

The use of the conditional and recourse to imagination in characterising a harm and a victim.





The page on 'The Absent' is a piece of writing on the harm constituted by homicide, as well as on the victim of this act.

“Harm done to another is described on the basis of what would be, but is not”

In the pages that follow, it will be worthwhile to examine these two elements in greater detail: **the harm and the victim.**

We shall first identify **the characteristic elements** specific to these two notions (1/), and then observe what answers **these characteristic elements** yield when **applied to the cases of homicide and abortion** (2/).

Summary:

Intro

General remarks on Harm.

p4

1

The characteristic elements of a harm and a victim.

p5

A. The description of a harm requires the use of the conditional.

p5

B. The figuration of harm requires the use of imagination.

p8

2

The characteristic elements of a harm and a victim, applied to the case of homicide and abortion.

p11

A. Legal science does not currently know how homicide harms another.

p11

B. The true Victim of Abortion.

p16

The day Mrs. Veil, condemning the Crime Against Humanity, evoked the structural pattern of harm and victim.

p18

Intro

General remarks on Harm.

What is a harm?

If asked, anyone would say that 'to harm someone' consists in 'doing wrong to' that person — in altering their condition of well-being, in **moving them from one condition of enjoyment to a lesser one.**

A harm can therefore be defined as a subtraction operated upon an individual's condition of well-being. It corresponds to a diminishment or a suppression of a state of enjoyment belonging to that person (diminishment, for example: restrictions placed on freedom of expression / suppression, for example: a ban on the right to protest).

In this world, Humans enjoy, or may enjoy, various benefits, and **harm is done to them when they are deprived of the enjoyment of one of these benefits.**

To harm another = to deprive another of the enjoyment of a benefit.

That, briefly, is how harm may be defined.

1

The characteristic elements of a harm and a victim.

Having briefly described the harm, it is now necessary to examine it in greater detail

A

The description of a harm requires the use of the conditional.

«Harm casts a situation of enjoyment into the conditional»

Harm affects a person's condition of well-being. It is a subtraction made from that condition, and **a subtraction is a passage from one situation to another.** In order to present this passage properly, it is necessary to set out both situations.

Let us then examine how harm can be described otherwise:

There is first the situation resulting from the harm — **the outcome of the harm** — which corresponds to a **situation of absence of enjoyment**. This situation is the situation that is, and, by the very fact that it is, it requires, in its description, only the **use of the present indicative**. It is described with the following words: *'he/she does not enjoy this benefit...'*

However, merely stating that a person does not enjoy a benefit is not enough to establish that a harm has occurred. For example, a person born blind does not have the use of his or her eyes, yet this disability is not the result of a harm. To identify the subtraction that constitutes a harm, it is therefore necessary to compare the resulting situation with the initial one—the situation that the harm affected, the one it brought to an end: the situation in which the benefit was enjoyed. This situation would have been, *'if,' 'on condition that,'* there had been no harm: **this situation, harm has placed it in the conditional**. This situation, which no longer is — (having undergone the harm) — therefore requires recourse to this verbal mode in order to be described.

The opposition of these two situations cannot, however, on its own suffice to describe a harm. For example, if a young woman had taken the noon train, she would be with her friends today, but she is not — yet there is no harm in this case, this opposition of situations resulting solely from her own personal choice.

It is therefore necessary to specify that the situation expressed in the conditional is understood—as everyone recognises—as the one that ought legitimately to have come about, the one corresponding to a norm that was to be respected. Thus, in setting out this situation placed in the conditional, it is appropriate to make its normative character explicit by using the very modal verb that conveys this norm: should (or ought to): *'he should have (or ought to have) enjoyed this benefit...'*.

A harm can thus be described in a single sentence contrasting these two situations, and therefore these two verbal moods: ***"she does not enjoy this benefit even though she should enjoy it,"*** or: *"he ought to enjoy this benefit, but he does not."* A theft, for example, can be described as follows: *"he should enjoy his property, but he does not,"* or: *"he does not enjoy his property even though he should"*.

By setting these two situations against one another — the one that is, against the one that is no longer, against the one that would have been 'if...' — the passage, the transition, **the subtraction, the diminishment of the human condition, that is, the harm inflicted, emerges with full clarity.**

B

The figuration of harm requires the use of imagination.

« Harm causes a situation of enjoyment not to be; it reduces it to no longer being, to belonging only to the realm of the imaginary »

The conditional refers to a condition that is dreamed of or feared, yet different from the one that is — a condition that does not, therefore, present itself directly before us, before our eyes. In order to picture this condition, sadly missed or fortunately avoided, it is then necessary to resort to imagination.

The outcome of harm corresponds to the reality that presents itself before us, before our eyes. Yet a subtraction is not an outcome, but the passage from an initial datum to that outcome. In order to picture this subtraction, it is therefore necessary, in addition to the visual reality offered to us, to picture the initial situation — the one that underwent the harm: the victim enjoying a benefit. However, this situation of enjoyment is no longer — is not — the real situation, the one that presents itself before us; and since it does not present itself before us, imagination alone remains to picture it.

In the previous example, that of a person blind from birth, it is not possible to imagine this person making use of their sight: this reality has never been, and it was never intended that it should be. It is otherwise if one had known a person living in full physical integrity, and found her, years later, with an arm amputated. It is then by recalling the memory of — by imagining — this person having the use of her arm, and by confronting this memory with the visual reality of the moment — by observing that, in fact, nothing of it remains — that one would perceive this diminishment of her human condition, that one would picture the harm suffered by this person.

In order to picture the harm suffered by a person, it is therefore necessary to imagine the condition that stands opposite the one that is — the supposed condition, the dreamed condition, the one we would have wished to see. In this way, and only in this way, is it possible to confront what is with what should have been, with what had the Right to be, and thus to bring out and make felt the violation of this Right — the harm done to this person.

These two criteria — the use of the conditional and recourse to imagination — are essential to the characterisation of a harm, and therefore, by extension, to the characterisation of a victim, the victim being the entity that undergoes the harm.

The thought set out on the website deals with homicide and abortion. Let us then examine what these criteria, applied to these two acts, tell us about the harm and the victim of each.

Aside – Harm in civil law:

In civil law, compensation for the injury suffered (harm done to the enjoyment of...) aims to '*restore the victim to the situation in which they would have found themselves had the damaging act not occurred*' (Court of Cassation, October 28, 1954).' However, to define the compensation for the injury is, conversely, to define the injury itself. Let us observe that in these terms – commonly used by legal scholars or judges – the conditional is indeed employed: the victim must be restored to the **situation 'in which they would have found themselves** had the act not occurred.' Let us also observe that, in assessing the injury (that is, the harm inflicted), account is taken not only of the **loss actually suffered**, but also of **the gain foregone** (see, for example, Article 1231-2 of the Civil Code) – **two elements that** are in no way visual in nature, and which require, in order **to be pictured, recourse to imagination**. Example: '*If my lawnmower had not been stolen, I would today have 200 euros in hand.*' Neither the lawnmower (loss) nor the 200 euros (gain foregone) constitute a physical, visual reality when the victim speaks of the harm he has suffered.

2

The characteristic elements of a harm and a victim, applied to the case of homicide and abortion.

« Two different acts, but the same victim: the one who would be, but is not »

A

Legal science does not currently know how homicide harms another.

Having identified the characteristic criteria of a harm, and therefore of a victim, it is worth examining whether the Law's current understanding of the harm and the victim in cases of homicide satisfies those criteria.

Homicide is currently prohibited in the name of the Right to remain alive, in the name of the Right 'not to be killed.' Homicide is therefore currently a violation of this Right, **a harm done to someone, in that it kills someone.**

Since homicide harms someone by killing them, **the victim** of this act is then **the person killed.**

Having presented this law's understanding, its accuracy must then be verified by analysing whether it satisfies the criteria identified as characteristic of a harm and a victim.

These criteria are the use of the conditional and recourse to imagination; let us verify whether they are satisfied.

At present, the harm corresponds to the fact of killing (a person is killed), and the victim accordingly corresponds to the person killed.

**Where is the use of the conditional?
Where is the recourse to imagination?**

The identified criteria are absent. Their absence — the absence of these two elements characteristic of a harm and a victim — reveals a problem with this understanding. It reveals that there is currently a flawed understanding of how a homicide harms someone.

The absence of these two characteristic elements reveals that it is not by killing someone that homicide harms someone, and likewise **that the victim of this act does not correspond to the person killed.**

In order to give an answer that respects and conforms to the two criteria identified, one would need to ask:

What is this diminishment of the human condition to which a homicide leads? **What is this situation of enjoyment that homicide places in the conditional?** What is this condition in which the victim of a homicide would be, had she or he not been the victim of this act? (opposition of the two conditions)".

What answer?

Anyone asked would reply that, **in the days following a homicide, a person would be here today living their life – but, because of this act, none of that is so!**

The characteristic elements would then emerge with perfect clarity! We would indeed find this use of the conditional ('would be / would do') to describe this situation which is not directly before us, and likewise we would indeed need this recourse to imagination to picture this situation (imagining the one who is not there living their life).

The characterisation of **the victim** would likewise follow this same structural pattern – the victim **no longer corresponding to the person killed, but to the one who 'would be (conditional), but is not,'** to the one who can therefore only be pictured by way of imagination.

This is how these structural elements allow us – in accordance with common sense – **to correct and properly restore the understanding of the harm and the victim of a homicide.**

Diagrams on the harms to which different acts lead:

Condition of enjoyment in which the person is, if the act is committed:

No act:

No harm has been done (no use of the conditional or recourse to imagination): a person is there, enjoying his or her property, physical integrity, person, or life.

A theft:

Harm has been done / diminishment of the human condition: A person would enjoy (conditional, imagination) his or her property, but does not.

A physical assault resulting in physical after-effects (amputation of the arm), followed by a theft:



Different harms have been done / diminishment of the human condition: A person would enjoy (conditional, imagination) his or her physical integrity (the use of his or her arm) and his or her property, but does not.

A homicide:



The absolute harm has been done / diminishment of the human condition: **A person would be there and would enjoy** (conditional, imagination) **his or her person, his or her life**, his or her physical integrity, his or her property, **but does not.**

This new understanding of the harm and the victim of a homicide makes sense to everyone. However, even though it makes sense, in practice it seems far from being grasped.

The best way to demonstrate this is to present it to people through the very issue of abortion and observe the reactions it elicits.

B

The true Victim of Abortion

Following an abortion, it is possible to use the conditional and to point out to anyone: *"a child would be here today, but because of this act, he is not."* It is likewise possible to add: *"imagination alone remains to picture this child that abortion has deprived of being".*

This most ordinary observation always provokes the same reaction: *"Certainly a child is not here today – a child who can only be imagined – but this child, yesterday, did not exist!"*

Such an experiment then demonstrates perfectly that the use of the conditional or recourse to imagination are not currently the criteria retained for picturing a harm or the victim of that harm.

Such an experiment demonstrates how focused everyone is on what was present and real at the moment of the act, rather than on what the act has placed in the conditional and reduced, today, to belonging only to the realm of the imaginary!

Harm must be seen, not imagined. We remain fixed on what is physically before us.

- Criteria: ***Someone would be here today.***
- Error: ***No one was killed, yesterday.***

Close in theory. Far in practice. We remain under the vault. The Error prevails. The new criteria, by contrast, allow us to take a radically different approach:

- Error: ***In the case of a homicide, someone was killed; not in the case of an abortion.***
- Criteria: ***Yet, in both cases, someone is missing from being here today***

/

A most surprising paradox: the very person who, indirectly and unknowingly, evoked this new understanding of the harm and the victim of homicide in a speech that has remained famous, is the same person who, on another day, had taken the floor at the Assembly to justify the legalisation of abortion in France:

The day Mrs. Veil, condemning the Crime Against Humanity, evoked the structural pattern of harm and victim.

« Why do you not likewise condemn your own law, which has also placed millions of people in the conditional? »

Auschwitz-Birkenau, January 27, 2005. Rain falls over the former death camp. Sixty years on, survivors have returned to the site to commemorate the anniversary of the camp's liberation. Joyful events, we celebrate their beginning; sinister ones, we celebrate their end.

Of all the survivors present that day, one person in particular is called to step onto the platform. That person is Simone Veil, a world-renowned figure, a symbol of the legalization of abortion in France. She took the floor that day to deliver a speech on the horror of the camps and to send out a message of hope for the future — a "*never again!*"

In that moment, as she prepared to give her speech, memories must have come flooding back to her. Memories of horror, of fear, but also of deliverance. Seeing this path leading to those two gates opening onto the outside, she must have remembered that, one day, she had walked along this snow-covered, feverish path, and that, in that moment, **she had known she was saved**, that she no longer had to fear, that she had known, in that moment, **she could finally hope to be here tomorrow and live her life**. And, on this day of commemoration, she remembered above all that many others had not had that same fortune.

How, then, was she to speak of all these victims, of all these people who had not had her good fortune? These were her words:

'What would this million murdered jewish children have become, still infants or already teenagers (...)? Philosophers, artists, great scholars, or more simply skilled craftsmen or mothers?'

On this grim day, **when a Crime Against Humanity perpetrated on this very site was being remembered**, was it of those who had been murdered here that she spoke? **Did she speak of those frail, lifeless bodies, piled one upon another like mere things? No!** Did she speak of those bodies reduced to ashes, who, only hours before, had been living beings – groaning, suffering, yet hoping? No!

Seized by emotion, she spoke of the ones that those murdered infants and teenagers *"would have become"*! **Seized by emotion, she did not fail to use the conditional.**

Seized by emotion, **she spoke of all those who**, that day, were not there, at her side, living their lives – those "scholars," those "artists," those "skilled craftsmen" – whom **one could only picture by way of imagination.**

That day, the feeling, the heart, of the former Minister of Health, found expression; and in **describing**, in a single sentence, **the tragedy of the camps, that feeling did not fail to convey the characteristic criteria of a harm and a victim.** However, in that moment, the former Minister did not grasp the full extent of her own words!

In that moment, as she spoke these words, an objection hovered above her — an objection that no one raised with her that day. No one, at that moment, had understood. This objection, we now take the liberty, posthumously, of raising with her:

*"You say: What would this million murdered children have become? Likewise, we ask you: **What would this million killed embryos have become? Would they not also have become philosophers, artists, great scholars, skilled craftsmen, or mothers?**"*

If this question had been raised in this way by some speaker — not during the commemorations themselves, for one should not disturb people in their duty of remembrance, but following these commemorations, in a drawing room, a café, or elsewhere, during one of those private gatherings where people meet to think — what answer would this speaker have received?

What would you have answered, Mrs. Veil? **These embryos too would have become craftsmen, philosophers, artists, and others...; why mourn the absence of the former today, and not mourn the absence of the latter?**

Let's try it! Let's challenge today's ministers. We will most likely first be reproached, with vehemence, for our impudence in daring to compare abortion laws to a crime against Humanity; we will then probably be told that all these people that these embryos '*would have become*' did not exist when all these abortions were committed.

What do you say, Mrs. Veil? Is that the answer you would have given — you, and all the worthy and zealous servants of your law?

A single question suffices to answer this claim:

"Did these philosophers, skilled craftsmen, artists and others, that these murdered infants and teenagers would have become, **exist at the moment when this crime against Humanity was committed?**"

If they "would have become", it is because they were becoming — and therefore that they did not yet exist

Those who existed at the moment the killings were committed were these 'children' and 'teenagers' — not these 'philosophers' and 'craftsmen' whose absence you deplore and condemn today.

All these 'scholars' and 'philosophers' that this genocide deprived of being were, at the moment when these mass killings were perpetrated, destined to be — just as these other 'scholars' and 'philosophers' were likewise destined to be at the moment when these abortions were committed. These ones are no different from those ones. The outcome of these two acts is identical. **Why then deplore the absence of this 'philosopher,' and have no word for the absence of that other 'philosopher'?**

The genocidal crime is certainly far more violent in its execution than abortion. Genocide is murder on a mass scale, the mechanisation, the industrialisation of murder — killing on an assembly line. Genocide confronts you with screams, with moans, with suffering, with blood, with dead bodies, with children weeping for their parents and parents weeping for their children. The insensitivity one must be armed with to endure such horror must be the most absolute there is! By contrast, the embryo, in the early stages of life, does not resemble a person; it does not resemble much of anything. There are no screams, no moans, no tears, and everything takes place within the woman's womb, hidden from sight and sound. In its form, **in what it shows, abortion is far more neutral, far more innocent, less horrific than the cold, impassive murder of an entire population.**

It is evident that a person endowed with even a minimal degree of sensitivity toward the other person could not bring themselves to commit the one, yet could easily come to commit the other. However, in substance, in their outcome, in what determines the gravity of an act, the two are identical: **in the days following the genocidal crime, "scholars" are not, today, going to the fruit seller's to buy their fruit; likewise, in the days following the enactment of your law, other "scholars" are not, today, going to the fruit seller's to buy their fruit** — and the one are no less human than the other for having been mere embryos when the act that deprived them of being was committed.

In their outcome, the two acts are no different. Is distinguishing between them not simply the result of failing to draw the parallel? **Is it not, through ignorance, to deny that they involve one and the same harm done to another, one and the same condemnable act, one and the same Crime Against Humanity?**

That day, condemning the atrocities committed on this site, **Mrs. Veil used words that condemned the very law bearing her name.** Yet, unable to grasp the full extent of her own words, she failed to realise this.

Not fully understanding for whom one deplores a crime is to risk supporting another act that produces the very same victim. And, not having fully grasped by reason of whom she condemned this mass crime that was the camps, the former Minister of Health did not perceive, in any way, that **this very act** whose legalisation she herself had permitted years before had likewise **consisted in placing millions of people in the conditional – people who 'would be, but are not,'** people whom today we can only attempt to picture by way of imagination.

To the height of irony, that day she called for people to be 'vigilant,' so that this horror would never happen again. She proclaimed to the world, which listened to her that day with emotion, a 'Never again!'. A scene at once distressing and laughable – to call for a 'never again!' while she herself had, years before, contributed to committing that very 'never again!' which she sincerely wished never to see repeated. This 'vigilance' to which she called on Humanity – why did she not recall it more fully when she brought forth this law? Terrible cynicism, with which Error mocks and scorns us!

