

## Criminal Justice's Ailing Role.

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### Abstract

The general philosophy of social contract is premised on the notion that the state assumes the role of maintaining social relation through diverse political ideas and strategies. Within the context of this historical arrangement, the institution of criminal justice has been foremost in shaping the relationship between members of the community by defining rights and sanctions. These socio-legal trajectories that developed through theories and policies have continued to define the various strategies of crime control as well as the jurisprudence of punishment. It has also been the key measure for the legitimacy of crime control and other dispute resolution technics (Davies et al. 2009). Being a significant component in the formation of political systems, the institution of criminal justice has also developed to encapsulate the values of democracy, constitutionalism and human rights. It is from these ideas that criminal justice institutions mainly the police, the prosecutors, the courts and prisons derived their legitimacy, that are today seen by many as the ideal mechanism for maintaining social order. These agencies have, over time, gained prominence within the framework of a larger political order, engaging themselves as some "product of incremental enlightenment, benevolence, and a consensual society" (Burke 2012: 194). Despite these lofty assumptions about the role of criminal justice in the society, this paper argues that the policies and practices in criminal justice are far from benign. By bringing to discourse the contemporary realities of penal justice, this paper argues that many of the traditional values of criminal justice have been tremendously altered; conventional narratives are replaced by a new kind of penology. This includes the way in which the role and rights of various parties and participants in the system have been reconfigured as well as the economic way of thinking that is steadily disrupting the balance and objectives of the entire institution of criminal justice.

**Keywords:** Community, Court, Criminal, Interest, Institution, Justice, Legitimate, Public, Victim.

### INTRODUCTION

It recent times, the world has witnessed a steady shift in the structure and dynamics of criminal justice. This move from traditional principles to a new kind of penology is driven by various factors that include the demise of the welfare state and the recurring interest in global capitalism (Burke, 2012). It is also evident that the growing pessimism in criminal justice's ability to effectively combat crime, the proliferation of unfamiliar strategies in crime control as well as the suspicion of a growing attitude of partiality have all contributed to some of the deafening accusations that have now become integral in public discourse about criminal justice policies. This conflagration of different and sometimes distinct factors reveals a new contour that is both complex and fragile. Meanwhile, the conventional narratives of crime control model, of adjudication and even the assumed role of the state in promoting and defending individual rights are steadily changing (Garland, 2001). This change in the structure, character and procedure has moved to the extent that new players such as private prisons and private parole officers have become part of the system. It is, however, important to stress that, despite these alterations, the state remains at the center of legislation, legal reform and penal policies

(Davies et al., 2009), which is to a large extent a reflection of the continuous relevance of the political philosophy of social contract. Moreover, the growing sentiment of constitutionalism and democracy has ensured that the state remains the symbol and manifestation of social cohesion, organization, and legitimacy of public institutions (Zedner, 2004). These obligations become even more entrenched as the state continues to be the primary establishment that bears the formal customary responsibility to guide the affairs of the society in accordance with settled legal and constitutional principles (Ashworth, 2002). Commenting on the state and other parties in criminal justice, Shapiro claims that for centuries, systems across the world have augmented the social relation between the state, the individual and the community, and that “we can discover almost no society that fails to employ this strategy that overwhelmingly continues to appeal to common sense and legitimacy” (1986: 1). Despite these assumptions settled values on the role of different parties in criminal justice administration, including the individual and the community, there is also a plethora of evidence that shows how the system has failed to fulfill its promise of impartiality and effectiveness. Some of these failures were seen as the reason for the emergence of other alternative methods such as plea bargaining that proponents support as a summary procedure devoid of the nuances of conventional trials. Yet, the idea of plea bargaining, which permits an offender to negotiate his or her charges or sentence in an informal manner, not only defies logic but also stands in the way of preserving some of the fundamental values of criminal justice. All of these elements together pose a new paradigm in criminal justice that is overwhelmingly a departure from the old.

### THE STATE

The state has historically been at the centre of criminal justice administration. This leading role in legislation, dispute resolution, and penal policies has ensured that the state, through various institutions and strategies, functions to provide fair arbitration among its citizens. Through crime control, penal provisions and constitutionalism, the state serves as a way of maintaining social order. It is also through these legal designs that a symbolic message is sent to the wider public of societal disapproval to certain conducts as well as the limits of legally approved behaviour (Zedner, 2004). The state's responsibility in the administration of justice becomes even more relevant owing to the fact that the state owes the society some degree of safeguards in accordance with political consensus on settled principles of law (Ashworth, 2002). There is, however, a long list of failures of the state in this respect. While criminal justice continues to depart from its orthodox values; as it is doing now, public suspicion and dissent continues to grow. Moreover, in countries where checks and balances on the criminal justice system are weak or ineffective, there is the constant outrage over judicial corruption, abuse of rights and unequal access to justice (de Souza, 2016). In developed democracies, the challenge is mostly on the question of civil liberties, social discrimination and corporatism (Bayley, 2001). It is, therefore, safe to argue that in both kinds of legal regimes; developed and the developing, criminal justice is still far from benign.

From the last quarter of the 20th century, both the theoretical and practical perspectives on criminal justice administration has seen a significant shift, principally in the field of crime control and in penal policies (McLachlin, 2000). One of the defining elements of this transformation is the growing sentiment of a risk society which primarily results in punitivism and over criminalisation (Garland, 2001). Through the growing, often politicised rhetoric of protecting the society from harm, the world has seen the rise of penal populism (Jennings et al., 2016). These aspects of modern criminal justice policies and strategies have ensured a reconfiguration of the conventional narratives by ushering in a new paradigm in almost every aspect in the criminal justice circle including the rise of private players (Jones and Newburn,

2005; Burkhardt and Jones, 2016). Ericson and Haggerty (1997) for example argued that the emergence of the sentiment of 'risk society' of late modernity has encouraged penal populism. Norris and Armstrong, on the other hand, pointed out the way criminal justice has continued to become 'actuarial' and its interventions based on risk sentiment that emphasises on practices such as mass surveillance, offender profiling and in some cases, preventive detentions (cited in Burke, 2012: 203). This leads to the question on why criminal justice submits itself to a new paradigm. It also begs the question on how these emerging concepts and strategies will be perceived by the wider public. Bottoms's (1995) explanation of this paradox was on the increased politicisation of crime control strategies, which he categorised as 'populist punitiveness' and 'Bifurcation' (cited in Kemshall and Maguire, 2013). The former he argued, represents the rise of the harsh penalty familiar in emerging legislation, and the latter represents how this increase in the degree of sanctions mostly targets the most serious crimes while minor crimes of lesser public visibility are treated leniently to reconcile monetary and other institutional burdens (ibid). This argument is supported by a number of empirical evidence that shows how lower courts in jurisdictions such as the UK and the US are the ones flooded with cases that often end up in quick disposal through new ideas in penology such as plea bargaining (Rauxloh, 2012; Marcus et al., 2016). Because lower courts do not often deal with notorious cases, there is mostly little public attention to what they do. Hence, these courts or prosecutors can simply resort to other methods that ordinarily will not appeal to the general population.

Of all the elements that are causing this gravitation, the sentiment of 'risk society,' appears to be a leading cause. For example, politicians have become prone populism and scaremongering as means of attracting support from the electorates. Using rhetoric that the 'risky' must be contained, they have found a potent tool for legislating for new offences that are often punitive in their content of punishments. This has led to a shift in the nature and definition of crimes. Evidence of this is abundant, particularly when one analysis developments in today's leading democracies that are continually criminalising conduct that were previously defined under administrative law, i.e., tax-related violations and environmental offences (Maffei, 2004; Benson and Kim, 2014). A typical example of this is found in the current laws of legal regimes such as England and Wales, which today has more than 8000 offences of strict liability (Rauxloh, 2012: 65). As recent as 2014, the UK government announced that it will introduce new criminal offence for tax evaders under the strict liability laws (Kaye, 2014). Corresponding evidence were also put forward by a report from an organisation in the United States called 'Right On Crime', which shows that there are now over 4,000 existing federal crimes. These include thousands of simple activities that were traditionally not regarded as criminal offences, among which are business activities such as importing orchids without the proper paperwork, shipping lobster tails in plastic bags, and even failing to return a library book. In addition to these Federal crimes, there are state crimes in which Texas alone has over 1,700. The implication of aggravating these redundant crimes and the removal of mens rea requirements have further led to the debate on the justification of the priorities that modern criminal justice intends to achieve.

One of the complexities arising from this state of affairs is the attempt to understand and explain the jurisprudence that leads to over criminalisation in a world that is deemed to have become more democratic and liberal. In this respect, some scholars argue about the extended implications of some peculiar elements of contemporary criminal law, which sees not only the commission but also the danger that a crime may be committed as sufficient culpability (Rauxloh, 2012: 64). By assuming this actuarial sense of approach, enormous complications have emerged regarding genuine culpability. In the sense that, "to avoid the problems of

causation, criminal liability had to be moved forward on the scale of action and culpability is increasingly related to the defendant's awareness of the danger and thus the mental state of the defendant instead of positive action" (ibid: 66). Beck contends that some of these unfamiliar trails in criminal justice are part of a broader conception that symbolises how "in advanced modernity the social production of wealth is systematically accompanied by the social production of risks" (1992: 19). The most challenging outcome of this paradigm is the growing tendency for a profound compromise of the principles of human and procedural rights in criminal justice administration.

It is safe to argue that number of these changes call for urgent reform in order to balance orthodox values with new priorities. Hence, scholars remain deeply divided on whether it is time to accept the relevance of a "reworked conception of penal-welfarism" that is largely driven by an economic style of decision-making (Garland, 2001: 3), or to challenge the presence of this new contour in 'law and order' legislation that can only be explained by the recurring interests of global capitalism (Burke, 2012: 170). Although there is a notion that the connection between law and economics is no longer a force, but an old aspect holding on to previously won ground (Ellickson, 1989), evidence from contemporary scholarship suggests a trend in which law and economics are becoming increasingly intertwined, especially when one considers some of the far-reaching aspects of modern criminal justice administration that include the widespread practice of plea bargaining, whose main justification is premised on the economics of criminal justice.

One of the major criticisms to the current trend is the perspective that sees criminal justice policies and regulations being increasingly directed towards the poor and deprived, which are targeted as risky, irresponsible and unproductive individuals that deserve some degree of control and discipline (Burke, 2012). Wacquant (2000) gave empirical evidence of the surge in the incarceration of mostly the poor and underprivileged, where he indicated the rampant rise in punitive legislation and over-criminalisation inherent in contemporary criminal justice, especially in jurisdictions such as the United States. Similar notion was echoed by Siegel who maintained that most aspects of criminal justice are, in fact instruments of coercion and control pitted by the State against the solitary individual (2009). Through the official juxtaposition of guaranteeing justice and fairness added Roach, disadvantaged groups are made to "rely on the criminal sanction's false promise of security and equality" (1999: 117).

However, the likes of Zedner (2006) think current trends, especially crime control through policing are not particularly a departure from historical practice. Instead, they are more of a reflection of past practices at times when crime control was mainly a responsibility of the individual and communal self-help. While these are historical realities, the present shift tends not to place the burden on the individual whose goodwill is to fight crime, but on organised private institutions often contracted by the state. The paradox is the presence of these non-state actors alongside state agencies in an area such as criminal justice which by its premise stands to serve as a neutral institution that should not be influenced by private actors of present-day capitalist societies. In this context argued Punch (2009), there is an inherent challenge faced by crime control institutions such as the police. Their organisational operations often foster some diverse pattern of operation across many of today's societies, which he categorised as 'the official paradigm' and 'the operational code' (ibid: 2-3). Through the official paradigm, these institutions portray to the wider public the 'façade' of efficiency, while their actual operational codes are often carried out through internal institutional priorities that are distinct from the official paradigm (ibid). For instance, structural adjustment

in crime control strategies such as offender profiling and preventive detention have become familiar even as they lead to abuse of rights and also fail to either convert crime or reduce recidivism (Garland, 2001). Instead, they are strategies that place greater emphasis on incivility; all in the name of safety and security (Burke, 2012). There is also abundant evidence showing a decline in the idea of correctional justice, which was earlier thought to be an alternative to the notion of retribution (Crawford, 1997).

In the midst of this complex interplay of political, economic and legal trajectories is also the controversial yet popular character of plea bargaining that takes criminal matters out of the court and turned them into commodities to be negotiated and discounted. The outcome of which is an expedited and lenient sentencing for those that agree to plead guilty and the threat of punitive sanctions to those that insist on their constitutional right to go to trial. The proliferation of plea bargaining across the world (Ma, 2002; Rauxloh, 2012) also leads to the argument that the territory of criminal justice now operates in a mixed paradigm that produced some extraordinary paradoxes. In the sense that punitivism is operating side by side the promise of lenient sentence through negotiated pleas. It also generates the criticism of being a system that rewards instead of punish offenders. In the end, a negotiated settlement neither serves the objectives of retribution nor those of deterrence or even rehabilitation. But proponents of plea bargaining incessantly reject these accusations, claiming that plea bargaining helps in ensuring efficiency and finality in criminal justice administration (Stitt and Chaires, 1992; Armstrong, 2014). Yet, it is important to point out the flaws of plea bargaining as a system that lends itself to procedural informalities and also compromises the transparency and accountability needed for the fair adjudication of criminal disputes. These flaws of plea bargaining have continued to put the fabric and credibility of the entire justice system at stake. Despite these familiar problems of plea bargaining, it has become a norm in modern criminal justice (Damaska, 2006; Thaman, 2010; Rauxloh, 2012; Dripps, 2015), to the extent that, in some jurisdictions, trials are becoming the exception (Duff, 2000; Gazal and Bar-Gill, 2004)

In relation to the formation legitimacy of the institution of criminal justice, it is the rights and obligations of the different parties involved in the process that becomes the foremost subject. The main theory is about the triad, i.e., the state, the community and the individual. In his famous work, Shapiro says this relationship of the three parties with legitimate role and interest is so universal that "we can discover almost no society that fails to employ it. And from its overwhelming appeal to common sense stems the basic political legitimacy" (1986: 1). This framework through which social and political relations are defined and sustained is key to building a system of administration of justice that is fair and just and it is a cardinal part of the social contract arrangement and of the democratic values of late modernity. It is within this political arrangement that criminal justice derives its legitimacy as a mechanism for sanctions and remedy.

### **THE COMMUNITY**

As an integral part of every political system, the community has a legitimate interest to be served, to be protected and to be involved in criminal justice process. They are the victims of crime, reporters of crime and witnesses to a crime (Zedner, 2004). Most importantly, they are the populace among whom, judges, police officers, prosecutors, the jury and prison officers are produced. The community also serves one of the key requirements of procedural justice, which is the transparency that allows the public to witness and understands all aspects and processes of criminal justice administration. Involving the community in the process of justice is the most viable political arrangement that allows the public to play the role of an

intermediate institution between the state and the individual (McCormick and Garland, 1998; Bazemore and Schiff, 2015). By observing court processes as well as crime control activities, the community is tasked with the obligation to scrutinize and challenge what it sees to be in contrast with settled principles of law. It also safeguards the principles of the rule of law by questioning any conduct that condones inappropriate and discriminatory application of the law.

Despite this cardinal role of the community in ensuring a free and fair administration of justice, Lacey, argues that in practice, much depends on the conception of what a community means, as the term 'community' often cuts across a number of affiliations articulated in terms of race, ethnicity, age or occupation (1988: 14). The empowerment of any of these distinct groups is capable of compromising certain values of the 'rule of law' as well as the standards of consistency that demand all regulations and decisions to be within the framework of some general standards of procedural and substantive justice (Ashworth, 2002: 5-6). This concern resonates with familiar political movements that are growing across the world. From the American 'Black Lives Matter' (Romano, 2015), to the Tibetan rights movement, the Rohingya rights movement (Brooten et al., 2015), etc., one witnesses an isolation of a particular group and termed as a community. These are some of the complexities about what a community is, which according to Ashworth raises the issue of dominance and partiality by one group on the grounds of race, gender and other physical and/or social divides (Ashworth, 2002). Critics of community participation contend that, by emphasising on the rights of the community, the justice system is vulnerable to tension with values such as equal participation and impartial involvement (2001: 153-158).

However, the strength and the legitimacy of the criminal justice system and the respect for law and order hinges on public confidence in the system (Easton and Piper, 2008). Where public's view of the justice system becomes overwhelmingly negative, the fabric of the entire system comes under intense criticism, making the community less willing to either participate in the process or to help in sustaining the growth and efficiency of the system (Hough and Roberts, 2005). A reflection of this sentiment is evident in the concern that most democracies have shown towards public perception of the justice system. In their work, Hough and Roberts revealed how in recent times, countries have become inclined to conducting researches and surveys to measure the level of public confidence in the justice system. While most of the surveys suggest a relatively unimpressive sentiment about the way criminal justice operates, the fact that governments are concerned is a symbol of how important public confidence is to the entire system. It was, however, argued that far from promoting liberal democratic values, state sensitivity to public opinion is a phenomenon that often leads to 'penal populism'. By reacting to public sentiment, the system is bound to amplify crime control measures and raise the degree of sanctions, which in the end compels the state to prioritize punitive measures as core in criminal justice policies (Hough and Roberts, 2005; Jennings et al., 2016). Burke (2012) also points out that because harsh sentencing is often part of the sentiment of the public on crime and criminals, politicians tend to exploit and capitalise on it for political gains. Even though penal populism is dependent on various socio-political contingencies, it is mainly driven by sentiments and emotions rather than by rational judgments (Pratt, 2007).

In the area of restorative justice, scholars such as Braithwaite (1989), Wright (1996) and Zehr (2015) emphasis on the idea of community participation, often in the form of 'community restoration' and the reintegration of the offender. But Ashworth cautioned about the certain unresolved issues relating to what is conceived as 'the community to be restored' (Ashworth,

2002). The first he said is where the demand is to restore a geographical community affected by the offenders' crime in which the boundary is defined (ibid). The second is where the crime is against a particular social class defined by race, gender or sexuality in which the community becomes wider (ibid). Because social affiliations are universal, the attempt to determine the criteria to be used in measuring what amounts to restoration, or which particular community to restore could be quite challenging (ibid).

Another aspect of modern criminal justice that challenges the traditional idea of community participation in the justice system is plea bargaining. As much as the community seeks for transparency, plea bargaining, by its character is mostly a negotiation done outside the court where only the parties involved knew the facts that resulted in the outcome (Wright and Miller, 2002). Hence, Baldwin and Mcconville (1979) view plea bargaining as a process that can scarcely be squared with the quest for justice, arguing that it exists primarily for the sake of convenience and administrative expediency. In general, the often out-of-court way of settling criminal cases no doubt affects not only public perception about fairness, but also sets back the rights of the defendant who is either coerced to plead guilty to a reduced charge or sentence. It also defeats the rights of the victim whose injury is the reason for the negotiation but who has little or no stake in the way the deal is struck, because most of it is done through the informal engagement and negotiation in "the prosecutor's or defence attorney's offices, the judge's chambers, in the corridor outside the courtroom, or over lunch in a local restaurant" (Cloyd, 1979: 454).

### **THE INDIVIDUAL**

The Victim: Among the parties in criminal justice, the victim is often the one whose legitimate interest is significantly affected. While his or her injury prompts criminal proceedings. He or she is also the person that is being widely denied any significant role in the system. Zedner (2004) argues that the victim serves the interest of the state as a political tool in the cause of punitivism. These were among the concerns most scholars have about the way victims are neglected in cases that matters to them. Arguments on the plight of the victim has motivated activism such as the 'victim's movement,' which in recent times saw a wave of scholarly interest and social campaigns on the need to introduce radical changes that will reform the way victims participate in the criminal justice process. The increased emphasis on the victim's role and rights has also resulted in persistence legal and policy discourse on both domestic legislations and international conventions. For example, The European Convention, The International Covenant on Civil and Political Rights and indeed in other related international documents have demonstrated the resolve to promote the victim in criminal justice process (Van Dijk et al., 1998; Ashworth, 2002; Bottigliero, 2013). Similar instances are found in domestic laws. In England for example, initiatives were introduced in the 'Victims' Charter' of 1996 that granted the victims of serious crimes easy access to information about their case (Hoyle, cited in Zedner, 2004: 145). Although Sanders et al., have criticised this policy based on research that shows how the 'Victim Statement' policy contained in the Charter projects a false view of the victim's role, and also found that few victims showed willingness to give these statements, of which only a third were satisfied with the process (cited in Zedner, 2004: 145). In general, most of the interventions to bring the victim to the centre have not achieved any practical significance (Crawford and Goodey, 2000).

While pondering over the victim's rights to participate, a number of scholars have posed a various arguments (Walklatre, 2013; Laxminarayan, 2013; Fattah, 2016). Some of these arguments alledged that certain aspects of criminal justice such as the adversarial structure of court systems as contributing factors to the diminution of the victims' role. By its peculiar

characteristic, adversariality is a system built on the notion giving the defendant every opportunity to present and defend his case and any attempt to restrict the defendant generates the inherent tension between the protection of the victims right and the significance of the defendant's rights (Yaroshefsky, 1989). The interest of the victim and that of the offender are therefore regarded as diametrically opposed, while the constant expression of concern for the offender's requests is considered to be at the expense of the victims' rights (Garland, 2001). Yet, as Goldstein argues, the victim's "injury becomes the occasion for a public cause of action, but he has no 'standing' to compel prosecution of the crime against him or to contest decision to dismiss or reduce the charge..." (1982: 519).

The motivation and argument by most proponents of victim participation is that the credibility of the legal system lies in the ability of the victim to raise his or her voice; to complain and not to be systemically silenced (ibid). It is, however, worthy to note that the part of the wisdom for assigning the role of prosecution to state officials is the idea that the prosecutor is neutral and less vindictive, particularly when compared to the victim who in most cases is already outraged by the harm inflicted upon him (ibid). But despite this perception of neutrality, there is still the danger that the prosecutor, being an advocate as well as an administrator, is likely to place considerable emphasis on managing time and resources more than the concern he will have in the pursuit of proportionate retribution for another person's injury (ibid, 555). Ashworth (2000) is also of the view that whether in the context of restorative justice or conventional sentence, the substantive rights and role of the victim should be limited to receiving support and proper service. The process argued Sander et al., (2001) should not extend to empower the victim to the extent that he or she will have influence on the outcomes of a sentencing decision. The argument here is that where victim's involvement becomes significant to the extent of influencing sentencing, issues of proportionality are likely to be endangered because, as Ashworth argues, "some victims will be forgiving, others will be vindictive" (2002: 9). Likewise, von Hirsch (1993) maintains that such involvement may come in direct conflict with the penological idea of 'just desserts', which by its nature insists on the proportionality of punishment (cited in Ashworth, 2002: 9). In the English case of Nunn, the Court of Appeal reiterated this position where it stated:

*"The opinion of the victim or the surviving members of the family, about the appropriate level of sentence do not provide any sound basis for reassessing a sentence. If the victim feels utterly merciful towards the criminal, and some do, the crime has still been committed and must be punished as it deserves. If the victim is obsessed with vengeance, which can in reality only be assuaged by a very long sentence, as also happens, the punishment cannot be made longer by the court than would otherwise be appropriate. Otherwise, cases with identical features would be dealt with in widely differing ways, leading to improper and unfair disparity".*

In contrast to what is in principle, most practical aspects of criminal justice do not seem to encourage victim participation. Apart from him or her serving as a witness during prosecution, the victim remains largely out of the picture.

The defendant: Another party whose role and interest has become a polemical topic as a result of the changes in the structure and practice of modern criminal justice is the defendant. Rights theorists are clear in their argument on the importance of protecting the rights of the defendant (Sanders and Young, 1994; McConville and Wilson, 2002). This argument brings to the centre how emerging sentiment of 'risk society that promotes ideas such as preventive

detention is eroding the fundamental concept of 'innocent until proven guilty'. The traditional principle is for those suspected of crime to be accorded the benefit of doubt, and be allowed to enjoy procedural rights during their trial, at conviction, and at sentence (Easton and Piper, 2012). This is because rights are an important universal mark of a civilised society (ibid). In the same vein, the 'due process' model rejects, to a larger extent, the proposition that accommodates procedural abuse or leads to wrongful detention or conviction. The aim is to protect the innocent as much as possible and to convict only the guilty (Sanders and Young, 1994). However, there is also the argument that criminal justice, especially of the adversarial system emphasis on the rights of the defendant to the extent that it raises the question of whether the aim is for the defendant to escape liability by suppressing the rights of the victim (ibid). Moreover, there is concern that the rhetoric of the 'victim's right movement' has over time pitched the defendant's right against those of the victim, resulting in some degree of judicial retreat on the rights of the defendant (Yaroshefsky, 1989).

Although there are numerous statutory and policy safeguards that give a common perception of the defendant's advantage in the courtroom, some scholars maintain that this presumption is in practical sense illusive, because the most part of a trial, the defendant is left with fewer options than to face and deal with the professionalism, legal prowess, and doggedness of the prosecutor whose main aim is often to secure conviction. The defendant also faces the hostility of the community that in most cases presume the defendant to be guilty (Yaroshefsky, 1989). Yet, Burke (2012) maintains that criminal trials, especially in adversarial settings entail a process that gives emphasis to procedural rights of argument and the strength of evidence, with the judge acting as an independent umpire. Hence, the defendant is guaranteed some degree of safeguard to his rights by granting him or her the unhindered opportunity to duly present and defend his case. It is however important to recollect that plight of the defendant is real; especially in the institution of plea bargaining where the aim is mainly to induce the defendant to plead guilty without trial.

### **CONCLUSION**

There is clearly and overarching evidence of a new philosophy in criminal justice. The convergence of the various emerging elements in political and social reorganizations of late modernity explains some of the consequences of the reorientation of the functions, objectives and practice of criminal justice administration; the obvious shift signifies a paradigm that is quite a radical departure from the trajectories of the past (Garland, 2001). It is, however, important not to ignore that the entire history of criminal justice has been one filled with "reform and reaction, and of false and disappointed optimism" (Marsh et al., 2004: 5). What the world is witnessing today is the way the institution of criminal justice is being altered. The shift in narratives, philosophy and jurisprudence is also reshaping the discourse on the essence and objectives of criminal justice. It becomes even more convoluted when one reflects on how the idea of retribution is giving way to a new style of response that is largely organised around economic form of reasoning (Garland, 1996), leading some scholars to argue about the growing influence of some sectional interest in 'law and order' legislation which can simply be explained by the recurring interests of global capitalism (Burke, 2012: 170).

Evidence from studies across the world, particularly in today's developed neo-liberal democracies, shows how a number of regulatory strategies in criminal justice are becoming addressed through interagency cooperation of both public and private (Garland, 1996). This to some scholars is a fulfillment of the objectives of neo-liberalism in a polity that is struggling with the crisis of legitimacy and progressively losing both the capacity to control crime and to establish successful economic policies in an increasingly competitive world (Wacquant cited in

Burke, 2012: 211). The complexity of these changes has also prompted a new kind of criminal justice strategy that is more centered around techniques of classifying groups by their level of dangerousness (Feeley and Simmon, 1994). The outcome appears to be making criminal justice 'actuarial' and its interventions based on risk assessment that emphasises practices such as preventive detention, offender profiling and mass surveillance (Norris and Armstrong, 1999).

A closer understanding of the path that criminal justice has taken indicates a broad but complex transition that is deeply remodelling the structure of penal institutions by ensuring that policies are premeditated around the notion of risk and resource management, politicisation of penal laws, the rise of punitivism as well as the commodification of justice by subjecting crimes to some form of negotiated settlement under the guise of plea bargaining. What is seemingly less understood however is how the convergence of all of these elements will shape the future of criminal justice administration across the world.

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