

Unjust Official Acts Rivet Policy Debate Over Reform of Justice

by Conrad Black



However the legal controversy between the administration, congressional committees, and the Justice Department plays out (and I have made my predictions on that subject), the general state of American justice should be the ultimate winner. No objective assessment of its condition can leave anyone in any doubt of the terrible shortcomings of the American criminal-justice system.

As I and as many others have written here and elsewhere, ad nauseam, but inconsequentially to date, the United States has 5% of the world's population and 25% of its incarcerated people, and six times to twelve times as many incarcerated

people per capita as the most comparable prosperous, democratic countries: Australia, Canada, France, Germany, Japan, and the United Kingdom.

There are more than 40 million officially convicted felons in the United States, which is ridiculous, and convincing proof of the practical legal impossibility of defending against a criminal charge because of the advantages enjoyed by the prosecution, and also of the insatiable public demand for more convicted people as part of the infamous and infinitely demagogic (and rather unsuccessful) "war on crime."

The American conviction rate of nearly 99%, 97% without a trial, because of the heinous perversion of the plea-bargain system, removes the United States in criminal-justice matters from the category of its socioeconomic and democratic peer countries and places it, in matters of criminal procedure and conviction rates, disgracefully among the totalitarian states.

I will not dwell on these points again. But even as the current drama that has called into question the probity of the highest officials of the security and intelligence agencies and of the Department of Justice itself has unfolded, there were some striking evidences of the terrible failures of this system.

There was the pathetic and heart-rending case of Matthew Charles in Nashville, who was released 15 years early on a terribly severe sentence (35 years), for drug trafficking, after the changes that the Obama administration made to reduce the disparity between sentences for powder and crack cocaine (essentially a distinction between white and non-white users). In two years, Charles re-integrated brilliantly into normal life, was usefully employed, engaged to be married, and well liked and encouraged by friends and co-workers.

Then he was deemed to have been ineligible for reduction of sentence because of a prior conviction, against the wishes of

the judge, the probation office, the press, and any audible civilized person. He has been ordered to finish his original sentence, and his judge has asked the Justice department to drop some of its charges and confirm his release. At this point, it appears likely that he will return to prison for many years.

This would be an abominably evil official act, though not an especially untypical one, compounded by the resigned shrugs of the prosecutors, robotically repeating that it is impossible to contravene the rules. The concept of tempering justice with mercy has been thrown out with due process and other relevant parts of the Bill of Rights. Hannah Arendt famously wrote, in respect of Adolf Eichmann, of the banality of evil; American criminal justice adds the failing of sclerosis to both its banality and its evil.

The United States has a self-emasculated attorney general, a deputy attorney general in whom no one has any confidence, and a Justice Department that is wallowing and simmering in the vessel of its own failure, a vessel suspended over the conflagration caused by the unmasking of the Justice Department's unconstitutional politicization. As the legal and political communities await the latest findings of the inspector general of the Department of Justice in the Clinton emails affair, it is little wonder that a system so rotten at its core has attracted intense scrutiny of its highest levels.

Illustrative of the brutality of the system was the disgusting spectacle this past week of Harvey Weinstein being frog-marched handcuffed past the press of the world into the courthouse in New York. I am not trying to rouse sympathy for Mr. Weinstein on the legal charges that he faces (unless a quiet persistent suggestion of due process is seen as sympathy because of the unlikelihood that it will occur).

But the addiction of American law enforcement, even in the least constabulary circumstances, to handcuffing people and

publicly humiliating them in a gauntlet of the gawking, mocking public and press is barbarous. Harvey Weinstein was not going to flee on foot or flail out at anyone, and I doubt that even those who allege that he raped them would claim otherwise. The perp walk should end, and most of the oppressive and excessive powers of American prosecutors should end with it.

The assault on the Trump presidency and his counterattack on his tormentors will run their course. But the best possible result that could come from this affair, apart from the end of the routine criminalization of policy differences between partisan political opponents, would be a massive overhaul of the medieval torture chamber of the American criminal-justice system.

The plea bargain must cease to be a process of extorting and suborning perjured inculpatory testimony under threat of prosecution and inducement by immunity for the catechized perjury. Notions of civilized penal reform must return, such as assisting convicted people to learn how to earn honest incomes on release, and encouraging wholesome relationships with families and friends during incarceration.

The entire spirit of the system must change, from unlimited punitive severity in pursuit of political kudos, to policies that encourage law-abiding conduct as efficiently as possible, facilitate rehabilitation where it is reasonable to aspire to it, while protecting the public from wrongdoers with any tendency to violence.

If these ends are served, the nasty and tawdry political struggle in Washington in which the president has torn off the pompous fraudulent facade of American official justice and exposed its unsalubrious innards will have been very much worth this immense distraction.

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