

The American criminal justice system has to be the greatest demonstration of inequality in democratic history. The problem is not defective nor corrupted laws. Neither is it inept legal constructions. U.S. criminal statutes are masterfully codified and effectuated. They accomplish exactly what they were meant to; and, that is the problem.

For beginnings, murder is about as perfect a starting point as possible. Taking another's life is almost universally condemned. Though there are some instances when it is also commendable. Saving another person or many people from being killed are among the exceptions. Naturally such acts are viewed heroic. This is only to illustrate killing is not universally held repulsive yet repugnant it still is. Acts of homicide provoke something visceral, primeval and negative: A murderer should be punished and that punishment equal the crime. In present society this means three possibilities: 1. death penalty; 2. life imprisonment; and 3. decades behind bars. Few killers, finding themselves in front of justice, go unpunished. All things being equal nobody can complain about prescribed penalties. Many are as harsh as any despotic monarch's. Yet, it is the very potential penalties that everybody should be up in arms over.

Before progressing we must discuss categori-

zations of homicide. Homicide itself is a simple matter: complete termination of human life. Murder is the intentional ending of said life. The big difference between homicide and murder is one word: intentional. Because of that one word we have over a dozen varying degrees and shades of murder and homicide. Premeditated murder being considered the most heinous. On the other, lesser end of the spectrum are negligent homicides, manslaughters, and such. Justifiable murders, as in self-defense, are found more or less in or near the midpoint. Killing is indiscriminate. It is neither good nor bad; merely an action - no different than breathing - but, as with homicide, intent matters; intent and what is killed. For the purposes of this essay we will focus on elementary homicide.

A person who commits homicide has a wide range of potential penalties. Death by state sanctioned execution only being the tip of the punishment pyramid. Following this is an assortment of life imprisonment formulations: life without the possibility of parole, life with the possibility of parole, natural and virtual life sentences. The latter two meaning anything from 15 - 20 or 25 years to a person's actual remaining days. After these are the many years and decades the courts can sentence a person

to be incarcerated for a killing. Some people have received as little as six years for manslaughter or second degree murder. Others have served as few as zero years because a sentence can be deferred or suspended. This is only in regards to realized homicides. If and when you examine attempted homicides matters become beyond confusing. A person charged with attempted homicide can be sentenced to upwards of half a century or more when an actual homicide could have resulted in a quarter century less.

In the 21st century our society has advanced far beyond imaginings of antiquity. Our concept of justice has become equally sophisticated but with sophistication comes complexity. Complexity breeds complications. U.S. criminal justice system is molded to address a post-modern, technologically advanced society and its diverse, unique implications and consequences. Crime comes in any shape or form imaginable; sometimes even unimaginable. Over the centuries since law and order was institutionalized criminal codes and punishments have kept apace, becoming so multifarious and tailored that one crime can address multiple and/or a singular criminal episode. Then again, multiple codifications can be applied to a single criminal act. In short, it has become a bit ridiculous. Potential penalties and

actual sentences meted out only serve to increase its illogic.

There is a philosophical equation that applies here:

$$\text{Rationale} = \text{Reason} = \text{Subjectivity} \neq \text{Justice}$$

This is the heart, why U.S. criminal justice is a farce.

Our conception of Lady Justice is an adaption from ancient Greek and Roman traditions. Lady Justice is the personification of noble, regal even. Her posture - erect, rigid, straight. Sensible hair, face unadorned, a simple toga and sandals. A sword in her left hand, balancing scales held aloft in her right, a blindfold marring sight. She is an iconic figure representing an ideal as powerful as love and vengeance. In fact, love and vengeance together mean justice. A loved one is killed and vengeance is sought. Law and order demands it, but also prevents us from taking vengeance into our own hands. Therefore, we petition "justice" through the criminal courts; Lady Justice's realm where one and all are judged equally. Hence her blindfold.

Unfortunately, Lady Justice no longer speaks to post-modern civilization so her duties have devolved to fallible humanity.

Recall our equation -  $\text{Rationale} = \text{Reason} = \text{subjectivity} \neq \text{justice}$ . Rationale equals reason. Reason equates subjectivity.

Subjectivity does not result in justice. Human beings are anything besides logical. Otherwise we would stop contributing to our own demises, individually and collectively. Be that as it may, human judgment is the measure of justice today.

Thousands of variables go into human judgment. Two of the most important and influential are subjective experience and societal expectations. These are also interrelated and overdetermined aspects of life, living - the human condition. Subjective experience, or subjectivity, is everything we have seen, felt, done, had done to us throughout our ever-evolving human condition and how we interpret all of it. Interpretation is partially predicated on period norms and standards - societal expectations. Finally, norms and such are dependent on the collectivity of subjective experiences. Each dictates and informs the other's development. Beyond these are economics and politics, ideology and religion, beliefs, morals, values, principles and ethics. All of that without adding culture, individual and collective, history and their myriad influences or prejudices. Our judgment is a messy calculation.

Humanity is susceptible to all this and more. Judges and attorneys, though we tend to believe the contrary, are just as prone to being human. Few areas of human relations illustrate this failing more so than

where judgment meets justice.

As I stated earlier we have an ever-growing plethora of laws, mandates, rules and such. Of all the shifting parts of justice's clockwork the one that uneeringly results in injustice is discretion. Discretion is an intrinsic factor of our justice system. Prosecutors, the avengers of the people of a state, district, county, city, town, etc., have all the discretionary latitude necessary to choose from among the many codes and statutes constituting criminal law's proscriptions. Prosecutors also wield amazing discretion in what punishment to seek (e.g., death penalty, life imprisonment, incarceration or alternatives like state supervision); in fact, whether to pursue criminal prosecution at all. Judges likewise have massive discretionary powers. Our law is not rigid, neither are its actors. Although, justice is.

Justice makes one demand: Equality - one standard, one bar, one criterion. For justice's sake all should be weighed and judged by one measure. Sadly, this is not the reality because, discretion, in its many guises, is most always directed and/or influenced by extrinsicities; that is, matters brought from outside not springing from within. Politics, economic considerations, ideology, folk psychology, conditioned responses, vitriolic, rhetoric, and a host of other extrinsic topics factor into criminal justice and its actors' judgment calculus. This is why two people

charged with the same crime can and do receive disparate punishments. Criminal justice outcomes vary state by state, county to county, and even within the same courtroom. U.S. justice is anything but consistent.

In the U.S. codified crimes overlap, intertwine, interrelate and, at times, many are applicable to the same acts. Homicide, for instance, has some two dozen applicable criminal codes all dependent on individual discretion. This is even more true regards their many potential punishments. In our sophistication we have overcomplicated justice. What was, once upon a time, blind now sees with 20/20 vision and equal discrimination. While the U.S. is held up as the standard for democracy its criminal justice system is the definition of unjust. In a country where unarmed people can be shot to death and their assailants not even charged with any class of homicide. There is no one standard because justice is a fable.