

Justice, an Antiquated Notion

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April 20, 2016



The American justice system, “the best in the world” as we often hear on Sunday morning talk shows, has become a travesty of its former self. Even the most foundational of truths, the presumption of innocence until proven guilty, is under severe threat today. Like justice, it is becoming an antiquated notion.

Twenty-five percent of people in jail in this nation have not been convicted of any crime but are confined because they cannot come up with cash for bail. And for what are they waiting? Most of us assume they are awaiting trial, but it turns out only 3 percent of them will actually get a trial. 97% will plead guilty to something, even if they are totally innocent, rather than risk a longer sentence by appearing before a jury, on the advice of their defense attorney. This defense attorney may well have spent only five minutes reviewing the case before giving this advice, because it has nothing to do with the defendant. It has everything to do with the system.

In too many states, there is no requirement a prosecutor demonstrate criminal intent. Possibly for those who can afford an expensive defense attorney, this would be brought up as a defense, but generally, intent is irrelevant. Overwhelming numbers have now been criminalized by the system, as evidenced by the fact that with 5% of the world’s population America has 25% of the world’s prisoners. It seems highly unlikely that Americans are so much more inclined than the rest of the world to have criminal intentions, and so we must look elsewhere for an explanation.

The result of these overwhelming numbers has been a great increase in funding for prosecutors, with no corresponding increase for defense. It is a prosecutor’s dream. And to assure convictions, prosecutors simply have to add in a charge that carries with it a six-year mandatory minimum sentence. Few defendants are willing to risk this when they can plead guilty to a lesser charge that puts them in jail for a mere few months, or even lets them out with only probation.



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On top of prosecutors overzealous for the advancement of their careers and callous to the results of their actions on the accused, the system is now a huge moneymaker for all sorts of people, like the owners of private prisons who make a fortune with little oversight on the conditions within the prisons. Inmates die daily due to mistreatment and indifference to their plight. Any resistance on the part of an inmate is likely to result in long periods in isolation, and it is inevitable that many come out with severe mental problems. Many went in with severe mental problems because America doesn’t have alternative treatments available.

First and foremost, the value of a human being transcends any system. A human being has unique, cosmic, divine value. Certainly this does not preclude the need for a course correction in any one life, but it makes the idea of jail as merely punishment quite simply wrong. In a recent *60 Minutes* episode, the U.S. prison system was compared with the German system (which is fairly representative of Europe as a whole) and the glaring deficiencies and injustices were clearly demonstrated. America seems to have no interest in reform (the recidivism rate is huge compared to that of Germany) and no interest in rehabilitation, since reentry is so difficult that it effectively prevents an ex-felon from reentering society.

Healing as a part of prison life would be considered laughable in many circles in the American criminal justice system. And yet Germany, so lenient that inmates get time out of jail to visit family periodically, has proven to be much more successful in limiting crime. Prisoners receive counseling and investment, not punishment, mistreatment and solitary confinement. And they demonstrate reform, returning to society changed, not full of deep resentment and anger.

The American system is a demonstration of accusation run wild, a society so deeply invested in accusation that everything must be documented endlessly as a priority before any action can take place, as protection from a possible lawsuit. In Principled terms, we are seeing an archangelic nation having difficulty separating from its archangelic tendencies.

In recognizing the archangelic nature here, we also see the hope for reform. Looking into the history of this land and its people, we find a different perspective within native American traditions, one more reflective of feminine values and focused on the people, not on the system:

“Take as an example, Blackfoot justice. What we would term a crime is, to many indigenous people, a disruption of the harmonious working of their society. Rather than approaching this disorder in terms of adversarial trial, proof, guilt and punishment, a circle of elders meet with the aggrieved party and perpetrator. Discussion within this circle is not so much designed to establish the factuality of what has occurred but rather it seeks a way of restoring balance. Thus the perpetrator may be asked to suggest some action that would satisfy all parties. Finally, when everyone is again in a balanced relationship the decision is made public.”

(From F. David Peat, *Blackfoot Physics and European Minds*)

The rule of law can be used as an instrument of deep injustice without human input, and, as is the case, when the human input is too one-sided. The native American tradition rests on a more holistic foundation, one that recognizes the value of the community, and the inherent need for all people to be accepted unless they themselves specifically reject their place as part of the whole. It is generally an expression of a more feminine perspective, so lacking in today’s criminal justice system.

We cannot leave the U.S. criminal justice system to those who work in it because they have a strong tendency to think in terms defined by the system. Their lives and careers are shaped by the hopelessness of seeing daily injustice, or indeed by the profit to their own lives bought at the expense of injustice to others, in the end, a much deeper injury to their own lives. We cannot leave it to our legislators because they will be too influenced by questions of funding, by the need to appear tough on crime, and so many other factors.



Cell block on Rikers Island, New York City's jail

What we can do is set up ways to prevent people from coming into contact with the system, collectively finance legal clinics to help those too poor to fight the system, educate ourselves, and be very vocal about what we believe a justice system should be doing.

Priorities for criminal justice reform should include:

1. End cash bail. Keep people in jail who are likely to be violent or a threat to society, and give all others a court date without incarceration in the interim.
2. Demand that prosecutors prove criminal intent.
3. End the War on Drugs. If you doubt this has been a disaster, read “*The New Jim Crow*” by Michelle Alexander.
4. Provide oversight to the activities of prosecutors and judges. Prosecutors who tack on charges that carry mandatory minimums on a regular basis just to get guilty verdicts should be reprimanded.
5. Municipalities can seek ways to set up their own programs to deal with young offenders before they get into the criminal justice system. There are plenty of retired but energetic citizens who would find meaning and purpose in serving on a panel that performs such a role. School districts that currently send their children directly to jail from school would have an obvious alternative, and many police departments would be happy to use these programs.

Each generation challenges the previous generation. However, seldom have values changed so much in so short a time. Our post-Foundation Day world offers us an opportunity for rapid advancement, and indeed, we find ourselves at a critical juncture, a time when everyone knows something is deeply wrong and knows we must make real changes.

The foundation for the systems of our nation comes from a very masculine tradition, but we have reached a time when, without major feminine involvement in the evolution of our systems — justice, health, economic, government, etc. — the battle for our children’s future may be won by humanity’s archangelic tendencies for yet another generation.

Sometimes it feels like you are more in control if you hold on to a truth you know, rather than risk letting go and moving into a new paradigm — but that is what the state of our world calls us to do at this time. Without expression of the feminine nature of God, and accepting our children unconditionally just as they

are (not denying the more masculine expression, which demands adherence to right behavior, but recognizing this is an already well-established tradition), we leave them as prey to the ministrations of a system that is increasingly becoming more controlling and bound up in accusation.

We have bequeathed to our children the task of sorting out what is true and what is not true, what is considered a crime and what is a desperate cry for help. We need to support them by allowing them the freedom to do this without criminalizing so much of what they do. Loving our children requires loving all children, which without doubt is the most urgent calling of any woman or man in this world today.

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