

Criminal Control System

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"Justice is the great interest of man on earth," according to Daniel Webster, an eminent American politician and diplomat. People yearn for justice and societies need it.

Read the formative words of our country, the preamble to the Constitution.

"WE THE PEOPLE of the United States, in Order to form a more perfect Union, **establish Justice**, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

Our forefathers craved justice which England, their government, was not providing. They thirsted for justice so much that they rebelled, spilled blood, and formed a new country "with liberty and justice for all." People in all times and lands have sought justice. Why are people so unhappy with our justice system?

Clarence Darrow, a famous lawyer noted for representing underdogs, said **"There is no such thing as justice—in or out of court."** William McIlvanney, a novelist, wrote, **"Who thinks the Law has anything to do with Justice? It's what we have because we can't have Justice."**

Like the two men quoted, many people in America don't have confidence in our justice system. Legal practitioners supply endless reasons for our disaffection with the justice system in general and the criminal justice system in particular. For now, I want to deal with one aspect of the criminal justice system—punishment.

We have only one form of punishment for all crimes—incarceration, confinement, jail. Fines are not a separate punishment, because the jail waits for people who don't pay.

Thus, we have only one basic punishment which is inherently unjust. Since incarceration and fines can't provide justice, people are forever discontented. When people are wronged or see their neighbors wronged, they are indignant till justice is done, and justice can't be done with jail and fines. At best we have a Criminal Control System—not a Criminal Justice System.

Justice

The "Scales of Justice" have symbolized our basic understanding of justice for centuries. The scales show that when a person is wronged, the wrongdoer must make things right for his victim until the wrong is balanced by retribution. For example, in some legal systems when a person steals from another, he is required to repay the stolen property plus extra to the victim. Since the victim is the one harmed, retribution must be made to him for justice to be done. In our criminal justice system, a criminal pays a fine to the state or goes to jail, and in neither case does the victim receive justice.

Let me use a simple and contrived illustration to get away from emotions for a moment. Consider a seminar with ten students and one instructor. Every day at the beginning of the seminar all students must lay one dollar on their desks. Later, a chosen student collects the money and buys refreshments for the class. One day one of the students steals one of the dollars. Later in the day the thief is discovered with ample evidence to prove her guilt. Now the scenario will diverge and I will describe two ways to handle the theft—one is just and the other is not.

Solution One: Just

The thief is brought before the student from whom she stole while the class observes. Since the student was the one who was deprived, the thief is required to pay back the dollar plus another dollar for inconvenience caused to the student and for punishment.

The victim is repaid for her deprivation and feels a sense of justice and satisfaction. The other students see justice done. The victim received retribution from the one harming her, and the criminal was punished. By retribution I mean a fair requital for harm done to the victim, not vengeance.

Even the criminal can have a sense of justice. She knows she did wrong. She personally made up for the harm that she did to another person and has a chance of regaining self-dignity. She will be deterred from future theft because she knows she will have to pay double out of her own pocket.

Solution Two: Unjust

The thief is detained outside the classroom. The instructor decides that she should be punished, so he separates her from the classroom and puts her in a room by herself where she must stay for a period of time. She must leave all her possessions with the instructor for safekeeping. The instructor goes back to the classroom.

The victim must find another dollar for her part of the refreshments. Just before a student is chosen to collect the money and get refreshments, the instructor tells the students to put an extra 15¢ with their dollars. He explains that since the thief is confined in a room without her possessions, she can't get her own refreshments and the class must get them for her. Plus he needs to cover the costs of copying today's notes for her.

The victim received no justice—worse, she received negative justice. She must suffer her loss of money and make up for it. The instructor might believe that the thief is properly punished, but the victim doesn't. In fact, the instructor added insult and injury to the original injury by requiring the victim to help pay for refreshments for the thief. The victim received negative justice, that is, the instructor victimized her further. She is not satisfied, in fact, she is disgruntled.

The other students are disturbed since they saw no justice for their friend and had to pay to take care of the thief who did the wrong. The thief seems to be doing okay. She took a dollar, and the students contributed a total of \$1.35 to take care of her making a total of \$2.35. Since she is out of sight, as far as the students know, she might be reading a book, listening to a radio, or watching television.

The instructor is not happy either. He may have taken steps to control the behavior of the thief, but he senses that true justice was not done.

Injustice

Let us compare the contrived classroom scenario to a real life situation. Consider a family comprised of a husband, wife, and two children in which the husband is the primary source of income. A robber paralyzes the husband while accosting him in his driveway. The robber is caught, convicted for robbery, and receives a life sentence. Our criminal justice system says everybody did their jobs and justice was done. The problem is that **justice was not done at all**. Let's analyze the situation.

The family suffered severe emotional pain from a debilitating injury, and for the rest of their lives, will suffer loss of income and burdens of medical expenses. It is futile to sue the robber, because he is in jail and can't make money to compensate their losses in our current penal system. The family has suffered horrible losses, and incarceration in no way balances the scales of justice for that family. Keeping the robber in jail might protect other families from the same fate and might deter the robber from future robberies and might deter other would be robbers, but the jail sentence in no way recompenses the family. They received no justice at all.

In fact, the family receives negative justice—they are victimized further by the government. The family must continue to pay taxes that provide and care for the very criminal who has so grievously injured them.

Let me repeat why no justice has been done. Nothing has been done for the injured family—plus, they must pay taxes to feed, clothe, house, and train the criminal. The scales continue to be weighted down on the side of wrong to the family and nothing has been put on the side of justice for the family to begin to balance the scales.

Society might be protected. The criminal might be controlled. He and others might be deterred. He might even be rehabilitated. All of these things are important, but they are all effects that help the rest of society—not the family harmed. Confinement by the state, fines paid to the state, control, protection, deterrence, and rehabilitation are not justice. They might be important for a smooth running society, but they leave the scales weighted down on the side of wrong for victims.

Aim For Justice

Police officers need to understand the preamble to the Constitution if they want to understand their goal. Their goal is not "To Protect and Serve" nor is it to enforce the law nor is it to arrest criminals nor is it any of the other ideas floating around. The goal of police officers is to establish justice, insure peace, protect the liberty of people, and promote the general welfare. Enforcing laws and arresting criminals are but means available to officers as citizens with a specialized job.

Ethical analysis says that anytime people confuse a means with an end, they have failed. Not only must the police stop confusing their means with their end, they must fulfill their obligations as citizens and clearly tell the community that "incarceration only" is not working. Officers must bring their experience and expertise to community and legislative forums and help our country find means to handle criminals that bring justice to people. The police need to provide a more productive definition and description of their role in society—one that is effective in insuring justice and liberty.

All officers know the frustrations of arresting criminals repeatedly and of facing alienation, apathy, and resentment of citizens. Officers need to admit that simply putting people in jail is self-defeating, promotes more crime, and raises the underlying discontent of the community, thus harming the very people we want to protect. When police arrest criminals who are then merely incarcerated, they are perpetuating the cycle of crime and injustice to victims. Police admirably accomplish their objective of arresting people but fail in attaining their goal of "liberty and justice for all", because the basis of their present efforts is fatally flawed.

The goal for our government in general and police in particular is to establish justice, liberty, and peace for each and every person. Though control, protection, and deterrence have their places, they must not be confused with justice. The criminal justice system can admirably accomplish all of them and fail miserably in establishing justice.

The next time you arrest a person for car theft who has destroyed the car he stole, ask yourself a few questions. How is my arrest helping to balance the scales of justice for the person from whom the car is stolen? How does fining or jailing this suspect in anyway repay the victim who was injured? Why am I having to arrest the same criminals over and over? Why is the public so unhappy with the system? Why do I sometimes feel that my efforts are futile? How can I be an active agent in changing the criminal justice system that obviously isn't attaining its goal of liberty, justice, peace, and welfare for all people?

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