

The U.S. Justice System Is Criminal

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On January 23, 2017, I asked, "Are Americans Racists?" I pointed out examples where racist explanations prevail over empirical fact. I did not write that there is no racism in America. I said that racism is not the be-all and end-all explanation of American history and institutions. The point I made is that racist explanations are often inadequate and both work against racial harmony and blind us to more general and more serious problems.

Perhaps the worst of America's failed institutions is the criminal justice system. The US has the largest prison population in the world, not only as a percentage of the population but also in absolute numbers. "Freedom and democracy" America has an absolute larger number of incarcerated citizens than "authoritarian" China, a country with four times the US population.

Many factors contribute to this result. One is the privatization of prisons, which has turned them into profit-making enterprises ever needful of more labor to exploit, which adds to the pressure for convictions. Another factor is the disregard of the protective features of law in order to more easily pursue demonized offender groups, such as the Mafia, child abusers, drug dealers and users, and "terrorists." Lawrence M. Stratton and I describe the transformation of law from a shield of the people into a weapon in the hands of the state in our book, *The Tyranny of Good Intentions*.



Arizona State Prison Cell Block

This transformation did not occur because of racism. It occurred because chasing after devils and convicting them became more important than justice. Today the criminal justice system is largely indifferent to a defendant's guilt or innocence. This is a far worse problem than racism. It is the main reason that there are so many false convictions in the US and so many wrongfully convicted Americans in prison. Indeed, even the guilty are wrongfully convicted as it is easier to frame them than to convict them on the evidence.

To be clear: The primary reason for wrongful conviction is that the success indicator for

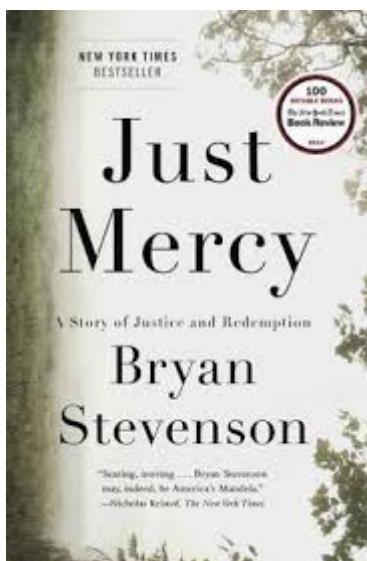
police, prosecutor, and judge is conviction, not justice. Crimes are solved by wrongful convictions. High conviction rates boost the careers of prosecutors, and high profile convictions boost their political careers. The key to rapid and numerous convictions is the plea bargain. And plea bargains suit judges as they keep the court docket clear. Today 97% of felony cases are settled with a plea bargain. This means police evidence and a prosecutor's case are tested only three times out of 100. When the evidence and case are tested in court, the test confronts a vast array of prosecutorial misconduct, such as suborned perjury and the withholding of exculpatory evidence. In America, everything is loaded against Justice.

In a plea bargain police do not have to present evidence, prosecutors do not have to bring a case, and judges do not have to pay attention to the case and be troubled by a growing backlog as trials consume days and weeks.

In a plea bargain the defendant, innocent or guilty, is told that he can plead to this or that offence, which carries a lighter sentence than the crime that allegedly has actually occurred and on which the defendant is arrested, or the defendant can go to trial where he will face more serious charges that carry much harsher penalties. As it has become routine for police to falsify evidence, for prosecutors to suborn perjury and withhold exculpatory evidence, for jurors naively to trust police and prosecutors, and for judges to look the other way, attorneys advise defendants to accept a plea deal. In other words, no one expects a fair trial or for real evidence to play a role in the outcome.

The short of it is that the pursuit of justice is not a feature of the American criminal justice system. Justice does not matter to the police, to the prosecutor, to the jury, to the judge, and often not to the hardened defense attorney who has witnessed so much injustice that he believes justice is a fairy tale.

The only exception to this is the justice introduced from outside the justice system by innocence projects and pro bono attorneys, such as Bryan Stevenson, director of the Equal Justice Initiative in Montgomery, Alabama.



In 2014 Stevenson published *Just Mercy*, a fascinating collection of case histories of wrongful convictions that he and his colleagues managed to have overturned. A book such as this benefits from a main case, and the one that Stevenson delivers is that of Walter McMillian. It required six years for Stevenson to overturn what must be the most obvious, blatant frameup of a completely innocent man in US history. There were a large number of witnesses who testified that they were with McMillian at a fish

fry during the time that a murder for which McMillian was indicted and convicted took place. The only “evidence” against McMillian was the suborned perjury of a man who retracted his coerced testimony three times, once in the courtroom of Alabama Judge Thomas B. Norton, who simply ignored it.

McMillian is black, and the sheriff, prosecutor, judge, and jury that framed him are white. This fact, together with the fact that the ignored witnesses whose testimony cleared McMillian were black and McMillian’s sexual affair with a white woman in a small Alabama town, seem to convince Stevenson that McMillian was convicted because of racism.

Using Stevenson’s own account, I am going to show that many other factors in addition to racism played roles in McMillian’s wrongful conviction. Stevenson’s emphasis on a racist explanation of Alabama justice deflects attention from the fact that *human corruption and evil go far beyond mere racism*. McMillian was wrongfully convicted, because the justice system has no concern with justice. Letting the system off as merely racist doesn’t nearly go far enough. The problem is much worse.

McMillian was falsely convicted, (1) because sheriff John Tate was under community criticism for the failure to solve the murder case of a young woman and needed someone to arrest for the crime, (2) because Ralph Meyers gave false testimony against McMillian for confused reasons that did not work out for him, (3) because the local newspaper, as newspapers are wont to do, convicted McMillian in the press, which meant that the jury had to convict or be accused of letting off a murderer, and (4) because the judge, Robert E. Lee Key, not only is unworthy of his name but most certainly did not have the fortitude to run a fair trial when the only possible outcome for his career and reputation in the community was conviction. Neither did his successor, Thomas B. Norton, have fortitude for the same reasons.

I am convinced that all of these representatives of the justice system are racists, but they would have convicted McMillian for the same reasons if he had been white. If the justice system was concerned with justice, he would not have been convicted irrespective of race or gender.

What the emphasis on racism blinds us to is that the justice system is corrupt because justice does not play a role in it. Justice has to be brought into the system from outside by people such as Bryan Stevenson. And for people such as Stevenson to bring justice into the justice system, they must have a high tolerance for death threats and for witnessing justice fail again and again.

I want to emphasize that I am not being critical of Bryan Stevenson. He is very intelligent, overflowing with integrity, determination, ability and empathy for others. He has a moral conscience second to none. He is someone everyone would love to have as a friend and colleague. If Stevenson does not see what his own work reveals, that injustice prevails irrespective of race and gender, it is because he grew to maturity during a time when the victimization of identity politics is the prevailing explanation. Victimization has expanded to its limit: everyone is the victim of white heterosexual males. I wouldn’t be surprised if white heterosexual males have now been shown by identity politics to be the victims of themselves.

Stevenson describes the convictions of white women by white women. In the aftermath of

hurricanes and tornadoes that wrecked coastal Alabama, Marsha Colbey gave premature birth to a stillborn son. She came to the attention of police because her busybody neighbor Debbie Cook had noticed the pregnancy but saw no child.

Colbey's fate was sealed by the media craze set aflame by Andrea Yates and Susan Smith's murders of their children. Media sensationalized the baseless suspicion surrounding Colbey and turned her into another "dangerous mother." Forensic pathologist Kathleen Enstice testified without evidence that Colbey's son had been born alive and had died by drowning. The state's own expert witness, Dr. Dennis McNally, and the defense's expert witness Dr. Werner Spitz testified that Colbey's age alone placed her pregnancy at high risk for fetal death and that there was no scientific evidence that a crime had occurred.

Irresponsible media had communities and juries on the lookout for "dangerous moms" who should be put in prison, and they found one (along with many others) in Colbey. The trial judge permitted Colbey's fate to be decided by jurors who stated that they could not honor the presumption of innocence in Colbey's case. Other jurors said that they always believe the police and prosecutor. This failure of justice enabled Stevenson after years of effort to secure Colbey's release. Clearly, Colbey's wrongful conviction had nothing to do with racism. Identity politics would want to say she was convicted by misogynists, but Colbey was the victim of other women.

Justice is so absent in the criminal justice system that Victoria Banks in order to avoid capital punishment was coerced into a plea bargain carrying a 20-year sentence for murdering her child after her pregnancy despite the fact that there was no pregnancy and no child. Stevenson was able to win her release by establishing that she had had a tubal ligation five years prior to her alleged pregnancy, which made it biologically impossible for her to conceive and give birth to a child.

A woman whose tubes were tied, for which conclusive medical evidence existed, five years before she was accused of having just had a child that she murdered is forced into a plea bargain carrying 20 years in order to avoid the electric chair. Perhaps only Alabama could produce something this absurd, but this is a faithful picture of American "justice."

Stevenson's legal work for wrongfully convicted women brought him into contact with more horror. At Alabama's Tutwiler prison for women, women prisoners were raped and made pregnant by prison guards. Stevenson reports: "Even when DNA testing confirmed that male officers were the fathers of these children, very little was done about it. Some officers who had received multiple sexual assault complaints were temporarily reassigned to other duties or other prisons, only to wind up back at Tutwiler, where they continued to prey on women." In other words, rape is not a crime if you are a prison guard at a women's prison.

This is a faithful picture of justice in America.

The justice system needs victims, and is focused on ruining people's lives whether they deserve it or not. The more American lives ruined, the greater the success of the justice system.

There is a current case in Alabama of a US Marine honorably discharged who suffers from PTSD. To help out a family friend, who needed a car for work but could not obtain a loan, the Marine sold him a car of his own, which the family friend was to pay off monthly. When payments stopped, the former Marine inquired. Payments were promised, and the family

friend offered his cell phone to be held until payments caught up, as an indication of his good faith to pay.

It turned out to be the wrong cell phone, not the debtor's personal phone but a company-issued one. The company regarded it as a theft by the Marine, and the family friend had to report it to the police. The fact that it was all a misunderstanding has not caused the justice system to drop the case. Instead the prosecutor is demanding a misdemeanor plea. In other words, another person with something on his record who can be a suspect for the next burglary. As everyone in the case is white, injustice is occurring despite the absence of racism.

It is a paradox that child protection laws in the hands of police and prosecutors have become weapons with which to ruin children.

A father whose son is being ruined for life over nothing sent me the story with his permission to publish it as a warning to others about the heartlessness with which the justice system irresponsibly ruins even the immature young. This story again demonstrates that the function of American justice is not justice, but to ruin as many people as possible and as early in life as possible. The gratuitously ruined lives that the justice system achieves is the monument to the success of justice.

I decided not to publish it, not because I disbelieve it, but because the son has not been sentenced, and protestations of innocence in media, as Stevenson says, can prejudice authorities against the defendant, especially in Virginia where this miscarriage of justice took place. I do not want to expose the son to risk in the event that the father is wrong, as I suspect he is, in expecting publicity to elicit compassion and empathy that would moderate an unjust event.

Instead, I will tell the gist of the story, which illustrates the tyranny of good intentions. Child protection laws were passed by legislators ignorant of the unintended consequences. Consequently, the laws have done far more harm than good.

Let's call the son Zach. Having just turned 18, he was visiting a young woman his age whose younger sister introduced him via social media to a 13 year old female who shared his interest in dragons and animation. The two never met. As their shared interest developed via the Internet, so did their friendship.

As the natural process that turns a girl into a woman progressed, the cyber relationship developed a romantic aspect. The girl/woman sent Zach five photographs of herself in her underwear.

Later the girl/woman developed emotional problems due to the impending divorce of her parents and was admitted to a mental health facility. At some point she confided her cyber relationship with Zach to a counselor. The "child protection" laws required the counselor to inform the police, who seized Zach's computer and found chat logs and the five photos.

The consequence was that Zach was charged with 20 felony indictments carrying 350 years in prison. As they always are, the charges were vastly overstated. For example, the five photos sent to Zach of a torso in underwear (apparently the girl's face was not shown) got Zach charged with distribution of child pornography.

No charges were filed by the parents of the girl. The charges were entirely the idea of the

prosecutor's office, and the 350 years produced a plea bargain to lesser offences. American criminal justice had secured another victim.

In the absurdity that is American law you can be guilty of "indecent liberties with a minor" without ever having seen the girl in person or ever having been close enough to touch. The advent of virtual reality and video screens means that crimes can have happened in virtual reality that did not happen in real reality.

In my days it was almost impossible to be guilty of indecent liberties with a minor, because the age of female sexual consent was 14. Today the legal age that a male may have sex with a female is 18. In other words, the absurd American legal system pretends that women do not have sex until after they graduate from high school. Who can imagine college dorms full of virginal women?

When America had a livable legal system, law was based on the common ordinary behavior of people. This is known as the Common Law, the foundation of law in England and the United States.

Today the law is so uncommon as to be absurd. Yet absurdity is enforced with vengeance.

The video age means that crimes can be committed by looking at a video screen, and that is what happened to Zach. Neither his attorney nor the judge told Zach and his parents that his coerced plea meant that there was no appeal and that he was registered for life as a sex offender. Zach had committed a "violent sex offense" online! It was the girl who sent the photos, but the offense was Zach's for having them on his computer.

We owe these crazed results that destroy our youth to "child advocates" who have pushed through in total ignorance of unintended consequences laws that criminalize the normal sexual exploration and testing that accompanies the teen-age years that begin with puberty. Child advocates think that when a kid enters puberty at age 12 or 13 nothing is supposed to happen until the kid is 18. Then at this magic age, everything illegal at 17 becomes legal. People who produce laws like this ruin people. Laws pushed by child advocates have broken up families and taken children from their homes and placed them in foster care where they are often abused. By providing a bounty to Child Protective Services for seizing children, the federal government provides an incentive for CPS to break up families on the slightest pretext.

And they enjoy the ruin that they inflict. When you read Bryan Stevenson's *Just Mercy*, what you encounter are Americans who enjoy ruining other people. *What Stevenson is revealing is not racism but evil unleashed.* When the liberals destroyed religion as a moral restraint, they released evil. Evil is now everywhere in the West and seldom held accountable—Abu Ghraib, Guantanamo Prison, the CIA Black Site torture prisons, women's prisons where inmates, most of whom are wrongfully convicted, are routinely raped by guards, and American courtrooms in which sit judges whose function is to defend justice but who accept coerced pleas from innocents in order to save themselves work.

This is America, a country totally devoid of justice, a hapless country forced to suffer injustice except for those few cases that heroes such as Bryan Stevenson are able to overturn.

If only Americans in their so-called democracy had the power to make Bryan Stevenson

Attorney General for life and give him the power to write and enforce the laws would justice return to America.

God help a country as totally devoid of justice as the United States of America.

It is important to understand that very few of these wrongful convictions are mistakes. They are done willfully, because the overriding incentive of the American criminal justice system is to produce convictions at all cost.

Police, prosecutorial and judicial misconduct seldom bear any cost. Just so you understand how “law” completely protects the police, prosecutors and judges who routinely violate it, as Stevenson reports, “state and federal courts have persistently insulated prosecutors from accountability for egregious misconduct that results in innocent people being sent to death row.” In 2011 a Republican Supreme Court ruled that a prosecutor cannot be held liable for misconduct in a criminal case, even if he intentionally and illegally withheld evidence of innocence.

In plain words, criminal actions against the innocent are now the legalized policy of the American criminal justice system.

Are the American people moved by these extraordinary injustices and their legalization by the Supreme Court of the United States? Are the Alabamans in the same county who egged on the frame-up of Walter McMillian ashamed of their willing complicity in a gratuitous act of injustice? Absolutely not. They reelected sheriff Tate, and he remains in office today.

In 2003 Illinois governor George Ryan, citing the unreliability of evidence on which capital punishment is based commuted the death sentences of all 167 people on death row. His reward was to be convicted on false corruption charges and sentenced to five years in prison. Ryan was convicted by the coerced testimony of Scott Fawell who received in exchange for his testimony reduced prison time for himself and his fiancée. On the stand Fawell said that the prosecutor had his “head in a vise” and that he was testifying against Ryan to save his fiancée from a long prison sentence. He said his testimony against Ryan was “the most distasteful thing I’ve ever done.” That jurors believe such compromised witnesses is the reason defendants avoid jury trials.

This is the face of justice in America, a hapless country totally devoid of justice where law exists solely for the economic benefit of those whose careers rise with conviction rates, whether of the innocent or the guilty.

Law professors, such as Harvard’s Charles Fried, have shown their indifference to wrongful conviction. Fried came up with the argument that “finality” was more important than justice. Fried was annoyed by appeals. He argued that ending a case had its own importance and that at some point appeals based on fresh evidence had to be cut off even if it meant an innocent person was executed or spent life in prison.

Conservative legislators showed their indifference to wrongful conviction in 1994 when they took over Congress and promptly eliminated federal aid for legal representation of the wrongly convicted on death row. The conservatives were more comfortable with the deaths of innocents than with admitting the willful mistakes made by “law and order.”

The indifference of Americans to injustice has spread outside US borders. The Clinton, George W. Bush, and Obama regimes are responsible for millions of dead and displaced

persons in 10 countries—Serbia, Somalia, Afghanistan, Iraq, Libya, Yemen, Pakistan, Syria, Ukraine, and Palestine. None of those responsible have expressed any remorse and neither have the American people.

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