

Misguided Penal Policies of the American Legal System

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The American criminal justice system presently is broken, and an example of justice run amok. The system has deteriorated to a point whereby innocent people are being imprisoned even with the lack of sufficient evidence. For the real criminals, punishments are often not commensurate with the crime. Presently, many nonviolent offenders serve more time behind bars than murderers, rapists, and armed robbers. Consequently, the criminal justice system does more harm than good – destroying lives, shattering dreams and crushing hopes and aspirations for happiness.

Being the world's largest democracy is supposed to make America a faithful steward of the fairest and finest legal system the world has ever known. However, the U.S. legal system runs counter to traditional American core values. 25% of total global prisoners reside in the U.S. even though America is only about 3% of the world's population. About "seven million are now under some form of penal supervision,"¹ and roughly "100 million Americans – or as many as one in three – have a criminal record."²

The credo of legal jurisprudence in any civilized dispensation is that the accused is presumed innocent until proven guilty by a competent jurisdiction. However, in the United States of America, the reverse is the case due to its misguided penal policies.

Presently, the U.S. leads the world in highest prison population, longest prison time, most business deals for contractors and lobbyists, and highest recidivism rate. Worse, so many ex-convicts end up back in jail and, as a result, the U.S. prison system has become a revolving door, with people brought in every day, as if doing so was the only option. The law, rather than being a rule of conduct or ordinance has become a trap to ensnare even the most unsuspecting innocent citizen.

Moreover, when you become entangled in the cobweb of the American criminal justice system, as I was, your innocence becomes irrelevant, and you have no authority to turn to for help. Even though the Constitution guarantees the right to a fair and speedy trial, many have lost faith in the judicial system because of corrupt practices by judges, prosecutorial abuses and unethical courtroom conduct by government agents. Although lawmakers can do more to remedy the situation, because of political expediency, the legislative arm of government continue to enact laws and regulations that criminalize harmless acts.

Under normal circumstances, obeying the law is enough to shield anyone from trouble. Unfortunately, the current dispensation is hardly normal and being careful in private or public life does not insulate against being caught in the cobweb of the numerous laws and

regulations that are the hallmarks of the criminal justice system. Stories of prosecutorial abuse run like a horror movie and the fear of prosecutors “is the beginning of wisdom.” They take to the extreme the dangerous impulse to punish perceived offenders – real or imagined. Prosecutors have enormous power and discretion to pick and choose who goes to jail and who does not. Reports of unwarranted arrests, police brutality, senseless prosecutions, and mass incarceration are a commonplace to the extent that the country’s legal system is teetering dangerously towards a precipice.

Across the country, the visible signs of pain and anguish can be seen in many families devastated by the imprisonment of a loved one and the so-called respect for human rights can only be thought of in comparative terms. The lack of a guilty mind no longer matters in criminal cases in U.S. courts. As a result, the nation has drifted from the core foundations and principles on which the Union was built, which adds up to one concept and one word: freedom. In the context of the nation’s criminal justice system, this “American Creed” lies in tatters.

While many of us believe that it is the responsibility of the government to punish criminals for public safety and security, and the fact that society has a right to demand punishment for wrongdoers, however, this fundamental tenet must operate within a justice system that is equal and fair. Punishment must fit the crime, and the innocent must not suffer unjustly for crimes not committed.

There is no justification for mass incarceration; it could no longer be defended morally. America needs a more rational and sensible justice system, one that is fair – a people’s justice system – that all can trust to protect them while punishing offenders appropriately and ensuring that innocent people are not unfairly prosecuted or imprisoned. Only a reformed justice system can give practical meaning to the noble ideals on which the nation was founded. A commonsense approach to the criminal justice system in America might someday be possible, but not anytime soon given the interplay of politics and business within it. With so many locked up, the United States has become a nation that feeds on its own.

As part of reform efforts, public accountability for investigators and prosecutors is required. Prosecutors found wanting should be prosecuted as a deterrent to others. Greater oversight of prosecutors’ activities should be undertaken by the American Bar Association to deter those who engage in flagrant ethical misconduct such as withholding exculpatory evidence, using false witnesses, witness intimidation, bribing potential witnesses, threatening defendants and their families, among other behavior. Appropriate punishment should be meted out to those found wanting. Also important is the need to address abuses in the system. One way to stem the tide of prosecutorial abuse is for Congress to put in place a moratorium on further attempts at creating new laws and regulations, while at the same time undertaking a thorough review of existing ones. Wherever possible, laws that are deemed unnecessary or vague should be decriminalized and expunged from the statute books.

This article is an excerpt from my book, American Criminal Justice System, Inc: Rogue Prosecutions in an Era of Mass Incarceration.

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Notes

1. Robert A. Ferguson. *Inferno: An Anatomy of American Punishment*. p. 16.
2. Rebecca Vallas & Sharon Dietrich. Center for American Progress. *One Strike and You're Out – How We Can Eliminate Barriers to Economic Security and Mobility for People with Criminal Records*. December 2014, available at <https://cdn.americanprogress.org/wp-content/uploads/2014/12/VallasCriminalRecordsReport.pdf>.

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