

Strengthening Institutions of Justice to Eradicate Violence in Society

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Background

The use of violence has long been the method by which numerous societies have resolved disputes. However, the resort to violence only tends to engender more violence. Democratic values and the observance of human rights are impossible to promote and sustain in an atmosphere of disorder and retributive acts. Indeed, while free and fair elections are held in many states, it is questionable whether these are sufficient credentials to allow for the label liberal democracy. This is so because in the absence of a peaceful social order, the essential elements of a liberal democracy, equality and liberty, cannot be exercised by citizens. In addition, if the government is not limited in its ability to carry out its policies by a constitution and the rule of law and, as such, held accountable for its actions, then its capacity to exercise its authority especially in the face of social crisis is severely weakened.

Put another way, governments without the requisite political will, institutional authority and organized power to maintain order, protect human rights and provide socio-economic welfare, are not only deficient, but they render a state incapable of being classified a true liberal democracy -- whether or not they were chosen by free and fair elections. It is generally agreed that instability and violence result from the state's loss of monopoly of legitimate physical force, the incapacity for social reform through legal channels, corruption of epidemic proportions in public office and many state agencies, and the prevalence of 'para-state' activities and organizations. Hence, rather than operating as it should, that is, exerting its monopoly of coercive power to maintain order, the state may multiply the factors of violence against its own volition.

Violence is often an expression of a number of complex and intertwined political and social phenomena. It is comprised of partisan rivalry, political banditry, peasant uprising, criminal banditry and state and para-state 'justice', or any combination thereof. Indeed, violence may tend to denote a specific phenomenon, sometimes becoming the historical agent that brutally replaces peaceful methods to transform society. Violence, or the threat or use of physical force to harm or injure someone and/or to intimidate or deprive others of their rights has often been used indiscriminately in numerous countries for political, social and economic reasons. Factors such a rapid social change, extensive poverty and high unemployment, that have fostered their own high rates of crime, now also include the meteoric rise of organized crime in this hemisphere that have only amplified the trend.

Further, many political systems have a tradition of being less than democratic. Partisan hatreds over the past century in numerous countries usually lacked any central direction although they were at times promoted by government officials and or politicians in an attempt to intimidate the opposition. These actions often resulted in waves of wanton violence and represented a significant backward step in the process of social development. The majority of the fighting occurred in the rural regions of many countries over land reform and socio-economic balance, which left a legacy that facilitates new levels of violent activity. This has left people with a low value for human life and with a predilection to resort to violence rather than conciliation as the primary vehicle in dealing with conflict.

This propensity for violence has thus left a number of administrations in a difficult position to devise workable and sound justice policies. Identifying that a problem exists and needs to be addressed is only part of the battle for reform, however. This is so because such breakdowns are a death knell for democratic governance. Government can be the guarantor of the stability of expectations such that human endeavors are possible. When a government is working well, the political process unobtrusively and continuously resolves conflict. However, when government is unable to maintain social order and garner legitimacy, democracy is virtually impossible and the government begins to fracture along

personal or familial lines where persons or parties jockey for position and control over ever-diminishing resources.

Genuine efforts to reform a justice system are, therefore, often clouded by party affiliations in major areas of political life that are rife with entrenched systems of patron-client relationships and vested interests. Unfortunately, such a setting is a magnet for private power brokers. It is presumably much easier to operate illegal businesses and bypass a system in which order is lacking and public institutions are rife with patronage and graft. And because a breakdown in institutionalism has occurred, often whenever some brave and honest government officials do become involved in trying to stop the spread of illegal activity, broken links in the chain of command make extortion and bribery effective in countering such efforts.

When the instruments of coercion then land in the hands of groups other than the government, communities become subject to still more arbitrary and personally-motivated interests. In some regions a number of groups, including insurgents and drug mafias, often provide such 'public services' as housing, education and even justice to the people and in so doing have virtually replaced the state as the governing authority. However magnanimous these deeds may be, however, the fact remains that these self-appointed leaders were not democratically chosen by the people. Rather, they insinuated themselves using large quantities of money and have continued to operate with relative impunity like barons of medieval feudal fiefdoms, with the law of the 'jungle' as a guide for the dispensation of their largesse and their justice.

Hence, while the citizens in these regions are subject to a well-written and just constitution on the formal level, at the informal level they are subject to as much arbitrary rule as exists in any other authoritarian state. The lack of liberty and fear for personal safety that are characteristic of authoritarian government amount to the same thing, but the coercion is simply being employed by groups other than the government. Hence, it is somewhat onerous to talk about what type of system of

government a country has or how its justice system should be reformed when the government does not have an exclusive monopoly on the use of power. However, despite this problem, much change to these circumstances may be brought about by reforming the institutions of justice so that they operate effectively and efficiently to restore peace and order and good government to society.

What Role then for the Institutions of Justice?

It is important when attempting to reform institutions of justice to recognize that they are parts that comprise the whole system. That is, these institutions do not stand alone and are thus not independent from the effects of other components within the criminal justice system. They therefore cannot undertake initiatives to reform their own practices. This is especially the case in the face of corrupt activity within a particular justice institution. Accordingly, some form of joint management initiative is required in order to establish common goals and to allocate resources effectively when resources are limited and crime is increasing.

An important first step in reviewing whether criminal justice institutions are achieving a fair dispensation of justice is to determine whether they are preventing the arbitrary application of group or personal power. The courts must be able to decide, impartially, the matters placed before them and must not be subject to control or to undue influence by the executive arm of government. Similarly, the police must not be used by the state to serve purposes outside their legal mandate nor must they be fettered by improper constraint in their investigation and arrest of persons suspected of breaking the law. Correctional programs, likewise, must not be used to incarcerate or control persons who have not been found guilty of an offence in law or who are improperly confined for any reason. Thus, it is not enough to establish and reform a justice system, but the people who control and oversee the system must also be controlled. One of the most deleterious challenges to this is the prevalence of corruption.

Corruption undermines the justice system in a variety of ways and does not allow it to function efficiently and within the confines of the law.

First and foremost among the considerations for establishing and maintaining an efficient and functioning criminal justice system is the awareness that the fundamental requirement is to protect the public and to control inappropriate behavior on the one hand, while assuring individual liberty and the rights of the offender on the other. Hence it is not only the presence of corruption and violence alone that undermines the criminal justice system in many states, but also a variety of factors many of which arise out of the structure and objectives of the society as a whole. Many of these objectives conflict with each other and lend themselves to contradictions in the criminal justice system. Indeed, it has been argued that the success of a justice system depends a great deal on the methods which a society employs to achieve social control objectives, and whether these methods are compatible with each other (Duffee et. al., 1978: 509).

In a number of countries, it appears that several strategies have been conflicting with each other, especially with regard to deterrence and retribution. While demand for deterrence has been increasing in many jurisdictions since the 1970's, the demand for retribution, however, has been relatively weak. This might be explained by the fact that retribution involves actively seeking out and punishing those who break the laws of the society. Perpetrators of violence and crime who need to be punished are so efficient at intimidating and suborning members of the judicial system that the fear of violence as well as the prevalence of corrupt personnel tends to divert the system's efforts away from retribution back to the more rhetorical pursuit of deterrence. Ironically, because of the extremes of violence and corruption that undermine the ability of a state to bring criminals to justice, a system that seeks to expose the instances and the perpetrators of such criminal activity will likely continue to be weak -- perhaps only instigating more violence. Hence, a system that continues to stress deterrence (as in enhanced police powers to respond quickly and patrol more widely, or change offenders' or potential offender's

environment and therefore behavior) will aid the criminal justice system in becoming more sophisticated. In other words, a structural plan that alters the outcomes of criminal acts rather than targeting the specific perpetrators themselves will likely become less influenced by the specific criminal groups. Rather, justice agencies will be increasingly influenced by each other and particularly by higher-level state and federal decision-making groups and expert staffs. Obviously, all forms of crime cannot be predicted in detail, thus constitutional constraints on the system would have to be made as society changes.

Indeed, the implementation of retributive techniques, when they have been employed with rigor have most often led to the phenomenon of military and para-military death squads that have engaged in outrageous acts of violence. The 1970s and 1980s witnessed numerous governments increasingly resort to the use of force and repressive techniques carried out unofficially rather than officially. The repressive techniques mirror those employed by the criminal organizations and include anonymous threats, kidnappings, disappearances, selective assassinations and collective massacres. Clearly, in countries that have demonstrated a propensity for violence, pursuing a criminal justice system that is highly dependent on retribution will only lead to a breakdown of democracy, for example, not unlike the period experienced by Argentina under the Juntas for three decades.

Accordingly, foremost consideration must be given to the preservation of the law. This commitment carries with it a variety of consequences. The first is that violations of the law should be punished, but should be done so within the law. That is, anti-terrorist policies of liberal democracies should not involve reprisals against segments of the population thought to be sympathetic to the outlaws. Thus, if democratic governments react to violence by using indiscriminate force against certain segments of the population, they will not only be resorting to the same practice as the terrorists, but build rather than weaken whatever support the outlaw group may enjoy among members of the population. Declarations of martial law and emergency measures, therefore, do not tend to strengthen

the fight against violence. Similarly, security forces and police or military units given the task of combating violence should be closely monitored to ensure that they operate within the framework of the law to whose defense they are committed. This means that civilian control must be retained over their activities through legislative oversight and judicial constraints.

There are at least two factors that will assist in focussing attention on the social purpose of the various institutions in the criminal justice system and policy issues related to that system. The first lies in improving efficiency and effectiveness of criminal justice generally, by attempting to view the programs of criminal justice as a "system" which can be managed by employing the principles and practices associated with any corporate enterprise. This will necessitate numerous refinements to the practices of managers within criminal justice institutions, including and increasing desire, if not requirement, to articulate, for public consideration, the various strategies or approaches being employed in the organizations. Related to these changes must come a growing "openness" of government in proclaiming the work in the criminal justice system and making it subject to external audit and review. As states democratize, this trend will be partially stimulated by an increasing demand by the citizenry for accountability in government. This growing articulation of rights attached to the acquisition of information about public affairs and the requirement for public comment and participation in policy changes related to social programs will increasingly require governments to take a more "educative" stance in their actions. The participation of an informed public will only serve to strengthen the institutions within criminal justice by lending it credibility and legitimacy.

Much frustration, confusion and uncertainty often accompanies the reform of justice agencies. Often a change in the focus of jurisdictional responsibility requires a reassessment of the management and administrative structures, which determine both policy and practice. There are three areas that require attention in particular; firstly, reform initiatives are most often subject to procedural difficulties arising from splits in, or conflicting, jurisdictions. In this instance, the success of the reform initiative is

severely hampered and requires that the legislative authority attend to such rifts. In the second case the problem of cost-effectiveness has dictated that functions and overlapping jurisdictions be streamlined and that duplication of efforts be taken into consideration in the reform initiative. Often division of responsibility causes a 'fight' over scarce resources such that the problem of institutional entropy occurs.¹ This problem, while not corruption per se, poses a serious problem of mismanagement of scarce resources with duplication, overlapping, lack of communication, inefficiency, ineffectiveness, and lack of rational basis for the continuance of many organizations. Finally, and this matter follows closely on the second point, attention must be paid to organizing justice agencies so that they achieve the greatest possible compatibility with authority structures that provide other justice services. The aims of each agency should thus be consistent with, and supportive of, the goals and aims of other agencies within the justice system.

Hence, of utmost importance in reforming justice agencies is the requirement that long-term objectives be examined, with a view to assessing the implications of these factors. Reform, must be efficiently, effectively and consistently administered. This requires therefore that the operating philosophies of justice agencies, and the strategies that result from them, be consistently reviewed. It also requires that each organization be ordered to ensure management integrity through clear lines of authority where the responsibility for managing reform is regarded as an inherent activity associated with the goals and strategies of the criminal justice system as a whole. Piecemeal improvements in specific areas of service delivery will be less effective in the long term and there is, of course, the fundamental question as to whether this form of 'muddling through' works at all (see, for example, Robert Behn, "Management by Groping Along", 1988).

¹ Entropy may be defined as the situation in which the institution ceases to function for the purpose it was originally intended and, rather, functions solely for the purpose of maintaining the status quo, and indeed, employment of the members of the institution.

It is worth stating, of course, that judgements about whether or not reform should take place depend a great deal on the political, theoretical and ideological perspectives of the people in charge of ensuring governance. Any assessment of reform initiatives within public institutions proceeds best when reform is viewed in terms of both process and result. Often it is difficult to establish firm and consistent goals since the criminal justice system is a reflection of movements and changes in social attitudes, "professional perspectives" and political beliefs. Thus, an inherent danger in reform is that it often becomes a method by which to retain something in the face of these movements and changes or a move toward something which affirms basic organizational, cultural, social, or political values, regardless of other shifts in attitude and beliefs which may occur.

These basic values include such things as the reasonable exercise of stewardship over public resources (cost-effectiveness and cost-efficiency), the avoidance of cruel and unusual punishment (humane treatment), the maintenance and promotion of respect for the law (equality in application) and the right of citizens in a free and democratic society to determine the parameters within which the state can make interventions on their behalf – including the requirement that the state be accountable to its citizens for any interventions made within those parameters.

Policy-Making Aimed at Reform

Dror, in his book, Policymaking Under Adversity, argues that most policy-making is made under conditions of adversity and as such an analysis of a policy must take these conditions into consideration (Dror, 1986). To do so, an integrated application study is proposed which includes five prime heuristic phases. These are: identification of main capacity deficits (capacities for policymaking under adversity should be evaluated, in relation to predicaments, so as to identify main capacity deficits); improvement feasibility-domain mapping -- concrete situations should be mapped in respect to more serious

policymaking quality deficits; evaluation redesign proposals; interdependence testing; and, re-evaluation in terms of principles and strategies.

Bearing Dror's argument in mind, first, a detailed study needs to be made of the various problems that exist within the criminal justice system as a whole. A plan needs to be drawn up, perhaps by distinguishing between the variety of problems, analyzing them separately and then jointly. In other words, a definition of the problem with all of its complexities will be more helpful than simply assuming that the outcomes, for example acts of violence or examples of corrupt activity, define the problem.

The next step requires the consideration of all possible alternatives along with any contingent consequences. In this step, identifying the specific criteria for resolving the problem of violence is not sufficient in and of itself. What must also be considered at this stage is whether any of the possible solutions might themselves trigger another set of problems. The resort to violent methods by the state to maintain order might be used as the exemplar in this regard. While this remedy may tend to restore order in the short term, its use most often provokes an equally challenging set of problems. That is, once the state reacts to a situation with the use of force, citizens, by and large, tend to use reactionary violence in retaliation, which in the long run may render the jurisdiction almost ungovernable. This, in turn, often provokes the government to resort to still stronger measures, which in essence pushes the government into escalating the violence against its own volition. Hence, a concurrent and systematic consideration of possible alternative policies or decisions is also crucial at this stage.

The subsequent part of the process involves the exploration of the political and economic feasibility of the alternatives for justice. While there will always be special interests, if not in some cases vested interests to consider, the policy decision should reflect the solution that will best satisfy the constitutional tradition of the country, and especially the prevailing conception of fundamental justice. This is where values come into play. Not only must values be defined but also they must be systematically considered especially in that the democratic process in a free society is respected. It is at

this point that there will doubtlessly be conflicting values and hence a methodology for measuring a valuative criteria must be developed. A cost-benefit and/or a ranked analysis are helpful at this juncture. This will require not only defining and measuring costs, but will assist in ensuring that the benefits are not overvalued. It will also aid in comparing increments of change under resource constraints, and for choosing among alternatives given their defined costs or benefits over time.

Human welfare is an important component to be taken into account when evaluating the possible policy consequences of options under consideration. Insofar as welfare is viewed as being a long-term value, the prominence of human life and life conditions, reported levels of satisfaction and happiness and, of course, the conditions of equality and liberty are factors by which the planning must be guided. Hence, a plan that resolves a short-term problem but that leads to societal chaos will obviously be inconsistent with the elements of equality and liberty upon which democracy draws its strength.

Thus far, the policy method has been rationalist. However, incrementalism would come into play at the implementation stage (as well as other stages). That is, changes should be brought about incrementally. Too many people have been murdered and terrorized in reprisals for government policies in many countries. If change is brought about gradually, augmenting and slowly altering existing policy, but at all times following a chosen plan of action, the violence will be at least minimized as far as possible. In this way, a number of value compromises may be made without the resort to the use of extreme violence and coercion.

Ethical Considerations

When formulating and altering public policy for criminal justice it is necessary to consider how principles or values in practice (ethics) can be reviewed and considered. A balance between social values must be found, especially as it relates to the issue of individual versus collective rights. In this regard, the notion of the moral contract, which considers the application of moral values and principles

in the realm of public service, is central. Whenever groups of people live in community with each other, and particularly when they organize themselves politically within well-defined boundaries, articulate philosophies and principles as in a constitution, and have a citizenry that can be identified and enumerated in some way, then the interaction between all of those persons, particularly between the general citizenry and the people elected or chosen to govern them, is thought of as involving a moral contract. The moral contract reflects certain expectations which lie outside of the context of positive law, but which direct social policy and may be best seen in the way in which political parties present themselves to the electorate through their platforms and statements about proposed policies. These policies are usually presented in a way that attempts to keep faith with an understanding about what the public will accept, as well as an understanding of the limits of public tolerance. Thus, when the public responds negatively to activities of public servants, for example, when a head of government misuses his public office for private gain, it is because such actions are considered to be a violation of the moral contract. The moral contract has to do with expectations about the boundaries within which any governing agency must operate when carrying out its practices.

Thus, what are the limits of the moral contract with regard institutions of the criminal justice system? How far can the state go in containing, confining, treating, punishing or researching people before the moral contract has been violated or broken? This is an important ethical consideration when attempting to strengthen institutions of justice. This is so particularly in the context of doing the work of government and particularly when that work involves dealing with crime and maintaining social order. Usually, it is expected that the moral contract requires faithfulness to the limitations set by law and regulation. It is assumed, furthermore, that public servants cannot break the law and still be faithful to the moral contract. Because of this, the moral contract exists as a conservative instrument of social control. It seeks to conserve and preserve the peaceful order by protecting the interests of all people in their interactions with each other. Nothing is thus allowed to reach an extreme. The understanding

about fairness implicit in the moral contract is supposed, therefore, to keep the interaction between the governors and the governed within reasonable parameters.

The law does not, in and of itself, provide the practical elements of the moral contract. The moral contract is partially reflected in law and social philosophy and partially reflected in public policy. It is out of this milieu that specific codes of ethics emerge. Codes of ethics are not necessarily part of positive law, but rather, they are usually statements of professional expectation. When a professional is engaged in controlling activities or intrusive behavior with other persons, they do so in relation to an understanding about ethics, which is often formulated in a written code. Because codes of ethics are conservative in their tone, they usually identify the parameters of conduct within which accountability is structured and grievances are resolved.

Making standards of practice may thus strengthen institutions of the criminal justice system, and will serve to define the parameters of acceptable behavior for employees in these organizations. While these may not necessarily be rules that impede the ability of individuals to exercise discretion, they do serve as guidelines for corporate behavior, standards of practice, codes of conduct, rules of procedure, and so forth, all of which reflect ethical considerations.

There are a number of factors that determine how these standards or codes are established. One type of influence on local standards is international agreements. For example, the United Nations has developed a set of standards for the treatment of offenders once they are within the criminal justice system.² These guidelines have been used by many countries as general guidelines about the conditions that should be observed in the care and keeping of offenders.

Conclusion

At their most basic, governments exist to maintain order through the selective use of force. If

this cannot be accomplished, then the law, and therefore, numerous forms of coercion, may be 'taken into the hands' of private power brokers smart or powerful enough to gain control. The result of coercion being used by bodies other than the government is generally a breakdown in order. The result, more often than not, as demonstrated by the attitude of complete disdain toward all government operations by many societies, is a lack of faith in the institutions of government and their ability to fulfill such basic requirements as the maintenance of order in society. In an attempt to restore legitimacy, governments have often, erroneously resorted to employing coercion in increasing measure to regain their control. Maintaining and strengthening the authority and integrity of institutions of justice is essential in avoiding this condition. The authority of justice institutions must garner respect both symbolically and in practice. If the institutions have a solid foundation of support, they can secure the respect they need from the public to deal with crime. The public will give justice freedom to do so without the felt need of continuous criticism and suspicion. Thus, in countries where there is concern about the operation of the justice institutions, a building of trust needs to occur which will assist both symbolic and operational perceptions. If the public perceives that the institutions have become more efficient and effective, both symbolic and operational trust results. Thus, if justice institutions state their underlying social values and are subsequently seen to adhere to them in their operations, then respect for their integrity and authority will soon follow.

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² See United Nations Standards. Guidelines and International Instruments: Standard Minimum for the Treatment of

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