therapeutic closure. One rare exception occurred in December 2004 in Canada. It was a complicated, tragic case in which a very disturbed young man, Darren Varley, was shot twice by a police officer while in custody. The jury found that the first shot was fired in self-defence but the second shot, fired a few seconds later, and the one that killed him, was not. So the Royal Canadian Mounted Police (RCMP) officer, Michael Ferguson, was convicted of manslaughter. While the mandatory sentence called for a minimum of four years, Justice GC Hawco of the Alberta Court of Queen's Bench, took the unusual step of exempting Ferguson from the minimum choosing, instead imposing a conditional sentence to be served in the community.

'I am aware of the grief and anger of the Varley family', said Hawco. 'I know what it is to lose a 23-year-old son. No sentence that I can impose will alleviate their grief. Their anger many never be nullified. Our courts cannot become involved in retribution and vengeance. Rather, I am obliged by law to render a sentence which is proportionate to the gravity of the offence and the degree of responsibility of the offender. That is what I shall attempt to do today.'

Justice Hawco hit it on the head. His job was not to alleviate anyone's feelings of grief or anger; the very idea that any judge has it in his power to do so is suspect. Hawco didn't fall into the emotional trap of thinking that justice is all about the victims, and he side-stepped the notion of 'closure' that confuses retribution with healing.

I think that it's time that judges stopped using the word 'closure', because all too often the sentences they impose in its name have nothing to do with getting over what happened and everything to do with having a taste of vengeful satisfaction. That's not something our courts should ever have become involved in; the challenge now is finding a way out.

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