14 July 2006

Clerk of the Committee
Justice and Electoral Select Committee
Select Committee Office
Parliament Buildings
Wellington

SUBMISSION OF MAXIM INSTITUTE ON THE INQUIRY INTO VICTIMS' RIGHTS

INTRODUCTION

1) Maxim Institute is an independent social research and public policy think-tank, based in Auckland. Maxim Institute is a charitable trust, funded by donations.

2) Maxim Institute's vision is to work towards a freer, more just and more compassionate New Zealand. The issue of victims' rights involves the balancing of freedom, compassion and justice and as such goes right to the heart of the nature of New Zealand society. Maxim Institute therefore thanks the committee for the opportunity to submit on this issue.

3) We have restricted our submission to a consideration of the fourth term of reference and its implications: "examining the concept that criminals owe a debt to individuals as well as society, including issues of compensation and reimbursement of costs."

THE NATURE OF SOCIETY

Our current justice system focuses on crime as a violation against the state, rather than the victim, and in doing so perpetuates the very isolation and breakdown in relationships which provides the foundation for crime.

4) In The House of the Dead, Dostoyevsky writes about the horror of imprisonment in a Siberian prison camp. In the novel, the alienation of the central character takes centre stage. His exploration of what it means to be human causes him to realise the importance of connection between people, both convicts and soldiers. Dostoyevsky himself was imprisoned in a Siberian prison camp, and while the conditions he endured were far removed from those in New Zealand prisons, his assertion that, "The degree of civilization in a society can be judged by entering the prisons..." is still relevant for New Zealand today.

5) The increase in New Zealand's prison population is indicative of our attitude as a society towards crime and the offender. The recent suggestions that this increase is in short-term sentences, and not violent crimes, shows that we
have reduced our justice system to a punitive response to the offender. Public safety is clearly not an issue in these short-term sentences, but rather solely punishment. Whilst it is just that our response to crime involves such an element, by focusing entirely on responding to crime punitively, we have neglected the relational dimension of it, to the detriment of both the offender and the victim.

6) If one asks the question, "what does entering New Zealand's prisons tell us about our society?", we see that New Zealand has, on the whole, marginalised the victim and reduced crime to an offence against the state. Whilst crime is against society in a wider sense, it is also an offence against a victim. In 2005 debate took place in the UK over whether the 'Yorkshire Ripper' should be allowed out to see where his father's ashes had been scattered. The dominant public voice called for a harsh and unflinching approach to the decision in recognition of the offender's violation against the state. In reality, while the crimes he committed were against society as a whole, and no doubt had consequences for those other than the specific victims, the idea that the offence was against a specific group of victims was hardly mentioned. This case seems symptomatic of our approach in the West to justice. By reducing crime to an offence against the state and neglecting the specifics of the offence which has occurred, reparation and restoration is made virtually impossible.

Whilst crime is committed against the state, it also involves a violation against a fellow citizen.

7) Michael Schluter, Executive Director of the Relationships Foundation, suggests that: "It is a truism to say it is only in and through relationships that our characters can express themselves. To live entirely alone is to lose one's humanity." It is interesting to observe the implications of this very simple statement in the area of justice. When considering the factors that tend to correlate with criminal offending, one finds that what links many of them is the breakdown of relationship: family breakdown, alcohol and drug abuse, and mental illness. The isolating nature of these different factors is self-evident. It is no wonder then that imprisonment so often fails to help prisoners reform and instead leads to high recidivism rates.

8) As unlawful behaviour involves a disconnection between an individual and society as a whole, so too it must involve a disconnection at the local level, between an individual and their immediate community. The nature of imprisonment is to further isolate; exacerbating the disconnection between an individual and those around them, i.e. the community. Conversely, if a citizen understands their obligation to society and feels a connection and a sense of mutual responsibility to their community this acts as a restraint encouraging citizens to obey the law.

9) There is also a sense in which the law reflects the common good of society. Law creates the order that enables a stable society to exist. As each citizen benefits from the order which the law generates, so each citizen has an obligation to contribute to this stability by obeying the law. A violation of law involves at its core a violation against society, and the stability and safety which it provides.

10) There is both a macro and a micro level to crime. A criminal act is both simultaneously an infringement against the state (as representing the interest of society as a whole) and also against the victim who is directly impacted. As Michael Schluter observes: "...crime [is] primarily... a breakdown in
relationships; even in those cases where the offender does not personally
know the victim, a relationship can be said to exist by virtue of their being
citizens together, bound together by rules governing social behaviour.**

**How do we want New Zealand society to look?**

11) The question that must ultimately be asked when attending to victims’ rights
is what kind of society do we want New Zealand to be? Maxim Institute
suggests that if the New Zealand we want is one where crime is minimised,
victims’ needs are met, and order and freedom are balanced, as far as
possible policy must encourage mutual responsibility between citizens. It is
only through people taking responsibility for those around them, and
understanding the obligation that they have through connection and
community, that a society can be shaped where people, through belonging,
are constrained from breaking the law. This approach of stressing connection
and community must permeate our culture and influence the way we ‘do
justice’, even when considering victims’ rights.

12) As this Inquiry into Victims’ Rights proceeds, Maxim Institute urges that the
committee consider the nature of crime and how, at its core, crime is a
violation not only against the state but also a violation against a specific
person. This violation breaks the trust that exists between citizens. Crime
therefore causes a breakdown in both the offender’s relationship with society,
and also with a fellow citizen (the direct victim).

**IMPLICATIONS**

**Connection between the offender and victim is desirable.**

13) Maxim Institute suggests that there are some discreet and specific things that
can be done to help connect the victim and their offender and to ensure that
barriers in their relationship are minimised, so that the needs of victims may
be met.

i) **Restorative justice**
   Restorative justice practices are creeping into our justice system; at
   the micro level they provide a comprehensive approach to connecting
   the victim and offender. Maxim Institute encourages the committee to
   consider ways of further mainstreaming such practices as the default
   paradigm for dealing with crime in New Zealand.

ii) **Family group conferences**
   Family group conferences are one of the few ways in which victims of
   crime are able to have their voice heard. However, their effectiveness
   needs to be improved. There are too many stories of victims who have
   attended conferences and have subsequently been frustrated by a lack
   of accountability. The workload of facilitators is often heavy and this,
   combined with a lack of provision for enforcement, often makes it
difficult to ensure that any agreements arrived at during a conference
   are carried out. Maxim Institute urges the committee to consider how
   family group conference agreements can be better enforced.

iii) **Compensation**
   Maxim Institute submits that reparation is an important part of
   recognising the nature of an offence as against a victim and therefore
   submits that compensation needs to have a more central place in New
Zealand's justice system. We recommend that the committee examine ways to increase reparation awards and also consider ways of enforcing the payment of reparation, for example, by deducting a proportion of an offender's income or benefit.

iv) **Preventative schemes**
Maxim Institute also suggests that in considering the place of victims' rights in the justice system, the reduction of crime must be considered. Obviously minimising the number of victims in the first place will not only have a wider benefit for society, but will also help with the care of victims by freeing up resource. Maxim Institute suggests that the committee consider policies that would help reduce the risk factors associated with crime, such as early intervention programmes with at-risk youth.

**CONCLUSION**

14) As a society we now sit at a crossroads. We must either continue on the path we are walking, a path where imprisonment continues to increase and criminal offenders are further isolated as the punitive element of punishment eclipses all others, or we may choose to take our society on another path, revisiting the very principles that underpin our justice system. The rights of victims will only be truly addressed by finding ways to further integrate the relational dimension of society into our approach to crime. A focus on compensation and restorative justice are vital components of this.

Yours faithfully,

**MAXIM INSTITUTE**

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2 BBC, Should Ripper have been allowed out?, http://news.bbc.co.uk/1/hi/talking_point/4190905.stm accessed July 2006
5 M. Schluter, 'What is Relational Justice?' 24.