

La réponse de l'administration de la justice à la perception du public

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We have finally come, after two and a half days, to the last workshop dealing with possible responses to the public perception of the administration of justice.

How does or indeed how should our system of justice attempt to answer growing public concerns and criticisms? We have for you, ladies and gentlemen, a very fine panel which will try to deal with this question.

As you will have noticed, however, our panelists, this morning, will focus mainly on the area of civil and administrative law. I have thus been given the task this morning to make some brief introductory remarks on the criminal aspects.

I must confess that some of the comments that I heard on how the public image of the administration of justice could be improved have in one case frightened me and, in another case, challenged my own perception of justice.

Let me, very briefly, try to explain why and what those concerns are.

Everything that I will say now, I say of course with the greatest of respect for all the opinions that were expressed even for those that I profoundly disagree with.

I am an unconditional believer in the complete and absolute independence of the judiciary, which to me is the key to a fair, non political, impartial and legitimate system of justice and thus a prerequisite to the positive public perception of the system. If the day ever came where I would feel this independence to be threatened by the political system, the executive or indeed even by the public, it would be my strictest duty to resign.

I am also a firm believer in the idea of public accountability of all the actors that work directly or indirectly in the justice system. I believe that police forces should be accountable and thus, unlike some panelists, that it is better to have an accused, who is guilty, go free than to condone police practices that go against fundamental civil liberties of the citizen. I believe that lawyers are also accountable and unlike what happened in the recent O.J. Simpson's case, that at least in ethics if not in law, the duty to defend one's client has limits in terms of tactics and means that can reasonably be used to secure a non guilty verdict.

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Finally, I also believe that justice should be an open, public, transparent process. The preservation of the freedom of the press is crucial because it constitutes the watchdog of democracy. However, in my opinion, there can and indeed should be some limits imposed on the unfettered and, in my view, sometimes prurient press reporting techniques, if only to protect the memories of the victims and the anguish and sorrow of their next of kins.

Je suis inquiet de certains commentaires que j'ai entendus sur la justice criminelle. Je le suis pour plusieurs raisons.

La première est que j'ai entendu certains avancer que l'une des meilleures façons d'améliorer l'image de l'administration de la justice était de rétablir la peine de mort, de punir les jeunes contrevenants comme des adultes, de revenir aux châtimens corporels et d'imposer des peines plus lourdes. Ceci me fait peur.

Il est temps que l'on se rende compte, au Canada, que la criminalité est avant tout un problème social qui ne saurait se régler par une répression accrue. Sur ce point, la perception d'une grande partie du public est fautive et erronée lorsqu'elle estime qu'une plus grande sévérité est garante de l'atténuation ou même de la disparition du problème. Nous avons à cet égard, je l'admets volontiers, un grand effort d'éducation et d'information à faire auprès du public, mais aussi, et peut-être surtout, auprès de tous ceux qui, avec la crise économique actuelle, se voient obligés de couper certains programmes sociaux de base qui sont l'une des façons les plus efficaces de prévenir et de contrôler la montée de criminalité.

Ma seconde préoccupation, qui est beaucoup plus une interrogation, touche ce que j'ai entendu à propos d'un groupe social particulier (les autochtones), mais que l'on entend souvent à propos d'autres groupes minoritaires ou opprimés (minorités visibles, femmes, homosexuels, etc.), à savoir que le système de justice et plus spécifiquement les décisions judiciaires doivent **nécessairement** refléter la spécificité de leur philosophie, de leurs aspirations et de leurs revendications politiques.

Le multiculturalisme et le multi-ethnicisme canadien a, il n'y a aucun doute là-dessus, de très grands avantages. Il constitue une extraordinaire ouverture aux autres et est désormais pour nous une richesse que bien des pays nous envient. Il pose cependant pour l'administration du système de justice un problème que j'essaierai de formuler en ces termes.

La justice canadienne doit-elle nécessairement, lorsqu'un groupe minoritaire est affecté, aller plus loin que de développer une sensibilité particulière à son égard et doit-elle obligatoirement refléter dans ses jugements la perception optimale que ce groupe minoritaire s'est fait lui-même de notre justice?

Une réponse positive et sans nuance est porteuse, à mon avis, d'un double danger.

The first danger, necessarily, is that by attempting to accommodate a specific view or image of the administration of justice, the judiciary would tend to surrender itself to minority group pressures and to the temptation of "political correctness" which is a

good and valuable thing as a concept, but which in ultimate and extreme form may lead to clearly undesirable consequences.

The second danger is that solutions to identical legal concerns become fractional and split into as many different interpretations of the law as there are different minorities, cultural or social groups. Should a judge, for instance, interpret differently the notion of theft, fraud or homicide according to the particular group the accused belongs to? Could the court, to take an extreme example, completely excuse the mutilation and clitorrectomy of a 12 years old girl, because such is the cultural tradition in the country of her parents?

Justice must be equal and identical for everybody and be reflective of core values of Canadian society. Although it should indeed be more sensitive to and even ready to go as far as to accommodate cultural, ethnical and ethical differences, if only at the level of police and prosecutorial actions, courts should be very careful not to forego the principle of the universality of the law, only because of a desire to respect political or cultural differences. As the motto is in every courtroom in Italy, *La legge e equale per tutti* : the law is the same for all.

My final concern is that the Charter may have given us judges a sort of poisoned gift, in introducing us indirectly into the realm of political power. This, if not well understood, could be dangerous. Why? Because it raises the fundamental issue of the difference of which we, judges, should always be aware that is the difference between *legality* and *legitimacy*. Our role is not to act as a substitute for the shyness or, sometimes, the lack of courage of elected politicians. We are not there to determine what kind of country Canada should be on the political level. We are only entrusted with the responsibility to correct the improprieties of the legislative and executive power in shaping Canadian democracy. Should we become "political" judges, justice would stand to lose its credibility.

