

Liberty and Safety

By RAMSEY CLARK

Our system of criminal justice fails to reduce crime. It is not working well. Police are not professional, courts are unable to process case loads, prisons make criminals of boys they could rehabilitate. We see the reforms that are desperately needed, yet we do not make them. But even if these public agencies were working at the most effective level possible, they could not substantially or permanently reduce crime while conditions exist that breed crime. Mere words of prohibition, with force and the threat of force their only sanction, cannot shape human conduct in mass society.

As turbulence, doubt and anxiety cause fear to increase, fear in turn seeks repressiveness as a source of safety. But experience tells us that the result of repressiveness is more turbulence and more crime. In frustration over the failure of law enforcement to control crime, new, quick and cheap methods by which police and courts and prisons might be made more effective are sought amid desperate hope and rising hatred. A public that believes the police alone are responsible for crime control, and therefore no other effort is needed, will vest any power in the police that seems to promise safety when fear of crime is great. But there is no such power.

Excessive reliance on the system of criminal justice is terribly dangerous. It separates the people from their government. It is the one clear chance for irreconcilable division in America. It puts institutions of government in which people must have confidence in direct confrontation with dynamics they cannot control. When the system is abusive, society itself is unfair and government, demeans human dignity. Then there is a contest of cunning between the people and the state. The state can never win.

The dialogue over the proper limits of police action and barely relevant court rulings consumes most of the emotion and much of the energy that could be constructively used to strengthen the system of criminal justice. Instead of efforts to raise police standards, expand training, increase salaries, and improve judicial machinery, we debate in ignorance and anger whether police should be authorized to stop and frisk whenever they choose and whether the Miranda decision should be reversed. The resulting diversion of attention, emotionalization of concern and polarization of attitude damage the system of criminal justice. Those who stimulate prejudices in public opinion, who appeal to base instincts of fear, who protest their willingness—even desire—to sacrifice

"If ever there was a worse Attorney General it was Ramsey Clark . . . like a jellyfish, a softie . . . You never knew which way he was going to flop on an issue. He was worse than Bobby [Kennedy]."

J. Edgar Hoover on Ramsey Clark

freedom on the altar of order add immeasurably to the burdens of achieving excellence in the performance of criminal justice agencies.

A narrow logic can even conclude that the use of deadly force—shooting looters, for instance—stops crime. After all, it does eliminate a criminal—if the right person is shot. Our total experience shows beyond question that the result of using such extreme repressiveness is always an increment to the dimension of violence and a new potential for more.

There are degrees of repression. Each demeans the dignity of the individual in its different way. Intimidation of speech or conduct by force or threat of force in essence says the state is supreme, the individual has no rights, he must do as he is told. We see this when police tell people to move along, when they stop and frisk without cause, arrest on suspicion, enter premises without a warrant or without knocking, deny permits to speak and assemble, break up meetings and raid places where unpopular people live or work, without legal justification.

Stealth and trickery as methods of repression mean that the state has no respect for the individual. It will deceive, lie, invade privacy, steal documents, do whatever it thinks necessary to catch people in crime. By wiretapping, the government says to its citizens: Do not trust us, for we do not trust you. We will hide, overhear, wait secretly for months for you to do

wrong. If you do anything to displease us, we may choose to watch your every move.

Denial of bail and preventive detention are essentially premised on the belief that the individual must yield his liberty to the state if he is poor, ignorant, despised—and apparently dangerous. He can be tried later. Society will not presume him innocent. No respecters of human dignity, these measures imply that judges can tell who the bad people—the dangerous ones—are and can say that they should be denied freedom and punished as guilty until proven innocent.

There is no conflict between liberty and safety. We will have both, or neither. You cannot purchase security at the price of freedom, because freedom is essential to human dignity and crime flows from acts that demean the individual. We can enlarge both liberty and safety if we turn from repressiveness, recognize the causes of crime and move constructively.

The major contribution the law can make is moral leadership. Only then can it hope to permanently influence the conduct of its citizens. The law cannot therefore impose immoral rules or act immorally. The government of a people who would be free of crime must always act fairly, with integrity and justice.

Ramsey Clark, former Attorney General of the United States, is author of the newly published "Crime in America," from which this is extracted.

"The F.B.I. has so coveted personal credit that it will sacrifice even effective crime control . . . This has been a petty and costly characteristic caused by the excessive domination of a single person, J. Edgar Hoover, and his self-centered concern for his reputation."

Ramsey Clark on J. Edgar Hoover