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## Chapter 15

# The Criminal Legal System Needs a Radical Revolution of Values, Not Just Reform

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# **Criminal Legal System Needs Radical Revolution of Values, Not Just Reform**

By Bill Quigley<sup>1</sup>

The criminal legal system relies on violence and oppression to respond to violence and oppression, thereby multiplying social harm. It is failing victims, offenders and community.

“Lawyers are either social engineers or parasites.” Charles Hamilton Houston

“Lawyers are either servants of the people or predators.” Nadia Ben-Youssef

“Judge, you better sentence me to a jail with walls because I refuse to put up fences in my mind.” Karl Meyer

“Real expenditures on the criminal justice system as a whole total over \$270 billion, or \$870 per capita and have grown by over 70 percent in the last two decades. Real spending on incarceration totaled over \$80 billion, or more than \$260 per capita. In 2013, 11 states spent more on corrections than on higher education. Relative to average rates in the world, the United States employs 2.5 times more corrections officers per capita, while we employ 30 percent fewer police officers per capita.” White House Council on Economic Advisers Report: Economic Perspectives on Incarceration and the Criminal Justice System (2016).<sup>2</sup>

## **INTRODUCTION**

Reform is in the air. We must all work on reform. But we must all keep the end result in mind and seize on every opportunity to completely transform this by applying a radical revolution of values to the criminal legal system.

Radical comes from the Latin word for root. Is this system one of a few bad apples or is it a bad orchard? There is much evidence that this is an unjust system that needs not just reform but being dug up at its roots and replaced.

“We simply cannot afford to spend \$80 billion annually on incarceration, to write off the seventy million Americans — that’s almost one in three adults — with some form of criminal record, to release 600,000 inmates each year without a better program to reintegrate them into society, or to ignore the humanity of 2.2 million men and women currently in U.S. jails and prisons and over 11 million men and women moving in and out of U.S. jails every year.”<sup>3</sup>

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<sup>2</sup> <https://obamawhitehouse.archives.gov/the-press-office/2016/04/23/cea-report-economic-perspectives-incarceration-and-criminal-justice>

<sup>3</sup> [https://www.brennancenter.org/sites/default/files/publications/2019\\_EndingMassIncarceration\\_digital.pdf](https://www.brennancenter.org/sites/default/files/publications/2019_EndingMassIncarceration_digital.pdf)

## START WITH WORDS

Start with words. Let's be honest.

It is not a community justice center; it is a jail. Some say it is a cage.

It is not a juvenile community study center; it is a jail for kids.

It is not the criminal justice system; it is the criminal legal system.

Never say "No you can't do that."

## TRUTH ABOUT THE CRIMINAL LEGAL SYSTEM

Why is the criminal legal system in need of radical revolution?

Start with the truth. Despite the individual best efforts of good people, we have a horrendous system.

We have the largest jail and prison system in the world.

The system is overtly racist and impacts African American community in worst possible way. Similar for other people of color.<sup>4</sup>

It overtly discriminates against poor people.

It targets LGBTQ adults and youth.

It is now increasingly targeting women.

It targets immigrants.

Mass Incarceration include over 2 million in: 1719 state prisons, 109 federal prisons, 1722 juvenile jails, 3163 local jails, 80 Indian county jails and immigration jails. And Mass Incarceration must include these people too: 84,000 people on parole; 3,600,000 on probation. So, we must be wary of "alternatives to incarceration" that easily lead back to incarceration.<sup>5</sup>

Here are some facts from The Sentencing Project.<sup>6</sup>

Incarceration has increased by more than 500% in the last 40 years.

2.2 million people are in prison or jail in the United States;

1 in every 10 black men in his thirties is in prison or jail on any given day;

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<sup>4</sup> [https://www.huffpost.com/entry/18-examples-of-racism-in-criminal-legal-system\\_b\\_57f26bf0e4b095bd896a1476](https://www.huffpost.com/entry/18-examples-of-racism-in-criminal-legal-system_b_57f26bf0e4b095bd896a1476)

<sup>5</sup> Source: <https://www.prisonpolicy.org/reports/pie2019.html>

<sup>6</sup> Source: <https://www.sentencingproject.org/issues/racial-disparity/>

When Brown v Board of Education was decided in 1954 about 100,000 African Americans were in prison. Today there are about 800,000 African Americans in jails and prisons 538,000 in prisons and over 263,000 in local jails.

If present trends continue, 1 of every 4 African American males born this decade can expect to go to prison in his lifetime.

The number of women in prison has been increasing at a rate 50% higher than men since 1980.

The Prison Policy Initiative reminds us that another 3.6 million people are on probation and 840,000 are on parole bringing the overall number of people under correctional control to nearly 7 million.<sup>7</sup>

Lesbian, Gay and Bisexual Americans are 3X more likely to be incarcerated than the general US population. 20% of youth in detention facilities identify as LGBTQ. 3.8% of adults identify as LGBTQ but 7.9% of adults in prison identify as LGBTQ.<sup>8</sup>

Poverty is not only a predictor of incarceration; it is also frequently the outcome, as a criminal record and time spent in prison destroys wealth, creates debt, and decimates job opportunities.<sup>9</sup>

Racism in Hiring People with Criminal Record. Having a criminal record hurts a person's ability to get a job. Hurts Black men worse. White men with a criminal record have a better chance of getting a positive response in a job search than black men without a criminal record. Confirmed by a study of 6000 applications in Arizona and in Milwaukee and New York City.<sup>10</sup>

Criminal Law is the Intersection of Many Unjust Social System – thus demands an intersectional approach to radical change.

## **IS THIS AN INDIVIDUAL PROBLEM OR A SYSTEMIC PROBLEM?**

Is this a problem of a few bad apples? Or is it a bad orchard that needs to be uprooted and replaced?

Reform is certainly helpful, but what is needed is radical change.

## **WHY HAVE ANY HOPE THAT THINGS WILL CHANGE?**

Why have any hope that a radical revolution is possible?

Consider Justice and Law: The One Hundred Year Rule.<sup>11</sup>

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<sup>7</sup> Source: <https://www.prisonpolicy.org/reports/pie2019.html>

<sup>8</sup> <https://www.lgbtmap.org/file/lgbt-criminal-justice-poc.pdf>

<sup>9</sup> Source: <https://www.prisonpolicy.org/reports/pie2019.html>

<sup>10</sup> Researchers Examine Effects of a Criminal Record on Prospects for Employment:  
<https://csgjusticecenter.org/reentry/posts/researchers-examine-effects-of-a-criminal-record-on-prospects-for-employment/>

<sup>11</sup> William Quigley, Justice and Law: The One Hundred Year Rule, 15 CUNY L. Rev. 1 (2011).  
<https://academicworks.cuny.edu/clr/vol15/iss1/2/>

Look back 100 years.

What was totally legal but we know totally unjust?

Segregation. Women could not vote. Child labor was rampant. Unions were illegal. Discrimination against disabled was common sense. Domestic violence was accepted. Pollution was much more widespread than it is now. Etc etc etc.

Yet we know changes came about.

How did they come about?

Study the history of social change. Movements make change. Not individuals. Organizations.

Social Change comes about when people get together and demand change. Collective action is key. Not always the same actions by the same people, but organizing, education, outreach, legislation, court action, protest, cultural changes, etc are always part of the movements for change.

We will look at the role of the lawyer later in this.<sup>12</sup>

Look at money bail and fines and fees. Five years ago, there was no movement on these. Now change is everywhere.

If radical revolution is going to come, we must pitch in.

## WHAT ARE THE BASICS OF CHANGE?

Start with Safety. Refuse to surrender safety. Everyone has a human right to be safe.

Human Right to Safety: "Everyone has the right to life, liberty and security of person." Article 3, UN Declaration Human Rights.

Does the Criminal Legal System promote safety and human rights for everyone?

The criminal legal system relies on violence and oppression to respond to violence and oppression, thereby multiplying social harm. It is failing victims, offenders and community.

"The criminal justice system, an institution of violence, domination, and control, has increased the level of violence in society."<sup>13</sup>

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<sup>12</sup> See 20 Tools for Movement Lawyering. <http://lawatthemargins.com/20toolsmovementlawyering/>

<sup>13</sup> Source Statement of INCITE and Critical Resistance: <https://incite-national.org/incite-critical-resistance-statement/>

Also go to the language of human rights, not legal rights. Legal rights are narrow, human rights are expansive.

Reject the false choices. Not going to limit radical change to marijuana. Not going to limit radical change to non-violent offenses only. Reject False Choices of: Criminal Legal System or Chaos; Police Abuse or Safety; Victim or Offender; Individual or Community.

Being tough on crime is stupid. Being smart on crime is effective.

Huge educational challenge, but it can be done.

It is being done!

## WHAT SPECIFIC CHANGES NEED TO BE MADE?

### RESTORATIVE JUSTICE

Restorative justice views crime as more than breaking the law – it also causes harm to people, relationships, and the community. So, a just response must address those harms as well as the wrongdoing. *If the parties are willing*, the best way to do this is to help them meet to discuss those harms and how to about bring resolution. Other approaches are available if they are unable or unwilling to meet. Sometimes those meetings lead to transformational changes in their lives.

Restorative justice four principles:

Inclusion of all parties

Encountering the other side

Making amends for the harm

Reintegration of the parties into their communities

### TRANSFORMATIVE JUSTICE

Transformative justice is a liberatory approach to violence which seeks safety and accountability without relying on alienation, punishment, or State or systemic violence, including incarceration or policing.

Transformative Justice is a response to the State's inability to provide justice on either individual or collective levels.<sup>14</sup>

### CAUTION

Radical changes cannot be limited to nonviolent drug offenses.

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<sup>14</sup> Source: [http://www.generationfive.org/wp-content/uploads/2013/07/G5\\_Toward\\_Transformative\\_Justice-Documents.pdf](http://www.generationfive.org/wp-content/uploads/2013/07/G5_Toward_Transformative_Justice-Documents.pdf)

Decriminalization of marijuana is important victory...but the exclusive focus on non-violent drug offenders is far too narrow.

Focusing only on non-violent offenders sends the message that nonviolent offenders are entitled to compassion and second chances and violent offenders are not.

Cannot Leave Behind Violent Offenders. "Each of us is more than the worst thing we've ever done."<sup>15</sup>

Even if we released every one of the 20% of people in prison for drug offenses, we would still have the world's largest prison population.<sup>16</sup>

## INTERSECTIONALITY OF JUSTICE DEMANDS

Economic Justice  
Educational Justice  
Housing Justice  
Family Justice

## DECRIMINALIZE

End War on Drugs, not just marijuana  
No Crime for Sex work  
No crime for drug addiction  
No crime for Mentally Ill  
No poverty-based consequences  
Close all Juvenile Jails – treat kids like kids  
Dramatically reduce prison time for violent offenders

## SYSTEM ISSUES

End money bail. Period.  
Guarantee pre-trial diversion for nonviolent and violent accused and make it free  
Severely cut back Probation and Parole and Make it Free  
End Fines and Fees  
Expunge and Seal Criminal Records Automatically After Time  
End Disenfranchisement – right to vote in jail and out  
End the Death Penalty  
End Private Prisons  
Eliminate Life Sentences. 20 year maximum.<sup>17</sup>

## GUARANTEES

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<sup>15</sup> Bryan Stevenson, JUST MERCY.

<sup>16</sup> Source: <https://www.jamesformanjr.com/>

<sup>17</sup> <https://www.sentencingproject.org/criminal-justice-facts/>



Guarantee REAL alternatives  
Guarantee treatment for drug addiction  
Guarantee treatment for mental illness  
Guarantee Services for Adolescents Treat Kids like Kids and  
Be wary of “alternatives to prison” which have high costs and onerous conditions  
End Onerous Condition of Probation and Parole (specifically including ankle bracelets and \$)

Aside: Why are there waiting lists for Alternatives to Prison but never waiting lists for Prison?

We know we will see justice when...there are unlimited spaces in programs that are alternatives to prison, and there are waiting lists to get into prison.

“If the federal government and every state took two simple steps —ending imprisonment for lower-level crimes and reducing overly long sentences for other crimes — we could safely cut the nation’s prison population by 40 percent.”<sup>18</sup>

Decriminalize Poverty. Every one of us should be treated equally under the law. This idea is so fundamental to our justice system that it is carved above the doors of the Supreme Court. Yet every day, criminal justice policies penalize people for being poor. People who are unable to pay bail, fines, and fees are forced to remain in jail or take on debt for their involvement in the justice system, contributing to a cycle of poverty and tearing families apart. State policymakers should guarantee that people are not held in jail before trial because of an inability to pay, and should reduce and eliminate fines, fees, and other ways our justice system criminalizes poverty.<sup>19</sup>

#### TRAINING SUPERVISION AND PUBLIC ACCOUNTABILITY

Require regular training, supervision and public accountability of District Attorneys  
Require regular training, supervision and public accountability of Judges  
Require regular training, supervision and public accountability of Police  
Require regular training, supervision and public accountability of Jailers  
Require regular training, supervision and public accountability of Probation and Parole  
Require regular training, supervision and public accountability of child welfare & foster care workers  
Require regular training, supervision and accountability of Criminal Defense Counsel

#### DISTRICT ATTORNEYS<sup>20</sup>

Offer Restorative Justice Options to All Victims and All Defendants  
Charge with Restraint and Plea Bargain Fairly

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<sup>18</sup> Dramatically Reduce the Incarcerated Population, Inimai Chettiar and Priya Raghavan, Brennan Center for Justice at New York University School of Law. At [https://www.brennancenter.org/sites/default/files/publications/2019\\_EndingMassIncarceration\\_digital.pdf](https://www.brennancenter.org/sites/default/files/publications/2019_EndingMassIncarceration_digital.pdf)

<sup>19</sup> <https://www.demos.org/research/everyones-america>

<sup>20</sup> Brennan Center. 21 Principles for the 21st Century Prosecutor: Fair and Just Prosecution, Brennan Center for Justice, Emily Bazelon, The Justice Collaborative, December 3, 2018. [https://www.brennancenter.org/sites/default/files/publications/FJP\\_21Principles\\_FINAL.pdf](https://www.brennancenter.org/sites/default/files/publications/FJP_21Principles_FINAL.pdf)

Broaden Discovery – 15 days after arraignment open files  
Play Fair with Forensic Evidence  
Create Effective Conviction Review  
Treat Everyone with Respect

## MONEY

Require regular public accounting of all the costs of the criminal legal system  
Spend \$ on Community Based Drug Treatment  
Spend \$ on Job Training  
Fully fund public defenders & dramatically reduce caseloads

Other organizations have similar lists.<sup>21</sup>

## WHAT CAN CRIMINAL DEFENSE LAWYERS DO TO HELP MOVEMENTS FOR RADICAL CHANGE?

Don't be a hammer. Be a Swiss Army knife.

First of all, consciously prioritize movement building in your community. Directly impacted families and formerly incarcerated. Mobilizing IS: Planning, communication, organizing, building the organization, litigation, legislation, media, education, direct action, protest, win/lose rinse repeat.

Second, Work with groups of directly impacted. Document and help people tell stories. Challenge status quo with truth. Legislative Advocacy. Support Protestors.

Third, this is a local, state and federal system so all fronts must be addressed. Organizing for change must happen on all fronts.

Not voice for the voiceless. Rather help create circumstances where the people in power quiet down enough to allow the voices of those with less power to be heard.

Here are 20 specific tools for lawyers who want to help bring about radical change.<sup>22</sup>

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<sup>21</sup> SHRINK PIE CORRECTIONAL CONTROL?

End War on Drugs;

End Money Bail;

Dramatic Expansion of Pre-trial Diversion;

Dramatic Reduction in Sentencing for Violent Offenses;

Fully Fund Pub Defenders w Fewer Cases;

Spend \$ on Community Based Drug Treatment;

Spend \$ on Job Training;

End Disenfranchisement Totally;

End Onerous Condition of Probation and Parole (specifically including ankle bracelets & \$)

Source: <https://www.prisonpolicy.org/reports/pie2019.html>

Work for and with Organizations, Not Issues: This is Not Impact Litigation or Law Reform

Understand the Goal of Movement Legal Work is to Help Build the Power of the Organization

Organizations Make the Decisions about the Legal Work, Not the Lawyers: Just Like Paying Clients

Learn to be a Swiss Army Knife not a Hammer

There are No Voiceless: Lift Movement Voices as Primary Speakers Lawyers Take Back Seat with Media

Help Organizations Fight for Public Participation, Demand Public Meetings and Hearings

Help Organizations Fight for Transparency, Demand Release of Public Information

Help Organizations in Public Confrontations

Help Organizations Get Publicity and Lift up Community Leadership

Help Organizations with Investigations and Fact Sheets

Help Organizations Raise Money to Sustain the Movement

Never Say “No, you cannot do that”

Help Organizations Dismantle and Radically Restructure Current Systems of Law and Power

Help Organizations Work to Destroy White Supremacy and Institutional Racism

Lawyers Can Disempower Organizations: Understand and Fight Lawyer Privilege and White Privilege

Prepare to Be Regularly Uncomfortable

Be Prepared to Journey with Community and that includes Uncertainty, Conflict, and Chaos

Learn and Understand Building Community Power through Organizing

Learn About Other Movements and Learn How Social Change Happens

Rediscover Humility, True Partnership and Respectful Relationships in Solidarity for Liberation

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<sup>22</sup> See 20 Tools for Movement Lawyering. <http://lawatthemargins.com/20toolsmovementlawyering/>

## CONCLUSION

“Law is a powerful tool. And law is a tool of the powerful.”<sup>23</sup>

If you have come to help me you are wasting your time.  
If you have come  
because your liberation is bound up with mine,  
let us struggle together.

## ADDITIONAL RESOURCES:

Brennan Center has many great think pieces. Including: Ending Mass Incarceration: Ideas from Today’s Leaders.

[https://www.brennancenter.org/sites/default/files/publications/2019\\_EndingMassIncarceration\\_digital.pdf](https://www.brennancenter.org/sites/default/files/publications/2019_EndingMassIncarceration_digital.pdf)

Brennan Center. 21 Principles for the 21st Century Prosecutor: Fair and Just Prosecution, Brennan Center for Justice, Emily Bazelon, The Justice Collaborative, December 3, 2018.

[https://www.brennancenter.org/sites/default/files/publications/FJP\\_21Principles\\_FINAL.pdf](https://www.brennancenter.org/sites/default/files/publications/FJP_21Principles_FINAL.pdf)

List Center for Media Justice. <https://centerformediajustice.org/electronic-monitoring-is-not-the-answer/>

EVERYONE’S AMERICA: State Policies for an Equal Say in Our Democracy and an Equal Chance in Our Economy. [https://www.demos.org/sites/default/files/publications/EveryonesAmerica\\_July23.pdf](https://www.demos.org/sites/default/files/publications/EveryonesAmerica_July23.pdf)

Alec Karakatsanis, “The Punishment Bureaucracy: How to Think About “Criminal Justice Reform”  
<https://www.yalelawjournal.org/forum/the-punishment-bureaucracy>

The Marshall Project: <https://www.themarshallproject.org/>

Prison Policy Initiative. <https://www.prisonpolicy.org/>

Prison Policy Initiative. Mass Incarceration: The Whole Pie 2019

<https://www.prisonpolicy.org/reports/pie2019.html>

Restorative Justice: <https://transformharm.org/tikkun-restorative-justice/>

Sentencing Project: <https://www.sentencingproject.org/criminal-justice-facts/>

Transform Harm: <https://transformharm.org/>

White House Council on Economic Advisers Report: Economic Perspectives on Incarceration and the Criminal Justice System (2016). <https://obamawhitehouse.archives.gov/the-press-office/2016/04/23/cea-report-economic-perspectives-incarceration-and-criminal-justice>

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<sup>23</sup> Nadia Ben-Youssef CCR