

Law Day Address, 1973

THE LAW ENFORCEMENT PROCESS AND THE CITIZEN

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The process of law enforcement has absorbed the attention of the Nixon Administration since 1969, when the crime wave of the 1960's was at its worst. The progress we have made and the programs we offer in law enforcement concern not only Washington. They are as real and as close to the citizen as the problem of crime itself, because crime and anti-crime measures begin and end with the individual. Our achievements and our approach to law enforcement come right down, like crime itself, to individual responsibility. Our success, that is to say the effectiveness and the improvement of law enforcement, depend in large measure on a combination of the realistic quality of our approach and the active support of the individual citizens exercising discipline over themselves and through the traditional institutions of the community--family, church, school, and local government.

I.

Each of us recalls the crime wave of the 1960's. From 1960 to 1968, serious crimes had more than doubled, and in

1968, the rate of increase was 17 percent. Six years ago President Johnson's Crime Commission reported that "one-third of a representative sample of all Americans said it was unsafe to walk alone at night in their neighborhoods". This was what we were up against in 1969 when the present Administration took office.

Street crime is peculiarly within the jurisdiction of state and local government, but the Federal government launched an attack on it with its resources of financial aid. Through the Law Enforcement Assistance Administration, millions of dollars reached the state and local governments to strengthen and revitalize their agencies of law enforcement. At the same time, there was a massive increase in Federal activity within its own jurisdiction. The Administration attacked organized crime with high-calibre law enforcement agents organized into strike forces and through the use of court-authorized wire-tapping. We attacked the drug trafficker and dried up his sources through increased cooperation with other nations, such as Turkey, France, and Mexico and the use of greatly strengthened and improved enforcement efforts. We attacked the interstate commerce in pornographic materials. The Federal Bureau

of Prisons is emphasizing job training and education with special attention to the problems of women and young people. It will be a model for the nation. Sweeping changes in the organization of the District of Columbia courts were accomplished in 1971 to provide a quality of justice never before known in Washington, with a swiftness, for example, that brings felony cases to trial in eight weeks. Hundreds of millions of dollars have gone to the state and local governments to spark initiative and bring about basic innovations and reforms.

These efforts have had good results.. Step by step through the last four years, the Administration has been able to announce a steady fall in the rate of the increase of crime, from the 17 percent increase in 1968, to 12 percent in 1969, to 11 percent in 1970, to 7 percent in 1971. Last year we turned the corner. The Attorney General has announced the first actual decrease in crime in seventeen years--a 3 percent decline for 1972. He said, "It is an important milestone in the fight to reduce crime and is directly attributable to the strong efforts of law enforcement officers throughout the nation to turn back the wave of crime that rolled upward in the 1960's."

The details of the crime reports also are interesting testimony to the success of law enforcement efforts. Violent crime increased by only 1 percent in 1972, compared with a 9 percent increase the year before. Robberies showed a 4 percent decrease in 1972. There continue to be some increases, however. Murder was up 4 percent, aggravated assault 6 percent, and forcible rape 11 percent. But property crime decreased 3 percent, with auto theft down 7 percent, grand larceny 3 percent, and burglary 2 percent.

Cities over 100,000 population reported an average decrease of 7 percent. Crime in suburban areas had increased 11 percent in 1971; it increased only 2 percent in 1972. Similarly, crime in rural areas increased 4 percent last year, down from a 6 percent increase in 1971. Finally, in the Nation's capital, where the Federal responsibility is clear and its effort intense, the 1972 decrease was 26.9 percent compared to the 1971 decrease of 13 percent.

Gratifying progress has also been made in controlling drug trafficking. Five times as much heroin and equivalent drug derivatives were removed from the international market in 1971 as in 1968. Twice as many arrests were made by Federal

agents in fiscal 1972 as in fiscal 1969. There is evidence that the drug traffic has been disrupted. The price of heroin has gone up, its purity has gone down, and more and more addicts are voluntarily going to treatment centers.

II

Despite the progress these figures reflect, crime remains a serious problem indeed. It is time we reflect on the origins of criminal conduct. Permit me to share with you some thoughts of mine on that matter.

I start with a proposition which is both factual and inescapably philosophical. It is that crimes are committed by individuals, not by robots propelled by society.

We are all familiar with the weary refrain that crime is the result of poverty, or unemployment, or discrimination, or poor schooling or some other social condition. The implication is that crime will all but disappear if these conditions are corrected. The corollary is that the only effective crime control program can be--and need be--one that is wholly directed toward this end. Additional funds for education, the elimination of poverty and discrimination, unemployment compensation,

and job-training programs are, by this reasoning, more important than additional funds for police improvement and reform of the criminal justice system.

This is a faulty view. It obscures from view the necessary responsibility of the individual to conduct himself in conformity with social norms as prescribed by and reflected in law and in a manner that will minimize the temptation to others to disobey the rules. In brief, it ignores what theologians call sin. Greed, lust, envy--yielded to by individuals--are the sources of much of our crime. The rest may well be accounted for by an indifference to the personal and civic obligations inherent in the community of man--called civilization.

There is nothing new about these sins. What is new in our time is our population density and modern technology that has made possible the rich and varied life of urban civilization. that most of us enjoy even when, in fact, we live some distance from the inner city. Our numbers and mobility increase the available choices, both for good and evil, and diminish the effectiveness of the restraints operating through the family, the church, and the community. Affluence and compara-

tive anonymity provide intense temptation on the one hand, the high probability of immunity from censure on the other.

Coincident with these developments and stemming from the same causes are the decline, in some quarters, of religious belief, a clearly defined moral philosophy, and patriotic commitment to our civic ideals. With this decline has come the rise of relativism, which in its most extreme form has the value system of a teenage ruffian indistinguishable on moral grounds from that of a Socrates or a Christ, provided the ruffian is prepared to authenticate his values by asserting that they spring from his conscience.

These spiritual and civic transitions have occurred at the close of a period of our history in which our westward thrust toward an ever open horizon or frontier has been halted. During that period we moved; we plowed new ground; we built new towns; we fought and sometimes died. We lived turbulently; but we believed fervently. Today, we treasure the legacy of turbulence but value lightly that of fervent belief in deeply held and shared principles. The God-fearing pioneer of lawman has been replaced in our morality plays, the movie westerns, by the romantic outlaw loyal only to a code which springs from the depths of his personal, existential and unique experiences. Once, our hero of the movie western rarely touched the heroine;

now, he seldom fails to slap her.

As these processes have worked their way, and as the standards have fallen away, each of us has been forced to look inward. Many have found less and less. Some have found nothing. In the escape from this emptiness, there has been an outward scramble to find new faiths and answers. Many have turned to drugs, to the occult, to diverse religious faiths, and to the ideological convictions of other nations. Many have turned to the state as the source of spiritual and material relief. While we lifted the burden of responsibility from the individual, we starved the community, the family and other traditional institutions and impaired their capacity to sustain the individual. We have fostered the growth of a vast federal bureaucracy, while losing confidence in the soundness and efficacy of many of our institutions, particularly those closest to us, our state and local governments.

The Supreme Court, sensing both the quality of this "new individualism" as well as the decline in the legitimacy of authority and government, particularly state and local, has sought to fashion a body of constitutional doctrine which would accommodate innumerable value systems and liberate their adherents from conventional restraints. The Court's impulse is understandable. The flaw in this impulse is that it has minimized the need for government actions which support the individual's capacity for self-control and which suppress his greed and other sinful inclinations and discourage

indifference. A value system built on the triad of greed, lust, and indifference is, I submit, not as entitled to constitutional protection as any other.

Moreover, in the process of establishing its own increased legitimacy by intervening in the processes of the other branches and levels of government, the Court has hastened the decline in the legitimacy of those other branches and levels. In a democracy, the courts have an obligation to sustain, as well as to check, the vitality of the political branches even when they produce compromises whose logical symmetry it is difficult to discern.

Nowhere has this tendency of the Court been more pronounced than in the field of criminal procedure. Skeptical of the values reflected in a criminal code, cynical of police behavior, and doubtful of the competence of state and local governments, the Court has proceeded to work a revolution.

Not all aspects of this revolution are bad, but its cumulative effects are very disturbing. Criminal proceedings have become more lengthy and complicated. When post-conviction remedies are considered along with pretrial hearings, in many cases litigation extends from arrest and arraignment, through a determination of guilt, to the time of release and beyond--habeas corpus no longer requires custody in certain circumstances. "Portal to portal" litigation may

extend over so many years that the government finally cannot prove its case on retrial. This endless litigation improves the lot of criminals and lawyers (and not necessarily in that order), but the public is entitled to be dubious about the advantages to it.

However the public views this development, it is clear enough to law enforcement officials that the balance of advantage has shifted to the accused. The police and prosecution are held to exquisite standards of conduct while the remedies available to the accused (or prisoner) have been extended. Sometimes, as fatigue creeps in during the reading of another appellate opinion reversing a conviction, one comes to believe that our criminal process is the means by which we repeatedly try our law enforcement officials and seldom find them innocent. It almost seems that the accused is performing a civic service by providing the occasion for further scrutiny of our ever-errant police and prosecutions.

Moreover, the virtue of the accused is assured if his activity is related, however tenuously, to a political objective shared by a vocal few or more. Crime has come to be to some a legitimate tactic in the political process. Examples range from relatively harmless sit-ins and "trashing" to much more serious crimes committed in the name of humanity, brotherhood, peace, decency, or whatever. It seems that a political

purpose can somehow enoble the shabbiest, most contemptible act. Were the Hell's Angels and similar groups to espouse blue-collar populism, their public standing might well soar.

The plight of the criminal justice system is also reflected in the current search by many both within and without the system for means by which many activities can be decriminalized and wrong-doers can be diverted from the system. Each suggested step in these directions becomes instantly popular, not necessarily because of its intrinsic merit, but because of the weakened authority of the law enforcement process. Any alternatives to the processes of law enforcement and the institutions of corrections are better than what we have now, some would argue.

III

Nonetheless, we are making progress. The average man has never believed that the only sin is a collective one. He has always known that the robber, the rapist, the murderer are more guilty than either their victim or himself. He has not lost faith in the police force, for he knows that when it is gone he is weak and defenseless. He also knows that endless criminal litigation reflects a weakness that needs attention. And, finally, he expects his leaders to find a

way in which crime is reduced and the criminal process be made both swift and just.

We, in the Nixon Administration, accept the challenge these beliefs represent and, as my earlier remarks indicated, substantial progress has been made. More will be made in the future.

Recently the President submitted to Congress a new and completely revised Federal Criminal Code that recognizes the dual sovereignty of a federal system and is carefully designed to minimize federal encroachment upon state jurisdiction over crime. The proposed Code will be considered with a similar effort prepared by a Senate subcommittee and the work of the National Commission on Reform of the Federal Criminal Laws. In our judgment, the President's Code, three years in the making, is superior to the others, but we will work with Congress to achieve and internally consistent code of crimes defined succinctly and sanctions commensurate with the crimes.

The Code submitted by the President includes realistic, workable provisions to curb the dissemination of pornography, to restore the death penalty under circumstances believed permissible under the Supreme Court's recent ruling, and to simplify the law of insanity as a defense. Under this last-mentioned change, the insanity issue at a trial, which is concerned with guilt or innocence, is merely whether the

accused knew what he was doing. If he did know, his mental condition would not preclude conviction but would relate instead to the question of treatment or imprisonment. This reflects our belief that the individual is responsible for his actions.

The death penalty, as provided in the Code submitted by the President, is reserved for crimes that are clearly deterrable by the death penalty and for heinous crimes which require the community's profound and considered outrage to be expressed through the imposition of the supreme penalty, but only after careful search in the sentencing process for mitigating circumstances. The President believes firmly that retribution can be just, and that just retribution does not amount to cruel and unusual punishment.

IV

All of these measures, both those submitted by the President and those under review and study, rest on the abiding conviction that individuals are responsible for their acts. This Administration rejects the notion that the criminal justice process is the means by which a guilty society seeks atonement for its sins by the sporadic sacrifice of victims randomly selected by a mindless system. We acknowledge that some are tempted more than others, but we hasten to point out that those who tempt are not the tools of a collective,

will but are individuals--free and responsible for their acts.

The President has made progress in his fight against crime. Each of us can help by conducting himself in a lawful manner. The struggle with greed, lust, and indifference never ends, but "law and order" are nothing but consecutive daily triumphs by a host of individuals each achieving his personal victory in his own way.

None of us, in our hearts, believe that we will fail. Self mastery, in the final analysis, is the key. My entire message is contained in a line from the hymn "America the Beautiful":

"Confirm thy soul in self control

"Thy liberty in law."