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# A Vision of Criminal Violence, Punishment, and Relational Justice

Mary Graw Leary\*

SAMUEL H. PILLSBURY, *IMAGINING A GREATER JUSTICE—CRIMINAL VIOLENCE, PUNISHMENT, AND RELATIONAL JUSTICE*, (Routledge, 2019)

Since the inception of a state-run criminal justice system, many have debated and critiqued its features and goals. Often this dialogue takes place largely among academics and theorists with limited impact on policy and an even more marginal influence on the day to day reality of those most affected by the system. In every generation or so, however, a consequential movement emerges, for better or worse. These include movements regarding the evolution of the prison system,<sup>1</sup> the creation of a rehabilitative juvenile court system,<sup>2</sup> the implementation of “tough on crime” provisions of the 1980s,<sup>3</sup> as well as others. With these types of exceptions, efforts to truly reshape the justice system often remain theoretical. In contemporary times, however, there is the potential for major reform of the criminal justice system as courts, states, and the federal government take some actions to recalibrate sentencing laws and procedures.<sup>4</sup> Consequently, pundits and scholars author a plethora of books and articles about “criminal justice reform,” making it a hot topic for theory and academic discourse.

Many of these pieces, however, risk a lack of implementation because they do not recognize all the actors in the criminal justice system, but focus on a subset that is of interest to the author. As for the other actors, if authors recognize them at all, it is to pillory them as the problem “to be fixed,” rather than a stakeholder in the system with whom one should collaborate.<sup>5</sup> Thus, some advocates for sentencing

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<sup>1</sup> E.g., James Cullen, *The History of Mass Incarceration*, BRENNAN CENTER FOR JUSTICE (July 20, 2018) <https://www.brennancenter.org/blog/history-mass-incarceration>.

<sup>2</sup> Elizabeth E. Clarke, *Disrupting Injustice: Fifty Years Post Miranda and Gault: A Call to Action to Re-Examine the Rights of Children in Conflict with the Law*, 62 S.D. L. REV. 608, 608 (2017).

<sup>3</sup> Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103–322, 108 Stat. 1796.

<sup>4</sup> E.g., First Step Act of 2018, Pub. L. No. 115–391, 132 Stat. 5194.

<sup>5</sup> Some reform efforts that do bring in all sides of the criminal justice system to collaborate have been very successful. See, e.g., Hon. Toko Serita, *In Our Own Backyards: The Need for a Coordinated Judicial Response to Human Trafficking*, 36 NYU REV. L. & SOC. CHANGE 635 (2012) (discussing the human trafficking intervention court as a successful problem solving court in which the Court, prosecution, and defense all collaborate to assist victims of trafficking but also hold some

reform focus on the incarcerated individuals, often ignoring the offenders' victims to a large part.<sup>6</sup> Some characterize most prosecutors as unethical attorneys focused on conviction at all costs and law enforcement in an equally negative light.<sup>7</sup> Conversely, advocates for a stronger law enforcement approach often focus solely on the victims' experience, not considering the offender, and characterize the system of offender rights as a series of loopholes to impede justice.<sup>8</sup> The result of this polarized discussion is that the needle moves very little to improve our system and the human toll is great.

In the midst of this, Samuel H. Pillsbury offers a new book—and a refreshing new perspective—that has the potential to move the needle to an improved criminal justice system. What makes *Imagining a Greater Justice—Criminal Violence, Punishment and Relational Justice* so potentially impactful is Pillsbury's inclusion of the perspectives of all the actors in the system to produce a thoughtful analysis which understands the practical reality of an authentic criminal justice system, as well as the need to attain more for all.

What makes this book stand out is that Pillsbury brings into this important discussion the perspective of all those affected by criminal law and procedure, not only offenders. By focusing on the effects of criminality on the individual and the community, he gives voice to the victims of crime and their families, the families of the offenders, and the needs of the community for a safe and humane existence. In so doing, he offers a comprehensive examination not only of where the system exists now, but what it could potentially realize. His book conveys an understanding that no reform can actually be accomplished on the ground without the active collaboration of all parties—especially victims, and that can only be done with the recognition of the true nature of victimization, as opposed to a glossed-over version. By doing so, Pillsbury then more effectively advocates for the steps necessary to alter current policies and the need to rethink our system for the betterment of all, including offenders and the greater community.

He achieves this goal, not by taking the easy course. As the title suggests, he focuses not on “victimless” or “nonviolent drug” offenders. Rather, he takes on the hard questions by focusing the book on violence and violent crime. By giving victims as well as offenders a voice in this analysis, his answers to these questions

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responsible); see also Kristin Henning, *Criminalizing Normal Adolescent Behavior in Communities of Color: The Role of Prosecutors in Juvenile Justice Reform*, 98 CORNELL L. REV. 383 (2013).

<sup>6</sup> E.g., Susan N. Herman, *Getting There: On Strategies for Implementing Criminal Justice Reform*, 23 BERKELEY J. CRIM. L. 34 (2018) (article on criminal justice reform focusing almost exclusively on sentencing, referencing support for victim services three times).

<sup>7</sup> See e.g., *The Power of Prosecutors*, AMERICAN CIVIL LIBERTIES UNION, <https://www.aclu.org/issues/smart-justice/power-prosecutors> (last visited July 26, 2019); see also Ellen C. Yarofshesky, *Duty of Outrage: The Defense Lawyer's Obligation to Speak Truth to Power to the Prosecutor and the Court when the Criminal Justice System is Unjust*, 44 Hofstra L. Rev. 1207, 1208–11 (2016).

<sup>8</sup> See, e.g., Rafael Manguel, *Everything You Don't Know About Mass Incarceration*, CITY JOURNAL (Summer 2019), <https://www.city-journal.org/mass-incarceration>.

are refreshingly candid and grounded in the ugly reality of violent crime and the imperfect justice system in its wake.

Part of the reason for the success of this approach is Pillsbury's own background. Not only is he a highly regarded legal scholar at Loyola Law School, Los Angeles, but this book draws on his other experiences as well. A former journalist, Pillsbury covered criminal trials and crime in North Florida. Later, he served as an Assistant United States Attorney in Los Angeles prior to his career in academia. Perhaps most useful to the book, however, is his work as an ordained Episcopal Deacon through which he engages in ministry in juvenile detention halls, jails, and prisons in California (pp. 9–10). All these experiences not only lend him credibility but afford the reader a rich insight into criminal justice as it plays out on the ground.

In 1993, a book appeared on the scene that altered the national debate on the death penalty, Helen Prejean's *Dead Man Walking*.<sup>9</sup> This popular book transformed the dialogue on the death penalty and convinced many to reconsider and oppose the death penalty where before they had been silent or disinterested.<sup>10</sup> It succeeded for many reasons, but one of which was Sister Prejean's honest and candid acknowledgment of the horrors of the crimes committed by the offenders.<sup>11</sup> Sharing the evolution of her own thoughts on the very real harms experienced by victims and their families, as well as the importance of offender responsibility and accountability, gave her a credibility which allowed her to reach so many readers. *Imagining a Greater Justice*, although a different type of book, possesses these qualities and similarly is the work of an author, albeit an academic one, who also shares a rich history on the front lines of the criminal justice system. Consequently, if readers accept Pillsbury's invitation to understand the humanity of all those in the system, its vision is one many should study and one that could have a similar impact on our system.

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<sup>9</sup> HELEN PREJEAN, *DEAD MAN WALKING: AN EYEWITNESS ACCOUNT OF THE DEATH PENALTY IN THE UNITED STATES* (1993).

<sup>10</sup> Tim Griffin, *Dead Man Walking* (Book Review), 3 *CONTEMP. JUST. REV.* 109, 110–112 (2000) (stating that Prejean's "more penetrating" critiques of the death penalty arise from her ability to force the reader to acknowledge the humanity of the men on death row but to also be "evenhanded in her presentation of the crimes . . ." Also asserting her success is in her dualistic desire for offenders to accept responsibility for their actions and her concern for the impact of the crimes on families).

<sup>11</sup> Raymond A. Schroth, *Sister Helen Prejean*, *COMMONWEAL MAGAZINE* (June 23, 2004), <https://www.commonwealmagazine.org/sister-helen-prejean> (last visited July 28, 2019) ("Prejean's main impact, says Stephen Bright, of the Southern Center for Human Rights in Atlanta, has been in bridging the gap between convicts and the survivors of their crimes, in asserting the humanity of everyone involved—inmates, victims' families, guards, executioners, law enforcement officers, even jurors who often do not have enough information when they vote for death.").

## I. STRUCTURE

To categorize this work as simply another criminal justice reform piece would not be accurate. Many such books focus on the collateral effects of a harsh system on its less violent offenders. Similarly, many of them propose solutions to symptoms, but do not delve deeply into the core of the purpose of the criminal law.

Pillsbury accurately describes his book as different. First, he focuses on violence and violent crime. In so doing, he argues that if one broadly examines violence and how society responds to it, we can fundamentally alter the landscape, not only of criminal justice, but of the occurrence of violence itself (p. 19). Pillsbury states that the book has three pillars: violence, punishment, and what he calls “relational justice” (pp. 15, 99, 195–196). To this list I would add a fourth: victimization. While perhaps this could be considered a component of the violence pillar, woven throughout the book is an authentic voice of victims so often missing from books that address the justice system. The section of the book on violence addresses what he calls the “moral disregard” of the victims, and the section on punishment addresses the “moral disregard” of the offenders by society (p. 44). Finally, the section where Pillsbury describes relational justice is designed to outline his solution. As will be discussed, this is a new concept which lacks the clarity of the first two sections, but also provides some important insights.

Pillsbury begins his book with a discussion of violence—a bold choice, and he acknowledges as much. He does so, not by simply laying out the latest statistics on violence in America.<sup>12</sup> Rather, he begins with a discussion of the real meaning of violence, “the deep pain that violent crime causes, and the moral responsibility of perpetrators” (p. 3). While this sentence may sound as though the author will launch into a conservative assault on traditional criminal justice reform, he does not. Instead, what follows is a thoughtful book which acknowledges the realities of crime, not the theoretical. A more theoretical approach often sanitizes the nature of crime and its effects on not only individual victims, but also their families and communities. Such an approach allows an author to avoid the pain caused by perpetrators to invade the analysis. Pillsbury, however, gives that pain a voice. He recognizes that by exploring the human dignity of victims in Part I of the book, he can then make those same human dignity arguments for offenders. He can legitimately challenge the reader to appreciate the humanity of the offender because he has spent so much time laying out the humanity of the victim that was ignored by the offender. “Our problems with violence and with criminal justice are inextricably intertwined. We would not be so punitive a people if we were not also so violent” (p. 4).

In a refreshing display of transparency in legal scholarship, Pillsbury plainly acknowledges this approach of focusing on violence is atypical. While that fact may seem unremarkable, he explains why it is atypical with welcomed candor. “[F]or

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<sup>12</sup> Erin Grinshteyn & David Hemenway, *Violent Death Rates: The US Compared with Other High-Income OECD Countries*, 129 AM. J. MED. 266 (2016).

highly educated people—such as the kind who write and read books like this on criminal justice—close and patient listening to victims is difficult . . . . It is hard because listening to the hurt hurts . . . . For those who love to discuss ideas . . . sustained attention to emotion can be uncomfortable” (pp. 4–5.) He later compounds this thought when discussing criminal policy and the shortcomings of experts imposing their detached will. He acknowledges it sounds good to an academic but “[t]elling someone who is deeply upset to calm down and listen to the experts does not sound like an effective strategy . . .” (p. 152). It is precisely for this reason all should read this book.

The book, therefore, begins not only with a discussion of violence but also with the pain of victims of violence and the responsibility for that pain of the wrongdoer. Although Pillsbury labels Part I of the book “Judging Wrong”, this is confusing. It really is more about listening. By listening to the pain of victims, he paves the way for the reader to also listen to the voices of the wrongdoers and to the problems with judgment. He does so through examples, but also personal stories to poignantly demonstrate the pain.

Part II turns to examining punishment and what it looks like in contemporary America. This can seem a little confusing given that the first part addressed the harms of violence, the culpability of the offenders, and how to most accurately judge the wrongdoing. Here, the book could have benefitted from a discussion delving into the aforementioned *need* for “holding wrongdoers accountable” and “just punishment,” which is the title of Part II (p. 82). Again, in this part he looks not only at trends, but also at specific examples such as the mandatory life sentences in California, their history, and the role violence and the media played in their development (pp. 129–155).

Part III explores Pillsbury’s concept of relational justice, which he sees as the solution to the flaws in the criminal justice system. The first three chapters in this Part flow together nicely. He starts with an examination of what the traditional justice system does and does not do for victims. The next chapter looks at relational healing for the victims and the responsibility of the individuals, community, and government to engage in that healing. Chapter nine then proves to be most challenging as Pillsbury tackles what relational healing would mean for the offenders who have redeemed themselves. By the end of that chapter, he has constructed a tangible vision for the future of a system which acknowledged the reality of the violence, but also the personhood of all the actors and, through healing, raises all boats.

However, Pillsbury then has two remaining chapters that address important issues in criminal justice: the roles of race and implied bias in the system and the need for individuals to engage in this relational justice in their own lives. While important points, they appear as add-ons to an already well-structured book. They read like individual powerful essays, rather than an extension of the themes of the book. It is difficult to criticize the book and suggest these chapters should not be included, as they address the profound role that race plays in our criminal justice system. The book would have been better served with these critical observations

being included in the earlier discussion (as race was), rather than being tacked on to the end. However, by doing so, Pillsbury underscores the potential of relational justice. For example, he argues that when we racially segregate, we consolidate power and reinforce fears which lead to a feeling of un-belonging (pp. 293–97). Similarly, by calling upon individuals to engage in relational justice in their own lives, he underscores that he is advocating not for a series of tweaks to our system, but rather for a fundamental change in our concept of violence and justice which will, in turn, decrease violence.

## II. THE VOICE OF VICTIMS OF VIOLENCE

While Pillsbury commences his book with an exploration of violence and interweaves that discussion throughout this book, and a significant reason it stands out among its peers is his giving voice to victims. This bold beginning is rare because of the obvious challenges of advocating for reforms beneficial to offenders. It is especially challenging to do so for violent offenders, but Pillsbury retains credibility by first fully acknowledging the harms of violence. Just as Helen Prejean gained credibility after she did not shrink from outlining the horrors of murder faced by victims and families, so too does Pillsbury gain authority through candor. He takes on the victim experience of violence in part because “[a]s a society, our most pressing need for justice comes after criminal violence” (p. 1).

Pillsbury attempts to describe the harms of violence by discussing how violence “harms the soul” and how that is manifested in a variety of ways that exceed the physical and emotional injuries but also include psychological effects such as PTSD, substance abuse, and self-harm (pp. 16, 18). He further develops this idea of harm to the soul by noting that when one’s soul is harmed, one loses one’s identity (p. 29). His illustrations of this seemingly esoteric concept are all too familiar to the reader, such as victims saying they no longer know who they are, or that offenders took a part of them, or family members saying they want their child back, etc. (pp. 29–31). This idea is even more powerfully illustrated through excerpts from victim impact statements, in which victims discuss what their assailants took and how they “ripped my soul out” (pp. 29–30).

This early discussion serves two important purposes in setting the tone for the book. First, it demonstrates a real appreciation that violent victimization is *life-altering* for victims.<sup>13</sup> This is a point often lost in an academic discussion of crime. The one person in a criminal court who is there through no fault of her own and yet permanently loses a piece of herself is the victim—understanding that is key. Pillsbury understands that notion, but also does not fall into the trap of pandering to victims. Rather, he demands recognition of their deepest needs because, as he puts

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<sup>13</sup> Victims of serious violent crime not only suffer the physical injury, but face a lifetime emotional, physical, social, and psychological injuries and challenges. See DEP’T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS, SOCIO-EMOTIONAL IMPACT OF VIOLENT CRIME (2014). See also DEAN G. KILPATRICK ET AL., NAT’L VICTIM CTR. & CRIME VICTIMS RESEARCH & TREATMENT CTR., RAPE IN AMERICA: A REPORT TO THE NATION (1992).

it, “punishing offenders has distracted from addressing victims’ deepest needs” (p. 153). Therefore, Pillsbury utilizes this suffering as a reason for his ultimate proposal. He underscores his definitive point that criminal justice policy “should never deny or avoid the evil which victims have faced,” but society must also have the moral courage to, at times, disagree with victims about punishment (p. 153).

Second, he ties the importance of violence not only to the victim experience, but also to the experiences of all those affected by violence, a group which includes the victims’ families, the community, and the offenders.<sup>14</sup> This connection leads to a clearer understanding of his concept of “relational justice” because he has identified how victimization separates the person from identity and community and that this is a harm. As such, we must understand the impact of the violence experienced by offenders and how that, too, can separate them from the community. “[A]ppreciating the soul harms of violence helps us see the significance of personal and collective histories of violence” (pp. 17–18).<sup>15</sup>

In the third part of the book, Pillsbury discusses what many have targeted: over-criminalization and harsh sentences. In so doing, he strikes a more relational tone, both acknowledging that what communities want, and rightly so, is “an assurance of future safety by bringing perpetrators to account” (p. 198). Rather than lament the harsh sentences as the result of cynical or racist politicians, although he spends much time discussing the racism and implied bias elements of criminal justice policy, he more characterizes these actions as the “tragedy of a people who thought they were doing justice” (p. 155). Pillsbury attacks their perspective neither as vengeful nor purely retributive. His argument is much more thoughtful. He suggests that while the current system may *feel* as though it is accomplishing justice for victims, it is in fact not making people safer.

Some criminal procedure scholars discuss how our system often requires policy makers to choose between security and individual rights.<sup>16</sup> Pillsbury makes an important point about true safety which challenges this conventional wisdom. It has long been true that Americans do not even report most crimes.<sup>17</sup> Although many in law enforcement lament this reality, Pillsbury links the need for a more professional law enforcement system, one with more legitimacy, to safety (p. 199). Specifically, he notes that what is required for safety is not harsher sentences but a public which trusts law enforcement and will report crimes, quality law enforcement officers that

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<sup>14</sup> Joy D. Osofsky, *The Impact of Violence on Children*, in 9 THE FUTURE OF CHILDREN 33, 36, 40–42 (1999) (outlining the impact of exposure to violence on children and parents).

<sup>15</sup> His discussion of victims’ voices is not only substantive but procedural. Laying out the importance of victim impact statements and using the sentencing of Larry Nassar, he explains the importance of understanding the victim as a human being. See *Tennessee v. Payne*, 501 U.S. 808 (1991).

<sup>16</sup> E.g., *United States v. White*, 401 U.S. 745, 790 (1971) (Harlan, J., dissenting); Thomas K. Clancy, *The Purpose of the Fourth Amendment and Crafting Rules to Implement that Purpose*, 48 U. RICH. L. REV. 479 (2014) (discussing the purpose of the Fourth Amendment as security).

<sup>17</sup> Rachel E. Morgan & Jennifer L. Truman, U.S. Dept. of Justice, *Criminal Victimization*, (NCJ 250180), Washington, D.C.: Office of Justice Programs, Bureau of Justice Statistics, Mar. 22, 2018.

are able to determine guilt in a reliable way (without implied bias for example), and a court system with judges who will do the same (p. 199). This linkage is an important argument regarding criminal justice policy that should fall on the receptive ears of those seeking safety.

### III. RESPONSIBILITY

Anytime a book on criminal justice acknowledges that offenders must take actual responsibility for the harms they inflicted, it risks sounding pedestrian and over-simplified. This risk is compounded by openly asserting that morality has a role to play in criminal law (p. 44). Pillsbury, however, successfully articulates both these points in a convincing and thoughtful way which avoids a judgmental tone. This thorough and well-developed discussion is a strong feature of the book.

He accomplished this herculean task by invoking his concept of “moral disregard.” He defines moral disregard as possessing two features: (1) a failure to see the victims as they are and (2) a failure to care for the basic good of the victims (p. 54). Having convinced the reader that moral disregard is fundamentally wrong, Pillsbury begins with the ways in which an offender morally disregards his victim. This is done by rejecting colloquial concepts of blame (throughout the book, he warns the reader that the “good guys vs. bad guys” narrative is a false narrative). Instead, he defines blame as assigning responsibility for moral disregard (p. 44, 50).

While some readers may perhaps find the tone of morality off-putting at first, Pillsbury successfully navigates potential hot points by pivoting his discussion away from offenders and victims.<sup>18</sup> He does so by using as an example an institution which is widely believed to have demonstrated this moral disregard for victims: the Catholic Church hierarchy regarding child sexual abuse. Here he illustrates moral disregard by outlining how the hierarchy did not recognize the harm of child sexual abuse, did not recognize how one of their own could be bad due to the “good guys vs. bad” guys false dichotomy, and did not recognize how the culture of the Church was one that turned inward to fight “the other” (pp. 78–80).<sup>19</sup>

Through this example, among others, Pillsbury makes a powerful point about moral disregard and accountability. By utilizing the child sexual abuse scandal of the Catholic Church hierarchy, he selects a group of offenders universally seen as

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<sup>18</sup> CHARLES E. TORCIA, *WHARTON’S CRIMINAL LAW* 10–12 (15<sup>th</sup> ed. 1993).

<sup>19</sup> This phenomenon of not wanting to believe victims because that would force the observer to face the reality of violence is not unique to the Church officials. Many do it by judging and ostracizing crime victims so that they can treat them as “the other” and feel less threatened. See Mary Graw Leary, *Sexual Abuse and Moral Indifference*, PUBLIC DISCOURSE (Nov. 28, 2011) <https://www.thepublicdiscourse.com/2011/11/4340/>; see also Shaila Dewan, *Why Women Can Take Years to Come Forward with Sexual Assault Allegations*, N.Y. TIMES (Sept. 18, 2018), <https://www.nytimes.com/2018/09/18/us/kavanaugh-christine-blasey-ford.html> (“But because many people are not psychologically prepared to accept how common harassment and assault are, experts say, they tend to look for reasons to disbelieve.”).

harmful such that no reader would disagree with their being held morally responsible. Bringing the reader along to agree with that point, Pillsbury makes the logical conclusion that offender acceptance of *responsibility* is an essential component of an effective justice system. “[T]he child abuse scandal in the Catholic Church should serve as an example that, whatever their merits (and they are many), apology remorse and repentance and forgiveness, counselling and treatment cannot substitute for holding serious wrongdoers publicly accountable. Justice demands it.”<sup>20</sup>

In making this point, Pillsbury can then make his more significant argument more forcefully. Society also demonstrates moral disregard for victims when it fails to recognize the victimization of the most marginalized because they are not “one of us,” or “one of us” could never do such a crime. This is clearly wrong. So, too, is it wrong when society demonstrates moral disregard for the offender who has taken genuine responsibility for his actions, has been held publicly accountable, and is now in a position to move forward with human dignity. This “us v. them” mentality is equally as wrong in this context, and Pillsbury’s theme that all deserve the same moral regard is a powerful point not to be dismissed.

#### IV. PUNISHMENT

This previous line of discussion provides an effective bridge to discuss punishment. Pillsbury begins with two important points about punishment. First, he argues it is an essential characteristic of the system and, second, that it must be communal, i.e. come from the community. Punishment is important for the system but also for the community as it reflects society’s collective view of wrongdoing.<sup>21</sup>

While the reader might expect a defense of the status quo to follow, Pillsbury instead enters into a deep discussion of the need for *just* punishment and the reality of the shortcomings of the current system in that regard—largely due to inequality. He does discuss the racial and economic disparities between different groups of people. He also acknowledges continued discrimination against these marginalized people through the criminal justice system, which results in the fact that those sentenced are largely poor and minority.

But it is here, in the midst of commonly accepted critiques of the system that Pillsbury makes his most brilliant point. He asks of us, the public and the punishers, to do what we ask of offenders: to engage in the very same soul searching and to take responsibility for the harms the criminal justice system causes. Among many

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<sup>20</sup> He continues by writing, “[a]pologies and evidence of personal reform, expressions of forgiveness and processes of reconciliation have their place in a scheme of justice . . . but none can meet the modern community’s need for a forceful, collective answer to the worst acts of violence. Serious wrongdoers need to be punished” (p. 100).

<sup>21</sup> “I do not think we can make clear the moral and social unacceptability of serious crimes without punishing their perpetrators” (p. 104). *See also id.* at 105 (“[T]he criminal law has a critical role in defining community. It expresses and defends base-line principles of right and wrong conduct.”); *see supra* n. 35.

harms is the reality that the criminal justice system does not give moral regard to defendants who are over-incarcerated due to mandatory minimum sentences, who are sentenced to prisons far from their families, and who suffer in prison systems without pathways for rehabilitation or a return to society. He powerfully accuses society of the same “responsibility avoidance” committed by offenders (p. 126).

Here, Pillsbury links this “responsibility avoidance” behavior to his moral regard and relational justice theories. While many books have focused on the length of mandatory minimum sentences or their harshness, Pillsbury identifies another less detectable, insidious aspect which he argues has more far reaching consequences. This “legislative sentencing” not only fails to consider the individual offender, but it “dilutes personal responsibility for punishment decisions . . . [And] operates to impede sentencer empathy for the punished” (p. 150).

Any law student can recite the most common theories of punishment from retribution to rehabilitation.<sup>22</sup> Pillsbury reframes these theories for more contemporary times as he analyzes the purpose of the more narrow form of punishment, incarceration.<sup>23</sup> “[T]hree rival norms compete for dominance: punishment, security and reformation.<sup>24</sup> Punishment and reformation wage the most public battle for priority, but security mostly prevails in the end” (p. 165). While he laments the loss of focus on reformation/rehabilitation within the prison system, he calls for something more: *redemption* (p. 244). He distinguishes rehabilitation from redemption by defining the former as the personal changes of the offender, while redemption is “society’s decision to welcome the [offender] back into free society.” *Id.* Society tends to dismiss some offenders as “unredeemable.”

In his punishment analysis, therefore, Pillsbury again takes a traditional critique and shapes it into something more profound and fundamental. In his view, the problem is not simply that our punishment scheme is too harsh, but that the mandatory sentences allow society to avoid the responsibility of the resulting punishments. In so doing, society becomes as guilty as the offenders because such a process morally disregards people—the exact act of the violent offenders.<sup>25</sup>

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<sup>22</sup> WAYNE LAFAVE, *SUBSTANTIVE CRIMINAL LAW* § 1.5 (3d ed. 2000).

<sup>23</sup> It has been well documented that the United States incarcerates more people than any other nation in the world by far. See *Highest to Lowest—Prison Population Rate*, WORLD PRISON BRIEF (last visited July 25, 2019), [http://www.prisonstudies.org/highest-to-lowest/prison\\_population\\_rate](http://www.prisonstudies.org/highest-to-lowest/prison_population_rate). See also Amanda Petteruti & Jason Fenster, *Finding Direction: Expanding Criminal Justice Options by Considering Policies of Other Nations*, JUST. POL’Y INST. 3 (Apr. 2011), [http://www.justicepolicy.org/uploads/justicepolicy/documents/finding\\_direction-full\\_report.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/finding_direction-full_report.pdf).

<sup>24</sup> Traditional legal scholars are more familiar with the term rehabilitation. Pillsbury, however, prefers the term reformation because “[r]e-habilitation suggests that offenders were fully functioning, productive citizens before suffering debilitation.” *Id.* at 169–170.

<sup>25</sup> Even here, Pillsbury demonstrates his even-handedness by noting that the first step to societal redemption is the offender taking responsibility for his past, and the next necessary step is society not permanently condemning him.

## V. RELATIONAL VIOLENCE

The author proposes relational justice as a path out of this quandary. This original concept is the most difficult to grasp in the book. Easier to understand are Pillsbury's observations of how violence experienced is relational. He links violence of the soul to the harm experienced by victims and their families (p. 18). Regarding offenders he tries to make the same argument that violence is relational. He rejects the argument that not all marginalized people are violent and, therefore, we should not consider any of the offender's circumstances in punishment. Instead, he links their committed violence to the often-noted trauma they experienced.<sup>26</sup> Unfortunately some of his argument is elusive. However, his concrete point about sentencing is clear. We must recognize the individuality of the victim and demonstrate moral regard for the individual she is, and we must do the same for offenders. He has a commitment to moral regard for all.

## VI. RELATIONAL JUSTICE

Pillsbury devotes the third part of the book to his concept of relational justice. Having spent the first two sections outlining the realities of violence through traditional means of statistics, but also through the authentic voices of victims, he effectively demonstrates the ripple effects of violence throughout communities. At this point, the reader could find himself somewhat confused with what to do with all of this information. This third section tries to provide the answer. Pillsbury does so not simply by proposing conventional fixes to the criminal justice system but by introducing his conception of an alternative to the traditional framework of "justice under the law," which he labels "relational justice." "In relational justice we still punish wrongdoing, but we also address the relational harms and wrongs of violence" (p. 195).

He outlines his idea that violence is soul harming and damages relations among people and, therefore, among the community. Thus, the community can and should help heal the soul/person—all souls/people to include the victims, the offenders, and the community. It is this form of healing that Pillsbury advocates must be a component of the justice system.

While "healing" may sound a little too amorphous for those who read and think about criminal justice efficacy, Pillsbury makes a nuanced and thoughtful argument that gives his theory some concreteness. Because he has shown a respect for the positions of those on both ends of the spectrum, he is able to do so persuasively. In

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<sup>26</sup> The effect of the exposure to violence is commonly recognized. Gayla Margolin & Elana B. Gordis, *Children's Exposure to Violence in the Family and Community*, 13 CURRENT DIRECTIONS IN PSYCHOL. SCI. 152, 153 (2004) ("Children who are exposed to violence of any kind may exhibit behavioral disorders such as aggression and delinquency; emotional and mood disorders such as depression and anxiety; post-traumatic stress symptoms such as exaggerated startle, nightmares, and flashbacks; health-related problems and somatic symptoms such as sleep disturbances; and academic and cognitive problems.").

a discussion reminiscent of Thomas and Dressler's "norms of the criminal process," Pillsbury lays out what is necessary for an effective criminal justice system. Thomas and Dressler argue that for a system to be legitimate it must be accurate, fair, efficient, and it must limit the government.<sup>27</sup> Here Pillsbury reminds the reader that the current justification for today's justice system is security. He asserts that to truly have security, society needs something more fundamental than lengthy sentences. It needs a public that reports crime, law enforcement who are well trained to identify the guilty through evidence and not bias, and prosecutors and courts who can do the same (p. 199). He then underscores that the system today simply does not have these characteristics and, therefore, is not achieving the security that its fiercest advocates claim it ensures. By focusing on the statistics for reporting crimes of violence, he notes that in the current system less than half of cases are even reported.<sup>28</sup> The result, he argues, is a system with "widespread impunity under law for wrongful violence. This is a hallmark of nations or regions where government has failed or is failing" (p. 200).

Here he links the victims' rights movement to the dysfunctional system. At times he unintentionally takes too broad a stroke at the victims' rights movement which did give voice to victims who previously had no say in the prosecution of their own victimization.<sup>29</sup> That is unfortunate because this omission risks obfuscating his larger and more important point: society should do more to reshape the system after the victims' rights movement. That "more" consists of society doing the same for offenders, which is a much more daunting task (p. 205). The current system, he argues, not only does nothing for offenders, but also nothing for our security and even less for the actual needs of victims necessary to their healing. *Id.*

The book could benefit here from a discussion of the Crime Victims Bill of Rights to give it a more balanced tone. This would outline that victims under both federal and state law actually have certain rights which, at least procedurally, provide them with some moral regard.<sup>30</sup> However, such a discussion would also have to include a discussion about how these rights are often not honored.<sup>31</sup> Indeed the recent press coverage of the Jeffrey Epstein case illustrates as much. A wealthy

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<sup>27</sup> JOSHUA DRESSLER & GEORGE C. THOMAS, CRIMINAL PROCEDURE: INVESTIGATING CRIME 41 (6th ed. West 2017).

<sup>28</sup> *Supra* note 17 (noting that 45% of violent victimizations and 36% of property crimes were reported to law enforcement). While 40% of rapes were reported to law enforcement in 2017, in 2016 only 23% of rapes were reported. *Id.*

<sup>29</sup> See 18 U.S.C. § 3771 (2015); Hon. John Kyl et. al, *On the Wings of Their Angels: The Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims' Act*, 9 LEWIS & CLARK L. REV. 581 (2005); Mary Graw Leary, *Crime Victim Rights*, in THE STATE OF CRIMINAL JUSTICE 233-48 (Am. Bar Ass'n 2015).

<sup>30</sup> See Leary.

<sup>31</sup> Jessica Spencer & Joan Petersilia, *Voices from the Field: California's Victims' Rights in a Post-Realignment World*, 25 FED. SENT'G REP. 226 (2013).

and well connected businessman apparently regularly sexually trafficked minors.<sup>32</sup> Yet, he was given a plea deal with no input of the victims, as required by federal law.<sup>33</sup> This contemporary example illustrates the accuracy of so many of Pillsbury's points of how the marginalized are treated in the system.

When this section comes to its discussion of offenders, it is much more successful. Here, he explores in more detail his idea of redemption. Redemption becomes the key to the new form of justice he envisions. Reformation of offenders, even the most violent ones, is essential, but almost as essential is society's redemption of these offenders (pp. 244–45). Here the relational mutuality of obligation is most apparent. The first step to redemption is reformation and the first step to offenders' reformation is addressing their pain: the pain they themselves experienced in the past and taking responsibility for the pain they have caused. Hence, he proposes an offender-based reform, but one that ultimately recognizes its primary step is validation of victims. Only after that can we engage in the "mutuality of obligations" necessary for justice.

No book on the criminal system could start with this mutuality concept because it effectively brings blame to both society and the offender. But he powerfully makes this point by previously laying the groundwork of realistic recognition of the pain of victimization. While he acknowledges the suspicion surrounding so-called "jailhouse conversions," he argues, no doubt based on his experience ministering to prisoners and being a prosecutor, that the prison system must provide the *opportunities* for such redemption. Such opportunities include prison programs that recognize prisoners can change, a prison culture of potential rather than dehumanization, and effective parole and reentry programs.

This book is nothing if not practical. Pillsbury, therefore, acknowledges his prescription of shifting the system's entire framework is a tall order with an expensive price tag. He effectively ties it all together by acknowledging as much by not advocating for such a shift for the offenders alone. Here he utilizes his "relational theory" to powerfully assert that this relational justice is the only way all stakeholders can move to a less violent society, the ultimate goal of all.

## VII. CONCLUSION

*Imagining a Greater Justice* is a thoughtful examination of the realities of the criminal justice system for all the stakeholders: victims, offenders, and communities. As such it is an essential read for anyone interested in an efficacious justice system. Unlike most other books it authentically gives voices to all these stakeholders through personal narratives. It demonstrates a moral regard and respect for the

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<sup>32</sup> Doe 1 v. United States, 359 F. Supp. 3d, 1220–22 (S.D. Fla. 2019) (Prosecutors violated the CVRA by failing to consult with victims regarding the non-prosecution agreement).

<sup>33</sup> *Id.* at 1207–16; see also Paul Cassell, *Prosecutors Violated the Rights of Jeffrey Epstein's Victims*, THE VOLOKH CONSPIRACY (Feb. 21, 2019), <https://reason.com/2019/02/21/prosecutors-violated-the-rights-of-jeffr/>.

experience of all these figures, which is no doubt due to the rich experience of the author. As such, when it advocates for changes, these changes have a legitimacy that demands attention.

Toward the end of the book, Pillsbury reflects on his “justice work” as he calls it. While he apparently defines this “justice work,” as his prison ministry and teaching, this work is rooted in observing the criminal justice system as a journalist, participating in it as a prosecutor, and studying it as a scholar. He questions his impact by confessing that, “I don’t know that I accomplish much. I just *don’t know*” (p. 316). Well, Professor Pillsbury should include in his “justice work” this book. By doing so, he will see the answer to that question is most assuredly, “yes.” Yes, he does accomplish very much.