

The Real Reform We Require

Never mind the police. The greatest failing of the American judicial system is the fact that prosecutors have practically unlimited power.

by Conrad Black



The current inflamed condition of political debate presents opportunities as great as its challenges. There is some merit in both the Democratic and, as far as they are now known, the Republican proposals for reform of police techniques. No doubt many American police forces have habitually and excessively harassed African Americans. That community accounts for an inordinate percentage of both offenders and victims of felonies, and strictly from a policing perspective, the inevitable discussion about the sociological reasons for the relatively high African American crime rate is not relevant. Whatever the motives of the lawbreakers, it is a police problem to deal with it, but that does not justify the

proactive suspicion that any African American is apt to be guilty of something.

Most police activity is not a federal jurisdiction, but the fiscal influence of the federal government can assert irresistible pressure on local police forces to observe reasonable guidelines in the apprehension and treatment of all suspects.

It need hardly be added that there is a 100 percent consensus that the death of George Floyd in Minneapolis was a monstrous crime; it was an almost unimaginable affront to the sensibilities of everyone in the world who watched the video. Nothing since Bull Connor's vicious dogs in Birmingham, Alabama—nearly 60 years ago—has in a single depiction done so much damage to the reputation of the United States, nor produced such a convulsion in domestic public opinion.

We can now see that the most remarkable result of Floyd's death has been the sudden revelation of the proportions and ferocity of the urban terrorist guerrilla movements in the United States.

We saw Antifa at Berkeley, Portland, and Charlottesville in 2017 and saw that it had its adherents and emulators elsewhere, but it is clear that none of the municipal governments in the many cities that have been afflicted in the last two weeks—and apparently not the U.S. Justice Department either—had any idea of these movements' ability to exploit peaceful demonstrations in such a hugely destructive and well-organized manner.

It is sobering for Americans and shocking to the whole world to see how powerful and numerous are the forces of nihilist, almost mindless, destructive, anarchy in American society. It would never have been imagined prior to two weeks ago that any such forces would be capable of wreaking the damage they did in the most prosperous areas of America, on some of the most

famous avenues in the world.

The Envy of the World?

After imposing reforms on police treatment of suspects, and providing for special relief for those who suffered severe economic loss because of the inability of American urban police to protect thousands of business establishments from being trashed and torched, the next priority should be a comprehensive reform of American criminal law.

It has been intensely irritating to hear commentators regularly refer to the American legal system as “the envy of the world,” and make the claim that 99 percent of the membership of the FBI and less exalted police forces are entirely admirable people. The American legal system is despised by the entire civilized world, with good reason.

While many of the lawyers, higher court judges, and academic legal experts are of the highest quality, the American criminal legal system is a disgrace. It is a conveyor belt to the country’s bloated and corrupt prison system and because of the gross inequality in the ability to make their arguments between the prosecution and the defense, and particularly the obscene corruption of the plea-bargain system, the United States has six to 12 times as many incarcerated people per capita as comparable prosperous democracies: Australia, Canada, France, Germany, Japan, and the United Kingdom.

There is little justification for the incarceration of most people convicted of nonviolent offenses. It is a hideous life, an antiquated penalty, unjustifiably expensive to the state, generally imposed for excessive custodial periods, and—in the case of state prisons—in abominable condition. Correctional officers are among the most aggressive pressure groups in the country and their ranks are comprised almost entirely of unskilled labor. In the maximum-security prisons they effectively control the perimeter and prevent escapes while

the government of the prisoners is left to the harsh and capricious mercies of the prisoners themselves.

The U.S. Bureau of Prisons is notoriously corrupt and has had frequent changes of directors for reasons that reflected upon their integrity as well as their competence. In most cases, nonviolent offenses should be punishable by contributed work and community service and, where appropriate, compulsory rehabilitative treatment. Those with predilections to violence are another matter. It is usually impossible to be confident of the corrigibility of such people and there is a clear duty to protect society from them.

The greatest advantage that could be taken of the present intense controversy would be to reform the prosecution system.

Prosecutors who willfully withhold exculpatory evidence should be subject to severe penalties. This is not an infrequent occurrence and the outrageous case of the late Senator Ted Stevens (R-Alaska) and the infamous John Thompson case (1984-2003)—where a man spent 14 years on death row regularly expecting to be executed for a crime of which the prosecutors knew him to be innocent—are only among the most prominent. In neither case were any legal penalties imposed on those responsible; an invitation to prosecutors to ignore any restraint at all. Their ability to extort evidence by threatening spurious prosecution of those unable to remember what they are asked to recall is notorious.

And the nonchalance with which prosecutors guarantee to such people from whom false inculpatory testimony has been extorted an absolute freedom from charges of perjury confers an almost insuperable advantage on the prosecution that has been denounced by many legal experts and highly respected jurists for many years with no consequent result.

A System Built on Hypocrisy

Prosecutors should be stripped of their absolute immunity in cases of clear professional wrongdoing and of the right to guarantee immunity from charges of perjury for those witnesses from whom they have extorted the perjury.

Further, the prohibition on the defense advising jurors of those arrangements should be lifted. The defense should speak last to the jury, as in other civilized countries, and not the prosecutors. There are a number of other technical reforms that should accompany those changes. But the current condition of prosecutors being successful in over 95 percent of their prosecutions, and over 95 percent of those without a trial, suggests something primitive and barbarous.

It is a great irony that there are vast demonstrations against the police, who in general do an adequate job made more difficult by the universal profusion of firearms as a constitutional right. The problem is not really with the police; the problem is with an evil justice system built on hypocrisy and societal paranoia.

The United States had conviction rates and prison populations similar and proportionate to other advanced democracies and an active legal reform movement until the severe racial disturbances of the 1960s and '70s, accompanied by the extreme agitation of the feminist movement. The coruscation of this last factor has been seen in the [regime of denunciation](#) that recently has enabled women to destroy the careers of practically any man on almost completely uncorroborated recollections of ungentlemanly conduct many years before.

The ebb and flow of the society's mores ultimately are self-correcting, and the present crisis will subside, as it should, with some police reform and no general police defunding.

Not the least cause of discontent and the greatest failing of

the American judicial system is the fact that prosecutors have practically unlimited power, a proverbially corrupting condition. They must be enabled to enforce the law, but not to terrorize the population, and particularly not to be the subject of almost universal witless media laudations as they do so. This is the real reform that is required.

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