

Justice Tempered With Mercy

by **Conrad Black** (March 2014)

Because of my well-publicized experiences with and criticism of the criminal justice system, I was invited to one of a series of law reform public meetings that occurs more or less monthly through the winter at St. George's United Church in Toronto, and attended a session last week addressed by Roy McMurtry, former attorney general and chief justice of Ontario. It was a most convivial and informative occasion, and although I have had my disagreements with Roy in the 40 years we have known each other, our relations have generally been cordial and certainly are now.

When questions and comments were called for, and there was a pause, I indicated a desire to speak and made a comment before posing a question. I noted that we had had ups and downs but throughout our relations of 40 years spanning his entire public career, Roy McMurtry had never wavered in his efforts to temper justice with mercy, to try to make the law equitable, and to make due process as accessible as possible to the economically and socially disadvantaged. The audience, of about 150 people I would reckon, applauded Roy warmly and he deserved no less.

My question, as he had criticized the increasing severity of the federal government's rules on sentencing and the nature of imprisonment, as well as the construction of new prisons while rehabilitative efforts are scaled back, and the proposed increase in the penalties for marijuana production and use, was about the motives of those responsible for this legislation. As Roy was a prominent Progressive Conservative, in the piping days of that party, which provides about half the votes the present Conservatives enjoy federally (the rest coming from the Reform Party and the Canadian Alliance, most of whom were, in fact, Progressive Conservative supporters before that), I asked for his insight as an ex-politician whose loyalties might be assumed to be with the government, though with reservations, and "as we are all unlicensed psychiatrists," I asked if he would hazard a guess at whether Stephen Harper and his justice and public security advisers were really trying to improve society and make it safer, or were just reinforcing their political base.

The former chief legal and judicial officer of Ontario did not hesitate an instant; he did not take the bait – he seized the fishing rod and wielded it as a flail. The federal government, he said, had shown no interest in addressing the causes of crime or in assisting offenders to re-enter society effectively incentivized against recidivism. The increased penalties would achieve nothing in deterrence, would reduce the possibility of avoiding repeat offenses, would

inflict maximum pain and stigmatization on the families of offenders, and would waste a lot of money on unnecessary prisons that would be administered in a retrograde and draconian manner. (This is my summary of Roy's words but it is faithful to what he actually said.) He also opined that the motive had to be entirely political.

I did not feel I had any standing to filibuster the meeting by asking him why the government would do this, given that the troglodytes of the jail 'em, flog 'em, hang 'em variety were sure to vote with the Conservatives anyway, since they could hardly be enthused about Justin Trudeau or Thomas Mulcair. When I have put this question to the politicians and political experts, they generally answer that it reinforces the enthusiasm of habitual supporters, and compensates them for impatience with policy initiatives to which they are less amenable.

It would be unduly pious to lament that such matters are partisan issues at all; I think all public policy should ultimately be in the hands of those who may be held electorally responsible for them, including setting interest rates – I have never been overly impressed with the notion of independent determination of such matters by the head of the central bank regardless of the wishes of senior elected officials.

But where there is a substantial constituency of imprisoned or otherwise supervised people who are without any audible spokespeople for their interest, not an interest to break the law, repeat offenses, or evade condign punishment but to advocate effective remedies, feasible rehabilitation, and the concept that discharging the imposed penalty wipes the slate clean and permits a new beginning, a democratic state must provide for that constituency to be heard. Instead, this government is promoting a Manichaeian vision of rigid good and evil, and an unforgiving and permanent ostracism of offenders. This is, in itself, an evil concept.

All people are sinners and all are good and bad in differing degrees at different times. I am not a moral relativist and am a believer in law and order, the confession and repentance of sin, and the punishment of crimes. But I also believe in forgiveness where the adjudicated penalty has been served, there is remorse and a determination to avoid past misconduct, and I favour every reasonable incentive to make the correctional system a repair shop of flawed personalities and consciences and not a junk-yard of human souls.

Roy McMurtry eloquently cited Anatole France's sarcastic commendation of the even-handedness of the system that condemned with equal ferocity the famished peasant who stole a loaf of bread and the famished peasant who begged for alms in public. There is in this federal government's penal policy an element that is devoid of the humanitarian concern that no democratic regime can be without and still be morally acceptable. It is compounded by the fact

that almost all the organizations that try to assist the deserving accused and convicted are dependent on the government, and such flinty and mean-spirited careerists as Vic Toews and Julian Fantino, for their support.

All democratic governments must recognize and act on an obligation to give reasonable assistance to those deserving and in need of it, and that includes, according to all Judeo-Christian precepts and equivalent tenets of compatible faiths and cultures, those who have offended, been punished legally, and seek to do better. This government does not meet that test and the moral implications of this shortcoming are very serious. And although Roy McMurtry and others present at St. George's Church on Sunday did not have the opportunity to get into this, the chief victims of this moral and policy vacuum are native people. This opens up very complex issues, but no part of any solution or even modest improvement of current conditions resides in simply throwing inordinate numbers of the affected population into prison for extended terms.

The scant relative numbers and impenetrable odium that afflicts those convicted of crimes make this a slow-burning issue, but it gnaws constantly at the moral fibre and conscience of this and other societies. Penal reform is a challenge whose time will come. It will not permanently be obscured by the sort of cynical posturing that Roy McMurtry, with the authority of the unchallengeable expert on the subject and former senior standard-bearer of the governing party that he is, imputed, unfortunately quite plausibly, to the current federal government last Sunday in a pleasant house of worship in Toronto.

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