

## Step One in Transforming the Criminal Justice System: Articulating a New Vision



There is a gathering consensus that the criminal justice system has gone horribly awry. For the past 45 years, we spent like a drunken sailor, throwing money at anything that promised to keep “us” safe from “them.” We thought we knew who “they” were, gave the police the power to round ‘em up, and prosecutors the tools to send ‘em away.

We filled the prisons, built more, and filled them again. We carved a hole out of entire communities, took fathers from their kids, and kids from their mothers. We militarized the police until armored vehicles were rolling down Main Street. We saddled people who passed through the criminal justice system with every burden we could imagine, which all but guaranteed they would be part of the system forever.

And what did it get us? Two million people in prison, more than any country on Earth. Another five million under custodial supervision. Millions of men and women who can’t vote, can’t get a job, can’t get a loan to start a business or go to college. And though crime rates have fallen sharply, the best evidence is that our punitive policies played little part in the decline.

Meanwhile, **nearly half** of all black men under the age of 23 have arrest records, as do forty percent of all white men of the same age. Animosity and mistrust between the police and the communities they serve have never been worse. **One in 11 Americans over the age of 12** has a

substance abuse problem, and drugs are cheaper and more plentiful than ever. Suddenly, we're not so confident that we can reliably separate "us" from "them," or that we should even try.

But is change really upon us? As is their wont, most politicians are long on posturing but short on particulars. Even worse, precious few political leaders are willing to tackle the really contentious problems in criminal justice, like policing and racial disparities. And most reforms that have taken place have been confined to easy fixes that divert or release a small fraction of the prison population, most of whom never should've been locked up in the first place.

Yet a different problem is far more serious, though it has received much less attention: No one has articulated an alternative vision for the American criminal justice system. Everyone can point to a host of ways the current system has led us astray. For some, the criminal justice system is too big and too expensive, and government has been given far too much power. For others, it is too cruel, and people are treated little better than animals. For still more, it is hopelessly biased against minorities and the poor, producing disparities that make the United States the shame of the Western world. Others have concluded it is given to hysteria and prone to error, which has helped create the largest prison population in the world.

But what is the alternative organizing philosophy of the criminal justice system? We know we don't want to be *here*, but no one seems to know where we should be instead. Some people—principally those who focus on mass incarceration rather than the pathologies of the entire carceral state—have suggested that prison populations should be cut by a more or less arbitrary amount. [#Cut50](#), for instance, describes itself as "a national bipartisan initiative" whose goal is "to safely and smartly reduce our incarcerated population by 50 percent over the next 10 years."

That is certainly a laudable goal, but it is emphatically not an alternative organizing principle. On the contrary, it is, quite deliberately, precisely the same philosophy, only less so. It says, in other words, that the only problem with the current system is that it got too big. It does not provide us with another way to organize the system. It simply says, get smaller.

The failure to articulate an alternative organizing philosophy should not be judged too harshly. Most advocates suffer from the silo syndrome. Those who work to end solitary confinement don't have time to think about the campaign to abolish capital punishment, and both of those groups can only look on in sympathy at the people working to reform urban policing or improve defense services. In addition, because the current vision is now in its fifth decade, nearly everyone working in the system has never seen anything else, and they find it difficult to imagine



how it could be meaningfully different. The end result, however, is that transformation of the criminal justice system is still more of a slogan than a program.

In this and the following columns, I hope to present an alternative philosophy of criminal justice, explain its rationale, demonstrate its superiority to the current system, and describe the many changes that would ripple through the system if this philosophy were to be adopted—changes that not only achieve the reforms so widely sought but many others as well that would make the criminal justice system vastly better.

To begin this process, let me state here the elements of a legitimate criminal justice system. The system should be organized to achieve three distinct conditions:

1. people have a right to be treated with dignity and respect;
2. communities deserve to thrive;
3. the state has an obligation to be fair and just.

Though these conditions can be stated simply, they represent a radically different orientation from other framings that appear in discussions of American governance, which invariably propose interests that purport to balance against one another—liberty vs security, for instance, or community safety vs the constitutional rights of the accused—but in practice lead to demonization and division. By contrast, the conditions I propose do not balance against one another. They are separate and independent, and no criminal justice system can be considered legitimate unless each condition is fulfilled. People have rights; communities have interests; and the state has obligations. All matter, all are non-negotiable.

I will elaborate on each of these conditions at length in future columns, but here it is important to make a few observations. First, I recognize full well that in addition to rights, people have obligations, prominent among them the obligation not to victimize others. The failure to live up to that obligation is a major reason why we have, and why we need, a criminal justice system. I am not a criminal justice abolitionist, and accept that we will (and should) have police, prosecutors, and prisons.

But I am completely agnostic about the *amount* of criminal justice in society, as measured, for instance, by the number of people in prison or arrested. Instead, the conditions I propose focus our attention on a particular *type* of criminal justice—one in which people are treated with dignity and respect; communities are allowed to thrive; and the state is fair and just. As I will

describe, the criminal justice system would shrink dramatically if we made fulfillment of these conditions the overarching goal of our system. But that shrinkage, along with many other changes, would be incidental to the more fundamental goal of organizing the system behind a new philosophy of criminal justice.

Second, and more provocatively, these conditions deliberately do not prioritize “public safety,” which has been the hallmark of the existing vision for nearly five decades. When framed as a freestanding goal, “public safety” became a license to kill the patient while treating his symptoms. Under the old vision, we have destroyed thousands of communities across the county, all in the name of keeping them “safe.” Instead, we must design a system that permits communities to *thrive*, for among many other desirable outcomes, a thriving community is safe.

Criminal justice reform is all the rage. But reform will be halting, unfocused, and incomplete if it is not informed by an alternative, *transformative* vision. It is time to bring that vision into focus.



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