

### 3.2.2.3.2.81 Laws of proportionality

Because humans are emotional animals, we need laws that are drafted in accordance to principles, and not out of specific moods.

Currently, it is a common practice that parliaments pass laws after adverse events, and these laws are tailored to deal specifically with the eventuality of such events recurring. Subsequently, they curtail the personal freedom of a vast number of people, even though the probability of a similar adverse event is very small.

The chain of events typically runs like this.

1. There is an adverse event (a crime, a catastrophe).
2. The tabloid media and TV cover it, with a particular focus on stirring up emotions among the general population.
3. Politicians discover it as a topic to obtain front-page or prime-time media coverage, which is essential if they want to get elected.
4. Stringent new laws are passed, dealing with precisely this topic.

This is a bad practice. Basically, it means that the tabloid media and TV have an enormous leverage on the laws that are passed in a country.

It is bad practice, because these new laws are usually not in proportion to the penalties threatened in the general penal code of a country.

Typically, these new special laws threaten much stricter punishment, and sometimes they are even in conflict with older general laws. Proportionality is an important aspect in a legal system. But it is usually abandoned with ad hoc legislation after adverse events.

Many penal codes around the world specify that the punishment for rape and consecutive murder is the death penalty. If the victim is not murdered, the threatened punishment is considerably lighter.

If a criminal code is supposed to serve as a deterrent, then the

above makes sense, because a rapist may let his victim live, just in order to avoid the risk of being put to death if caught.

If after a child rape case, new laws are passed that

1. define any sexual contact with a person under 18 as statutory rape, even if no violence was involved

and

2. all rape of minors is threatened by capital punishment, then sooner or later, victims of rape or statutory rape will be murdered, simply because perpetrators are aware of the fact that they face capital punishment anyway, regardless of whether they murder their victims or let them live.

In the heated, emotional climate that is created by the tabloid media after sex crimes, no lawmaker will stand up and ask for a more lenient treatment of rapist that let their victims live, as the tabloid media would brand such an outspoken politician a supporter of rapists. And the lower the intelligence of an electorate, the fewer politicians one will find who dare to speak in favor of proportionality.

In some countries, simple murder carries 12 years, but selling 100 grams of marijuana carries the death penalty. Rape of a 19-year old carries 10 years, but fondling a 17-year old with her consent carries 20 years, and if the consenting girl is under 14, the death penalty.

In the US, corporate fraud now can earn executives prison terms of 100 years or more, and truth-in-sentencing campaigns make sure that such terms are not cut automatically into time spans that can be managed and offer hope, even though only money was involved, and no violence.

Furthermore, it was a longstanding principle of the justice systems of Western civilized countries that laws are valid for the territory over which a country and its lawmakers have jurisdiction. In the 1960s and 1970s, people laughed about the laws of countries like Libya that stipulated that Libyan laws are imposed on Libyans in other countries, even after they renounced their Libyan citizenship.

But meanwhile, sex-negative Christian fundamentalists and sex-negative feminists have succeeded in pushing extraterritorial laws through the US Congress, too. If American citizens or residents engage in lawful sexual conduct with a 17-year old partner in another country, they can be prosecuted in the US, where actually, they did nothing wrong. And they will be prosecuted even if they renounce their US citizenship.

The agenda of sex-negative feminists possibly is revenge, and the agenda of sex-negative Christian fundamentalists is simply to attack sex wherever possible. They are not concerned about a sensible justice system.

For the benefit of a sensible, proportional justice system, lawmakers should be restricted by the constitution of a country from passing special criminal laws. Instead, they should be required to integrate new ideas of criminal prosecution into existing penal codes. There should be proportionality stipulations in a country's constitution, and a Supreme Court should be compelled to assure that newly passed legislation is consistent with such stipulations on the proportionality of punishments.

To enhance the requirement for a proportionate system of legal penalties, a header paragraph for each group of crimes (crimes against public order, crimes against property, crimes against people) should specify a range of possible punishments, and the punishment threats of all further paragraphs dealing with the crimes of a particular category would have to stay within this range.

Only a legal system that is guided by principles of proportionality is in the benefit of the people, not one guided by the emotions stirred up by the tabloid media on topics that make the press sell more copies, and TV stations more ads.

Shortcomings are also in the democratic form of government which forces politicians to remain popular with a large number of uneducated and, let's face it: rather stupid, people.

The best chance for an enlightened legal system would be found in a country ruled by an elitist party with a science-based ideology that emphasizes personal freedom as well as a proportional legal system,

and both in as safe an environment as possible. For both, personal freedom and a proportional legal system depend much more on the character of those who rule than on the question of how they came to power.