

DEFENDING Justice

AN ACTIVIST RESOURCE KIT

Edited by Palak Shah

With Nikhil Aziz, Ph.D., and Pam Chamberlain



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All of the content in this publication,
plus additional information, can be downloaded
from the *Defending Justice* companion website:
www.defendingjustice.org.

Foreword

Defending Justice has been both a challenging and inspiring project in many ways. The complexity and breadth of this issue is astounding, and narrowing the scope of the project to focus on the most important issues has been a difficult process. In particular, it was challenging to identify what information would be useful analysis as opposed to fascinating, but irrelevant, facts. At the same time, our “action research” process, involving activists engaged in prison activist work and academics studying criminal justice, has been extremely thought-provoking and motivating.

The entire staff at Political Research Associates was involved in thinking critically about not only criminal justice but also how an analysis of the Right would apply to criminal justice. In this we were enormously supported by the active participation of the Advisory Committee as well as continued feedback from grassroots activists beyond the Advisory Committee. Over 75 leading activists and academics engaged in prison activist work and in studying criminal justice contributed their time, their enthusiasm, and their ideas to this project. Many of them also served as advisors, reading multiple drafts and providing comments at critical junctures. As a result, we are confident that this project and its process truly respects and incorporates the experience of activists and organizers who know these issues so well.

Activists working against the Prison-Industrial Complex find that only organizing against what we traditionally know to be the Right still leaves the system intact and does not hold people, who might not be Rightist but are still complicit, accountable. For example, the Clinton Administration, by most definitions liberal, passed some of the toughest crime legislation and increasingly criminalized behavior and certain groups of people (especially immigrants and youth of color). One of the reasons for this “we’re tougher than you” stance by supposed liberals is the mainstreaming of right-wing ideas and solutions on crime that exploits the racism prevalent in society. And so, we began asking ourselves, if this is the reality we face, how can PRA, as a progressive research organization, frame its analysis to produce research that is both nuanced and relevant to the activist groups working on the ground?

This question, and the process of publishing *Defending Justice*, has also had an enormous impact on the way we do our work here at PRA. For one, while we have always done our work centering the needs of grassroots activists and communities, we want to especially support the work of people of color, immigrants, low-income communities, and youth. And, we also want to move beyond just publishing our research to actively ensure that not only can multiple audiences access our analysis, but also find it useful in their everyday work. This is grounded in our belief that it is the people most affected by the Right as well as systemic oppression who should be at the forefront of challenging those forces.

Secondly, as many of us found the political environment to be increasingly complex, we began seriously debating deepening our analysis beyond the Political Right to cover broader systemic oppression. We know that for substantial numbers of people in this country, especially but not limited to those working on criminal justice issues, it is not just the Political Right that is the oppressor but also the system and/or State that perpetuates oppression. This is especially the case with people of color, low-income folks, immigrants, and youth. An analysis of the Right alone cannot explain the whole picture.

We envision PRA’s future role to be one of supporting the infrastructure of the growing progressive movement in this country, where it continues to provide useful and accurate analysis of the Right as well as other forces of oppression. We hope that you find *Defending Justice* useful and informative, and, as always, we welcome your feedback and suggestions.

Palak Shah
Editor, *Defending Justice*

Nikhil Aziz, Ph.D.
Director of Research

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We gratefully acknowledge the generous contribution of time, energy, resources, insight, and feedback by all who have contributed to this effort.

Defending Justice is the result of a collaborative effort and could not have been created without the thinking and input of many individuals and organizations. First and foremost, I would like to thank PRA's research staff in particular Director of Research, Nikhil Aziz, and PRA researcher Pam Chamberlain who tirelessly wrote, rewrote, edited, and proofed *Defending Justice*. Senior Analyst Chip Berlet's patience, and his decades of experience, was refreshing and very much appreciated. Their mentorship was truly respectful and collaborative and the process proved that meaningful inter-generational collaboration is possible.

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We could not have conceptualized this publication without the kind advice and constructive criticism from members of the Advisory Committee and the activist community. It was my intention to involve as many community organizers, academics, and people affected by the system as possible; and by the end of the project, more than 75 people played a role in producing *Defending Justice*. In particular, I would like to thank Rachel Herzing, Rose Braz and other members of Critical Resistance for not only paving the intellectual path, but for also demonstrating a genuine commitment to movement-building. This publication has been greatly influenced by your work. Rachel Roth, of Ibis Reproductive Health, was also especially generous with her time and advice.

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We are grateful to the following activists and organizations who generously shared their insights in the Q&As: Deborah Peterson Small and Break the Chains, Leah Henry Tanner, Stop Prisoner Rape!, Malika Saada Saar and the Rebecca Project for Human Rights, Zoe Hammer and Border Action Network, Maria Brennes and InnerCity Struggle, Kate Lowenstein and Murder Victims' Families for Reconciliation, Mimi Budnick and Direct Action for Rights and Equality, and Citizens Education Project (courtesy of Western Prison Project).

We were delighted to work with Debbie Hird who designed *Defending Justice*. The talented team at Design Action Collective in Oakland brilliantly designed the cover, our promotional materials and the website. Special thanks to Michael Jacobson Hardy for the cover image. In addition, Kirk Anderson, Stephanie McMillan, and Prince Serna put smiles on our faces by giving us permission to print their cartoons.

Many individuals and institutions have provided unrestricted support for PRA. Major donors supporting this work include: an anonymous donor through the San Francisco Foundation, Common Stream, The Brico Fund, C.S. Fund, Chambers Family Fund, Coydog Foundation, Funding Exchange/Dorfman Fund, Funding, Exchange/Flannery/Reilly Fund, Funding Exchange/Front Street Fund, Funding Exchange/Heller-Bernard Fund, Gaea Foundation, Haymarket People's Fund, Stephen A. and Diane L. Goldberg Foundation, Victor and Lorraine Honig Fund, Albert A. List Foundation, Morris Family Foundation, Ms. Foundation, Public Welfare Foundation, Tides Foundation/Underdog Fund, Tides Foundation/Tara Fund, and Unitarian Universalist Veatch Program at Shelter Rock.

On a personal note, my parents (both families) and grandparents, my sisters and brother, and, most of all, my partner have unconditionally supported me with endless encouragement, love, and patience. I could not have made it through the two years of producing *Defending Justice* without you.

Finally, much respect and love to the incarcerated brothers in the Black Studies class in the Suffolk County House of Corrections (South Bay) here in Boston. I am so grateful for your wisdom, strength, and love. Together, we will struggle and persevere.

In love, peace, and solidarity,
 Palak Shah
 Editor, *Defending Justice*
 Political Research Associates

How to Use This Kit

In the **INTRODUCTION**, we answer: **WHO IS THE RIGHT IN CRIMINAL JUSTICE ISSUES?** Start here for information answers to the following questions:

- ☞ Why study the Right?
- ☞ How does the Right overlap with the State and systems of oppression?

The **OVERVIEW** offers answers to our central question: **WHAT ACCOUNTS FOR THE SUCCESS OF THE MODERN TOUGH ON CRIME MOVEMENT?**

- ☞ Why does the criminal justice system continue to expand?
- ☞ Selected articles and abstracts
- ☞ Myths and frames the Right uses

CONSERVATIVE AGENDAS AND CAMPAIGNS profiles nine issues where the Right and/or the State pursue conservative criminal justice goals. This is the bulk of the content for the kit.

Each topic contains:

- ☞ Overview, context, and analysis of the role of the Right and the State
- ☞ In-depth issue analysis
- ☞ Organizing advice from activists
- ☞ Additional resources

ORGANIZING ADVICE offers guidance for activists challenging the current criminal justice system, including advice on framing your activism, language, and general do's and don'ts in dealing with the Right.

The **RESOURCES** section includes an annotated listing of conservative criminal justice organizations.

The **INDEX** is a reference guide to topics mentioned in this kit. You might want to start here if you have a specific question about a strategy, an organization or an individual.

CURRENT REALITY section online!

Download easy-to-read factsheets and materials to help you in your organizing!

- | | |
|--------------------------------|---|
| ✓ Basic Facts | ✓ How the System is Anti-Women |
| ✓ Trends | ✓ How the System is Anti-Immigrant |
| ✓ U.S. vs. the World | ✓ How the System itself is Violent |
| ✓ The System and Poverty | ✓ Intended and Unintended Consequences |
| ✓ The System and the Economy | ✓ Policies and practices of the criminal justice system |
| ✓ How the System is Racist | ✓ Prison Industrial Complex Timeline (from Project South) |
| ✓ How the System is Anti-Youth | |
| ✓ How the System is Anti-Queer | |

Visit www.defendingjustice.org

All of the content in this publication,
plus additional information, can be downloaded
from the *Defending Justice* companion website:
www.defendingjustice.org.

Because foundation grants have covered most of the research and production costs, the Activist Resource Kit is modestly priced. You can help keep it that way. If you find the kit a valuable resource, please consider making a donation to PRA towards ongoing costs of updating, promoting and distributing the kit.

INTRODUCTION

Who is the Right?

By Nikhil Aziz and PRA Research Staff

Now you tell me, how can the law be unlawful? Ridiculous nonsense. Serves them right, being thrown in jail.¹

—Mrs. Gupta to Dina Dalal.

What constitutes ‘harm’ is, of course...determined by the state and the law; and the state and the law will define harm in the shadow of the dominant ideology of power.²

—Upendra Baxi.

In reality, those who control the State make the laws, and it is they who define what harm is and is not and therefore what is and is not harmful. It follows, then, that the definition of what is a crime, and who is a criminal, what is or is not legal, is determined by those who control the State, define harm, and accordingly make the laws. While the State has a major impact on all aspects of citizens’ lives in modern times, it especially does so in the area of law and order—because the modern State has monopolized both the defining and the administering of law and order, including using force and violence, and the imposing of punishment. The State, thus, literally holds the keys to incarceration. The criminal justice system, which is part of the overall Prison-Industrial Complex, is an intrinsic part of the State. Control of the State, therefore, means control of the criminal justice system. Since 1980 and the election of Ronald Reagan, the Right controls the State in the United States, and thus it controls the criminal justice system.

This does not mean that if the Right were to lose control of the State and the criminal justice system that the system itself would crumble, or be dramatically different—because the problem is structural not superficial. Since the first colonists set foot on the shores of what is now called the United States of America, the political, economic, and social structures of U.S. society, including the U.S. State, have been based on systems of oppression that enable one group of people to enjoy privilege and to hold and exercise power over others; and these systems have been ideologically justified. From the expropriation of land from sovereign Indian nations and the genocide of Indian peoples, to the establishment of slavery and indentured labor, to the denial of equality for women (including the right to vote), to widespread homophobia, there have always been institutionalized forms of oppression.

Since the very beginning, however, there have always been voices resisting this oppression and calling for progressive social change. And progressives have consistently pointed out the irony that the ideas we value so highly—freedom, equality, democracy, and justice—are undermined by those practices that do not apply these values to everyone equally. These progressive voices have been countered throughout U.S. history by political and social forces calling for retaining the status quo, which privileges the wealthy, Whites, heterosexuals, and men; and that supports an imperialistic and militaristic international agenda while opposing social and economic equality and justice within the United States. At Political Research Associates (PRA) we call the forces

that generally defend this status quo the Political Right (or Right Wing movements). For the most part, even with major contradictions, the Left is the mirror opposite of the Right.³

Liberals: Can't Live with Them, Can't Live without Them

Within the Left, we also distinguish between progressives who question systemic oppression and work to dismantle it; and liberals who tend to be reformist in their views and strategies. Liberals and liberalism (which is the ideology liberals draw their inspiration from) generally address only the symptoms not the disease of social and economic injustice, only the effects rather than the roots of oppression and repression. Therefore, many liberals, while vociferously opposing individual acts (and individual effects) of racism, sexism/patriarchy, heterosexism/homophobia, and classism/capitalism, systematically fall short in taking the next step in challenging the institutionalized forms and systemic nature of these oppressions that are deeply rooted in U.S. society and culture. Welfare and affirmative action, which many liberals support, are examples of programs that are sorely needed in the absence of social and economic justice in our society, but they are in the final analysis band-aids that do not radically treat the entrenched structural and systemic oppression and injustice in society. In some cases, liberals might be opportunistic in their acceptance or even support of oppression—for instance, President Clinton's support for policies such as welfare reform or the federal Defense of Marriage Act (DOMA). Sometimes, when they are fearful, liberals step away from issues and ignore the Political Right's oppression or repression; for instance, during the beginning of the McCarthy Era with its witch hunts for Red subversives after World War II.

In the case of free trade policies, many liberals are complicit in furthering or bolstering economic oppression, not so much because they are trying to ride on the back of popular opinion, but because they actually believe in unregulated free trade and unrestrained free market capitalism. Likewise, in the case of foreign policy, many liberals do not question the institutional racism inherent in U.S. foreign policy, and in the idea that the United States is rightfully the world's most powerful economic and military power that dictates what the rest of the world should do. And in the case of criminal justice and the Prison-Industrial Complex, many liberals, mostly White, support "tough-on-crime" policies out of a combination of White Fear (see box on White Fear) and because, many of them also accept the conservative argument that criminals are individuals that choose to commit crimes and do not question the root causes of social and economic oppression that give rise to what gets classified as crime in the first place. In all of these above cases liberals have often moved lockstep with the Right.

But still, liberals are a vital ally for progressives to have because at many other times they, working with progressives, have moved the State away from pursuing the most blatantly repressive techniques, tactics, and policies against people, especially those who have historically been excluded or marginalized, such as the poor, immigrants, ethnic and racial minorities, and women—even as the Political Right has moved U.S. society toward supporting increased oppression and the U.S. State toward employing increased repression. While it is true that liberals do not fundamentally challenge the basic tenets of capitalism and free market ideology, it is also the case that liberals often oppose its excesses, and the excesses of the State. And when in power, liberals have often provided the vital breathing room for progressives to do the difficult work of systemic social transformation. What progressives need to realize is that meaningful social change has more often than not occurred when progressives and liberals have come together as allies. Progressives need to remember that they need liberals—but that they also need to hold liberals accountable.

The Right

The modern Political Right, especially since the 1970s, has effectively reframed a whole series of issues in a way that has moved federal and state governments toward an increasing level of repression. While successfully establishing their framework, the Political Right has managed to hide its own role in the process. What this means is that even as the arguments of the Political Right have become widely accepted, the way it actually created this situation has been overlooked. Many “average Americans,” mainly middle class Whites, now simply accept arguments for repressive measures—mandatory minimums, “three strikes and you’re out,” etc.—as “common sense.” As a result many liberals, particularly those in electoral politics, have “gone with the flow” in supporting such repressive measures. But it is crucial to realize that while many liberals may have followed what they think is popular opinion, many others, especially White wealthy or middle class folks, themselves benefit from a system that privileges them and maintains the status quo of racial and social inequality. And thus, they do not question the systemic roots of injustice and oppression.

Progressives and those who are working for social and economic justice need to illustrate how the current criminal justice system, and the criminalization of the poor, racial minorities, immigrants, all of which have deep roots in U.S. history benefits those who—and this includes middle class and wealthy White liberals—have historically enjoyed privilege and held power in U.S. society.

If we seek to challenge a situation, it is useful to understand how that situation was created, so that we can develop successful ways to frame arguments, which show that a different—less repressive—approach is possible and desirable. Studying different sectors of the Political Right to see how their arguments have convinced both society (including many liberals) and the government that increasing repression or oppression is acceptable, is thus necessary. While the Right alone is not culpable for economic and social injustice, particularly at the systemic level, it certainly plays a major role in perpetuating and increasing it.

At a very basic level PRA defines the Right as those groups and individuals that actively oppose social equality and economic justice within a society. There are of course exceptions to any generalization; right-wing libertarians oppose economic justice but often support social equality, for

“The contemporary right is not new; it is a direct descendant of earlier right-wing movements, especially its immediate predecessor, the Old Right,” according to Jean Hardisty. “It is primarily a white, middle-class movement; the policies it advocates benefit the white middle and upper classes. It manipulates working-class people by providing scapegoats for their frustrations and appealing to their fears.” Hardisty calls this process “mobilizing resentment.” The Right is much more complex than a simple conspiracy of conservatives, though much of its success can be traced to the fact that the leaders of its many sectors make a point of working together, and developing strategies and tactics in private meetings. The Right shamelessly promotes a populist anti-elite message which has the effect of masking its anti-working class agenda—an agenda that in reality only benefits wealthy people.⁴

“At PRA, we are often asked how we define the right wing. In the U.S., there is an identifiable right-wing agenda...Central to the agenda is White supremacy, preservation of individual wealth in a setting of free market capitalism, preservation of rigidly traditional religious and family structures, and defense of U.S. military hegemony. There is virtually universal agreement that para-military White supremacists or neo-Nazis are right wing. More subtle distinctions are required when right-wing groups operate within mainstream U.S. culture. For example, an organization uses the slogan ‘Environment as if People Matter,’ which sounds innocuous (and even pro-environment). But the group’s vicious attacks on the environmental movement, its revealing financial backing, and its demonstrations timed to coincide with Earth Day, bespeak a hidden agenda—in this case, the defense of profits and policies now being challenged by the environmental movement.⁵

example LGBT rights on grounds of the right to privacy. The Right includes groups that define democracy, or the nation, in a narrow way to exclude various communities, such as the poor, people of color, immigrants, women, and gays and lesbians. They also include groups that demonize, scapegoat, and deny equal rights to those they seek to exclude. The Political Right in the United States is a complex network of social and political movements that now controls the Republican Party, the government (through Republican majorities in Congress and the Bush Administration), and indeed much of the country. While the Right is not limited to a single political party in the United States, for the most part it has found a home in the Republican Party over the last 40-50 years. The Democratic Party continues to have conservative members, especially from but not limited to states in the South; and these members represent the right-wing in the Democratic Party.

It is important to remember that the Right is not monolithic. It is not one institution or group. It does not think in one way. It does not always agree on every issue. It does not have a single agenda. No one single individual or organization controls the Right or funds it. Sometimes, the different groups within the Right disagree on issues that can be quite divisive. Yet, on other fundamental issues, the Right is in basic agreement. For example, it is generally in favor of a free-market capitalist economic system, “traditional” or “family” values, and a strong role for government in maintaining law and order within the country (through increased policing) and U.S. domination abroad (through a strong military and a web of conforming allies).

Sometimes, the Right opposes the government and the system (the system is the various arms of the government including the Congress, the Administration, the judiciary, the bureaucracy, the military, and the police, plus societal institutions such as the media, churches, etc.) and seeks to change the status quo. An example would be the struggle to overturn *Roe v. Wade*, the U.S. Supreme Court decision that made abortion legal. At other times it supports the system and the government and fights to maintain the status quo, as in when it supports the efforts by conservative lawmakers to define marriage as a relationship between one man and one woman.

The Right is a social and political movement with many different components; each of which is a vital arm of the movement’s infrastructure and plays an important part in the movement’s overall mission. Some of the most significant components of the Right include the following:

National Organizations such as the National Rifle Association or the Christian Coalition are often the most visible arm of the Right. They are usually groups with large memberships and big budgets. Focus on the Family in Colorado Springs, for example, has its own zip code and a budget that runs over a \$100 million/year.

Local Activists, who are often members of these national organizations, are the foot soldiers (or grassroots activists) of the Right. They are sometimes not that obvious because they are our neighbors, the people on the local Parents Teachers Associations or school boards. As the rank and file members of the Right, they are instrumental in providing financial support and, more importantly, in providing political support during elections. In a 2000 survey, self-identified Christian Evangelicals, for instance, accounted for between 25-45 percent of the U.S. population. And while not all of them vote in a bloc, within the Republican Party the Christian Right is the single largest organized voting bloc (40 percent of George W. Bush’s electoral support in 2000 came from it), accounting for its influence.

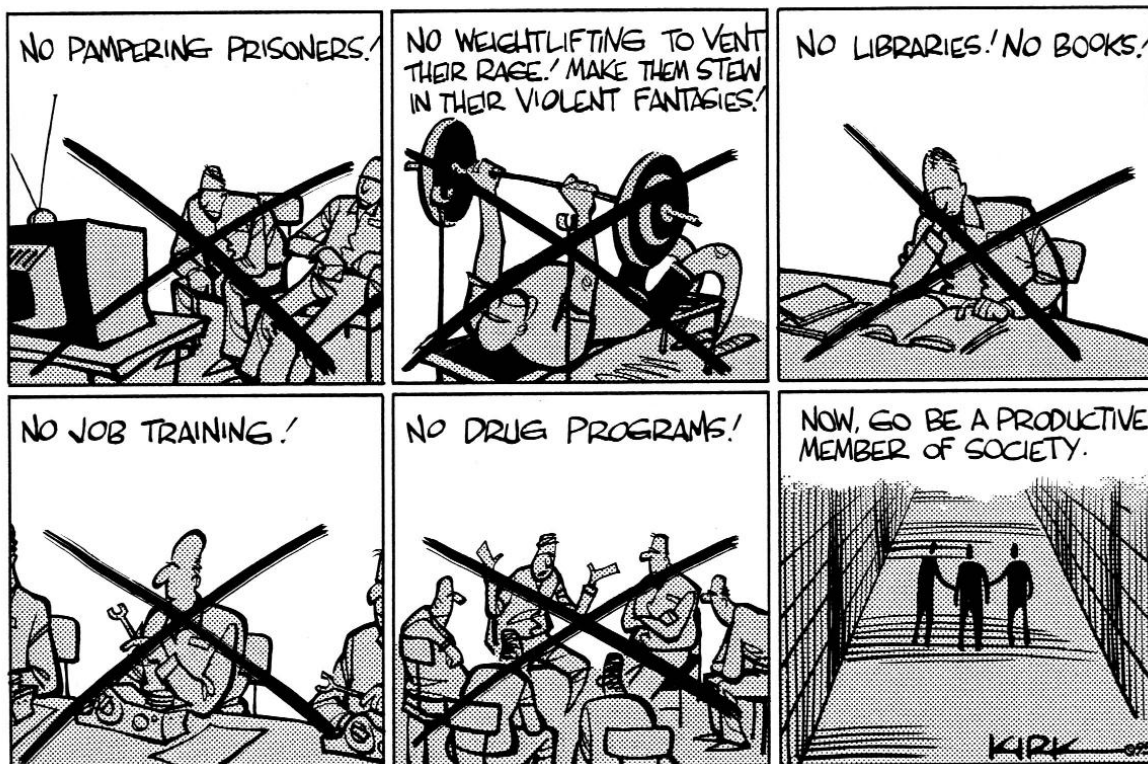
Think Tanks such as The Heritage Foundation, which published the “Mandate for Leadership” in 1980, a document that served as the blueprint for President Reagan’s domestic and foreign policies, are in a sense the brains of the Right. But besides national level think tanks like

Heritage or the libertarian Cato Institute, almost every state in the country now has at least two right-wing think tanks that are linked in two overlapping networks. One is primarily secular right-wing libertarian in orientation, while the other is affiliated with the Christian rightist Family Research Council (FRC). In Massachusetts, for example, there is the Pioneer Institute, a right-wing libertarian think tank that has been extremely influential in pushing for privatization in the state, especially in the areas of public education and public health; and the FRC affiliated Massachusetts Family Institute, which has been a leading anti-gay marriage voice.

Media and Publicity outlets are part and parcel of the Right’s arsenal. Early on, the Right realized that to successfully get its message out, it needed not only to have an effective message and frame, but that it also needed to control the medium. Christian Right groups vigorously lobbied to have federal ownership restrictions removed in order for them to be able to purchase radio and television stations, as well as print media. Today, the Rev. Pat Robertson’s Christian Broadcasting Network combines religious programming with regular newscasts that have a decidedly Christian fundamentalist slant to millions of viewers worldwide. Similarly, *The Washington Times* daily newspaper is owned by the Rev. Sun Myung Moon’s Unification Church, which also owns the global newswire service, the United Press International.

Foundations have poured hundreds of millions of dollars into right-wing institutions and causes in a very strategic way. They fund the national organizations, media and publicity campaigns, individual ideologues and think tanks, and programs for recruiting and training youth. Some of the large conservative foundations include the Coors Foundation, the John M. Olin Foundation, the Lynde and Harry Bradley Foundation, and the group of Scaife Family Foundations.

Ideologues are the thinkers and visionaries of any movement, including the Right. While the think tanks usually focus on policy, the ideologues emphasize the long-term vision, mission, and direction of the movement. William F. Buckley, Jr., the founder and editor emeritus of the



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National Review is one such thinker whose ideology of Fusionism in the 1950s brought together three sectors of the Right in the United States around the themes of anticommunism, “traditional values,” and free-market capitalism. William Bennett is another such ideologue writing frequently on issues of morality in America. Bennett was the “Drug Czar” under President George H.W. Bush.

Spokespersons are some of the most visible individuals on the Right. They are usually media-savvy, well-credentialed, sometimes young, and oftentimes women, people of color, or gay who present the Right’s perspective on any given issue to the general public. People like Ann Coulter, Dinesh DeSouza, Star Parker, and John Paulk take the Right’s message to the public through speaking engagements at college campuses, appearances on television talk shows, and by writing books or articles in newspapers. Their presence and activism serves to show the Right as being more than straight White old men. It is also harder to accuse the Right of being opposed to equality for women, people of color or being antigay when women (Coulter), people of color (DeSouza, Parker), or [ex]gays (Paulk) are the ones advocating policies that would result in the denial of full equality to women, people of color, and gay people.

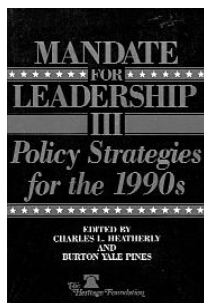
Cultural Workers are extremely important recruiting tools for the Right, especially among young people. Christian Right or Far Right rock bands and composers create music that serves as a medium for their message. For instance, there is a Christian Rock band called Hammertown, and also a Far Right hate music group by the same name.

Three Major Sectors of the U.S. Political Right

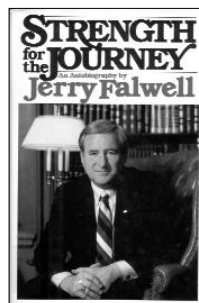
Another way to understand the Right is to look at it in terms of its different sectors. What we mean is that since the Right is not monolithic, and various groups within it have different ideologies (or belief systems) and agendas, it makes sense to distinguish them based on what they stand for. At PRA, we draw on Sara Diamond’s basic division of the Right into three broad sectors—Secular, Christian, and Xenophobic—and then sub-divide them further to account for differences within each. Sometimes these sectors come together to work towards common goals and sometimes they oppose each other based on their values and principles. For example, White nationalist groups within the Xenophobic Right are overtly racist and have a racist agenda, whereas Christian Right and Secular Right groups disavow overt racism. For the Xenophobic Right race is the central framework and primary issue; for the Christian Right it is gender and sexuality.

Different sectors of the Right also interact differently with the State. The Secular and Christian Right are currently the two sectors that control the State. Whether in the White House, the Congress or the courts, it is representatives of these two sectors that are currently in charge. For the most part, they seek to influence and control the State through electoral politics. Groups within the Xenophobic Right are often skeptical of the State and see the State itself as a problem; and have often been targets of State repression themselves.

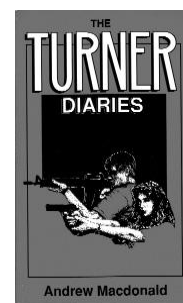
SECULAR RIGHT



CHRISTIAN RIGHT



XENOPHOBIC RIGHT



The Secular Right is, in some ways, the most difficult to comprehend. While not all right-wingers are secular, many secular rightists are moderate and not very conservative Republicans; with many being libertarians who are fiscally conservative but liberal or moderate on social issues. To complicate matters, secular rightists can also be conservative Democrats. Moderate Republicans include individuals like former secretary of state Colin Powell, Senators Olympia Snowe and Susan Collins, both of Maine, Lincoln Chaffee of Rhode Island and Arlen Specter of Pennsylvania. On certain social issues such as affirmative action or a woman’s right to have an

THE PATRIOT MOVEMENT AND ARMED MILITIAS

- The Patriot Movement began growing in the early 1990s...[as] farm and ranch economies essentially collapsed, with transnational agribusiness swooping in to buy out thousands of family-owned operations.
- Hard Right groups spread conspiracy theories in this region while corporate media and policy makers for the most part ignored the plight of residents who saw their way of life devastated.
- Extreme Right groups such as the Posse Comitatus laid part of the groundwork for the Militias during this period, but so did existing patriot groups.
- Patriot social movements involve as many as 5 million Americans who believe that the government is manipulated by subversive secret elites and is planning to use law enforcement or military force to repress political rights.
- Spurred by anger over [the deaths of survivalists at Ruby Ridge, ID and cultists at Waco, TX during confrontations with the FBI and other federal agents], the Patriot Movement spun off the Militia Movement as an armed wing.
- Armed citizens Militias quickly emerged in all 50 states and according to a tally kept by the Southern Poverty Law Center (SPLC), there were 224 Militia units in 1995. At its peak during this period there were between 20,000 and 60,000 active participants.
- The Militia Movement should not be primarily defined by antisemitism or White supremacy...There are elements of White supremacy and antisemitism in the Patriot Movement, but not in the same form or force as the Extreme [Xenophobic] Right, and in some cases barely distinct from prejudice found in sectors of ‘mainstream’ society.⁶

WHERE THE MILITIAS RECRUITED

- Militant right-wing gun rights advocates [like NRA members], antitax protesters, survivalists, and right-wing libertarians.
- Christian Patriots, and other persons promoting a variety of pseudo-legal “constitutionalist” theories.
- Extreme Right organizers in White racist, antisemitic, or neonazi movements, such as Christian Identity, the Posse Comitatus, and Aryan Nations.
- The confrontational wing of the antiabortion movement.
- Apocalyptic millennialists, including those Christians who believed the period of the “End Times” had arrived and they were facing the Mark of the Beast, which could be hidden in supermarket bar codes, proposed paper currency designs, implantable computer microchips, Internet websites, or e-mail.
- The dominion theology sector of the Christian Evangelical Right, especially its most militant and doctrinaire branch, Christian Reconstructionism.
- Advocates of “sovereign” citizenship, “freeman” status, and other arguments rooted in a distorted analysis of the thirteenth, fourteenth, and fifteenth Amendments, including those persons who argue that a different or second-class form of citizenship is granted to African Americans through these amendments.
- The most militant wings of the anti-environmentalist “Wise Use” movement, county supremacy movement, state sovereignty movement, states’ rights movement, and Tenth Amendment movement.⁷

abortion, moderate Republicans are more in line with liberal Democrats than others of their fellow Republicans who might be ultraconservative. Similarly, some liberals in the Democratic Party who are part of the Democratic Leadership Council are more in line with many Republicans on issues such as free trade, welfare, and “tough on crime.” Senator Joe Lieberman of Connecticut, former president Bill Clinton, or Senator John Kerry of Massachusetts would be examples.

The Christian Right is currently one of the most loyal and influential voting blocs within the Republican Party. Dr. James Dobson (Focus on the Family), Rev. Jerry Falwell (founder of the Moral Majority), and Rev. Pat Robertson (founder of the Christian Coalition), Tim La Haye (coauthor of the bestselling novels from the *Left Behind* series), and Beverly La Haye (founder of Concerned Women for America) are some of the more well-known figures within the Christian Right. Former attorney-general John Ashcroft is an example within electoral politics. We further sub-divide the Christian Right between Christian Nationalists (who are more numerous) and Christian Theocrats. Nationalists believe that the United States is God’s chosen nation, which has been undermined by secular liberals, feminists, and homosexuals. They oppose reproductive rights, equality for gays and lesbians, sexuality education, and support prayer in schools, etc. Theocrats go a step further and believe that Christian men are ordained by God to run society. Hardliners within this sub-sector support biblical law as the law of the land, and treating non-Christians as second-class citizens.

Finally, there is the Xenophobic Right, which includes militant, overtly racist groups such as White supremacists, Ku Klux Klan members, racist skinheads, and neonazis. Although numerically small at present, it is a serious political movement in some rural areas; and its propaganda promoting violence reaches into major metropolitan centers where it encourages alienated young people to commit hate crimes against people of color, immigrants, Jews, and gays and lesbians, among other targets. Overt racist ideology, however, is often repackaged in coded language by other right-wing sectors—called New Racism by scholar Amy Ansell—and the involvement in electoral politics by Pat Buchanan and David Duke serve as a bridge between the Xenophobic Right and more mainstream conservatives.

Knowing your opposition means you’re better prepared to counter its arguments and challenge its agenda and policies. For an extended look at the Right and all of its sectors and major actors, please visit PRA’s website <http://www.publiceye.org>.

Why We Focus on the Right, the State, and the System

By Palak Shah, Nikhil Aziz, Ph.D., and Pam Chamberlain

The term “ideology” refers to a set of ideas and principles that various groups consciously adopt (or accept as natural), hold, and seek to propagate, much as people do religious beliefs. Ideologies usually describe power relations, including how power should be allocated, and they provide the rationale for maintaining “social order” through a system.

Oppressive ideologies and systems such as authoritarianism, patriarchy, sexism, homophobia, heterosexism, White supremacy, racism, capitalism, and imperialism are embedded in the U.S. criminal justice system. This is because the criminal justice system is a part and product of the State and society we live in, and these ideologies are foundations of that society and State. At the same time, the criminal justice system legitimates and reproduces these ideologies of oppression that in turn help to maintain and expand the power of the Right, the State, and the criminal justice system itself.

While the Political Right did not invent oppressive ideologies, it is important to differentiate between those institutions and groups that reflect and reproduce these ideologies, and those that actively seek to sustain them. The modern Political Right remains the single largest force organized in defense of oppressive ideologies—and it is sophisticated enough to reject blatantly oppressive ideas and policies that are no longer culturally acceptable.

An excellent example of how oppressions are interlinked and how they are maintained by related systems is provided by activist and scholar Suzanne Pharr. She notes that sexism is the system through which the ideology of patriarchy (the “enforced belief in male dominance and control”) is maintained, and homophobia, economics, and violence are weapons that sexism uses to maintain itself.⁸ But as Pharr writes, “we have to look at economics not only as the root cause of sexism but also as the underlying, driving force that keeps all oppressions in place. In the United States, our economic system is shaped like a pyramid, with a few people at the top, primarily white males, being supported by large numbers of unpaid or low-paid workers at the bottom. When we look at this pyramid, we begin to understand the major connection between sexism and racism because those groups at the bottom of the pyramid are women and people of color. We then begin to understand why there is such a fervent effort to keep those oppressive systems (racism and sexism and all the ways they are manifested) in place to maintain the unpaid and low-paid labor.”⁹

The intersectionality of different oppressive ideologies and systems occurs not only because the groups being oppressed by each are connected, such as women and people of color but also because, as Pharr observes, “in order for this top-heavy system of economic inequity to maintain itself, the 90 percent on the bottom must keep supplying cheap labor. A very complex, intricate system of institutionalized oppressions is necessary to maintain the status quo so that the vast majority will not demand its fair share of wealth and resources and bring the system down. Every institution—schools, banks, churches, governments, courts, media, etc—as well as individuals must be enlisted in the campaign to maintain such a system of gross inequity.”¹⁰ This is true within an individual country as well as between countries, as is reflected in the unequal power relations between economically advanced countries and those in what is called the Third World.

It is important for progressives to understand, as Pharr points out, that “there is no hierarchy of oppressions. Each is terrible and destructive. To eliminate one oppression successfully, a move-

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ment has to include work to eliminate them all or else success will always be limited and incomplete. To understand the connection among the oppressions, we must examine their common elements. The first is a *defined norm*, a standard of rightness and often righteousness wherein all others are judged in relation to it. This norm must be backed up with institutional power, economic power, and both institutional and individual violence. It is the combination of these three elements that makes complete power and control possible. In the United States, that norm is male, white, heterosexual, Christian, temporarily able-bodied, youthful, and has access to wealth and resources.”¹¹

Institutional power, i.e., the power over, and control of society’s institutions, and economic power, which enables control of those institutions, Pharr reasons, “requires the use of *violence and the threat of violence*. Institutional violence is sanctioned through the criminal justice system and the threat of the military—for quelling individual or group uprisings.”¹² Most institutions, groups, and individ-

uals in our society reflect, in some way, regardless of intent, tendencies of these ideologies that, unconsciously or not, affirm the State’s ultimate power and authority, the “inferiority” of people of color, women and poor people, or the inherent value of strong punishment. Many people support these ideological concepts even when they don’t consciously self-identify as supporters or proponents—and, as a result, these extremely powerful ideologies are invisibilized. The system itself reinforces these beliefs, and some observers or participants in the system see “evidence” of their beliefs played out in the streets, the courts, and the prisons. And the ideologies start to intertwine, reinforcing each other, so that it “makes sense” to hold negative beliefs about “criminals,” whether they be immigrants, people of color, women and/or poor.

Central to the maintenance of the criminal justice system and, in fact, the modern State itself is the idea that the State alone has the legitimate power to maintain law and order within society, and to regulate, detain, and punish those who threaten that law and order. However, while the State might be a neutral player in theory, in reality it is controlled by those with power and privilege. And those who control the State make the laws.

The current criminal justice system is characterized by the desire to maintain total physical, emotional and psychological control over the people under the system’s control. A major ideology that supports this approach to criminal justice is generally known as authoritarianism; and looking at authoritarianism in the context of the criminal justice system enables us to see how an abstract theory plays out in reality. Authoritarianism is an oppressive system that uses force, violence, or the threat of violence, so that those in power are able to maintain social order and control. An authoritarian approach believes that through violence and repression an individual can be forced to conform to a set of behaviors—or face punishment. This is evident in the way our society punishes those who deviate from what the State and society deem as appropriate or moral. The criminalization of homosexuality through codified laws or the climate of hostility engendered through moral codes is a clear example of how those who deviate from what is deemed normal are subject to punishment or violence.

Authoritarianism plays out in many ways in the current criminal justice system but it is most apparent inside prison walls. The physical conditions that prisoners face are brutal and inhumane. The act of restricting human beings to small cages is only the most obvious form of control. Even the most intimate daily human functions are monitored and controlled in prison. Strip searches, controlled movement, regulated visitors, lock-downs, regulated supplies such as toilet paper and showers all add to an environment of total physical and psychological control. In addition, the explosive growth of the prisoner population has resulted in the practice of double and even triple bunking prisoners in cells too small for even one person. The most extreme form of control occurs in the “supermax” prison, where prisoners spend almost all of their waking and sleeping hours locked in small windowless cells sealed with solid steel doors. In some supermax facilities, because of technological “innovations,” prisoners might go days or weeks without any human contact.

The criminal justice system reproduces and legitimizes various forms of violence and the threat of violence to control both imprisoned and free people. Police forces, F.B.I. and C.I.A. agents, Immigration and Border Patrol personnel, and correctional officers enjoy and actively exercise the State’s legal authority over the use of force. The use of physical violence is rampant, normalized, and rarely questioned. Only the most egregious acts of violence and police brutality—such as the 1991 videotaped beating in Los Angeles of Rodney King, who sped away from police in defiance of a signal to stop, and was beaten 56 times with police batons and sustained 11 skull fractures and brain and kidney damage; the 1997 beating of Abner Louima, an innocent Haitian immigrant in New York City, followed by another beating in the police station in which he was sodomized with a plunger handle; or the 1999 killing of Amadou Diallo, a Senegalese immigrant who was shot with 41 bullets when he reached in his pocket at his apartment for what turned out to be his wallet—surface briefly in media coverage. Sexual abuse is also rampant in prisons, jails, and detention facilities, and rape or the threat of rape is condoned as a way of punishing or controlling prisoners.

The threat of prison and/or violence serves as a way of policing not only behaviors but enforcing the State’s ideology as well. Those who disagree with or challenge the State are met with swift and severe punishment, and in many cases, social or physical death. For example, during the 1950s, communists were persecuted, and, in the case of Julius and Ethel Rosenberg, executed by the government. In the 1960s, the FBI used COINTELPRO with the aim of sabotaging and destroying the Civil Rights, Black Power and American Indian movements. Even today, despite the U.S. government’s claims to the contrary, more than 200 political prisoners remain behind bars.¹³

As Angela Davis observes, “We thus think about imprisonment as a fate reserved for others, a fate reserved for the ‘evildoers,’ to use a term recently popularized by George W. Bush. Because of the persistent power of racism, ‘criminals’ and ‘evildoers’ are, in the collective imagination, fantasized as people of color. The prison therefore functions ideologically as an abstract site into which undesirables are deposited, relieving us of the responsibility of thinking about real issues afflicting those communities from which prisoners are drawn in such disproportionate numbers. This is the ideological work that the prison performs—it relieves us of seriously engaging with the problems of our society, especially those produced by racism, and, increasingly, global capitalism.”¹⁴

Endnotes Available Online!

All citations and references are available at www.defendingjustice.org or by contacting PRA.

ORGANIZING ADVICE: Challenging and Defeating the Right

Q&A WITH NIKHIL AZIZ, PH.D., PRA'S DIRECTOR OF RESEARCH

Palak Shah, Editor of the *Defending Justice* Activist Resource Kit talked to Nikhil Aziz, PRA's Director of Research about why it is important for progressive activists and people in general to learn about the Right.

PS: Why should people learn about the Right?

NA: The Right is more than hooded men in white robes. The average right-winger in the United States is not a cross-burning Ku Klux Klan member or a gun-toting NRA member. It can, literally, be the guy or gal next door. Like you, she might have a job and a couple of kids in school. Like you, he may go to church and softball games, and worry about his kids' future. Unlike you, she might never have come out on the street in a political demonstration or debated an opponent on talk radio. All he might do is to regularly write his representative in Congress whom he faithfully votes for every election. The point is that there is no stereotypical right-winger.

Even if all the KKK and NRA members, and their families, had voted for those politicians that put in place the policies that are rapidly increasing incarceration, gutting entitlement programs, and disenfranchising large numbers of citizens, that alone would not be enough to put those politicians in power. Their support base is much wider, and made up largely of ordinary Americans. It is easier to identify elected politicians, government officials, or heads of corporations as responsible for various policies that we oppose, but harder to identify their support base—the millions of “our own fellow citizens, organized effectively into right-wing social movements over many decades, [that] play a key role in sustaining the existing political-economic system.”

At Political Research Associates, we aim to tell you who that is, why someone might support such policies, and how you might mobilize effectively against such an agenda. But to challenge your opposition you have to know it, and know it well. And to do that, you have to “become familiar with the names, the faces, methods of operation and, perhaps most importantly, the underlying philosophies of right-wing movements.”

PS: Are all right-wingers the same? Do they all have the same views?

NA: No. Actually, the Right is full of contradictions, but what complicates matters further is that the Right is not one monolithic group that has one common view. It seems to have contradictory positions on a number of things, including the nature of government and the use of government power. How is it, for instance, that many right-wingers oppose abortion as the taking of life, but support the death penalty? The distinction they draw is between what they perceive to be innocent “pre-born” life and the criminal guilty. Or, why does the Right support tough law enforcement when it comes to drug use but seemingly looks the other way at corporate fraud? What is important to understand is that underlying these apparent contradictions are “consistent patterns in the Right's orientation towards the [S]tate.”

PS: What does this mean?

NA: Well, let's take social and economic policies as an example to explain what this means. The Right wants the State (that is the government + the bureaucracy + the military + the police + the judiciary + other arms of government) to ban abortion and sex education (if it goes beyond advocating abstinence). It opposes federal funding of childcare and hate crimes laws that would include violent crimes against gays and lesbians. But on other issues the Right opposes the State, as in when it tries to make the wealthy pay a larger and fairer share of taxes or when it imposes environmental regulations on corporations. The underlying issue, then, is not really about being for or against government but rather about being for or against what government does or should do.

When we understand that, we can quickly see that across the board “the Right favors a strong role for the [S]tate when it comes to enforcing order at home or abroad, be that through the means of the military, police or religiously inspired codes of conduct. At the same time, the Right wants the [S]tate to refrain from distributing wealth, power and legal rights more equitably throughout society.”

PS: But Bill Clinton supported welfare “reform” and was all “tough on crime.” And he is a liberal. So why does this whole Left-Right thing matter?

NA: It is true that President Clinton and many liberals supported a lot of the measures and policies during the 1990s that we progressives opposed, including the way welfare was “reformed” and the increasingly harsh and punitive role of the criminal justice system. This is not entirely surprising because when it comes down to the wire, liberals (and liberalism, which is the ideology that inspires liberals) address only the symptoms not the disease of social and economic injustice, only the impacts not the roots of oppression. And at a very fundamental level, what we are talking about is not one individual President or a particular government but a system of oppression that is deeply rooted in our culture and society. Patriarchy/Sexism, Racism/Xenophobia, Homophobia/Heterosexism, Classism/Capitalism, and other ideologies and systems of oppression exist in society regardless of who is in power—conservative Republicans or liberal Democrats—and the only way these can be overcome is through transforming society itself not simply through “regime change.” Societal transformation, however, doesn’t happen overnight. And that is why, as PRA founder Jean Hardisty has argued, liberals and liberalism are important, because it allows progressives some “breathing room” to organize, mobilize, and continue to work towards the long term goal of societal transformation, ending systems of oppression, and achieving social and economic justice.

Besides, systems of oppression don’t stand entirely independent of other factors. They are constructed, validated, and perpetuated by ideology—our beliefs and ideas about how a society should be structured, what role a government should play, how we as individuals living together in a society should relate to each other, and such. Right-wing ideology, that is the Right’s vision of social, political, and economic relations, is diametrically different from a progressive ideology of social and economic justice and equality.

PS: But then how come a right-winger like Pat Buchanan opposes NAFTA like we do?

NA: Pat Buchanan is a right-winger, and he does oppose NAFTA, but not like we do. When sections of the Right oppose free trade and corporate-led globalization they don’t oppose it for the reasons

progressives do. Their opposition to NAFTA doesn’t come from their opposition to the stranglehold of big business on labor in the United States or in Mexico, or low wages in China or India. They oppose it because they fear that international treaties like NAFTA might limit the independence and ability of the ruling class in this country to make decisions that affect ordinary peoples’ lives. Or, they fear that cheaper labor from other countries would cut into the profits that U.S. corporations make. But instead of saying that publicly, they drive a wedge between U.S. and Mexican workers by scapegoating lower-paid Mexican workers as responsible for taking away your jobs. Even though, in reality, neither Mexican nor American workers had a say in designing and implementing NAFTA and both opposed it for pretty much the same reason—it would hurt them.

PS: Why isn’t this more well-known?

NA: The mainstream media, which as you probably know is corporate-owned, generally thrives on events rather than issues. Plus, since it is corporate-owned and controlled, it does not seriously question policies that are or might be opposed to corporate interests. As a result the “news focuses on unusual actions taken by unusual people.” When an anti-abortion activist murders a doctor, or a neonazi blows up a building, that person is identified as “the Right.” It is easy to not only identify him but also to dismiss him as an irrational extremist and to deal with him under the law. “What escapes most media coverage are the routine ways and means through which the Right keeps its foot soldiers prepared to strike when it is time to vote, lobby, or protest. Most of this activity happens outside official political channels. It happens in Wednesday night church meetings and over weekday Christian call-in shows.” This superficial coverage also enables and directs the general public to question the symptoms.

PS: How powerful is the Right today?

NA: The Right is not over. It is all over. In the United States today, the Right controls the White House, both houses of Congress, and has a 5-4 majority on the Supreme Court that could get even more solidified. Its power appears unstoppable, as do its policies—all the more reason for you to understand it, in order to be able to effectively challenge and defeat it. The Right has been successful for many reasons, but one major reason is that it has tapped into a real feeling of anger, disillusionment, and

insecurity felt by ordinary Americans. Some of these fears, like bleak economic futures, declining pay scales, and terrorism are legitimate. Others, like the backlash of historically privileged groups to the demands for social and economic justice from marginalized groups, are not. In both cases, however, the feeling of grievance is real. What the leadership of the Right has done is to channel this insecurity into attacking scapegoats (poor people, immigrants, minorities, and women), and successfully framed or cloaked its divisive messages to receive widespread acceptance.

PS: What do you suggest those seeking to the challenge the Right should do?

NA: PRA suggests that progressives, especially activists, need to do five things in furthering their agenda for a just and equal society:

- Challenge the scapegoating, prejudice, and myths that the Right engages in, and counter the frames it uses to cloak its divisive messages to make them become the accepted norm.
- Identify real alternatives that are responsive to people's legitimate concerns, needs, and fears, including of those people who do not identify as progressive or even liberal.
- Form broad and diverse community-based coalitions, and work in solidarity to achieve social and economic justice and societal transformation.
- Push liberals to move left and bring them into coalitions to challenge systemic and institutionalized oppression.
- And in order to do all of this, recognize and understand the Right and impart a clear analysis of its agenda and policies.

All of the content in this publication,
plus additional information, can be downloaded
from the *Defending Justice* companion website:
www.defendingjustice.org.

OVERVIEW

WHAT ACCOUNTS FOR THE SUCCESS OF THE TOUGH ON CRIME MOVEMENT?

The following texts offer a variety of opinions on why the criminal justice system continues to expand.

Crime and Political Ideology

By Jean Hardisty, Ph.D.

INTRODUCTION

“An eye for an eye” captures the conservative model of punishment in contemporary western societies. That is, when a wrong is done to an innocent person, the wrongdoer must be severely punished in order to “even the books” and stand as an example to deter other wrongdoers. Its advocates often call this punishment model the “law-and-order” model.

In contrast, the liberal punishment model emphasizes the rights of the accused, humane (not “cruel and unusual”) punishment, and rehabilitation of those convicted of a crime. Conservatives and rightists belittle this model as “soft on crime.” In the United States, the two opposing models compete in the realms of culture and public policy. For most of U.S. history, the harsher punishment model has been so dominant that it is part of our international image. We are the country where we “hang ’em high.” Only in an exceptional period does the principle and practice of redemption gain the upper hand.

What explains the U.S. inclination to favor the law-and-order punishment model? Certainly in times of social tension and economic unpredictability, the punishment paradigm is especially appealing. When people feel vulnerable and insecure, rationally or not, they often look for someone, some thing, or some group to blame. Because racism pervades U.S. society as a whole, people of color, especially African Americans, who cluster at the lower end of the economic ladder, are close at hand to serve for White people as “the other,” as a source of criminal threat for the dominant population. (See Box on White Fear). And it is often true even for people whom White people have labeled as “the other,” but don’t see themselves as attached to, or identified with, those labeled criminals.

A convergence of several of the conditions that create social tension—for instance, hard economic times, rapid social change and/or a high crime rate—create a hospitable climate for an upsurge of the

What explains the U.S. inclination to favor the law-and-order punishment model? Certainly in times of social tension and economic unpredictability, the punishment paradigm is especially appealing. When people feel vulnerable and insecure, rationally or not, they often look for someone, some thing, or some group to blame. Because racism pervades U.S. society as a whole, people of color, especially African Americans, who cluster at the lower end of the economic ladder, are close at hand to serve for White people as “the other,” as a source of criminal threat for the dominant population.

law-and-order paradigm. If rightists hold political power and rightist cultural values are dominant at the time these conditions prevail, they are likely to work to strengthen public support for this paradigm, usually by emphasizing an “us/them” dichotomy that demonizes criminals and expands the definition of criminal behavior.

Only a powerful political force can push against the historical U.S. preference for a harsh punishment model. A strong progressive movement can mount a countervailing political analysis that promotes an understanding of the *root causes* of crime, critiques the law enforcement and criminal justice systems, and emphasizes rehabilitation and rights for criminal defendants and prisoners. Such an analysis is associated with liberal politicians, activists and advocates. A progressive analysis that questions the very right of the State to incarcerate its citizens rarely garners widespread public support.

However, even when liberal arguments gain political strength and acceptance, the policies that follow merely moderate the punishment model. A period of such moderation occurred in the 1960s and 1970s, when liberalism became strong enough to challenge the existing criminal justice system. Liberal publications, speakers at demonstrations, and political leaders talked about “equality” and “the dead-end life of the ghetto” as a place of no opportunity, and promoted a model of rehabilitation for criminals. This model focused on acknowledging that criminals were often the product of poverty and economic segregation, and that society should respond to behavior deemed criminal with education and opportunities as a form of crime prevention, and training while the criminal paid his/her debt to society.

But in those same decades, a conservative backlash began to gain popularity. By the end of the 1970s, the New Right, a growing social and political movement whose central program was to attack liberal ideas and practices, had labeled the liberal model the “coddling” of criminals. The New Right directed its message—that the country appeared to be spinning out of control—to White men, conservative Christians, and White Southerners. “Middle Americans,” feeling they were losing status and financial security in a time of social change, were encouraged by rightists to fear “chaos” in the streets and in private life. Subtle messages appealed to racial stereotypes by implying that the reforms of the 1960s and 1970s had strengthened the position of “undeserving” welfare recipients (usually stereotyped as people of color) and criminals at the expense of “good” White people. Soon moderate Democrats and even some liberals began to collaborate in the promotion of the backlash slogan, “tough on crime.”

It wasn’t simply economic and social tensions that underlay the New Right’s success in promoting its message on crime. “Law and order” resonated with a powerful ideological strain within the U.S. populace—the conservative worldview. You might think of this worldview as the ideological default to which many White Americans return when they are anxious, confused, or resentful.

The Prominence of the Conservative Ideological Worldview

As with so many of its policies, the Right’s conservative view of human nature and a preeminent desire for an orderly society drives its law-and-order agenda. While the liberal, humanistic vision of human nature is that people are basically good, but are made bad by oppressive poverty, abuse, addiction, racism, and/or lack of opportunity, the Right’s view is that people are bad by nature. Rightists see urges to sinful, aggressive, and selfish behavior as human nature. Therefore, conservative rightists often accuse liberals and leftists of being “idealists,” who fail to understand that people are fundamentally flawed and prone to anti-social acts.

For many rightists—especially those in the Christian Right—the only fruitful path of redemption lies in conversion to conservative Christianity. This path, promoted most notably by Charles “Chuck” Colson, whose conversion occurred while he served time in prison for crimes committed as part of the Watergate scandal in the 1980s, has become a small redemption industry.¹

The conservative view of humankind as sinful and in need of self-discipline, harsh punishment, and religious redemption to keep people on the correct path stems from a philosophical belief that society in its “natural” state is chaotic. Therefore society’s first obligation is to establish a formidable authority.² Authority naturally resides in the State, the Church, and the family/community. In the words of Thomas Hobbes, the 17th century English philosopher who is the father of the conservative worldview, “Before the names of just and unjust can have place, there must be some coercive power.”

Rightists, despite their occasional adherence to values of love and charity, believe that humankind is divided into good (worthy) people and bad (unworthy) people. Bad or unworthy people are irresponsible and/or anti-social because of weakness, self-indulgence, and lack of the will to overcome their baser instincts. The definition of “good” and “bad” has many dimensions, including moral, cultural, economic, and political. The designation “unworthy” can be stark and unforgiving. Lack of discipline should earn a “bad reputation” and a watchful eye from law enforcement officials.

The character trait of a strong and law-abiding person, on the other hand, is “social responsibility.” For such a person, the first hurdle is to resist temptation and, by doing so, live a good life. The story of Hester Prynne, the Puritan woman in Nathaniel Hawthorne’s *The Scarlet Letter*, captures the conservative worldview. Prynne, who became the town minister’s lover, was forced to wear a large, cloth scarlet A for “adulterer” on her chest for the rest of her life, making a clear statement that she was an undisciplined person.

The public policy implications of this worldview are enormous. For instance, if, as in the liberal model, all people are potentially good, preventive measures to keep them from coming under influences that will turn them “bad” are not simply justified, but a practical response to a rising crime rate. But if, as in the rightist worldview, all people are born with a strong urge to be “bad” and some are unable to control those urges through discipline and social responsibility, punishment and isolation are the appropriate responses to their behavior.

The conservative view of humankind as sinful and in need of self-discipline, harsh punishment, and religious redemption to keep people on the correct path stems from a philosophical belief that society in its “natural” state is chaotic. Therefore society’s first obligation is to establish a formidable authority. Authority naturally resides in the State, the Church, and the family/community. In the words of Thomas Hobbes, the 17th century English philosopher who is the father of the conservative worldview, “Before the names of just and unjust can have place, there must be some coercive power.”

The theme of law and order, as it stems from the conservative worldview, sets up a stark us/them dichotomy that makes it possible for “deserving” people to place “them” outside the boundaries of an orderly and godly society. From this perspective, once outside the boundaries of legitimate society, “the other” is no longer the responsibility of those who are good and worthy.

In order to advance the message that attention to “them” is misplaced by liberals, the Right launched its campaign to promote “victim’s rights” in the 1980s. Building on the conservative worldview, a “victims’ rights” campaign allowed rightists to introduce conservative tough-on-crime policies without appearing to be racist or opposed to individual rights and liberties.

How Does Law and Order Play Out In Racial Terms?

In the United States, existing institutional, systemic, and individual racism magnify and reinforce this us/them dichotomy.³ Because the criminal justice system of every country serves as a means of control over some members of that society (and others who get caught up in it), it always reflects the need of the State for control, the political desire of leaders to stay in power, and the norms and mores of behavior favored by those leaders and usually supported by at least a portion of the society’s members. In a country with the racial history of the United States, we cannot be surprised that Whites have always controlled the criminal justice system and used it to control people of color, especially African Americans and increasingly all dark-skinned people, including those from the Middle East and South Asia.

In the ideological and political campaign to promote “law and order,” conservative strategists have been careful to avoid any mention of its agenda’s racial implications. After arguing for criminalizing certain behaviors, especially drug consumption and distribution, they never men-

WHITE FEAR

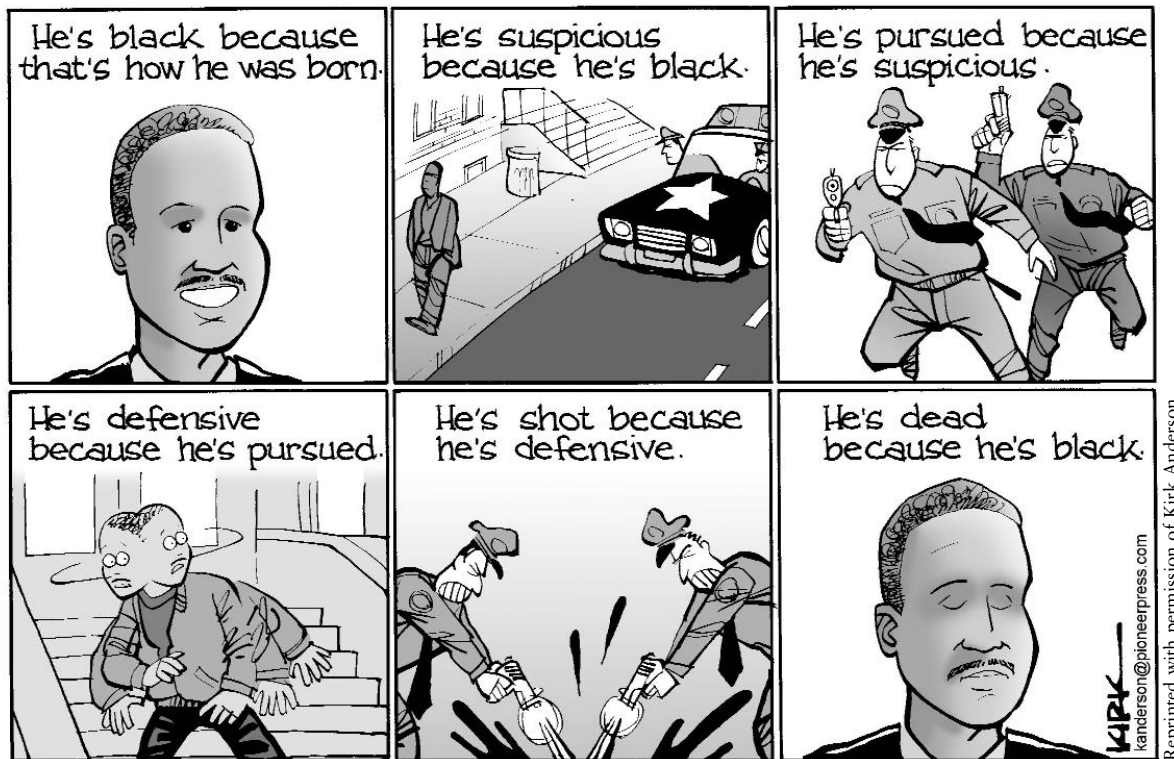
It is a tragic irony that the European settlers greeted by native peoples when they arrived in what the immigrants called the “New World” evolved a xenophobic worldview called “Nativism.” The term is used to describe the notion put forward by many immigrant settlers and their offspring that the ideal citizen is a White, northern European, native (U.S.) born, Protestant.

Xenophobia is a fear of (or a distaste for, or a hatred directed at) people, ideas, or customs thought to be strange or foreign. In the United States, this often involves White racial nationalism. When the new nation was founded in the late 1700s, there was an example of Xenophobia prompting government policies in the passage of the Alien and Sedition Acts. Periodically throughout U.S. history xenophobic Nativist movements have gained a mass following; spreading their ideas and pushing for federal action and legislation to limit immigration by people of color. Roberto Lovato calls the current manifestation of this phenomenon “White Fear.” “In white fear’s eyes, any shade of brown is suspect,” writes Lovato. And just like previous periods of anti-immigrant bigotry, this fear justifies a “war against those perceived as 21st century barbarians.” Lovato explains that “White fear mobilizes Republican and Democratic voters to defend their perceived racial interests under the guise of patriotism.”

According to Lovato, “Even though ideas about race, ethnicity, culture and civilization are fluid and murky, white fear is cohesive and entrenched.” He notes that “White fear is profitable. Bond issues for prison construction managed by major investment banks are more profitable than school construction bonds for improving the decrepit, crowded public schools.” He adds that “prison construction bonds also depend heavily on a steady flow of young, brown bodies of former students of de-funded schools, as do the crowded barracks in Iraq’s deserts.”

Part of contemporary White fear is driven by demographic trends that suggest White people will become a “minority” group sometime during the 21st century. Lovato warns this is creating a “new wave of minority politics: white minority politics. Though rooted in California, this new politics of fear is cropping up across the country as its promoters redefine who is racial victim and who is racial oppressor, neatly inverting—and co-opting—the arguments and terms of the civil rights movement.”

*Source: Roberto Lovato, “White Fear,” Pacific News Service, May 18, 2004
<http://www.alternet.org/story/18734/>; Roberto Lovato, “Fear of a Brown Planet,” The Nation, June 11, 2004, online archive.*



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tioned how this would disproportionately affect communities of color (where the State’s arrests for such behavior are higher than in White and suburban communities). Some of the academics who promote law-and-order arguments have even maintained an identity as liberals, and claim to be writing in the interests of “the community.” Through this sleight of hand, rightist policy-makers have constructed law-and-order policies as a series of supposedly race-neutral policies, although the outcome of these policies has been to criminalize, to a vastly disproportionate extent, the behaviors of certain targeted groups, especially racial minorities. Whether or not these law-and-order policies were intentionally racist may be open to debate, but many people, especially people of color, connect the dots and see their outcome as both intentional and systemic.

You might imagine that an increased emphasis on law and order would result in increased attention to all forms of law-breaking. But addressing police brutality and other forms of State violence clearly is not the focus of law-and-order policies. Nor is it the focus of the ideological camp that promotes these policies. Such neglect of a whole class of “victims”—those victimized by police or military power—supports the assertion that illegitimate race-based practices are the single most salient feature of the contemporary criminal justice system. Rightists often blatantly deny statistical evidence of unequal rates of incarceration, arrest, and punishment by race or class for identical crimes, as well as evidence of police and criminal justice officials’ presumption of guilt according to the race of the accused.⁴ Rightist Professor John J. DiIulio, Jr., a prominent law-and-order proponent who inaccurately predicted a growing wave of “super-predator” children, stated that data on the administration of capital punishment “disclose no trace of racism....”⁵ But it is nearly impossible to study the discrepancies between incarceration rates for people of color and those of Whites for similar behaviors and not conclude that these policies, and those who defend them, are racially motivated.

Ideological Contradictions In Law-and-Order Policies

Each sector of the Right does not necessarily support the same policy solutions to the issues of crime and punishment. Various anti-crime policies create splits and disagreements within the Right. For example, rightist libertarians—who favor the most limited role possible for government—object to a punishment model that requires a huge investment of government funds, even when incarceration is privatized, and prisons eliminate training and treatment. The cost of building new prisons to house and police a swelling prison population increases government spending in both the long- and short-term. Between 1985 and 1995, states and the federal government opened one new prison a week to cope with the flood of inmates into the prison system.⁶ Much

Liberals have supported some of this growth in the role of federal courts. Because they hope, for instance, that hate crimes, abortion clinic bombings, and stalkings will often be prosecuted more vigorously at the federal level than at the state level. But, as both political parties compete to appear tough on crime, much of the federalization of the criminal justice system is directed at drug offenders and non-violent criminals. It thereby diminishes the role of the states in fighting even local crime. So much for states' rights, a key principle of the Right's ideology.

of this increase resulted from the increasing criminalization of non-violent offenders, through three-strikes laws, mandatory sentences, and drug laws. Referring to the many economic interests that now have a vested interest in maintaining high rates of incarceration, some critics, notably Angela Davis, have called this the emergence of a “prison-industrial complex.” Police departments, private prison corporations, unions of prison guards, rural communities eager for prison jobs, and businesses that provide prisons with food, security, and maintenance serve as pressure groups to assure the continuation of ever-increasing funding for prisons and to support tough on crime policies and drug laws that continually escalate rates of imprisonment.⁷

Widespread imposition of the death penalty also creates dissonance for some rightists. Between 1995 and 2003, prisoners in the United States were executed at an average rate of one per week.⁸ Although execution is a more expensive

form of punishment than life-long imprisonment (due to the cost to the State of legal appeals), until recently its use has been steadily increasing, driven, in large part, by the Secular Right. Some conservatives are disconcerted by the revelation, as a result of DNA testing, that innocent prisoners have been executed. Others more critical of the criminal justice system, have not been surprised by these cases.

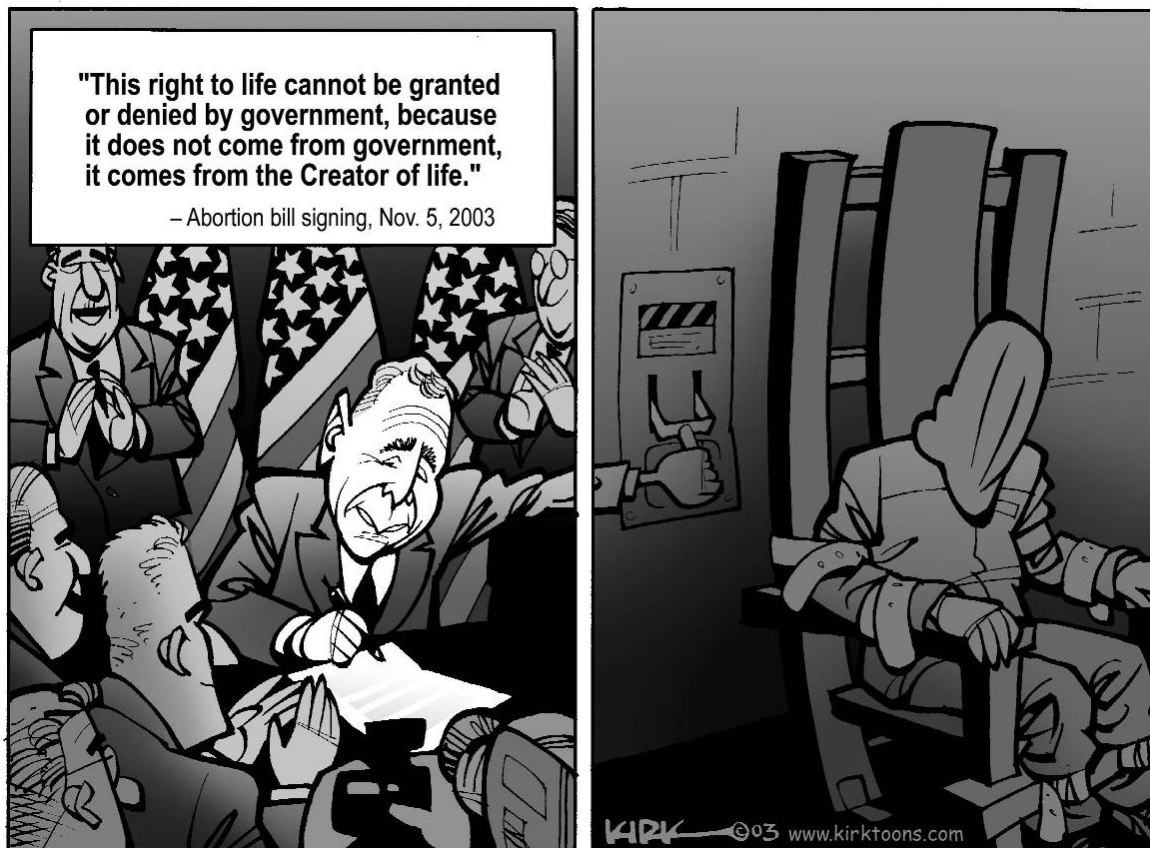
Finally, some rightists are uneasy with the growth of federal domination over state criminal justice systems. Despite the traditional conservative commitment to “states’ rights,” criminal prosecutions usually conducted at the state level have increasingly been taken over by the federal government, as the law-and-order crime model has grown in influence. For decades, crimes that involve crossing state lines have been classified as federal crimes and are prosecuted in federal courts. Organized crime cases and many drug and firearms crimes have swelled the number of federal cases. But journalist Ted Gest describes a “creeping federalization of criminal prosecutions” of crimes that occur at the local level. Liberals have supported some of this growth in the role of federal courts. Because they hope, for instance, that hate crimes, abortion clinic bombings, and stalkings will often be prosecuted more vigorously at the federal level than at the state level. But, as both political parties compete to appear tough on crime, much of the federalization

of the criminal justice system is directed at drug offenders and non-violent criminals. It thereby diminishes the role of the states in fighting even local crime.⁹ So much for states' rights, a key principle of the Right's ideology.

Why would rightists persist in favoring these "big government" aspects of tough-on-crime policies? The prevention and rehabilitation model, which has largely been defunded, ultimately costs less in tax dollars because it addresses the causes of crime and the rehabilitation of prisoners. The answer lies in the ideological compatibility of apparently contradictory ideas when they are held within an overarching worldview that explains the contradictions. Two especially strongly held conservative beliefs are not subject to debate—criminals must be punished, and government should remain small. But "smallness" does not mean that the government should be weak. Thomas Hobbes' admonition that States must establish a strong power that can exert control undergirds the idea that a massive program of incarceration is ideologically acceptable for conservatives who don't believe in "big government." In this case, many conservatives who believe that criminals are bad and must be punished in order to protect good, responsible (read White) people accept a strong role for government as appropriate and consistent with a conservative ideology. All sectors of the Right oppose the one policy solution that is most likely to solve the problem of crime in the long term—the creation of jobs, housing, economic opportunity, and universal health care that includes treatment for addictions.

Why Is the Law-and-Order Model So Widely Accepted?

People who are ideologically progressive or who are disproportionately subjected to the excesses of "tough on crime" policies and practices, find it hard to understand the widespread vicious,



Perhaps another important part of the answer lies in the widespread acceptance of the conservative ideological worldview, especially its view of human nature, by many average Americans. I suggest that many in the United States see themselves in much the same way that philosopher Thomas Hobbes saw humans—prone to sinfulness in the form of sloth, moral depravity, envy, covetousness, lust, and aggression. And they see their lives as a process of self-discipline to overcome these urges.

mean-spirited attitude toward people labeled as criminals. For instance, what would make a crowd gather outside a death penalty execution to cheer it on? What beliefs could make the public indifferent to the horrific conditions and physical abuse so common in contemporary U.S. prisons? Why has “tough on crime” become a bottom line necessity for any successful politician, even when people know that a substantial number of innocent people have been imprisoned, or even executed, through overzealous or malicious prosecution, lack of adequate legal defense, and/or racism?

As I mentioned above, several factors that might inspire such attitudes are: racism; fear and anxiety for physical safety and security; economic anxiety that leads people to seek a scapegoat who becomes the “other;” and a sense of grow-

ing chaos and declining order. These conditions clearly lead to a more punitive-minded general public, especially when political leaders and the media reinforce their inclinations.

Perhaps another important part of the answer lies in the widespread acceptance of the conservative ideological worldview, especially its view of human nature, by many average Americans. I suggest that many in the United States see *themselves* in much the same way that philosopher Thomas Hobbes saw humans—prone to sinfulness in the form of sloth, moral depravity, envy, covetousness, lust, and aggression. And they see their lives as a process of self-discipline to overcome these urges.

The struggle to live a life of virtue and dutifulness rather than sinfulness is an abiding source of pride in mainstream U.S. culture. To be a “good man” or a “good woman” is no small accomplishment. Average people know how much effort it takes to accomplish this identity. Accompanying the pride felt by those who work to maintain their virtue is a deep resentment of those they feel do not work and sacrifice to overcome their sinful urges. This resentment can turn especially bitter when “good people” perceive that “bad people” are reaping benefits that should rightfully be theirs. The resulting hatred is a major factor driving the country’s support for tough-on-crime policies and the law-and-order model. The common sentiment—“The bad people ruin it for all the rest of us”—captures much of the rightist worldview. To coddle the “bad” people is to devalue the hard work of the “good.”

To keep this system in place, two things are necessary: 1) there must be widely shared agreement on what is “good,” and 2) there must be a strict separation between the “good” and the “bad.” But in modern society, the definition of what is “good” becomes more confused every day, causing status and identity anxiety. Changing definitions of “good” and “bad” can make traditional rightists resentful and angry, leading them to charge progressives, secularists, and others who disagree with them as being “moral relativists.” When social mores change—for instance, when obtaining an abortion or living together as an unmarried heterosexual couple becomes socially normalized behavior—the former definition of “good” and “bad” becomes contested

territory. Most progressives hail such expansions of individual rights as progress for human rights. For conservatives, they represent a blurring of the lines, and a further erosion of the status of “good” people who resist “decadent” urges and model “virtuous” human behavior.

As free-market capitalism becomes more dominant and unregulated in U.S. society, subjecting workers to increasing job instability and pay fluctuations, many workers respond with economic apprehension and status anxiety. Further, private enterprise responds almost exclusively to its predominant goal—maximizing profit. To sell products, family values can be mobilized, but if individualistic, “anti-family” attitudes can more successfully sell goods, the market will promote those values. This “amoral” profit-driven ethic often conflicts with established notions of good and bad or right and wrong, adding to the sense of dislocation on the part of many people, who then seek a target for their resentment over all that has changed “for the worse.” Such an environment offers the “criminal”—whose very existence defines those who are not criminals as “good”—as a convenient and serviceable scapegoat. And in a society characterized by institutional and individual racism, a “criminal” or “bad” identity is disproportionately attached to dark-skinned people.

Conclusion

The Right’s law-and-order campaign has led to an increase in the severity and duration of incarceration since the early days of the Ronald Reagan Administration. Political moderates, and even liberals, collaborated in policies that have embodied reactionary intentions and racist outcomes. The mainstream media, by elevating sensational stories of criminals and victims to attract audiences and advertisers, have promoted a view of crime as rampant and frightening. By associating inner-city residents of color with guns and drugs, rightist politicians have promoted an ideological message that criminals are individuals who have choices and choose crime and victimization of those weaker than they.

Driven by a conservative ideological worldview, rightists and average people in the United States now support a huge prison industry that incarcerates people at rates second only to Russia in the world.¹⁰ Progressives must challenge this runaway law-and-order campaign by redirecting attention to the root causes of crime, such as poverty, abuse, addiction, and lack of opportunity, and by challenging the demonization and scapegoating of “criminals.” This work is part of a larger campaign to revive the public will to address the economic insecurity that plagues so many in the United States, while the few live in increasing luxury.

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Calvinism, Capitalism, Conversion, & Incarceration

By Chip Berlet

INTRODUCTION

Why are increased sentences and the severe punishment of those convicted of crimes so popular and prevalent in U.S. culture? Since the late 1970s our society has accepted increasingly rigid and vengeful ways of punishing those convicted of crimes. Behind this trend is the momentum of 250 years of a strain of religious philosophies brought to our shores by Pilgrims, Puritans, and other colonial settlers influenced by a Protestant theology called Calvinism. Today, many ideas, concepts, and frames of reference in modern American society are legacies of the history of Protestantism as it divided and morphed through Calvinism, revivalist evangelicalism, and fundamentalism. Even people who see themselves as secular and not religious often unconsciously adopt many of these historic cultural legacies while thinking of their ideas as simply common sense.

What is “common sense” for one group, however, is foolish belief for another. According to author George Lakoff, a linguist who studies the linkage between rhetoric and ideas, there is a tremendous gulf between what conservatives and liberals think of as common sense, especially when it comes to issues of moral values. In his recent book *Moral Politics*, which has gained attention in both media and public debates, Lakoff argues that conservatives base their moral views of social policy on a “Strict Father” model, while liberals base their views on a “Nurturant Parent” model.¹¹

Other scholars have looked at these issues and found similar patterns. According to Axel R. Schaefer, there are three main ideological tendencies in U.S. social reform:

- Liberal/Progressive: based on changing systems and institutions to change individual behavior on a collective basis over time.
- Calvinist/Free Market: based on changing individual social behavior through punishment.
- Evangelical/Revivalist: based on born again conversion to change individual behavior, but still linked to some Calvinist ideas of punishment.¹²

Coalition Politics

Republicans have forged a broad coalition of two of the three tendencies that involves moderately conservative Protestants who nonetheless

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hold some traditional Calvinist ideas; Free Market advocates ranging from multinational executives to economic conservatives to libertarian ideologues; and conservative evangelicals and fundamentalists with a core mission of converting people to their particular brand of Christianity. This is a coalition with many fracture points and disagreements.

As the Bush Administration has shifted government social welfare toward “Faith-based” programs, it has diverted government funding into privatized religious organizations (which raises serious separation of Church and State issues), but the amount of funding applied to “Faith-based” projects is small compared to the large budget cuts in previously government-funded government-run social welfare programs. Libertarians approve of the overall budget cuts, but would prefer cutting out the government funding of “Faith Based” projects.

Not all evangelicals and fundamentalists are political conservatives, although most are. The Christian Right is that group of politically conservative Christians—primarily evangelicals and fundamentalists—who have been mobilized into a social movement around social issues and traditional moral values; and who have sought political power through elections and legislation. The Christian Right became a political force in the Republican Party in the 1980s as part of a strategy of right-wing political strategists to enlist evangelical and fundamentalist leaders, especially television evangelists, in building a voter base.

The Christian Right has used populist rhetoric to build a mass base for elitist conservative politics.¹³ This process leads many people to vote against their economic self-interest, as Thomas Frank observes in his book *What’s the Matter with Kansas?: How Conservatives Won the Heart of America*.¹⁴ Today, the Christian Right is the single largest organized voting block in the Republican Party. These are predominantly White evangelical voters. Most Black Christian evangelicals overwhelmingly vote Democratic. The voting power of White Christian evangelicals has meant they are now political players on the national scene. For example President George W. Bush’s first term selection as Attorney General of the United States of John Ashcroft, a hero to the Christian Right and himself a member of the ultra-conservative evangelical denomination Assemblies of God, was a political reward to White evangelical voters.

Some of the goals of many White evangelical conservatives are shared by another group of people who call themselves the Neoconservatives. These are former liberals and leftists who rejected the social, cultural, and political liberation movements of the 1960s and 1970s. Neoconservative social and cultural politics echo many Calvinist themes such as the need to defend traditional morality and the patriarchal family; the special role for America in world affairs, and the righteousness of economic capitalism.

As the New Right gained power, Republicans—and Democrats—began to support repressive and punitive criminal justice policies that were shaped by one of the historic legacies of Calvinism:

Republicans have forged a broad coalition of two of the three tendencies that involves moderately conservative Protestants who nonetheless hold some traditional Calvinist ideas; Free Market advocates ranging from multinational executives to economic conservatives to libertarian ideologues; and conservative evangelicals and fundamentalists with a core mission of converting people to their particular brand of Christianity. This is a coalition with many fracture points and disagreements.



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the idea that people arrested for breaking laws require punishment, shame, and discipline.

While most mainline Protestant denominations and evangelical churches have jettisoned some of the core tenets of Calvinism, ideas about punishment and retribution brought to our shores by early Calvinist settlers are so rooted in the American cultural experience and social traditions that many people ranging from religious to secular view them as simply “common sense.” What Lakoff calls the “Strict Father” model gains its power among conservatives because it dovetails with their ideas of what is a common sense approach to morality, public policy, and crime. To understand where this “common sense” comes from, and why it is tied to the Strict Father model, requires that we trace the influence of Protestant Calvinism.

The Roots of Calvinism

Martin Luther founded Protestantism in a schism with the Catholic Church in 1517, but it was John Calvin who literally put it on the map in the city of Geneva, which is now in Switzerland. In the mid 1500s, Calvin forged a theocracy—a society where only the leaders of a specific religion can be the leaders of the secular government.

Calvinists believed that Adam and Eve disobeyed God and tasted the apple from the tree of knowledge at the urging of an evil demon. As a result of this “original sin,” the betrayal of God’s command, all humans are born in sin. God must punish us for our sins; we must be ashamed of our wrongdoing; and we require the harsh yet loving discipline of our heavenly father to correct our failures.

Calvinists also believe that “God’s divine providence [has] selected, elected, and predestined certain people to restore humanity and reconcile it with its Creator.”¹⁵ These “Elect” were originally thought to be the only people going to Heaven. To the Calvinists, material success and wealth was a sign that you were one of the Elect, and thus were favored by God. Who better to shepherd a society populated by God’s wayward children? The poor, the weak, the infirm? God was punishing them for their sins. This theology was spreading at a time when the rise of industrial capitalism tore the fabric of European society, shifting the nature of work and the patterns of family life of large numbers of people. There were large numbers of angry, alienated people who the new elites needed to keep in line to avoid labor unrest and to protect production and profits.

Max Weber, an early sociologist who saw culture as a powerful force that shaped both individuals and society, argued that Calvinism grew in a symbiotic relationship with the rise of industrial capitalism.¹⁶ As Sara Diamond explains:

Calvinism arose in Europe centuries ago in part as a reaction to Roman Catholicism’s heavy emphasis on priestly authority and on salvation through acts of penance. One of the classic works of sociology, Max Weber’s *Protestant Ethic and the Spirit of Capitalism*, links the rise of Calvinism to the needs of budding capitalists to judge their own economic success as a sign of their preordained salvation. The rising popularity of Calvinism coincided with the consolidation of the capitalist economic system. Calvinists justified their accumulation of wealth, even at the expense of others, on the grounds that they were somehow destined to prosper. It is no surprise that such notions still find resonance within the Christian Right which champions capitalism and all its attendant inequalities.¹⁷

Awakening To Evangelicalism

From the 1730s through the 1770s there was a Protestant revival movement in the colonies dubbed the First Great Awakening. As the revival swept the colonies, many reported a highly emotional experience of conversion after hearing sermons at large public meetings. The new evangelists tended to be zealous, judgmental, and authoritarian. Not everyone was happy with the results of the First Great Awakening, and some rejected the trend and remained on the traditional orthodox Calvinist path. Others rejected both and developed what became Unitarianism as a response. By the early 1800s there were three tendencies in American Protestantism:

- 1) Orthodoxy in the form of northern Calvinist Congregationalists and southern Anglicans;

While most mainline Protestant denominations and evangelical churches have jettisoned some of the core tenets of Calvinism, ideas about punishment and retribution brought to our shores by early Calvinist settlers are so rooted in the American cultural experience and social traditions that many people ranging from religious to secular view them as simply “common sense.” What Lakoff calls the “Strict Father” model gains its power among conservatives because it dovetails with their ideas of what is a common sense approach to morality, public policy, and crime. To understand where this “common sense” comes from, and why it is tied to the Strict Father model, requires that we trace the influence of Protestant Calvinism.

- 2) Revivalist rationalism and evangelism that drew not only from the Congregationalists and Anglicans (later called Episcopalians), but also swept through the smaller Protestant denominations such as the Baptists, Methodists, and Presbyterians;
- 3) Unitarianism, still relatively small but influential in the northeast.¹⁸

Social Reformers: Quakers and Unitarians

Many ideas on social reform that are now supported by mainline Protestant denominations were initially promoted by religious dissidents such as the Quakers and later the Unitarians.

Quakers had been concerned with prison conditions since the late 1600s in both England and in colonial Pennsylvania, and they introduced the idea of prison as a means for reform rather than punishment.¹⁹ They also promoted the “conception of the criminal as at least partially a victim of conditions created by society” which implied that society had some obligation to reforming the criminal.²⁰ In the early 1800s Quaker activist Elizabeth Gurney Fry launched a major prison reform movement in England, and these ideas were carried to the United States.

The Unitarians rejected the Calvinist idea that man was born in sin and argued that sometimes people did bad things because they were trapped in poverty or lacked the education required to move up in society. The Unitarians took the idea of transforming society and changing personal behavior popularized by the First Great Awakening and shifted it into a plan for weaving a social safety net under the auspices of the secular government.

The attention to social conditions by the Unitarians and Quakers overlapped with the Second Great Awakening, which ran from the 1790s to the 1840s. Sin was seen as tied to selfishness. Good Christians should strive to behave in a way that benefited the public good. America was seen as a Christian Nation that would fulfill Biblical prophecy. By the late 1800s, most major Protestant denominations (called “Mainline” denominations) had found some accommodation with the discoveries of science and secular civic arrangements such as separation of Church and State favored by Enlightenment values.²¹ There was also “a growing interest by churches in social service, often called the Social Gospel, [which] undercut evangelicalism’s traditional emphasis on personal salvation.”²²

Quakers had been concerned with prison conditions since the late 1600s in both England and in colonial Pennsylvania, and they introduced the idea of prison as a means for reform rather than punishment.¹⁹ They also promoted the “conception of the criminal as at least partially a victim of conditions created by society” which implied that society had some obligation to reforming the criminal. In the early 1800s Quaker activist Elizabeth Gurney Fry launched a major prison reform movement in England, and these ideas were carried to the United States.

Fundamentals and Prophecies

All of this created a backlash movement. A group of conservative ministers condemned this shift and urged Protestants to return to what they saw as the fundamentals of orthodox Protestant belief. From 1910 to 1915 these reactionary theologians published articles on what they saw as

the fundamentals of Christianity. Thus they became known as the fundamentalists. Among their beliefs was the idea that the Bible was never in error and was to be read literally, not as metaphor. While rejecting Calvinist ideas of predestination and the Elect, fundamentalists sought to restore many orthodox Calvinist tenets—and they embraced the idea that man was born in sin and thus needed punishment, shame, and discipline to correct sinful tendencies.

Although fundamentalists and evangelicals tended to withdraw from the political fray, devoting most of their energy to saving souls, they challenged modern ideas using such modern tools as radio and later television to communicate their message. Both groups were largely suspicious of the social reforms implemented during the administration of Franklin Roosevelt. Government welfare programs could be pictured as similar to the collectivism of Godless and perhaps Satanic Soviet communism.

The result of all this turmoil in evangelical and fundamentalist communities was the development of a tendency called “dominionism” based on the concept that Christians need to take dominion over the earth. Dominionism is an umbrella term that covers politically-active Christians from a variety of theological and institutional traditions.

While this was happening, in May of 1979 a group of conservative political activists met with conservative religious leaders to plan a way to mobilize evangelicals into becoming conservative voters for Republican candidates. Attendees included Jerry Falwell, Richard Viguerie, Paul Weyrich, Howard Phillips, Ed McAteer, and Robert Billings. This is where Jerry Falwell was tasked with creating the Moral Majority organization, which became a key component of the New Right. The Moral majority focused on opposing abortion and pornography. After evangelicals helped elect Ronald Reagan president, he appointed C. Everett Koop to the position of surgeon general of the United States as a payback.

The New Right not only recruited evangelicals and fundamentalists into their coalition, but also sought to strengthen the bridge between traditional moral values Calvinists and the neoliberal *laissez-faire* “Free Market” advocates in the Republican Party; which included both anti-tax economic conservatives and anti-government libertarians. This was a coalition initially forged by conservatives in the 1950s.²³

Many conservative Christians did not necessarily oppose a role for government, or object to government funding, as long as it focused on individual behavior. Thus faith-based initiatives are seen as a proper place for government funding because they shift tax dollars away from social change toward individual change.

The result of all this turmoil in evangelical and fundamentalist communities was the development of a tendency called “dominionism” based on the concept that Christians need to take dominion over the earth. Dominionism is an umbrella term that covers politically-active Christians from a variety of theological and institutional traditions.

The Child, the Family, the Nation, and God

Since the 1980s and the rise of the Christian Right, public policy regarding the treatment of criminals has echoed the patriarchal and punitive child-rearing practices favored by many Protestant fundamentalists. Most readers will recognize the phrase: “Spare the rod and spoil the child.” This idea comes from a particular authoritarian version of fundamentalist belief.

According to Philip Greven:

The authoritarian Christian family is dependent on coercion and pain to obtain obedience to authority within and beyond the family, in the church, the community, and the polity. Modern forms of Christian fundamentalism share the same obsessions with obedience to authority characteristic of earlier modes of evangelical Protestantism, and the same authoritarian streak evident among seventeenth- and eighteenth-century Anglo-American evangelicals is discernible today, for precisely the same reasons: the coercion of children through painful punishments in order to teach obedience to divine and parental authority.²⁴

The belief in the awful and eternal punishment of a literal Hell justifies the punishment, shame, and discipline of children by parents who want their offspring to escape a far worse fate. This includes physical or “corporal” forms of punishment. “Many advocates of corporal punishment are convinced that such punishment and pain are necessary to prevent the ultimate destruction and damnation of their children’s souls.”²⁵ This is often accompanied by the idea that a firm male hand rightfully dominates the family and the society.²⁶ The system of authoritarian and patriarchal control used in some families is easily transposed into a framework for conservative public policy, especially in the criminal justice system.

Lakoff explains that on a societal level, according to conservative “Strict Father morality, harsh prison terms for criminals and life imprisonment for repeat offenders are the only moral options.” The arguments by conservatives are “moral arguments, not practical arguments. Statistics about which policies do or do not actually reduce crime rates do not count in a morally-based discourse.” These “traditional moral values” conservatives tend not to use explanations based on the concepts of class and social causes, nor do they recommend policy based on those notions.²⁷ According to Lakoff:

The belief in the awful and eternal punishment of a literal Hell justifies the punishment, shame, and discipline of children by parents who want their offspring to escape a far worse fate. This includes physical or “corporal” forms of punishment. Many advocates of corporal punishment are convinced that such punishment and pain are necessary to prevent the ultimate destruction and damnation of their children’s souls. This is often accompanied by the idea that a firm male hand rightfully dominates the family and the society. The system of authoritarian and patriarchal control used in some families is easily transposed into a framework for conservative public policy, especially in the criminal justice system.

For liberals the essence of America is nurturance, part of which is helping those who need help. People who are “trapped” by social and economic forces need help to “escape.” The metaphorical Nurturant Parent—the government—has a duty to help change the social and economic system that traps people. By this logic, the problem is in the society, not in the people innocently “trapped.” If social and economic forces are responsible, then other social and economic forces must be brought to bear to break the “trap.”

This whole picture is simply inconsistent with Strict Father morality and the conservative worldview it defines. In that worldview, the class hierarchy is simply a

ladder, there to be climbed by anybody with the talent and self-discipline to climb it. Whether or not you climb the ladder of wealth and privilege is only a matter of whether you have the moral strength, character, and inherent talent to do so.²⁸

To conservatives, the liberal arguments about class and impoverishment, and institutionalized social forces such as racism and sexism, are irrelevant. They appear to be “excuses for lack of talent, laziness, or some other form of moral weakness.”²⁹ Much of this worldview traces to the lingering backbeat of Calvinist theology that infuses “common sense” for many conservatives.

Conclusion

The conservative Calvinist/Free Market coalition works the front end of the criminal justice system, ensuring harsh sentencing and incarceration. The evangelical/revivalist groups agree with that aspect of Calvinism, but they also work the back end of the system, salvaging the souls of the incarcerated so that whether or not they leave prison, they will be born again as properly behaved citizens heading to Heaven. There are only a relative handful of evangelicals (conservative and progressive) who challenge the system of increasingly harsh sentencing.

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PRISON MINISTRIES: SAVING SOULS AND PRISON REFORM

Why do so many evangelical Christian Right activists create prison ministries? Because they believe those convicted of crimes can change through the act of confession and redemption—admitting their weaknesses and the nature of their sinful and evil selves, and redeeming themselves by giving their lives over to Jesus Christ. They might still be in prison, but their souls are saved even as their bodies remain behind bars. In their mission to save souls, many Christians, especially evangelicals and the more doctrinaire fundamentalists, seek to improve prison conditions. It is not fair to dismiss this concern as not genuine simply because of their underlying religious desire to save souls.

At the same time, it is important to keep an eye on the baggage that some members of the Christian Right often bring along in the form of authoritarianism, sexism, patriarchy, and homophobia; and their reluctance to see the institutional and systemic roots of social problems.

Prison ministries run by Christians bring all this baggage to their work, but in the course of interacting with real prisoners they cannot help but become concerned about objective prison conditions. This seldom leads them to a systemic or institutional analysis favored by liberals and progressives, but it can mean that on a tactical basis, even leaders of the Christian Right can be temporary allies in formulating and organizing for specific reforms within the prison system or individual prisons.

Abstracts of Other Selected Articles

Below you will find the main points and the summary of articles on the various topics. To obtain the full text of any of the mentioned articles, visit the Defending Justice website at www.defendingjustice.org.

Overview of the Prison Industrial Complex

Herzing, Rachel. “What is the Prison Industrial Complex?”

Abstract: Herzing introduces the term “Prison Industrial Complex” (PIC) as a more accurate description of the criminal justice system and the one used by the organization Critical Resistance. The PIC consists of surveillance, policing and imprisonment, overlapping interests of government and business that contribute to the maintenance of the status quo. Unlike prison reform movements that attempt to “fix” the problem, she argues that the criminal justice system is not “broken” but actually doing what it was designed to do—maintain social control and state power.

Components of the Prison Industrial Complex:

- *Criminalization* or the ability to define what actions or groups of people are considered “criminal” through the use of media and government policy;
- *Skillful use of Media* to reinforce myths about crime and punishment and to amplify fear
- *Surveillance or threat of surveillance* that maintains data about people’s activities or enhances self-censorship;
- *A Court System* that is overburdened by too much to do, holding on to structural inequities that target poor people and people of color;
- *Prisons* that punish and control over 2 million people and provide little economic benefit except for the growing number of businesses that can profit from them.

Herzing suggests that the reaching the goal of safe, stable communities requires eliminating the PIC and replacing it (without a quick fix or a single answer) with a broader set of options that respond to the harms that people experience:

- More opportunity for social and economic participation;
- Quality education, housing, and health care for all;
- Community-based conflict resolution.

Although these are lofty goals, Herzing suggests they are achievable with vision and are preferable to reforms, which often only make the PIC stronger.

The “Prisonification” of Native People

Ogden, Stormy, “W-20170/Other: A Native Woman and Former Prisoner Speaks Out”

Abstract: Ogden begins by discussing her Indian heritage (Yokuts and Pomo) and the history of her people in what is considered California today. Ogden discusses her unique struggle to not only maintain a sense of self, within a system that isolates and degrades individuals, but also her Indian identity. She describes being “medicated the entire time” she was incarcerated and being fearful of receiving incompetent medical treatment. Ogden characterizes her imprisonment as “just another part of the historically violent mechanisms of colonization” that have resulted in the disproportionate rates of incarceration of Native adults and children. She views criminalization of Native peoples as another imperialist tool (along with the bottle and the bible) to control Native lands and deny Native sovereignty, and she describes the imposition of the U.S. criminal justice system in Indian Country as a form of racism and social control. Lastly, Ogden identifies three main legal principles that the U.S. government utilizes to justify its jurisdiction of and actions in Indian Country.

- *The Plenary Power Doctrine*, which originally asserted that Congress had sole and absolute power to negotiate with Native peoples, but in fact has been used to deny Native rights and sovereignty despite treaties between Indian nations and the U.S. government that are both an implicit and an explicit recognition of Native sovereignty.
- *The Federal-Indian Trust Doctrine*, the basis of the 1832 Worcester v. Georgia case, which was defined as the unique moral and legal duty of the United States to assist Indians in the protection of their property and rights—not unlike the relationship between guardians and their wards.
- *The “Doctrine of Geographical Incorporation,”* which claims that since Indian lands (i.e. reservations) are located within U.S. boundaries, the United States holds title to all of those lands, which are reserved for the use of Native peoples, and that the United States has the right to assert legal jurisdiction over these lands as well as to abolish title at any time.

Class War and the Need for Social Control

Parenti, Christian, “The ‘New’ Criminal Justice System: State Repression from 1968 to 2001,” *Monthly Review*, July 2001.

Abstract: Parenti analyzes how the “New” criminal Justice System is an integral part of the needs of capital and the ideology of white supremacy. He asserts that state repression is about creating political obedience and regulating the price of labor.

Chief components of the “New” criminal Justice System

- Policing and incarceration—(as well as INS detention centers, the militarized border, psych wards, halfway houses, hospital emergency rooms, homeless shelters, skid row and the ghetto)—all serve to contain and manage the social impacts of poverty.
- In Parenti’s words, “criminal justice regulates, absorbs, terrorizes and disorganizes the poor. At the same time it promulgates racism; demonizing, disenfranchis-

ing, and marginalizing ever-larger numbers of brown working-class people .”

Three phases of the new repression:

- The first began as a response to the “civil disturbances” of the mid-sixties and lasted until the late seventies. By the late seventies even many mainstream, middle-class White Americans began to tire of government repression as Watergate and other scandals exposed the seamier side of politics and policing. This caused a momentary pause in the otherwise forward momentum of the criminal justice juggernaut.
- The second phase began in the mid-eighties with “Reaganomics” (an effort to boost profit margins by increasing the rate of exploitation) and the right-wing assault on the disadvantaged and dispossessed. Parenti gives statistics on how the escalating repression of the ‘80s hit people of color hardest, and Black people hardest of all.
- The third phase: legislative acts of the Clinton presidency such as the Anti-Terrorism and Effective Death Penalty Act (expanded use of death penalty) and the “Illegal Immigration Reform and Immigrant Responsibility Act” (eliminated undocumented person’s right to due process) which implemented new heights of viciousness.

Media

Beckett, Katherine and Theodore Sasson, “Crime in the Media” adapted from Katherine Beckett and Theodore Sasson, *The Politics of Injustice: Crime and Punishment in America*, (Thousand Oaks, CA: Sage Publications, 2004), ch. 5.

Abstract: Beckett and Sasson describe the impact of the media’s representation of crime on the expansion of the criminal justice system.

They document several facts about the media:

- Local TV news spends 30% of airtime on crime;
- Politicians and public officials trigger surges in media crime coverage by their increased attention to issues of crime;
- Violent crime rates actually decreased as media coverage increased;
- Other forms of crime, such as corporate or state crime, are ignored in favor of “street crime;”
- Crime victims are incorrectly represented by the media as female, White and affluent;
- Crime is represented as a consequence of the failures of the criminal justice system itself, such as permissive laws, liberal judges, and legal technicalities.

Crime news is governed by several factors:

- The relative value of news stories

- The profit and market-share needs of the media companies
- The reliance on government and law officials as sources for actual news content
- The entertainment value of crime which reinforces at least three ideologically loaded ideas: offenders are professional criminals—clever and evil; liberal judges and lawyers are too often preoccupied with the rights of defendants; and law enforcements officials are the heroes.

The Need To Maintain the Status Quo

Saito, Natsu Taylor, “Maintaining the Racial, Economic, Social and Political Status Quo: Exclusion, Marginalization and Criminalization,” adapted from Natsu Taylor Saito, “FOR ‘OUR’ SECURITY: Who is an ‘American’ and What is Protected by Enhanced Law Enforcement and Intelligence Powers?” *Seattle Journal for Social Justice* 2(1) (2002): 58-59.

Abstract: Saito identifies the criminal justice system (and the intelligence agencies that support it) as key to the maintenance of the racial, economic, social, and political status quo in the United States. She calls the notion that America is a “nation of immigrants” a myth, since this idea sanitizes U.S. history by implying that all immigrants came voluntarily, and it ignores the contributions of Native peoples, slaves and others who are non-White. By reviewing U.S. legislative history since the Nixon Administration, she shows how this myth helps label anyone in these groups as “Other” and foreign. “Foreignness” became equated with not being sufficiently loyal to the United States and even having terrorist sympathies as well. These ideas evolved into a definition of the modern day Enemy.

Identifying the Enemy at various times in history has allowed for:

- The use of fear to pass restrictive legislation in the name of safety and security;
- Successive waves of campaigns evolving from a War on Crime to the War on Drugs and to the War on Terrorism;
- The reinforcement of the status quo of a U.S. based on racial hierarchy and White privilege that protects only a small segment of the American public.

Connecting Race-Based Slavery To Modern-Day Imprisonment

Graham, Robert. “Reflections of a Modern-day Slave”

Writing from prison, Robert Graham discusses the connections between the “antique” version of slavery and its present modern-day form. Graham connects his personal experience as an incarcerated Black man to the historical practice of slavery by comparing the:

- kidnapping of Africans to the surveillance and policing of people of color communities
- warehousing of Africans on slaveships to the jam-packed, overcrowded penal institutions of today
- physical bondage of slaves of the past to the handcuffs and chains of current prisoners

- destruction of slave families through sales and auctions to the forced separation and isolation of modern incarceration
- the poverty of slaves following “emancipation” to the current release of prisoners with “absolutely nothing”
- sale and purchase of slaves on auction blocks to the debate, negotiation, bargaining and bartering of sentences in the modern judicial system

Graham describes prisons as “emotional torture chambers” and shares his personal reflections on the psychological effects of being incarcerated.

Myths, Messages and Tactics of the Political Right

Certain myths and false assumptions are so widely held in the United States today that they contribute to the firm control of the criminal justice system by the Political Right. These myths are the basic building blocks of an ideology based on punishment rather than reconciliation, and an examination of them should help criminal justice activists understand how the growth of the criminal justice system is influenced by these myths.

Much of the idealistic language about the promise of the United States and the American way of life is worded in ways that appeal to White middle-class America. These common themes, even when they are known to be inaccurate, still influence the way we see the world. The Right capitalizes on the widespread cultural acceptance of these myths by designing frames that resonate with White middle-class culture, the bulk of voters who keep the Right in power.

When myths like these are used to justify a punitive criminal justice system, many people find it hard to disagree, because there is often a kernel of truth, no matter how small, that progressive activists may agree with. Challenging these myths is also difficult because at some level the myths have been culturally accepted as a way to describe reality—even if people are not consciously aware of them because they are so embedded. A progressive response needs to examine, broaden, and reframe concepts such as safety and crime rather than accepting the Right’s definition.

COMMON MYTHS AND MESSAGES IN U.S. CULTURE

1. WE ARE RUGGED INDIVIDUALISTS

This is the belief that all Americans (and non-Americans, for that matter) are capable of pulling themselves up by their bootstraps. This idea is similar to the myth of the American Dream, which says everyone can overcome poverty and get rich if they just work hard enough.

Rugged individualism asserts that the strong rise and the weak fall. This idea values individual liberty over any collective or community obligation, which is often dismissed as socialist or communist ideas. In fact, people who need government laws and regulations to protect them are seen as weak “girlymen.” This is sometimes called a masculinist world view, placing a higher value on common ideas about men and maleness than on women; it contributes to a climate where sexism is acceptable. It also reinforces the belief that one person standing up against unfairness or cor-

ruption (like in the movie *Mr. Smith Goes to Washington*) can make a difference.

Rugged Individualism is a secularized version of the Protestant work ethic which asserts that people who cannot exercise self-determination are weak and do not deserve the rewards available to those who work hard. Sometimes those weak ones are the ones who succumb to the temptation to take short cuts or break the law.

2. IF YOU'RE IN PRISON, YOU MUST HAVE DONE SOMETHING WRONG.

This myth is based on the idea that human actions are governed primarily by personal responsibility, that a person's behavior reflects his or her values and choices. People who act responsibly stay out of trouble. Those who don't are subject to punishment that not only fits the crime but sends a deterrent-laden message to other irresponsible people that crime does not pay. Prisoners are people who acted irresponsibly and must suffer the consequences of their actions: "You do the crime; you do the time."

This myth also suggests that criminals deserve what they get. This approach views "bad" people as deserving of punishment. By extension this can mean that people in prison continue to be irresponsible, using up taxpayers' dollars for their "three hots and a cot" when they could have avoided the whole situation in the first place by behaving better and not making wrong choices. Those out of prison by contrast are law-abiding citizens who behave appropriately.

Ideas that have been around since the Puritans, which are based on Calvinist theology, have adapted and become part of the fabric of contemporary public consciousness. These include the belief that only good people, blessed by God, can go to heaven. People are born sinful and must exercise self discipline to reach heaven. If they refuse to behave properly, then punishment is not only appropriate, it is for their own good, to help them be redeemed in the eyes of God and society.

Personal responsibility is seen as a crucial value without which our society would fall apart, crime would run rampant, and we would all suffer.

3. JUSTICE IS BLIND AND THE LAW IS JUST

Most Americans believe, and want to believe, that the U.S. justice system treats everyone fairly despite clear evidence that this is not the case. Most people unfamiliar with the criminal justice system believe that, despite occasional aberrations, the democratic principles of "presumed innocent until proven guilty," guaranteed representation by a lawyer, a fair trial with a jury of peers, and wise sentencing judgments are universally practiced for all Americans. Transgressions are considered an exception to the rule, not systemic problems.

This myth that justice is served equally ignores the realities of how race and class inequities permeate our system. Poor people and people of color are disproportionately targeted and represented at various stages in the criminal justice system from police surveillance and arrests to trials and sentencing and ultimately to imprisonment. The system is self-generating because it continues to punish those it defines as offenders and simultaneously it benefits those who remain outside its control.

Many Americans (White, and some middle and upper class people of color) assume the system of law itself is neutral, just and righteous. Those who assume that the law is just, rarely question the process of criminalization and who it benefits. This myth, in part, persists because it is disregards the historic and current use of the system to maintain inequality.

4. THE CRIMINAL JUSTICE SYSTEM KEEPS COMMUNITIES “SAFE”

Related to the belief that justice is blind, most White Americans and even some middle and upper class people of color, believe that police, courts and prisons work to protect them from crime and “dangerous” people. Central to the notion that the system is working is the belief that the U.S. criminal justice system protects the innocent and provides for their security.

This myth is rooted in the false assumption that prisons work to create safety and reduce “crime.” It assumes that only prisons and police can ensure safety. This myth succeeds because it ignores the disproportionate arrest, conviction, and imprisonment of the poor and people of color. The idea also perpetuates the divide between so called “bad” people and “good” people. In this view, only bad people have to worry about being caught up in the system. Bad people must face the long arm of the law, and good people who witness or are victims of crime do their duty by speaking their mind in court, where justice is served.

RIGHT WING TACTICS COMMON TO CRIMINAL JUSTICE

Fear-Mongering

Fear-mongers use fear as a tool to gain popular acceptance of a particular position. They manipulate a legitimate concern, exaggerating its impact and increasing people’s suspicions. Then they predict that the situation will become much worse if their solution to the problem isn’t adopted. This is a common practice across the political spectrum, but it is used skillfully by the Right in relation to criminal justice and other issues of “safety.”

For instance, supporters of stringent penalties for drug offenses tried to invoke a public health crisis in the 1980s by claiming that pregnant crack users were contributing to an epidemic of inner-city crack babies who would be handicapped, hot-tempered, and an eventual burden to society. According to some conservative policy analysts and legislators, punishing these women harshly during their pregnancy or removing their children at birth would help stop the epidemic. Although the reality of crack babies did not materialize, heightened fears made it easier to justify harsher punishments. Another example capitalizes on the distrust and fear of youth. The Right has used fear of gangs and street crime to call for trying juveniles as adults and sending convicted youth to adult prisons. They reason that without strict changes in way the system treats gang members, the streets will never be safe.

The Right’s success in using fear is partly due to its skillful manipulation of entrenched beliefs that are based on racism, sexism and classism.

Scapegoating

Scapegoating, a common tactic of the Political Right, blames an individual or a group for problems they did not necessarily cause. Scapegoats can deflect interest or concern from the real issues, which those who engage in scapegoating do not want examined. For instance, the Right uses coded language to imply that African Americans are responsible for much of the crime in this country. This sidetracks the public’s interest or ability in uncovering systemic causes of crime and helps to justify large numbers of incarcerated African Americans. Other scapegoated groups in the criminal justice arena are young urban men, women on welfare, immigrants and Native peoples.

Demonization

Demonization portrays a person or group as totally malevolent, sinful, or evil—making them into a demon or devil. This process encourages discrimination and violence against the target, because a “demon” deserves to be punished or controlled to prevent it from harming us. Demonization acts as a form of dehumanization or objectification. It justifies placing the label “less than human” on gang members, welfare queens, drug dealers, immigrants, and others who may or do commit crime. According to this viewpoint, these groups deserve to be set outside the circle of mainstream society, and we can treat them as if they were not real people. In the realm of criminal justice, demonization allows the public to accept lengthy pre-trial jail time, lengthy sentences, and capital punishment as appropriate responses for those suspected and convicted of crimes.

Data Manipulation

Many sources collect information about the criminal justice system, from the Department of Justice’s statistical data collection and watchdog advocacy groups to scholarly and popular public opinion polls. In its effort to persuade, the Right has used the manipulation of data to argue for its criminal justice positions.

For instance, statistics published by the federal Centers for Disease Control demonstrate that White teens are much more likely to use cocaine, crack, methamphetamine and heroin than their African American counterparts. But the Right has repeatedly encouraged the media, and print and broadcast outlets have taken it on themselves, to emphasize the level of street crime in African American neighborhoods so that most White Americans mistakenly believe that drugs are more often used by people of color, not in suburban enclaves where much of drug use actually takes place. This helps misinform the public which in turn supports policies that target poor urban areas.

In addition, because the corporate and mainstream media receives much of its data and information from official, mostly government, sources, the resulting coverage describes crime in ways that reflect officials’ frames.

Co-optation of Progressive Language

“Prison reform,” “restorative justice,” and “victims’ rights” are examples of phrases that originated with liberal criminal justice movements and have lost their original meanings as conservative advocates have taken them up. For instance, while early prison reform efforts campaigned for fundamental changes in how prisons are run or the abolition of prisons altogether, now the concept of prison reform includes the design of maximum security institutions that are arguably better because they are more modern and efficient.

Criminal justice advocates on the Right often skillfully use language that appeals to moderates and liberals to describe conservative policies. This tactic creates a two-fold result: they can broaden the constituency that supports the campaigns and at the same time hold onto a conservative base.

FRAMING THE ISSUES AND TELLING STORIES

If a friend of yours was arrested, and after they were released they told you they had been “framed,” you would know what they meant: The police had arranged the evidence (or even planted it) so that your friend looked like they were obviously guilty. In other words, the police had created a frame of reference that portrayed a specific view of reality—focusing in on some items—and cropping out other items. In the same way, politicians often hire publicity experts to help them “frame” their discussion of issues in a way that will appeal to voters. They do this by looking at an issue from a particular perspective, and then choosing language and slogans that help make their arguments seem sensible and reasonable to a large number of voters.

Political movements regularly use the process of “framing” to present their ideas in ways that make sense for their members. While all movements engage in framing, the leaders and strategists on the Right are particularly successful in constructing ways of presenting problems to the public (“framing” the issue) that are intended to capture public opinion and direct it towards supporting their point of view. These frames are sometimes expressed as complex ideas, sometimes as simple slogans. In all cases, they make so much sense to listeners that they find themselves nodding their heads in agreement.

There are multiple frames within the Right’s worldview of criminal justice issues. Some of them are present in the common myths described above such as, “We All Have Our Day in Court” or “If You Do the Crime, You Serve the Time.”

Another example of a Right-wing frame is “**WE CANNOT AFFORD TO BE SOFT ON CRIME.**” According to this frame, the United States must do whatever is necessary to combat crime, even if it means taking costly steps like increased spending on police and prisons at the expense of other government services like education health care. To be “soft on crime” means adopting liberal standards for addressing crime such as more lenient sentencing and parole requirements or focusing on crime prevention at the expense of deterrence through punitive penalties. This frame has become so well accepted in American society that no candidate has been able to run successfully for political office in recent years if accused of being soft on crime.

“**GUNS DON’T KILL PEOPLE; PEOPLE KILL PEOPLE**” is another frame constructed by the Right. This frame appeals primarily to those opposed to gun control, and it applies the widely-held value of personal responsibility to the debate over the right to bear arms. It is a variant of the slogan, “If Guns are Outlawed, only Outlaws will have Guns.” These frames offer a description of the world as a dangerous place, not because of the widespread presence of firearms but because of those people who cannot handle the responsibility of gun ownership and who abuse their right to self-defense.

“**ACTIVIST JUDGES MUST GO**” is a frame that labels liberal judges a threat to the democratic process because they insert their personal political views into their work on the bench. The implication is that liberal ideologies applied to criminal and civil justice threaten the tenuous grasp society holds on public safety. This frame removes conservative judges, who are not portrayed as inserting their personal views into their work, from the picture so successfully that there is no need even to mention the distinction between liberal and conservative. It justifies targeting liberals on the bench and seeking to remove them.

Another way ideas are promoted is to tell stories about a situation that supports a particular point of view. These stories are narratives that have a plot, a hero, a villain, and a moral or

political lesson. You may have heard the story about the “Super Predator” gang of Black youth rampaging through New York’s Central Park; or the story of an epidemic of “Crack Babies” born with serious medical or psychological problems because their irresponsible mothers were drug users. That these stories are actually false does not mean they were not persuasive to millions of Americans.

REFRAMING THE ISSUES

The Right’s criminal justice frames are powerful and successful. They are the conscious constructions of particular viewpoints set in language that can be difficult to refute. For instance, the Soft on Crime frame sets up a dualistic, or an “either-or,” way of thinking about the public response to crime: either you are tough on crime or you fail to provide for public safety. No one really wants to support acts that demean or hurt people or erode our society. But disagreeing with tough on crime policies is not enough to transform the criminal justice system. These approaches do call for a response that “re-frames” the issues in terms that successfully challenge Right-wing positions and the idea that prisons are effective solutions to complex social problems.

Activists will often find themselves reacting to an existing frame that they fundamentally oppose. Anyone dealing with challenging frames has the opportunity to redirect the process of framing to attract their own constituencies around their selected issues. Not a simple task, this process calls for a clear understanding how an idea translates into a campaign and resistance to responding defensively to the terms of the frame. Yet the time it takes to reframe the context so it becomes your own issue is well worth the effort.

Endnotes Available Online!

All citations and references are available at www.defendingjustice.org or by contacting PRA.

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Right-Wing Frames You Might Encounter

CRIME IS AN INDIVIDUAL CHOICE

Variations:

- We all know the difference between right and wrong. Criminals simply make the wrong choice.
- Believing that crime is a product of social conditions is not only wrong but it lets criminals “off the hook” when they make irresponsible choices.
- People are poor, criminal, or addicted to drugs because they make irresponsible or bad choices. Social programs aimed at helping the poor only encourage them to make these choices by fostering a culture of dependency.
- Crime is fundamentally a spiritual and moral problem.
- Poverty and crime are freely chosen by dangerous and undeserving individuals who are greedy and “looking for the easy way out.”
- Poverty and crime are caused by a combination of bad people and excessive permissiveness.
- Guns don’t kill people, people kill people.

CRIME IS EVIDENCE OF THE BREAKDOWN OF LAW AND ORDER

Variations:

- The breakdown of the family contributes to the breakdown of law and order.
- Poor communities are dangerous because so many criminals live there.
- People who commit crimes have no respect for the law.

THE CRIMINAL JUSTICE SYSTEM IS TOO LENIENT

Variations:

- You do the crime, you do the time! No pleas!
- Criminals are going free in droves because they are getting off on technicalities.
- Handouts don’t stop crime, “Getting Tough” does.

GETTING TOUGH SENDS A CLEAR MESSAGE

Variations:

- Punishment must be harsh and painful in order to deter crime.
- The only services criminals really need is helping them develop self-discipline and a work ethic.
- Getting tough reinforces the authority of the real heroes, the police and other law enforcement officials.

THE CRIMINAL JUSTICE SYSTEM IS INEFFICIENT

Variations:

- We spend too much money on prisoners. Eliminate unnecessary programs.
- The answer to government bureaucracy and inefficiency is privatization.
- Criminals are clogging up the system with frivolous lawsuits and groundless appeals.

INVESTING IN THE CRIMINAL JUSTICE SYSTEM PAYS OFF

Variations:

- For every dollar we spend behind bars, we save two or three.
- Punishing criminals when they are young prevents them from doing more harm later.
- Government’s true function is to protect law-abiding citizens and provide security—not level the playing field.

THE “GET TOUGH” MOVEMENT IS A RESPONSE TO PUBLIC OPINION

Variations:

- Law enforcement pursues a get tough policy because the public wants it.
- The concern about crime is widespread because crime and drug problems have only gotten worse.
- The public will only vote for those politicians who are tough on crime.

The frames that come to dominate the political and cultural land-scape are likely to have a significant impact on policy. For example, to the extent that crime is seen as a consequence of lenience within the criminal justice system, policies that get tough with criminal offenders seem most appropriate. Conversely, frames that depict crime as a consequence of poverty, unemployment, or inequality suggest the need for policies that address these social and economic conditions. Debates over penal policy are less influenced by social scientific research than by the way crime-related problems are framed in political discourse.³⁰

—Katherine Beckett and Theodore Sasson, *Politics of Injustice* (Thousand Oaks, CA: Sage Publications, 2004), p. 46. Reprinted with permission.

CONSERVATIVE AGENDAS AND CAMPAIGNS

THE RISE OF THE MODERN “TOUGH ON CRIME” MOVEMENT

“Doubling the conviction rate in this country would do more to cure crime in America than quadrupling the funds for [Hubert] Humphrey’s war on poverty.”

—Richard Nixon, 38th President of the United States of America

“[President Nixon] emphasized that you have to face the fact that the whole problem is really the blacks. The key is to devise a system that recognizes this while not appearing to.”

—H.R. Haldeman, Nixon’s Chief of Staff

The “tough on crime” movement refers to a set of policies that emphasize punishment as a primary, and often sole, response to crime. Mandatory sentencing, Three strikes, truth-in-sentencing, quality of life policing, zero tolerance, and various other proposals that result in longer and harsher penalties and the elimination of rehabilitation and other programs are all contemporary examples of “tough on crime” policies.

The effects of these policies are alarming. Local, state and federal governments have all adopted and implemented these policies resulting in enormous increases in drug arrests, more punitive sentencing proposals, resurgence of the death penalty, departure from juvenile justice systems, and increased racial profiling and community surveillance. While proponents claim these policies are race-neutral, poor people and people of color are overwhelmingly affected and ensnared by the criminal justice system.

In the following article, scholars Katherine Beckett and Theodore Sasson argue “that conservative politicians have worked for decades to alter popular perceptions of crime, delinquency, addiction, and poverty, and to promote policies that involve ‘getting tough’ and ‘cracking down.’”¹ They also challenge the claim that political elites were simply responding to popular opinion about crime and punishment, and instead argue that conservatives played a large role in shaping the public’s perceptions about crime. The authors document how the modern “tough on crime” movement was part of a larger effort to increase votes for the Republican Party, and more significantly, to redirect State policy away from social welfare toward social control.

It is important to note that while the modern “tough on crime” movement—and the resulting incarceration boom—can be traced to late 1960s and early 1970s, many activists justifiably argue that the U.S. government has always had a “get tough” policy beginning with Native colonization. However, for the purposes of understanding the modern Right, this section will focus primarily on the electoral and political development of the “get tough” movement since the 1960s.

SECTION OBJECTIVE

This section will provide a historical narrative of the rise of the modern “Tough on Crime” movement. It will explore the Right’s role—along with the cooperation of liberals and the mainstream media—in promoting punitive state policies.

IN THIS SECTION

- Origins of the Current Conservative Discourse on Law and Order
- History of Racially Disparate Drug Law Enforcement
- Role of the Right: Intellectual Development of Conservative Crime Theory
- Organizing Advice: Q&A with Break the Chains
- Additional Resources

The Origins of the Current Conservative Discourse on Law and Order

By Katherine Beckett, Ph.D. and Theodore Sasson, Ph.D.

Over the past several decades, the U.S. government has enthusiastically declared and waged wars against crime and drugs. In this article, we focus squarely on this issue: Why have national-level politicians so vigorously waged a war on crime and drugs that has created the largest prison population in the world? We argue that in response to the social challenges of the 1960s, conservative political leaders—and, increasingly, those at the national level—began to highlight the problem of street crime in an attempt to steer state policy toward social control and away from social welfare.

In what follows, we show that conservative politicians have worked for decades to alter popular perceptions of crime, delinquency, addiction, and poverty, and to promote policies that involve “getting tough” and “cracking down.” We also show that when advocating such policies, these political elites were not simply responding to popular beliefs and sentiments about crime and punishment, although they did help to shape the public’s perceptions of the crime problem and preferences regarding what to do about it. Rather, their activities were part of a larger effort to realign the electorate in ways that favor the GOP and, even more significantly, to reorient state policy around social control rather than social welfare.

Turning Protest Into Crime

In the years following the U.S. Supreme Court’s 1954 *Brown v. Board of Education* decision, civil rights activists across the South used direct action tactics and civil disobedience to force reluctant southern states to desegregate public facilities. In an effort to sway public opinion against the civil rights movement, southern governors and law enforcement officials characterized its tactics as “criminal” and indicative of the breakdown of “law and order.” Calling for a crackdown on the “hoodlums,” “agitators,” “street mobs,” and “lawbreakers” who challenged segregation and African American disenfranchisement, these officials made rhetoric about crime a key component of political discourse on race relations.

As the debate over civil rights moved to Washington, depictions of civil rights protest as criminal rather than political in nature reached the national stage. For example, after President Kennedy unenthusiastically expressed his willingness to press for the passage of civil rights legislation in 1963, Republicans and southern Democrats assailed him for “rewarding lawbreakers.”² Later, Richard Nixon (1966) blamed civil rights leaders for the problems of crime and violence, arguing that

the deterioration of respect for the rule of law can be traced directly to the spread of the corrosive doctrine that every citizen possesses an inherent right to decide for himself which laws to obey and when to disobey them.³

Throughout this period, phrases like “crime in the streets” and “law and order” equated political dissent with crime and were used by conservatives in an attempt to heighten opposition to the civil rights movement. Conservatives

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also identified the civil rights movement—and, in particular, the philosophy of civil disobedience—as a leading cause of crime. Countering the trend toward lawlessness, they argued, would require holding criminals (including civil rights protesters) accountable for their actions through swift, certain, and severe punishment.

The Crime Issue In National Politics

The rhetoric of “law and order” became more prominent in 1964, when Republican presidential candidate Barry Goldwater announced that “the abuse of law and order in this country is going to be an issue [in this election]—at least I’m going to make it one because I think the responsibility has to start someplace.”⁴ Despite the fact that crime did not even appear on the list of issues identified by the public as the nation’s most important, Goldwater, a prominent civil rights opponent, made “law and order” the centerpiece of his campaign and promised that his party would do more to protect it:

Tonight there is violence in our streets, corruption in our highest offices, aimlessness among our youth, anxiety among our elderly. ...Security from domestic violence, no less than from foreign aggression, is the most elementary form and fundamental purpose of any government, and a government that cannot fulfill this purpose is one that cannot command the loyalty of its citizens. History shows us that nothing prepares the way for tyranny more than the failure of public officials to keep the streets safe from bullies and marauders. We Republicans seek a government that attends to its fiscal climate, encouraging a free and a competitive economy and enforcing law and order.⁵

There is no evidence that these early claims-making activities were a response to a demonstrable increase in public concern about crime. Opinion poll data show that other concerns—especially civil rights and the Vietnam War—were of far more concern to most Americans. On the other hand, it does appear that the tough anti-crime rhetoric struck a chord among some voters; those opposed to social and racial reform were especially receptive to calls for law and order.⁶

The responsiveness of these members of the electorate does not imply that they were manipulated or duped by political elites. Rather, the discourse of law and order provided a means by which a number of preexisting fears and concerns—about the pace and nature of social change, as well as the means used in an attempt to bring this change about—were tapped, organized, and given expression. As urban riots became a more frequent and highly publicized occurrence, the discourse of law and order provided a compelling means by which these concerns about social

CONSERVATIVE THEORIES OF CRIME

During the tumultuous decade of the 1960s, conservatives offered two theories of the newly politicized crime problem:

- 1) An individualistic theory suggesting that both poverty and crime are freely chosen by dangerous and undeserving individuals who refuse to work for a living and are not penalized for doing so
- 2) A cultural theory asserting that the “culture of welfare” is the primary cause of a variety of social ills, including poverty, crime, delinquency, and drug addiction

Although distinct in some ways, these individualistic and cultural theories both identify “permissiveness” as the underlying cause of crime and imply the need to strengthen the state’s control apparatus. As a rallying cry for Republicans, the permissiveness frame helped forge the party’s new (but unstable) political majority. In the 1980s and 1990s, the ascendance of this frame has also helped to legitimate the assault on the welfare state and the dramatic expansion of the penal system. In short, the construction of the crime issue as a consequence of excessive permissiveness has been extraordinarily useful to conservative opponents of civil rights and the welfare state.

change, racial reform, and increasingly unruly forms of political protest could be expressed.

Ironically, it was the success of the civil rights movement in discrediting more explicit expressions of racist sentiment that led politicians to attempt to appeal to the public with rhetoric that tapped into white fears regarding racial reform in more subtle ways.⁷ In subsequent years, conservative politicians also found the crime issue, with its racial subtext now firmly in place, useful in their attempt to redefine poverty as the consequence of individual failure and to recast welfare programs and their recipients in an unflattering light.

Crime, Poverty, and Welfare

Throughout the 1960s, civil and welfare rights activists drew national attention to the issue of poverty. These activists not only highlighted the plight of the poor, but also argued that inequality of opportunity and racial discrimination ensured that poverty would remain widespread and concentrated in minority communities. To remedy this situation, they sought, among other things, to expand the Great Society welfare programs. These programs, they argued, were not only a humane and appropriate response to poverty, but also a means of addressing the crime problem.

By contrast, conservative opponents of the Great Society programs argued that poverty and crime were caused by a combination of bad people and excessive “permissiveness.” Independent presidential candidate George Wallace ridiculed “soft social theories” of crime in especially memorable ways:

If a criminal knocks you over the head on your way home from work, he will be out of jail before you’re out of the hospital and the policeman who arrested him will be on trial. But some psychologist will say, well, he’s not to blame, society is to blame. His father didn’t take him to see the Pittsburgh Pirates when he was a little boy.⁸

According to this conservative argument, crime and related social problems originate in individual choice and greed rather than in social conditions; acting as though crime is affected by social conditions is not only wrong, but lets people off the hook when they make irresponsible choices.

For some opponents of the welfare state, discussions of street crime also illustrated the dysfunctionality of the poor that, they argued, was the true cause of their poverty. According to this culture-of-poverty thesis, poor people are poor because of their cultural values; programs such as Aid to Families with Dependent Children (AFDC) would only reward non-work-oriented lifestyles, thereby worsening the problems of poverty and crime. Furthermore, some suggested, the mere existence of welfare encouraged poor people to think that they are entitled to that which they have not earned. In this twist on the culture-of-poverty thesis, conservatives argued that the “culture of welfare” undermines the (already weak) self-discipline of the poor and promotes “parasitism”—both legal (welfare dependency) and illegal (crime).⁹ As presidential candidate Barry Goldwater put it so succinctly,

According to this conservative argument, crime and related social problems originate in individual choice and greed rather than in social conditions.

If it is entirely proper for the government to take away from some to give to others, then won't some be led to believe that they can rightfully take from anyone who has more than they? No wonder law and order has broken down, mob violence has engulfed great American cities, and our wives feel unsafe in the streets.¹⁰

Discrediting the “Root Causes” of Crime

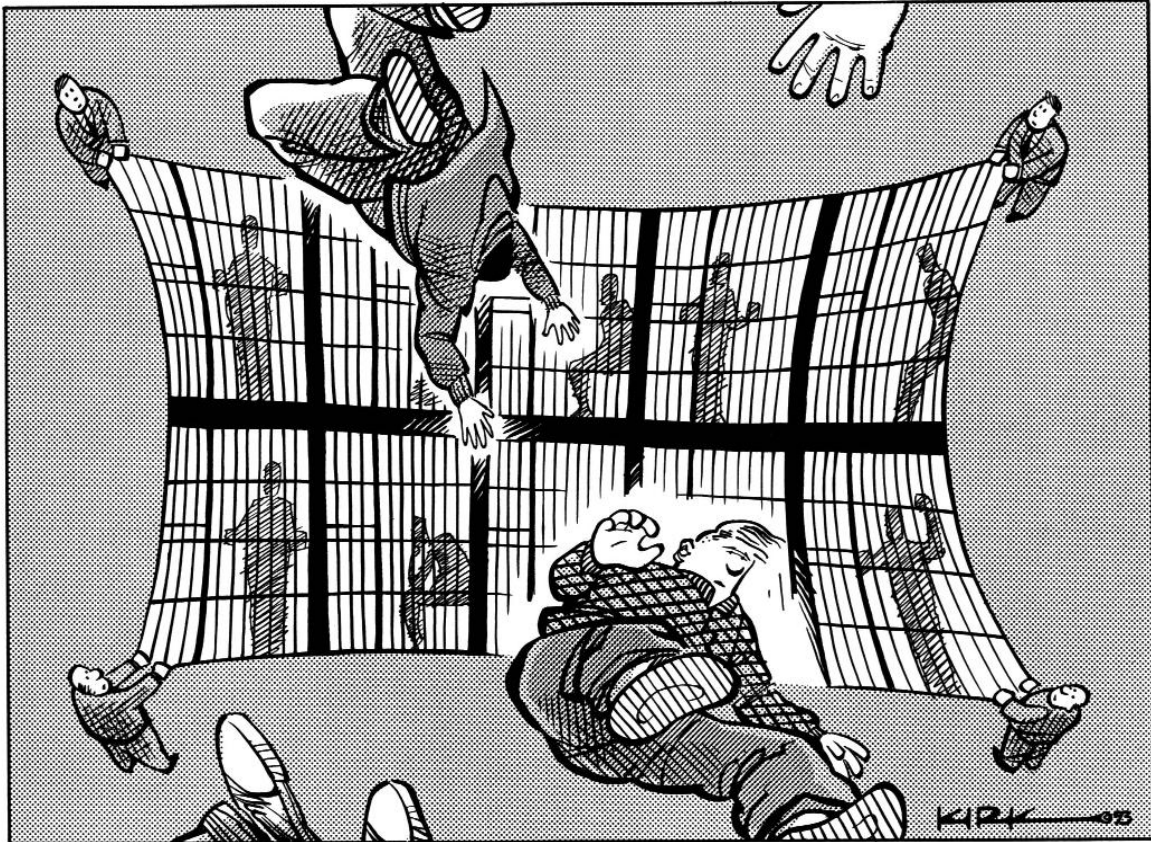
In the mid-1960s, then, liberals and conservatives offered very different explanations of poverty and crime-related problems. According to liberals, social conditions—especially racial inequality and limited opportunities for youth—were the root causes of crime, poverty, and addiction. It is only by addressing these social conditions, they argued, that we may begin to ameliorate the problems they cause. By contrast, conservatives argued that social pressures such as racism, inadequate employment, lack of housing, low wages, and poor education do not cause crime. Instead, people are poor, criminal, or addicted to drugs because they made irresponsible or bad choices. Ironically, social programs aimed at helping the poor only encourage them to make these choices by fostering a culture of dependency and predation.

Highlighting the behavioral pathologies and, especially, the criminality of the poor was thus part of an attempt to transform their image from needy to undeserving. The changing racial composition of welfare recipients may also have facilitated this transformation of the public perception of the poor: Continued migration to northern cities from southern and rural areas meant that increasing numbers of those who received AFDC were African American women and their children. By emphasizing street crime and framing it as the consequence of bad people making bad choices, conservatives made it much less likely that members of the public would empathize with the plight of the poor and support measures to assist them. As historian Michael Katz suggested, when the poor appeared to be dangerous, they were perceived as the undeserving underclass.¹¹

As early as 1965, the liberal emphasis on the root causes of crime began to weaken in the face of this conservative assault. Only 4 months after his election, for example, President Johnson declared in an unprecedented special message to Congress his new determination to fight crime: “I hope that 1965 will be regarded as the year when this country began in earnest a thorough and effective war against crime.”¹² Toward that end, Johnson established the Law Enforcement Assistance Administration (LEAA), an agency with a mission to support local law enforcement. To coordinate law enforcement activities aimed at fighting drugs, Johnson also created the Bureau of Narcotics and Dangerous Drugs (now called the Drug Enforcement Agency). These initiatives represented a shift away from the view that the most important crime-fighting weapons were civil rights legislation, War on Poverty programs, and other policies aimed at promoting inclusion and social reform. Over time, the liberal commitment to assisting the poor also attenuated.¹³

The Election of 1968

The Republican commitment to waging war on crime intensified during and after 1968. During the campaign that year, Republican candidate Richard Nixon followed his conservative predecessors by rejecting social explanations of crime and arguing that the lenience of the criminal justice system was, in fact, to blame for crime and violence. Throughout his campaign, Nixon insisted that the “solution to the crime problem is not the quadrupling of funds for any governmental war on poverty but more convictions.”¹⁴



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U.S. SOCIAL SAFETY NET

This rhetorical emphasis on crime was part of a political strategy, developed after the 1964 elections, aimed at weakening the electoral base of the Democratic Party: the New Deal coalition. This alliance of northern, urban ethnic groups and the white South had dominated electoral politics since 1932. But the fact that increasing numbers of African Americans were migrating to the North and acquiring voting rights created quite a dilemma for Democratic officials interested in attracting African American voters while simultaneously maintaining white southern allegiance to the party.

By drawing public attention to the plight of African Americans in the South, civil rights activists forced the Democratic Party to choose between its southern white and northern African American constituencies. Nightly newscasts during the period featured peaceful civil rights protesters being hauled off, rounded up, and otherwise brutalized by southern law enforcement agents. Not surprisingly, support for the civil rights cause grew among nonsouthern whites. This development, along with the increasing numbers of African American voters, eventually led the Democratic Party to cast its lot with African Americans and their northern allies.

Although this decision secured for the Democrats the loyalty of most African American voters, it alienated some of those traditionally loyal to the Democratic Party, particularly white southerners. “Millions of voters, pried loose from their habitual loyalty to the Democratic Party, were now a volatile force, surging through the electoral system without the channeling restraints of Party attachment.”¹⁵ These voters were “available for courting,” and the Republicans moved swiftly to seize the opportunity.

Law and Order: Appealing To Latent Racism

Initially, the GOP targeted white southerners—voters who had formerly composed the Democrats’ “solid South”—as potential “swing voters.” This strategy certainly paid off: The formerly Democratic South is now overwhelmingly Republican, a trend that the resurgence of evangelicalism, concentrated in the so-called Bible Belt, has helped to solidify. Over time, Republican analysts began to suggest that northern white suburbanites, ethnic Catholics in the Northeast and Midwest, and white, blue-collar workers might also be receptive to their socially conservative and racially coded rhetoric. Some conservative political strategists frankly admitted that appealing to racial fears and antagonisms was central to this strategy. For example, political analyst and consultant Kevin Phillips argued that a Republican victory and long-term realignment was possible primarily on the basis of racial issues, and therefore suggested the use of coded anti-black campaign rhetoric.”¹⁶ Similarly, John Ehrlichmann, Special Counsel to the President, described the Nixon administration’s campaign strategy of 1968 in this way: “We’ll go after the racists. That subliminal appeal to the anti-African-American voter was always present in Nixon’s statements and speeches.”¹⁷

New sets of Republican constituencies were thus courted through the use of racially charged code words—phrases and symbols that “refer indirectly to racial themes but do not directly challenge popular democratic or egalitarian ideals.”¹⁸ The discourse of “law and order” is an excellent example of such coded language, and allowed for the indirect expression of racially charged fears and antagonisms.’ In the context of increasingly unruly street protests, urban riots, and media reports that the crime rate was rising, the capacity of conservatives to mobilize, shape, and express these racial fears and tensions became a particularly important political resource.

Partisan Dealignment and the Republican Southern Strategy

As the traditional working-class coalition that buttressed the Democratic Party was ruptured along racial lines, race eclipsed class as the organizing principle of American politics. By 1972, attitudes on racial issues, rather than socioeconomic status, were the primary determinant of voters’ political self-identification.¹⁹ The “southern strategy,” as this tactic came to be known, eventually enabled the Republican Party to create a new division between some (mostly white) working- and middle-class voters and the traditional Republican elite, on one hand, and “liberal elites” and the (disproportionately African American and Latino) poor on the other.

The initial success of the “southern strategy” helps to explain why the liberal commitment to tackling the root causes of crime weakened over the course of the 1960s. At first glance, the Democratic embracement of law and order is puzzling: Throughout this period, much of the public retained the view that crime has environmental and social causes and remained committed to addressing these. But leaders in the Democratic Party were especially worried about the views and sentiments of a particular segment of the voting public: swing voters. Like their Republican counterparts, Democratic strategists had noted that economically liberal but socially conservative white voters were shifting their loyalties to the Republicans—and were strongly attracted to the Republican campaign for law and order. The liberal backpedaling on

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crime appears to have been part of an attempt to woo these voters back to the Democratic Party.

The long-term result of the GOP's southern strategy has been not so much a partisan realignment that works consistently in its favor, but rather the destabilization of the electoral system. The number of swing voters (as well as nonvoters) has grown, and voters increasingly cast their ballot for the candidate (rather than the party) they prefer. Analysis of these swing voters—variously referred to as the forgotten workers; Reagan Democrats; waitress moms; lunch-pail dads; soccer moms; and, most recently, office park dads—has become something of an industry among pollsters and political analysts.

The increased importance of these swing voters, along with Republican and Democratic reluctance to target and mobilize alienated (and disproportionately young, poor, and nonwhite) nonvoters and the winner-take-all electoral college system, encourage candidates from both parties to avoid taking anything that might be perceived as a controversial stand. Of course, the perceived need to court swing voters sometimes conflicts with the parties' need to maintain the allegiance of their more loyal base. But in the case of crime, the apparent popularity of the get-tough approach, especially among swing voters, meant that challenges to the war on crime have been few and far between.

The shift in liberal political discourse also occurred in the context of growing criticism, from scholars and activists across the political spectrum, of rehabilitation.²⁰ Not surprisingly, conservatives opposed rehabilitation on the grounds that punishment must be harsh and painful if it is to deter crime. But many liberals also became critical of policies associated with rehabilitation during this period, arguing that open-ended (“indeterminate”) sentences designed to facilitate the correction of offenders created the potential for the intrusive, discriminatory, and arbitrary exercise of power. Under the weight of these twin (if quite distinctive) critiques, the rehabilitative project was called into question. The declining legitimacy of rehabilitation as a penal philosophy undoubtedly made it more difficult for liberal politicians to offer a clear alternative to the conservative calls to crack down on criminals, and may also have facilitated the Democratic leap onto the law-and-order bandwagon.

Nixon's Federalist Dilemma

After assuming office, the Nixon administration was forced to contend with the fact that the federal government has little authority to deal directly with street crime outside of Washington, DC. Administration insiders concluded that the only thing they could do was “exercise vigorous symbolic leadership.” Toward that end, they waged war on crime by adopting “tough-sounding rhetoric” and pressing for largely ineffectual but highly symbolic legislation.²¹ Not fooled, journalists began to report that, despite Nixon's tough talk, the crime rate was still rising.

Nixon administration officials attempted to resolve this dilemma in several ways. First, Nixon requested—and received—a massive increase in LEAA funds to support local law enforcement.²² Second, new statistical artifacts were created in the hope that these would permit a more flattering assessment of Nixon's capacities as a crime fighter.²³ Most important, however, was the administration's identification of narcotics control—for which the federal government has significant responsibility—as a crucial anticrime weapon.²⁴

To explain and legitimate this new focus on drugs, administration officials argued that drug addicts commit the majority of street crimes to pay for their habits. In fact, the evidence marshaled to support this claim was quite problematic. For example, in a well-publicized speech in

1971, Nixon claimed that drug addicts steal more than \$2 billion worth of property per year. According to the FBI, however, the total value of all property stolen in the United States that year was \$1.3 billion.²⁵ Despite these kinds of problems, fighting drugs became a crucial weapon in the war on crime.

The Assault On Defendants' Rights

The Nixon administration's claim that crime is a consequence of "permissiveness" also had important implications for criminal and constitutional law. Under the leadership of Justice Earl Warren, the U.S. Supreme Court had strengthened the protections offered to criminal defendants throughout the 1960s. For example, in *Mapp v. Ohio* (1961), the court ruled that state police officers, like federal law enforcement agents, were, under most circumstances, obliged to obtain a search warrant before conducting a search or seizing evidence.²⁶ In *Gideon v. Wainwright* (1963), the Court ruled that people accused of a crime were guaranteed the right to counsel. In *Escobedo v. Illinois* (1964), coerced confessions were deemed inadmissible. And in *Miranda v. Arizona* (1966), the Court ordered that suspects must be informed of their legal rights upon arrest and that any illegally obtained evidence would be inadmissible in the courts. Finally, under the Warren Court, defendants were permitted to argue that they had been entrapped when the idea of the crime in question originated with the police or when police conduct "fell below standards for the proper use of governmental power."²⁷

Many of these legal rights and protections were undermined or abandoned altogether during the Nixon era. Some of the legislation sponsored by the Nixon administration directly challenged these legal protections.²⁸ By appointing several conservatives (including Warren Burger and William Rehnquist) to the Supreme Court, Nixon ensured that defendants' rights were further weakened. For example, in 1973, the Burger Court undermined the Warren Court's interpretation of the Fourth Amendment's prohibition against unwarranted searches and seizures by ruling that if an arrest is lawful, "a search incident to the arrest requires no additional justification."²⁹ All of these efforts to undermine criminal defendants' rights were rooted in the notion that the excessive lenience of the criminal justice system was an important cause of crime. Although these changes in criminal and constitutional law did diminish defendants' rights, but researchers have concluded that they did not have a demonstrable effect on the rates of arrest, conviction, or incarceration.³⁰

The Reagan Years

Despite the centrality of the law and order discourse to the GOP's electoral strategy, the salience of the crime and drug issues declined dramatically following President Nixon's departure from office in 1974. Neither President Ford nor President Carter mentioned crime-related issues in their State of the Union addresses or took much legislative action on those issues.³¹ As a result of this inattention, both the crime and drug issues largely disappeared from national political discourse in the latter part of the 1970s.

During and after the 1980 election campaign, however, the crime issue once again assumed a central place on the national political agenda. Candidate and President Ronald Reagan,

Reagan thus articulated the central premise of the conservative project of state reconstruction: Public assistance for the poor is an illegitimate state function; policing and social control constitute its real "constitutional" obligation.

following the trail first blazed by his conservative predecessors, lavished attention on the problem of “crime in the streets” and promised to enhance the federal government's role in combating it. Once in office, Reagan instructed the new U.S. Attorney General, William French Smith, to establish a task force to recommend “ways in which the federal government can do more to combat violent crime”³² and began to pressure federal law enforcement agencies to shift their focus from white collar offenses to street crime. By October 1981, less than 1 year into the new administration, the Justice Department announced its intention to cut in half the number of specialists assigned to identify and prosecute white-collar criminals. The Reagan administration's crackdown on crime also explicitly excluded domestic violence on the grounds that it was “not the kind of street violence about which it was most concerned.”³³

In subsequent years, President Reagan frequently returned to the topic of crime, striking all of the now-familiar conservative themes. Time and again, for example, he rejected the notion that crime and related social ills have socioeconomic causes:

Here in the richest nation in the world, where more crime is committed than in any other nation, we are told that the answer to this problem is to reduce our poverty. This isn't the answer... Government's function is to protect society from the criminal, not the other way around.³⁴

Reagan also echoed his conservative predecessors on the supposed relationship between crime and welfare. The naive view that “blocked opportunities” cause crime, Reagan suggested, led liberals to believe that the “war on poverty” would solve the problem. In fact, it is the government's attempt to ameliorate poverty—not poverty itself—that causes crime:

By nearly every measure, the position of poor Americans worsened under the leadership of our opponents. Teenage drug use, out-of-wedlock births, and crime increased dramatically. Urban neighborhoods and schools deteriorated. Those whom the government intended to help discovered a cycle of dependency that could not be broken. Government became a drug, providing temporary relief, but addiction as well.³⁵

Thus, like Nixon and others before him, Reagan argued that welfare programs such as AFDC not only “keep the poor poor” but also accounted, along with lenient crime policies, for the rising crime rate. In fact, studies investigating the relationship of welfare and crime have found that greater welfare spending is associated with lower—not higher—levels of crime.³⁶

Under Reagan, it became even more clear that conservatives sought not only electoral success, but a fundamental reconceptualization of the purpose and function of government. Administration officials argued quite explicitly that their liberal predecessors had distorted the government's functions. The state would be on more legitimate constitutional grounds and would more effectively help the poor, they suggested, by scaling back public assistance programs and expanding the criminal justice system and law enforcement:

[T]his is precisely what we're trying to do to the bloated Federal Government today: remove it from interfering in areas where it doesn't belong, but at the same time strengthen its ability to perform its constitutional and legitimate functions.... In the area of public order and law enforcement, for example, we're reversing a dangerous trend of the last decade. While crime was steadily increasing, the Federal commitment in terms of personnel was steadily shrinking.³⁷



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MANDATORY SENTENCING

Reagan thus articulated the central premise of the conservative project of state reconstruction: Public assistance for the poor is an illegitimate state function; policing and social control constitute its real “constitutional” obligation.³⁸ The conservative mobilization of crime-related issues was thus a key component of the effort to legitimate the shift from the “welfare state” to the “security state.” This reinterpretation of governmental responsibilities has affected not only federal priorities, but state-level spending as well.

Once again, conservative claims-making on the crime issue was not a response to a clear shift in public attitudes or beliefs. Prior to the Reagan administration’s renewal of the war on crime, the view that crime had its origins in welfare dependence and humankind’s propensity for evil was not widely supported. In fact, most Americans continued to attribute crime to socioeconomic conditions throughout the late 1970s and into the early 1980s. In 1981, for example, a national poll found that most Americans believed that unemployment was the main cause of crime. Similarly, a 1982 ABC News Poll found that 58% of Americans saw unemployment and poverty as the most important causes of crime; only 12% identified “lenient courts” as the main source of this problem.³⁹ As the decade progressed, however, public opinion did shift in more punitive directions.

JUST SAY NO: Launching the War On Drugs

When it came time to translate its rhetoric into policy initiatives, the Reagan administration faced the same dilemma as the Nixon administration had before it: In the United States, fighting conventional street crime is primarily the responsibility of state and local government. Once again, the identification of drugs as a crucial cause of crime partially resolved this dilemma. In

1981, FBI Director William Webster announced, “The drug problem has become so widespread that the FBI must assume a larger role in attacking the problem.”⁴⁰

As a result of the Reagan administration's renewed interest in battling drugs, federal law enforcement agencies were able to stave off the General Accounting Office's proposed, across-the-board budget cuts. By contrast, funding for agencies with responsibility for drug treatment, prevention, and education was sharply curtailed. By 1985, 78% of the funds allocated to the drug problem went to law enforcement; only 22% went to drug treatment and prevention.⁴¹ The only agencies that fared worse than those with drug treatment and prevention responsibilities in the 1982 budget were child nutrition (down 34%), urban development action grants (down 35%), and school milk programs (down 78%).⁴² The Reagan administration's early emphasis on the need for a tough approach to drugs gave law enforcement agencies a distinct advantage in the bureaucratic scramble for antidrug funds.

In sum, the Reagan administration's emphasis on the need for a tough approach to crime facilitated the emergence of the war on drugs and shaped the nature of that campaign. The administration's analysis of the causes of the drug problem was remarkably similar to its assessment of the crime problem: Drug use and abuse were a consequence of bad people rather than dangerous social conditions. “Narco-traffickers” and “drug pushers,” they argued, were especially evil individuals motivated solely by greed. Drug users were also individually culpable:

If this problem is to be solved, drug users can no longer excuse themselves by blaming society. As individuals, they're responsible. The rest of us must be clear that we will no longer tolerate the illegal use of drugs by anyone.⁴³

This belief in the importance of individual accountability also guided the recommendations made by the Department of Education under the leadership of (future drug czar) William Bennett. Students caught with drugs, Bennett argued, should be kicked out of school. Counseling these kids not only smacked of moral relativism but implied that drug abuse has root causes that are worth exploring.⁴⁴

Although public opinion has not been irrelevant to the development of federal drug policy, the get-tough approach to drugs, like the war on crime before it, was not primarily a response to changes in public attitudes. As of 1981, only 3% of the American public believed that cutting the drug supply was the most important thing that could be done to reduce crime; 22% felt that reducing unemployment would be most effective. Furthermore, the percentage of poll respondents identifying drug abuse as the nation's most important problem had dropped from 20% in 1973 to 2% in 1974 and hovered between 0% and 2% until 1982. Thus, public opinion polls do not indicate that there was an upsurge in concern about drugs prior to Reagan's declaration of war, nor is there evidence of widespread support for the idea that fighting crime and drugs through tough law enforcement was the best solution to these problems.⁴⁵

....the get-tough approach to drugs, like the war on crime before it, was not primarily a response to changes in public attitudes.

The Escalation of the War On Drugs

Political and media attention to “the drug issue” intensified significantly in the summer of 1986. In part, this surge in attention to the drug issue was a response to the cocaine-related deaths of athletes Len Bias and Don Rogers and the increasing visibility of the crack cocaine market. The claims-making activities of federal officials also played a key role.

In October 1985, the DEA sent Robert Stutman to serve as the director of its New York City office. Stutman made a concerted effort to draw journalists’ attention to the spread of crack. “The agents would hear me give hundreds of presentations to the media as I attempted to call attention to the drug scourge,” he wrote later.⁴⁶ He explains his strategy as follows:

In order to convince Washington, I needed to make it [drugs] a national issue and quickly. I began a lobbying effort and I used the media. The media were only too willing to cooperate, because as far as the New York media [were] concerned, crack was the hottest combat reporting story to come along since the end of the Vietnam war.⁴⁷

This campaign appears to have been quite effective. The number of drug-related stories appearing in the *New York Times* increased from 43 in the latter half of 1985 to 220 in the second half of 1986.⁴⁸ Other media outlets soon followed suit.

In an attempt to ensure that their party was perceived as taking action on the drug issue, Democrats in the House began putting together legislation calling for increased antidrug spending. In September 1986, the House passed legislation that allocated \$2 billion to the antidrug crusade for 1987, required the participation of the military in narcotics control efforts, imposed severe penalties for possession of small amounts of crack cocaine, and allowed the death penalty



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for some drug-related crimes and the admission of some illegally obtained evidence in drug trials. Later that month, the Senate proposed even tougher antidrug legislation, and in October, President Reagan signed the Anti-Drug Abuse Act of 1986 into law. In addition to the House proposals described above, this legislation prescribed harsh mandatory minimum sentences for some drug offenses.⁴⁹

Between 1986 and 1990, a period that bridged the administrations of Ronald Reagan and George Bush, drug use was one of the nation's most publicized issues. The 1988 Anti-Drug Abuse Act added more mandatory minimum sentencing statutes, including a 5-year minimum sentence for first-time offenders convicted of possessing five or more grams of crack cocaine.⁵⁰ Now, heightened public concern about drugs reached its zenith immediately following President Bush's national address in 1989, in which he focused exclusively on the drug crisis. Federal funds allocated to the battle against drugs grew rapidly. In fact, federal antidrug spending was greater under President Bush than under all presidents since Richard Nixon—combined.

The crime issue also enjoyed a high profile in the 1988 presidential campaign, in part as a result of George Bush, Sr.'s successful manipulation of what came to be known as the "Willie Horton" incident. Horton, a convicted murderer who had served most of his prison sentence, absconded from a Massachusetts furlough program while Michael Dukakis, Bush's Democratic rival, was governor. While on the loose, Horton kidnapped a couple in Maryland and raped the woman. During the 1988 campaign, Bush and his supporters used the incident in stump speeches and television commercials to mobilize outrage about crime and blame it on "liberal Democrats" like Dukakis. As one of Bush's political operatives explained, the incident was "a wonderful mix of liberalism and a big black rapist."⁵¹

CLINTON ONBOARD: The Triumph of Law and Order

The outbreak of the Persian Gulf War in early 1991 eclipsed domestic issues, and President Bush largely ignored crime and drugs during the 1992 campaign season. This shift probably reflects the inefficacy of the war on drugs (as indicated by increases in drug-related emergency room visits and in the overall supply of cocaine and heroin within the United States), as well as candidate Clinton's relative invulnerability on these issues.

Like many "new" Democrats, 1992 presidential hopeful Bill Clinton was determined not to suffer the fate of the previous Democratic presidential candidate, Michael Dukakis, who was portrayed by the Bush administration as hopelessly "soft on crime." As both governor and presidential candidate, Clinton expressed strong support for expanded police efforts, more aggressive border interdiction programs, and tougher penalties for drug offenders. The 1992 Democratic platform also embraced the idea that levels of crime and drug use are a direct function of crime control efforts: "The simplest and most direct way to restore order in our cities is to put more police on the streets."⁵² Clinton emphasized the need for greater law enforcement efforts and boot camps for juvenile offenders, and he touted his record on capital punishment. (Perhaps to make the point, Clinton returned to Arkansas in the midst of the 1992 campaign to oversee the execution of a convicted killer with an IQ in the 70s.)

In August 1993, Republicans announced an anticrime legislative package calling for increased federal aid for local law enforcement, enhanced federal support for prison construction for states willing to adopt "truth-in-sentencing" provisions, more mandatory minimum penalties, and new restrictions on the federal appeals process for death row inmates. One week later, Clinton and several key congressional Democrats proposed their own anticrime legislation, calling for much

the same. The only meaningful differences between the two parties' proposals were their positions on gun control, crime prevention programs, and the requirement that federal aid to local law enforcement be used to bolster community policing efforts (all of which the Democrats favored and the Republicans opposed).⁵³ Although these differences are not insignificant, both parties overwhelmingly emphasized the need to spend more on police and prisons. Only the Congressional Black Caucus developed anticrime proposals oriented toward a radically different goal: to "prevent crime [by making social investments, particularly in urban areas] and reform the criminal justice system to make it more fair."⁵⁴

The publicity associated with these legislative proposals appears to have had an impact on public concern about crime. The percentage of those polled who felt that crime was the nation's most important problem increased from 9% in June 1993 (when Republican legislators announced their new campaign) to 22% in October and to 32% by January 1994.⁵⁵ Attention to the crime issue increased still further when President Clinton used his 1994 State of the Union address to urge more congressional action, including the adoption of a federal equivalent of California's three-strikes law (which made life imprisonment mandatory for three-time convicts). Later that year, a national poll found that 72% of the voters endorsed these three-strikes provisions; 28% opposed them. Most Democrats—pleased with new poll results indicating that Republicans no longer enjoyed an advantage on the crime issue—continued to support the expansion of the criminal justice system while offering only tepid criticism of some mandatory sentencing provisions and mild support for some preventive measures.

The final version of the Violent Crime Control and Law Enforcement Act of 1994 authorized \$6.9 billion for crime prevention efforts, \$13.8 billion for law enforcement, and \$9.8 billion for state prison construction. The cost of the bill, originally estimated at \$5.9 billion, was now estimated to be \$30.2 billion.⁵⁸ The legislation was sent to President Clinton in August 1994 and was hailed as a victory for the Democrats, who "were able to wrest the crime issue from the Republicans and make it their own."⁵⁹

EVEN TOUGHER: Keeping Up With the Republicans

With Republicans demanding still-tougher solutions to the crime problem, House and Senate campaigns in the fall of 1994 focused more on crime than on any other issue. In Florida, gubernatorial candidate (and brother of the current president) Jeb Bush called for corporal punishment of the sort practiced in Singapore. On the television program *Meet the Press*, Texas Senator Phil Graham promised a "real crime bill" that "grabs violent criminals by the throat, puts them in prison, and that stops building prisons like Holiday Inns." In North Carolina, congressional candidate Fredrick Kenneth Heineman urged that provisions of the North American Free Trade Agreement be used to export U.S. criminals to Mexico, "where they can be warehoused more cheaply."⁶⁰

Under the leadership of then-House Minority leader Newt Gingrich, the Republican Party enthusiastically announced its "Contract With America"—including new anticrime proposals. This legislative package proposed further strengthening truth-in-sentencing, mandatory minimum sentencing, and death penalty provisions and weakening restrictions on the admission of illegally obtained evidence. In addition, the Republicans proposed eliminating funding for all preventive measures. Privately, Republicans justified this move by expressing doubt regarding the efficacy of crime prevention programs and by pointing out that their main beneficiaries were the urban poor—a group famous for its loyalty to the Democratic Party.⁶¹

The goals advanced in the Contract With America were subsequently embodied in a series of bills passed easily in the House in February 1995. Although President Clinton and the Democrats did manage to retain separate funds for community policing efforts and the ban on assault weapons, the 1996 legislation largely embodied the get-tough approach to crime and decimated federal support for crime prevention programs. Asked to explain President Clinton's failure to provide any real alternative to these proposals, one administration official said, "You can't appear soft on crime when crime hysteria is sweeping the country. Maybe the national temper will change, and maybe, if it does, we'll do it right later."⁶² Since that time, few congressional representatives have been willing to deviate from the bipartisan consensus in favor of "getting tough."

Expanding the War on Crime

Early in the 21st century, the war on crime is expanding in new ways. Just 6 weeks after the September 11, 2001 attacks on the Pentagon and World Trade Center, Congress passed one of the broadest anticrime bills in American history. The USA Patriot Act (short for Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism) was passed on October 26, 2001, at the height of the anthrax scare, a time when many legislators did not even have access to their offices. Not too surprisingly, the statute was adopted without much debate, despite the fact that the 342-page document amended a wide array of federal statutes covering everything from immigration law to privacy for library and bookstore patrons

Many other provisions of the USA Patriot Act have stirred up controversy. Belated concern about aspects of the bill led various congressional committees to hold hearings on aspects of the bill after its adoption. But so far, neither Democrats nor Republicans in Congress have been willing to challenge the bill in any sustained manner. The fear of being labeled "soft on terror" now stifles debate in much the same way that the fear of being seen as "soft on crime" has for decades.

Enron and Other Corporate Crime

Even as the country recovered from the attacks of September 11, 2001, a new crime-related scandal burst onto the front pages, this time featuring allegations of misconduct in the boardrooms of some of the nation's most prominent Fortune 500 firms. In these cases, high-ranking executives were accused of knowingly "cooking the books" in order to overstate the profitability of their companies. Knowing the real deal, these insiders then sold their stock at high prices, leaving employees to incur the hit when stock values subsequently plummeted. Some employees lost not only their jobs, but also, in some cases, their entire retirement savings. As revelations of this and other kinds of corporate fraud rocked the country, Congress passed legislation that increased the penalty for some kinds of corporate fraud from 5 to 25 years. As in previous years, fear of opposing what seemed to be a tide of public outrage led many representatives to vote for a bill about which they had many reservations. As one senator said, "Nobody wants to get out ahead of that get-tough train."⁶³

The seeming severity of the increased penalties for some forms of criminal fraud has left some wondering if tough criminal sanctions will be any more successful in deterring corporate crime than they have been in deterring street crime.⁶⁴ Whatever the answer may be, fears that corporate executives are being highly—and overly—criminalized seem misplaced. Much corporate misconduct is not prohibited by criminal law, and the prison and jail populations remain over-

whelmingly poor and disproportionately nonwhite—and will continue to be for the foreseeable future. Furthermore, the financial price tag of corporate crime far exceeds that of street crime. According to a recent FBI estimate, the combined cost of burglary and robbery is \$4 billion a year. By contrast, the annual cost of white-collar fraud is thought to be around \$200 billion.⁶⁵ Estimates of the cost of white-collar crime would undoubtedly be much higher if more corporate misconduct was defined as a crime in the first place. As one scholar recently put it, “The biggest scandal of all is how much bad [corporate] behavior is perfectly legal.”⁶⁶

Budget Crises

In short, both the scope of the war on crime and the federal government’s role in it have expanded significantly as a result of the increased federal involvement in the war on crime, as well as congressional action against terrorism and corporate crime. At the same time, some state governments are quietly attempting to undo some of the more draconian and extreme aspects of the get-tough approach to crime and drugs.

During the legislative season of 2001, for example, state governments across the country adopted legislation that either slowed or reversed tough sentencing policies in an effort to reduce levels of incarceration. These efforts took different forms: Five states expanded drug treatment programs that provide judges with alternative sentencing options, four states revised mandatory sentencing laws, and seven states passed legislation designed to ease prison overcrowding.⁶⁷ Declining levels of crime, concern about the massive numbers of released felons reentering the work force with little education and few skills, and decreasing tax revenues and worsening budget crises all seem to have fueled support for these measures.⁶⁸

In the fall of 2002, faced with very serious budget deficits, many states began to take more drastic measures to reduce prison populations and cut correctional costs. In Oklahoma, for example, Republican Governor Frank Keating asked the Pardon and Parole Board to find a way to release 1,000 nonviolent inmates. Looking for ways to make an even more significant impact on the state budget, several other states are considering overhauling draconian drug laws passed in previous decades.⁶⁹ By contrast, national political leaders, including congressional representatives, remain committed to the war on crime and have refused to modify the harsh sentencing provisions of the Anti-Drug Abuse Act of 1986 or repeal tough mandatory minimums for other offenses. Consequently, the federal prison population continues to grow quite rapidly while the number of state prisoners is stabilizing. In the year 2000, the state prison population increased by 0.3%, whereas the federal prison population grew by 8%.⁷⁰

Conclusion

Beginning in the 1960s, conservative politicians at the national level began to focus an unusual degree of attention on the problem of street crime. That they did so is somewhat surprising: Not only is the capacity of federal government officials to respond to this type of crime fairly limited, but there was no indication that public concern about crime had increased or that the public believed that getting tough was the best way to address this problem. Similarly, in the 1980s, conservatives called for the wars on crime and drugs *before* the public demonstrated any increased desire for such measures. These politicians made law and order a centerpiece of their political platforms, promoted the view that these social ills stem from permissiveness in the forms of criminal justice leniency and welfare dependency, and argued for tough criminal justice and welfare policies in order to address the problem.

If not a response to clear public demands to “get tough” on crime, how can the rise of the crime issue to the center of the political stage be explained? The conservative initiative on these issues was part of a larger effort to forge a new Republican electoral majority following the collapse of the New Deal coalition. Doing so involved reaching out to formerly Democratic, white voters who had been alienated by the (belated and reluctant) Democratic embrace of the civil rights cause. Rhetoric about the collapse of law and order, crime in the streets, and the need for strength in the face of chaos proved to be a successful means of doing so.

Conservative initiative on the crime issue has also been aimed at shifting the government’s role and responsibilities from the provision of social welfare toward the protection of personal security. The get-tough policies that have resulted from this campaign are not supported by the findings of most sociological research, which suggest that severity of punishment does not have a significant deterrent effect and that welfare spending reduces rather than increases crime. Nevertheless, these policies have been largely supported by both Republican and Democratic politicians for complex political reasons, and, to a significant extent, by members of the public.

Katherine Beckett is an associate professor at the University of Washington and Theodore Sasson is an associate professor at Middlebury College. This article is excerpted from their book, The Politics of Injustice: Crime and Punishment in America (copyright 2004, Sage Publications). Reprinted with permission.

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THE HISTORY OF RACIALLY DISPARATE DRUG LAW ENFORCEMENT

By Deborah Peterson Small

One hundred years ago, opiates and cocaine were freely available—used both medicinally and recreationally by people throughout the United States. Scores of patent medicines, elixirs and liquid concoctions contained substantial amounts of opium or cocaine. Studies published between 1871 and 1922 paint a striking portrait of the typical drug addict in the early 20th century: a middle-aged, middle- to upper-class White woman living in a rural community.⁷¹ The peak of opiate dependence in the United States occurred near the turn of the century, when the number of addicts was estimated at close to 250,000 in a population of 76 million—a rate far higher than today's.⁷² Yet even with the relatively high rate of addiction, the prevailing attitude at the time was that drug addiction was a health problem, best treated by physicians and pharmacists.

Public attitudes about drug use began to change as perceptions about drug users shifted. The source of initial prejudice against opiates can be traced to Chinese immigrants, whose custom of smoking opium seemed strange and foreign. White Americans took their own fair share of opium in concoctions such as laudanum and any number of other available tonics and elixirs, in liquid, powder, or pill form. In 1875 San Francisco passed the first drug law that banned the smoking of opium in opium dens. It was only the smoking of opium which was initially outlawed because it was associated with the Chinese. In 1902, the Committee on the Acquirement of the Drug Habit of the American Pharmaceutical Association declared: "If the 'Chinaman' cannot get along without his 'dope,' we can get along without him." The nation's first drug prohibition law was passed in 1909, when California outlawed the importation of smoking opium.

In 1910 Dr. Hamilton Wright, considered by some the father of U.S. anti-narcotics laws, reported that U.S. contractors were giving cocaine to their Black employees to get more work out of them.⁷³ A few years later, stories began to proliferate about "cocaine-crazed Negroes" in the South who had run dangerously amuck. One article in the *New York Times* went so far as to say that cocaine made Blacks shoot better, and would "increase, rather than interfere with good marksmanship." As a result of these and other inflammatory stories some southern police departments switched to .38 caliber revolvers, because they thought cocaine made Blacks impervious to smaller .32 caliber bullets.⁷⁴ An article in *Literary Digest*, a popular magazine of the era, claimed that "most of the attacks upon white women of the South are the direct result of the cocaine-crazed Negro brain."⁷⁵ When Coca-Cola removed cocaine from their popular soft drink, it was not simply out of concern for their customers' health. It was to appease their Southern market, which "feared blacks getting cocaine in any form."⁷⁶ These stories were motivated in part by a desire to persuade Southern members of

Congress to support the proposed Harrison Narcotics Act,⁷⁷ which greatly expanded the federal government's power to control drugs.⁷⁸ The sensationalization and gross distortions were also necessary because little crime was actually being committed by drug users, despite widespread use.⁷⁹

When the American jazz scene popularized marijuana in the 1920s and 30s, Blacks and Whites increasingly socialized as "equals" and smoked together. The racist anti-marijuana propaganda of the time used this breach of racial barriers as an example of the social degradation caused by marijuana. Harry Anslinger, head of the newly formed federal narcotics division, warned middle-class political and community leaders about Blacks and Whites dancing together in "teahouses," using blatant prejudice to sell prohibition.⁸⁰ In 1931 New Orleans officials attributed many of the region's crimes to marijuana, which they believed was also a dangerous sexual stimulant.

The first federal law targeting marijuana, the Marijuana Tax Act of 1937, was enacted during the Great Depression, again using racist rhetoric as a chief selling point. It was said that Mexican immigrants, who were vying with out-of-work Anglo Americans for the few agricultural jobs available, engaged in marijuana-induced violence against Whites. The American Coalition, an anti-foreigner group, stated:

*"Marihuana, perhaps now the most insidious of our narcotics, is a direct by-product of unrestricted Mexican immigration. Easily grown, it has been asserted that it has recently been planted between rows in a California penitentiary garden. Mexican peddlers have been caught distributing sample marihuana cigarettes to school children. Bills for our quota against Mexico have been blocked mysteriously in every Congress since the 1924 Quota Act. Our nation has more than enough laborers."*⁸¹

By the early 1960s, college students and 'hippies' again popularized marijuana. A growing 'counterculture' youth movement questioned the value of the Vietnam War, the sanity of U.S. foreign policy, and governmental authority in general. This period coincided with growing urban unrest by African-Americans impatient with the slow pace of progress in implementing civil rights gains. President Richard Nixon responded by declaring a new "war on crime" that targeted and effectively criminalized both groups of his most vocal critics—urban minorities and student dissidents. Student dissidents were regularly maligned as draft-dodgers, hedonistic drug users and unpatriotic opponents of United States foreign policy. Youth of color were portrayed as purveyors of violence, traffickers of drugs and an overall danger to society. Police surveillance was focused on communities of color, immigrants, the unemployed, the undereducated, and the homeless, who continue to this day to be the principal targets of law enforcement efforts to fight the "war on drugs."

Deborah Peterson Small is the director of Break the Chains.

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ROLE OF THE RIGHT: Developing and Implementing the Theory

James Q. Wilson: A Dominant Figure Among Conservative Crime Theorists

by Pam Chamberlain

James Q. Wilson is a neoconservative scholar and writer who has rubbed elbows with powerful politicians in a way that has significantly shaped public policy. Five years after starting a political science teaching career at Harvard, he became Chair of the White House Task Force on Crime in 1966. Later, Senator Daniel Patrick Moynihan introduced him to President Nixon. He has been highly influential among academics, policy-makers, and legislators ever since.

Wilson is best known by the general public for introducing the “Broken Windows” theory of crime control in a 1982 *Atlantic Monthly* article written with George Kelling, a theorist on policing (See box on Broken Windows). The article, reasonable in tone and without obvious logical faults, had a profound influence on the general public. The Broken Windows theory, adopted by New York City Mayor Rudolph Giuliani and his Chief of Police William Bratton, was widely credited as a major reason for the city’s reduction in violent crime. That “success” promoted and legitimized several ideas behind the then-burgeoning “tough on crime” movement.

Wilson’s other writing reveals the deeply conservative underpinnings of his theories on crime. As early as 1966, Wilson’s idea pieces on crime began to appear in the increasingly neoconservative journal *Commentary*, where his articles, book reviews, and letters influenced a generation of intellectuals. His 1975 book *Thinking About Crime* claimed that criminal activity is the product of a rational mind and is influenced by how much or how little a person can “get away with.” Without controls, crime grows. According to this perspective, a permissive, undisciplined environment and crime are linked. Ten years later, Wilson published *Crime and Human Nature: The Definitive Study of the Causes of Crime* with Richard Herrnstein, the co-author of the well-known right-wing treatise that links race and intelligence, *The Bell Curve*. They argued that crime is part of human nature, and the most effective controls prevent and punish those natural urges that lead to crime. A speech Wilson gave in 1997 to the conservative American Enterprise Institute described the United States as “two nations”—one of material wealth and social order and the other a chaotic, unstructured and spiritually-empty land of the poor. What will save the second nation from despair is returning to a path where religion is influential and where families remain intact. His latest interest is the preservation of marriage.

WHAT IS BROKEN WINDOWS, ORDER MAINTENANCE, QUALITY OF LIFE AND ZERO-TOLERANCE?

The origins of this movement can be traced to the influential argument that broken windows and other instances of disorder are important causes of crime. According to this view, signs of disorder—like unfixed broken windows—diminish residents' responsibility for their neighborhood, which leads to a progressive growth of wrongdoing. This theory, which has been challenged by recent research,⁸² implies that policing should focus on maintaining order and preserving a high quality of life to reduce crime. In New York City, this emphasis led to zero tolerance for any behaviors and people classified as disorderly, such as the streetside “squeegee men” who clean windshields for cash.

NYPD officials and former New York City Mayor Rudolph Giuliani have argued that these tactics are responsible for declining crime rates in New York City. Although these declines have been significant, studies suggest that a number of factors have contributed to the drop in crime that has occurred in New York City and elsewhere. These include demographic changes and declining unemployment levels.⁸³ A study sponsored by the Justice Department provides further evidence that the decline of the crack cocaine market has also been important, a finding that helps to explain why the homicide rate has dropped in Los Angeles and other cities that have not adopted the zero tolerance approach but whose crack markets have shrunk, and increased in cities that have not experienced a decline in crack use and sales.⁸⁴

There are also political problems with problem-oriented and zero tolerance policing. Unlike the more democratic versions of community policing, neither of these police strategies allows for citizen oversight of the police. In addition, these strategies continue to emphasize arrests and the threat of punishment as solutions to crime. This is most obvious with zero tolerance policing, which sets officers loose on any number of (potential) troublemakers. In New York City, order maintenance has meant a 50% increase in misdemeanor arrests. A disproportionate number of those arrested for petty crimes (such as vagrancy, disorderly conduct, and loitering) are black and Latino.⁸⁵ And it is no surprise that complaints about overaggressive officers increased significantly in zero tolerance New York.⁸⁶

—Excerpted from *Katherine Beckett and Theodore Sasson in The Politics of Injustice: Crime and Punishment in America (copyright 2004, Sage Publications). Reprinted with permission.*

The resulting policing practices that emerged from “Tough on Crime” and “Broken Windows” policies targeted youth, the poor, and people of color for intense police scrutiny. When violent crime decreased across the country, advocates of these theories claimed credit. But no causal relationship has yet been shown between the decrease in crime and tougher policing and sentencing policies. In fact, similar decreases occurred in San Francisco and other cities where alternative crime policies, such as abandoning youth curfews and involving community groups, were implemented.⁸⁷

Community policing, an attempt to engage police more actively in neighborhood problem-solving, has in some hands resulted in increased surveillance of certain groups (especially youth), racial profiling, and disproportionate incarceration and sentencing in communities of color and among the poor.

What sounded good on the pages of *Atlantic Monthly* magazine became fuel for policy makers and government officials alike who were eager to demonstrate that “tough on crime” could work.

National Rifle Association

“What fakes, frauds and liars! ... [A] shadowy network of extremist social guerillas fueled by anonymous wealth, sophisticated research, free media access and high-dollar consultants. You know, terrorism against freedom isn’t just practiced with bombs and box cutters. Anti-freedom elitists in academia, the media, rich foundations and government can do permanent damage to individual freedoms just as real as an insurrection or coup. Together they form a sort of Taliban, an intolerant coalition of fanatics that shelter the anti-freedom alliance so it can thrive and grow.”⁸⁸

—Wayne LaPierre, on gun control advocates at the 2002 NRA Annual Meeting.

The NRA was begun in 1871 by two officers of the Union Army, Col. William C. Church and Gen. George Wingate, who were appalled by the marksmanship of many of their troops. For the first 100 years, the NRA concentrated on improving marksmanship for military and law enforcement officers as well as hunters and those who wanted to learn shooting for self-defense. In 1957 affiliates of the NAACP in Monroe, NC, trained with the NRA to defend themselves against the Ku Klux Klan. From the late 1960s, however, the NRA embarked on what it is now most associated with—opposing gun control. In 1977 at its annual meeting in Cincinnati, OH, the NRA made legislative and political action towards opposing gun control its top priority.

While the NRA is officially non-partisan, it supports a legislative and policy agenda aimed at furthering its mission and contributes substantially to candidates that support its goals in national, state, and local legislative races. Quite naturally, these candidates tend to be right-wing conservatives and libertarians who oppose gun control, and are predominantly Republican. The NRA is the country’s largest and most powerful gun-owners’ rights lobby group. One of its many arms is the NRA Political Victory Fund:

“The NRA-PVF ranks political candidates—irrespective of party affiliation—based on voting records, public statements and their responses to an NRA-PVF questionnaire. In 2002, NRA-PVF was involved in 271 campaigns for the U.S. House and Senate, winning in 253 of those races. These victories represent the election of pro-gun majorities in both the U.S. House and Senate. NRA-PVF endorsed thousands of candidates running in state legislative races and achieved an 85% success rate in those elections. NRA relies on a very simple premise: when provided with the facts, the nation’s elected officials will recognize that ‘gun control’ schemes are an infringement on the Second Amendment and a proven failure in fighting crime. The importance of this premise lies in the knowledge that, as one U.S. Congressman put it: ‘The gun lobby is people.’”⁸⁹

CEO/Executive Vice-President:
Wayne LaPierre
Budget: \$120 million
Staff: 550
Board of Directors: 76, including Sen. Larry Craig, R-ID, Charlton Heston and Ted Nugent
Headquarters: Fairfax, VA
Membership: 3.5 million (Past members include Theodore Roosevelt and John F. Kennedy)

According to the Center for Responsive Politics, “If lawmakers are guilty of tiptoeing around gun control issues, it is because the NRA and other gun rights groups wield an enormous amount of influence in Washington....Gun rights groups have given more than \$17 million in individual, PAC and soft money contributions to federal candidates and party committees since 1989. Nearly \$15 million, or 85 percent of the total, has gone to Republicans. The National Rifle Association is by far the gun rights lobby’s biggest donor, having contributed more than \$14 million over the past 15 years. Gun control advocates, meanwhile, contribute far less money than their rivals—a total of nearly \$1.7 million since 1989, of which 94% went to Democrats...If gun rights groups have a substantial advantage in campaign contributions, they dominate gun control advocates in the area of lobbying. The NRA alone spent nearly \$11 million lobbying elected and government officials from 1997 to 2003....By contrast, the Brady Campaign to Prevent Gun Violence spent under \$2 million on lobbying from 1997 to 2003...”⁹⁰

The NRA and Criminal Justice

“In fact, studies of homicide victims—especially the increasing number of younger ones—suggest they are frequently criminals themselves and/or drug addicts or users. It is quite possible that their deaths, in terms of economic consequences to society, are net gains.”

—Paul Blackman, Head NRA Researcher, “The Federal Factoid Factory on Firearms and Violence: A Review of CDC Research and Policies.”⁹¹

The NRA opportunistically cites the decreasing crime rate to advocate against gun control and for various “tough on crime” policies. The website of the Institute for Legislative Action, the NRA’s lobbying arm, states: “The flaw in anti-gun thinking is starkly demonstrated by a confluence of two trends. Simply stated, while guns have been going ‘up,’ crime has been going ‘down.’ The number of privately owned guns rises several million every year and is now at an all-time high...According to anti-gun thinking, crime should be rising by leaps and bounds. In fact, quite the opposite is true. The nation’s violent crime rate (the number of crimes per 100,000 population) has declined every year since 1991 and is now at a 22-year low. And murder is at a 35-year low... Throughout the 1990s, NRA strongly supported successful initiatives in a variety of states to increase prison sentences for violent offenders and reduce parole, and during the last several years encouraged Project Exile-type programs which throw the book at felons who illegally possess firearms. Several law enforcement related factors are cited by the FBI, in its 2000 annual crime report, as among the numerous factors ‘known to affect the volume and type of crime.’ Though ‘gun control’ is absent from the FBI’s ... list of reasons crime has decreased, it is at the top of anti-gun groups’ list.”⁹²

For more on the NRA’s position on criminal justice see “Prosecution is Prevention,” at <http://www.nraila.org/media/misc/prevention.htm>.

Endnotes Available Online!

All citations and references are available at www.defendingjustice.org or by contacting PRA.

ORGANIZING ADVICE: Communities of Color and the War On Drugs

Q & A WITH BREAK THE CHAINS

Despite equal rates of drug use across racial lines, people of color (those of African, Latino, Native and Asian descent) are much more likely to be the target of punitive drug policies. These communities make up an overwhelming proportion of those penalized by the criminal justice system, incarcerated for long periods of time under draconian sentencing laws, denied access to sterile injection equipment to prevent HIV/AIDS and Hepatitis C, denied public assistance, deported or detained, stripped of the right to vote and restricted from education and employment opportunities as a result of a drug conviction.

Break the Chains (BTC) is an organization committed to building a movement in communities of color to oppose punitive drug policies. BTC educates the public, community leaders and policymakers about the drug war's disproportionate impact on communities of color; mobilizes local and national coalitions to advance drug policy reform; and promotes alternative models based on compassion, science, public health and human rights.

PRA: Why is your group called "Break the Chains?"

BTC: Because our work is about breaking away from the constraints of addiction, prison, disease, and negative ways of thinking that have hampered the development of effective drug policies. The focus of our work is to support the empowerment of people in communities of color that experience the brunt of punitive and misguided drug policies. We believe that people in these communities are developing a powerful momentum for drug policy reform and we are actively generating and encouraging their efforts to mobilize.

PRA: Has the drug war succeeded?

BTC: No. Despite the escalation of the war on drugs at a cost of billions of taxpayer dollars each year, very little has changed in the availability, price and health consequences of illegal drugs. Half a million Americans, the majority of whom are people of color, are behind bars for nonviolent drug offenses, even though there are roughly equal rates of involvement with drugs across races. Violent crime rates, which fluctuate because of many social

factors, show little apparent relationship to the severity of drug laws.

PRA: What shift, if any, has there been in the public debate about drug policy in the United States?

BTC: In recent years there has been a definite shift in public attitudes about U.S. drug policy and an increased willingness to try alternative approaches to the current "war on drugs." This shift is evident in the growing voter approval of ballot initiatives allowing for the medical use of marijuana; limiting the ability of law enforcement to seize assets of persons "suspected" of involvement with drugs and mandating that states opt for drug treatment over incarceration for minor drug offenders. Additionally, there are a growing number of public officials willing to publicly challenge the prevailing orthodoxy regarding U.S. drug policy.

In Congress, many of the African American and Latino elected officials who supported mandatory minimum drug sentencing and many other instruments of the drug war, have begun to question its impact on the communities they represent. In 1998, the Congressional Black Caucus declared a "health emergency" due to the crisis of HIV/AIDS in Black communities and lobbied the Clinton Administration for increased funding to address it. They also lobbied for federal funding for needle exchange as a public health intervention to reduce the spread of drug-related HIV—an important element in the overall AIDS crisis. They were ultimately successful in the former, not in the latter, but by raising the issue in Congress they helped broaden the debate about U.S. drug policies.

PRA: But are there some drugs—like heroin and cocaine—that simply should not be decriminalized or legalized?

BTC: This is a question that we have struggled with for a long time. It is an area where feelings are in conflict with one's thoughts. On the one hand, many of us have personally experienced the harms suffered by individuals and the people who love them because of drug addiction. Consequently, we want to do anything possible to prevent people from developing such problems. There are substances that are more addictive than others, and the physical consequences of substance abuse vary

by substance. Nonetheless, intellectually we cannot find a valid distinction based on addictiveness and/or physical harm between the drugs we categorize as “licit” and the ones we categorize as “illicit.” The addictiveness of tobacco products is on par with that of heroin and cocaine and the physical harms associated with its use have been firmly established. The only basis we can see for the legal distinctions between them are cultural and corporate. We have a more firmly established culture of smoking tobacco products than of sniffing or injecting drugs, and the corporate tobacco interests have been extremely successful in protecting their status as sellers of a legitimate product.

This is not to say that we would like to see heroin or cocaine made as readily available as cigarettes or alcohol. Given the nature of our society, such a scheme would most probably lead to the targeting of vulnerable populations as potential consumers. I think we need to find a scheme that would allow us to regulate access to powerful, potentially addictive psychoactive drugs. At the same time, we would need to focus considerable resources on reducing demand, which would necessarily include addressing issues like delivery of health-care services, including drug treatment; adequate income support for all; housing issues; unemployment and underemployment; the quality of public education and human-resource development. Very few of these issues are within the mainstream of American political conversation today. So, all that is to say that the short answer to the question is no, based on standards of addictiveness and physical harm, we don’t see justification for the distinctions we’ve made between legal and illegal drugs. Since we don’t believe that prohibition enhances the ability to deal with social problems in a free society, we’re against it for all substances.

PRA: What parameters, if any, should be taken into account when deciding issues like legal age requirements for drug use?

BTC: We should look to the parameters we’ve used in regulating access to alcohol and tobacco products for guidance in establishing legal-age requirements for drug use. Such decisions should be supported by research that analyzes the current age of initiation of drug use among youth and various use patterns including modes of consumption, frequency, and variety of drugs consumed.

PRA: Are there legitimate, rational reasons for forcibly keeping drugs out of the hands of people who have been known to hurt themselves or others when under the influence?

BTC: It’s far from clear that we know how to make such determinations as to what level of harm to self or others is sufficient to justify forcible intervention by the State absent a criminal act. The whole basis for prosecuting pregnant women who use drugs is that they are hurting another (namely their fetus) while under the influence of drugs. Yet the entire medical and public-health community is united in asserting that the appropriate response to such behavior is not to forcibly attempt to keep these women from drugs through incarceration or some other form of physical restriction. Some people would argue that the very act of injecting oneself with a dirty needle containing heroin or cocaine is harm sufficient to justify the government forcibly restraining such a person in order to save them acquiring an infectious disease such as HIV or Hepatitis C. Such approaches are generally misguided and impossible to administer in a nondiscriminatory manner.

PRA: Are there any successful alternatives?

BTC: Canada, Australia and a number of Western European countries are increasingly adopting drug policies based on a public health model, as opposed to a criminal justice model. Policies such as providing accessible drug treatment and clean needles concentrate on reducing the harms of drugs instead of punishing low-level users and sellers. As a result of pursuing a more public health oriented approach, these countries have avoided the epidemic of drug related HIV/AIDS that has disproportionately affected communities of color in the United States. The United States should direct more of its resources to drug treatment and community resources if we want an effective drug policy with less waste of human and financial resources.

Additional Resources

Critical Resistance

1904 Franklin Street, Suite 504
Oakland, CA 94612
Phone: 510-444-0484
<http://www.criticalresistance.org>

Critical Resistance seeks to build an international movement to end the Prison Industrial Complex (PIC) by challenging the belief that caging and controlling people makes a safe society. Critical Resistance works to abolish the PIC.

Drug Policy Alliance (DPA)

925 15th Street NW, 2nd floor
Washington, DC 20005
Phone: 202-216-0035
<http://www.drugpolicy.org>

DPA works to broaden the public debate on drug policy and to promote realistic alternatives to the war on drugs based on science, compassion, health and human rights. Break the Chains, a project of DPA, educates the public about the drug war's disproportionate impact on people of color. DPA has offices around the country.

Families Against Mandatory Minimums (FAMM)

1612 K St., N.W., Suite 700
Washington, D.C. 20006
Phone: 202-822-6700
<http://www.famm.org>

FAMM is a national organization that challenges inflexible mandatory sentencing laws. FAMM's 35,000 members include prisoners and their families, attorneys, judges, criminal justice experts and concerned citizens.

Justice Policy Institute (JPI)

4455 Connecticut Ave., NW
Suite B-500
Washington, DC, 20008
Phone: 202-363-7847
<http://www.justicepolicy.org>

JPI generates comprehensive research and reports for policy makers, practitioners and the media on a wide range of criminal justice issues. JPI also provides technical assistance for jurisdictions and communities seeking to reduce the overuse of incarceration.

Sentencing Project

514 Tenth Street, NW
Suite 1000
Washington DC 20004
Phone: 202-628-0871
<http://www.sentencingproject.org>

The Sentencing Project produces analysis, data, reports and publications that advocate for reduced reliance on incarceration and increased use of more effective and humane alternatives to deal with crime.

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CONSERVATIVE AGENDAS AND CAMPAIGNS

CRIMINALIZING THE RESERVATION AND MOVEMENTS FOR SOVEREIGNTY

*“Today, Native people are not free;
they are a colonized people seeking to decolonize themselves.”*

—Luana Ross (Salish)

The U.S. criminal justice system’s intersection with Native peoples is a revealing case study in systematic human rights violations and opposition to self-determination. In addition to being disproportionately overrepresented in the criminal justice system, Native peoples have long faced the criminalization of their identities, culture and traditions; and the U.S. legal system has institutionalized Native criminality.

The imposition of the U.S. criminal justice system on Native reservations has resulted in a complex maze of overlapping tribal, federal, state, and local jurisdictions. Although tribal justice systems predate federal ones, they are viable only if a sovereign tribal entity exists that governs its people, enforces its own laws, and has relations with other similar political/legal entities. Native peoples have negotiated with the U.S. government primarily through treaties (similar to treaties the U.S. government signs with foreign nations) that helped define “Indian Country,” the idea that American Indians have jurisdiction over their own affairs. Sovereignty is a controversial issue in the Native community, in part because U.S. intervention has diminished the reality of tribal sovereignty over time, and different opinions exist about how to respond to these changes and challenges.

Opposition to sovereignty and self-determination on the part of non-Natives is rooted in racism, White supremacy and the stereotype of Native people as “savages” who relentlessly disobey U.S. law. As Native peoples resisted, sometimes violently, the expansion of the United States into their territories, the image of Natives as uncivilized outlaws took hold in the American consciousness. In the face of this resistance, attempts to control Native peoples escalated, state and federal governments and agencies enforced laws that criminalized behavior from performing traditional dances and engaging in religious activities to violating liquor laws and vagrancy.

While the opposition and challenge to Native sovereignty is not restricted to the U.S. Political Right—the U.S. State, regardless of whether liberals or conservatives are in power, has systematically eroded Native sovereignty from its very creation—various right-wing sectors have been at the forefront of the assault on Native peoples’ rights. Whether it is White supremacist and racist groups belonging to the Xenophobic Right such as the Aryan Nation or racist elements within the Militia Movement, the anti-environmental Wise Use Movement sponsored by corporate mining and ranching interests that is part of the Secular Right, or elements among the Christian Right that are opposed to the beliefs and practice of Native spirituality and religion or to Native-owned gaming operations, Native sovereignty represents a real threat to their respective agendas and interests. For that matter, genuine Native sovereignty and self-determination fundamentally challenges the very nature of the United States, which is why this issue (like the larger issue of Criminal Justice this activist resource kit addresses) goes beyond the Political Right to the very heart and soul of U.S. society.

Special thanks to former PRA Intern Maura Klugman for her contribution to this chapter.

SECTION OBJECTIVE

This section will discuss the criminalization of Native Peoples in the historical context of U.S. colonialism.

IN THIS SECTION

- Framing Article: Sovereign Crimes
- Native People and the Current U.S. Criminal Justice System
- Native People and U.S. Domestic Law
- The Anti-Sovereignty Movement
- Q&A with Leah Henry-Tanner
- Additional Resources

Sovereign Crimes: American Indians and the U.S. Criminal Justice System

By Luana Ross, Ph.D.

The history of the colonization of America's indigenous people is a tragic one. From the time of European contact to the present day, these people have been imprisoned in a variety of ways. They were confined in forts, boarding schools, orphanages, jails and prisons and on reservations. Historically, Native people formed free, sovereign nations with distinct cultures and social and political institutions reflecting their philosophies. Today, Native people are not free; they are a colonized people seeking to decolonize themselves.

Criminalizing American Indian Sovereignty

The destruction of indigenous cultures includes the eradication of their judicial systems. Law has repeatedly been used in this country to coerce racial/ethnic group deference to Euro-American power. Understanding this history of colonization is essential because Native criminality/deviancy must be seen within the context of societal race/ethnic relations; otherwise, any account of crime is liable to be misleading. Any explanation of Native criminality that sees individual behavior as significant overlooks the societal and historical origins of the behavior. A thorough analysis of Native criminality must include the full context of the criminal behavior—that is, their victimization and the criminalization of Native rights by the United States government.

There is a widely held belief that America's indigenous peoples were completely lawless. Nothing could be further from the truth. Although the standards of right and wrong varied widely, as did the procedures for punishing transgressors, Native groups all exercised legal systems founded upon their own traditional philosophies. The law was part of their larger worldview. Precontact Native criminal justice was primarily a system of restitution—a system of mediation between families, of compensation, of recuperation. But this system of justice was changed into a shadow of itself. Attempts were made to make Natives like white people, first by means of war and, when the gunsmoke cleared, by means of laws—Native people instead became 'criminals.' *Criminal* meant to be other than Euro-American.

Racialized oppression was not a discrete phenomenon independent of larger political and economic tendencies. Nineteenth century laws and their enforcement can readily be seen as instruments for maintaining social and economic stratification created in the centuries before. In a greedy, expanding young nation building law and custom on the ownership of property, crime-control was part of the maintenance of that sacred foundation. Law-enforcement officials were not simply bystanders in this history; they participated in and encouraged lawlessness in the interests of suppressing minorities. As remaining Native lands were seized and resisting tribes massacred, federal officials often looked the other way or were actively involved. Genocide against Native people was never seen as murder. Indeed, in the Old West the murder of Natives was not even a crime.

One product of colonialism is, thus, the controlling of indigenous people through law. The values that ordered Native worlds were naturally in conflict with Euro-American legal codes. Many traditional tribal codes instantly became criminal when the United States imposed their law and culture on Native people. New laws were created that defined many usual, everyday behaviors of Natives as 'offenses.' The continuous clashing of worlds over the power to control Native

land and resources constantly brought Native people in conflict with the legal and judicial system of the United States, which demonstrates the political intent and utility of Euro-American laws.

Crucial to understanding Native criminality is knowledge of the disruptive events brought about by assimilationist, racist policy and prohibitive legislation mandated by federal, state and municipal governments. These policies and accompanying criminal statutes were concerned with cultural genocide and control as the tenacious Euro-Americans, seeking to replace tribal law and order with their own definitions of criminality and due process, increasingly restricted the power of Native nations.

History tells us that Native ‘criminals’ were not lawless ‘savages’ but rather were living in the turbulent wake of a cataclysmic clash wherein Native legal systems, along with everything else, collided with a most different world. Native worlds have been devastated by their relationship with Euro-Americans and their laws. The number of jailed Natives is a disheartening indication—a reminder that because deviance is a social construct, official crime statistics reveal discretion in defining and apprehending criminals. The behavior of reservation Natives...is clearly subject to greater scrutiny, especially considering the number of [multiple, overlapping, and often contradictory] criminal jurisdictions they fall under, and there is a greater presumption of guilt than for Euro-Americans. This assumption is based on the prevalence of Native Americans in the official crime statistics and the composition of prison populations. But the battle for jurisdiction in the remainder of Indian Country, where various Euro-American legal entities led by the federal government compete for primacy over tribes, is a telling example of the continuing struggle for sovereignty.

Reclaiming American Indian Sovereignty

It is essential to address the intricate factors, within the context of limited self-government and sovereignty, that contribute to social ills found in Native communities. While nothing is ever monocausal, the equation of Native criminality with the loss of sovereignty is convincing. Neocolonial racism may well account for the overrepresentation of Native people in jails and prisons, and decolonizing efforts may alleviate some social problems found in contemporary Native communities. In fact, this premise has been effectively put into practice. The Alkali Lake

CRIMINALIZING AMERICAN INDIAN CULTURE

Numerous American Indian traditional customs were periodically outlawed and the U.S. government banned Native American religion from the late 1800s till 1934. The practicing of outlawed traditional customs resulted in the regular prosecution of Native people. Some of the outlawed customs included: plural or polygamous marriages; immorality [as defined by Whites]; intoxication; destroying property of other Natives (this speaks to mourning practices: destroying the property of the deceased was customary in many tribes); any Native dance [such as the Sun Dance and Ghost Dance “intended and calculated to stimulate the warlike passions of the young warriors of the tribes;” and the practices of medicine people, which were seen as ‘anti-progressive,’ because medicine people used their power in “preventing the attendance of the children at the public schools, using their conjurers’ arts to prevent the people from abandoning their heathenish rites and customs.”

It is revealing that the superintendent’s annual reports from the late 1880s to the late 1930s disclose that the majority of crimes on the Flathead Reservation in Montana were gambling, adultery and liquor violations. For instance, the 1925 data reveal that adultery accounted for 41 percent and gambling offenses 26 percent of all arrests... Native customs were slow to die, and the subjective idea of morality continued to be a significant issue for Indian agents and missionaries, who were particularly concerned with traditional Native marriage and divorce laws. The prosecution for adultery had the effect of criminalizing Native people and their culture.

Aside from laws, special regulations to control Native people, such as the pass system, were created in the nineteenth century. Once segregated on reservations, under the pass system, Natives were not allowed to leave unless they obtained legal permission.

—Luana Ross

WHAT IS AMERICAN INDIAN SOVEREIGNTY?

After declaring independence in 1776, the United States began the process of negotiating treaties with governments of other independent countries. Treaties were signed not just with European nations but also with the governments of Native peoples in North America such as the Iroquois Confederacy and other Native nations whose territories would later be annexed or conquered by the United States. These treaties, which are part of international law, are the means with which sovereign governments establish and conduct political and economic relations with each other.

Scholar Rebecca Robins writes that one of the reasons the U.S. government signed treaties with American Indian peoples was “undoubtedly due in large part to the fact that native nations had held—and in many respects continued to hold for some time—the balance of military power all along the new republic’s western border. Additionally, as Vine Deloria, Jr., has pointed out...Indian nations, many of which had already been formally recognized through treaties as legitimate sovereignties by various European Crowns, were in more of a position to recognize the legitimacy of the U.S. than the other way around.”

“Correspondingly, U.S. relations with American Indians were...formally cast as being government-to-government in nature, a matter abundantly reflected in the fact that the U.S. Senate ratified not fewer than 371 separate treaties with Native American governments between 1778 and 1871. These were complemented by a series of international agreements, unratified treaties, and other instruments of foreign affairs extending into the early 20th century. At least as late as the Supreme Court’s 1903 *Lonewolf v. Hitchcock* decision, federal authorities were still sending de facto treaty commissions into the field to negotiate with native leaders as the heads of nations entirely separate from the United States.”

“Insofar as the federal government is constitutionally prohibited from entering into treaty relationships with any entity other than another fully sovereign national government, it follows that each treaty entered into by the United States with an Indian nation served the purpose of conveying formal federal recognition that the Indian nation involved was indeed a nation within the true legal and political meanings of the term. Further, given that these treaties remain on the books and thus are binding upon both parties, it follows that North American indigenous peoples continue to hold a clear legal entitlement—even under U.S. law—to conduct themselves as completely sovereign nations unless they themselves freely determine that things should be otherwise. For this reason, they have been described as constituting ‘the nations within’ the United States.”

Robins points out that in reality Native sovereignty has been continually and unilaterally eroded by the United States: The 1886 *United States v. Kagama* case effectively demoted the status of Native governments from being sovereign governments to that similar to a U.S. state; Public Law 280 in the 1950s further downgraded this status in many cases to virtually that of counties; And in the case of some reservations in parts of California, even county and municipal authorities have asserted their authority over Native territory.

Source: Robins, Rebecca L. 1992. “Self-Determination and Subordination: The Past, Present, and Future of American Indian Governance.” In The State of Native America: Genocide, Colonization, and Resistance. M. Annette Jaimes, ed. Boston: South End Press, Pp. 87-121, 89-90.

Band of Salish, on a reserve in Alberta, Canada, saw sobriety grow from less than 5 percent to 98 percent today. The Salish tell other Natives how they regained control over their land and their destiny by ousting white traders, setting up Native commerce, reinstating a traditionally designed council, and gathering for communal prayer. They gained control and sovereignty and they became well; criminal/deviant activity decreased.

One way tribes can exercise their sovereign rights, and thereby regain control over their communities and nations, is to design and direct rehabilitative programs. Although the Swift Bird Project, a pilot correctional program started on the Cheyenne River Sioux Reservation in 1979, was unsuccessful for a variety of reasons, indigenous people must seriously consider such projects. It is encouraging that in Canada, the Okimaw Ohci (Thunder Hills) Healing Lodge, specifically designed for Native Canadian female offenders, opened in August of 1995. The concept underlying this alternative prison is true rehabilitation and healing through culture-specific programming. The Healing Lodge encourages an environment conducive to the empowerment of

Native women—one that is free of racism, sexism, and classism. All people, regardless of race/ethnicity, would greatly profit from a similar program.

The criminal justice system in the United States needs a new approach. Of all the countries in the world, we are the leader in incarceration rates—higher than [apartheid] South Africa and the former Soviet Union, countries that are perceived as oppressive to their own citizens. Euro America builds bigger and better prisons and fills them up with ‘criminals.’ Society would profit if the criminal justice system employed restorative justice and readily used alternatives to incarceration such as community service, house arrest, electronic surveillance, and treatment programs. The incarceration of nonviolent offenders is self-defeating and the cases of women who kill their abusers demand the acknowledgment that we live in a patriarchal society. Before we can move forward as a society, we need to recognize that issues of race/ethnicity, gender, and class are inexplicably bound together. Additionally, it is important to recognize the impact of violence, no matter the form, on the seemingly eventual deviant status accorded those defined as Other. Because the contextualizing of the criminalization process is central to the understanding of deviance, the personal lives of those imprisoned must be perceived within the gendered and racialized nature of their lives.

All people in Euro-America, regardless of race/ethnicity, need healing. The criminal justice system would greatly benefit from the philosophy of traditional Native societies. As expressed by Chief Justice Robert Yazzie:

Imagine a system of law that permits anyone to say anything they like during the course of a dispute, and no authority figure has to determine what is ‘true.’ Think of a system with an end goal of restorative justice, which uses equality and the full participation of disputants in a final decision. If we say of law that ‘life comes from it,’ then where there is hurt, there must be healing.”

Luana Ross (Salish) grew up on the Flathead Indian Reservation, home of the Salish and Kootenai peoples in Montana. She is currently Associate Professor, Department of Women’s Studies, University of Washington in Seattle. This article is excerpted from her book, Inventing the Savage: The Social Construction of Native American Criminality (copyright 1998, University of Texas Press) and reprinted with permission.

POPULATION FACTS

American Indians have been called an “invisible” minority because their numbers are too small to show up on government-reported tracking scales.

2.5 million individuals in the United States identify as American Indian or Alaska Native, and 1.6 million identify as part American Indian or Alaska Native.

The American Indian population is geographically clustered, with 62% living in only 11 states. 48% of American Indians live in the West.

60% of American Indians live in urban areas, and 40% live on reservations, trust lands, or bordering rural areas.

Native Americans rank at or near the bottom of most social, health and economic indicators:

- The national poverty rate in the United States between 1999 and 2001 was 11.6 percent. For Native Americans, the national average annual poverty rate was 24.5 percent.
- Almost 1 in 3 American Indians living on reservations live in poverty.
- The unemployment rate for American Indians is twice the general unemployment rate at 12.4%. On reservations, the unemployment rate averages 13.6%.
- Of American Indians aged 18 to 24, 63.2% have graduated high school compared to 76.5% of the national population. For American Indians aged 25 and older, 9.4% have completed 4 or more years of college compared to the national rate of 20.3%.

Note: The term American Indian is used here to accurately represent government data collection categories. Usually the term does not include Native Hawaiians and/or Native Alaskans.

Source: U.S. Commission on Civil Rights. July 2003. “A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country.” Washington, D.C.: U.S. Commission on Civil Rights, p. 7-9.

Native People and the Current U.S. Criminal Justice System

Note: The following is excerpted from a 2003 report by U.S. Commission on Civil Rights titled “A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country.”

Jurisdictional divisions among tribal, federal, and state law enforcement agencies complicate and challenge the unique justice system that prevails in Indian Country...As early as 1817, Congress asserted federal jurisdiction over non-Indians for crimes committed against Indians, as well as over Indians for some crimes committed against non-Indians. Congress also established that the federal government did not have jurisdiction over Indian-on-Indian crimes, those crimes that have been punished by the tribe, or those for which a treaty specifically designates tribal jurisdiction. Seventy years later, however, Congress claimed federal jurisdiction over seven crimes. If committed by Indians in Indian Country, regardless of the victim’s identity, murder, manslaughter, rape, assault with intent to kill, arson, burglary, and larceny are under federal authority. Seven additional crimes have since been added: kidnapping, incest, assault with a dangerous weapon, assault resulting in serious injury, attempted rape, robbery, and felonious molestation of a minor.

*In 1978, the Supreme Court ruled in *Oliphant v. Suquamish Indian Tribe* that tribal courts have no jurisdiction over non-Indian defendants, reiterating precedent that reservations must submit to the territorial sovereignty of the United States.*

Matters were further complicated in 1953 when Congress passed a law terminating tribal authority over criminal and civil matters in six states and enabling other states to assume jurisdiction by passing state law or amending state constitutions. In 1978, the Supreme Court ruled in *Oliphant v. Suquamish Indian Tribe* that tribal courts have no jurisdiction over non-Indian defendants, reiterating precedent that reservations must submit to the territorial sovereignty of the United States. However, the decision only dealt with limitations to tribal power, not the federal responsibility to compensate for those limitations based on the trust relationship. The Court did not *require* the federal government to protect tribes or prosecute non-Indian offenders who commit crimes on tribal lands. Only in cases where an enforceable treaty already existed would the federal government be required to provide a justice system and law enforcement for a tribe.

The federal government has treated tribal justice authority inconsistently, at times granting jurisdiction to tribes and at others revoking it. Simply stated, today, jurisdiction over crimes in Indian Country depends on the identity of the victim and the offender, the severity of the crime, and where the crime occurred. Under current laws, tribal criminal authority is restricted to misdemeanors, with sentences limited to one year in jail and/or a \$5,000 fine per offense. Tribes have the authority to create and design independent judicial and correctional systems to address these matters, but often a lack of funds from [the Department of Justice] and [The Bureau of Indian Affairs] limits their ability to do so. The result has been a severe shortage of crime prevention, victim assistance, public safety, and correctional programs on tribal lands. Furthermore, when a criminal perpetrator is non-Indian, tribes and their members depend on the federal government to provide the same law enforcement benefits that other Americans receive from state and local governments. According to one legal expert, the federal government has not always honored this responsibility seriously, and Native Americans have become easy crime targets. Many offenders

know that they can get away with committing minor offenses against Native Americans because the federal government is not likely to spend resources pursuing these crimes.

The lack of federal resources and efforts to address these issues may explain why Native Americans are the victims of crime at more than twice the rate of all U.S. residents...Despite the prevalence of crime, law enforcement in Native communities remains inadequate, with understaffed police departments and overcrowded correctional facilities...Native Americans are... overrepresented in jails and prisons. American Indians are incarcerated at a rate 38 percent higher than the national per capita rate. Alaska Natives are incarcerated at nearly twice the rate of their representation in the state population.

Many Native Americans attribute disproportionate incarceration rates to unfair treatment by the criminal justice system, including racial profiling, disparities in prosecution, and lack of access

THE NUMBERS

Overincarceration

- Currently, an average of 1 in 25 adult American Indians is under the jurisdiction of the nation’s criminal justice system. This number represents more than twice the number of White adults in the system.³
- American Indians are incarcerated in federal and state prisons at a rate of 808 per 100,000 American Indians as compared to the 702 persons of all races per 100,000 U.S. residents.⁴
- Native Americans are incarcerated at a rate 38% higher than the national per capita rate.⁵
- The number of Native American youth in the federal prison system has increased 50% since 1994.⁶

Victimization

- Not only are American Indians overrepresented in the system, they experience excessive rates of social violence. Dian Million calculates that “[n]ationally, acts of violence against Native Americans occur twice as often across all age groups that for all other ‘racial’ categories: 124 acts of violence (per 1,000 individuals), compared to 49 for whites, 61 for blacks, and 29 for Asians.⁷
- Native women are victimized most often, and are 50% more likely to be victims of an assault than are black men and women, who are also frequently targeted and abused. Native women’s assailants are of another race 70% of the time (whites are involved in 60% of all victim reports).⁸

Violence

- American Indians experience violence at a rate that is more than twice the national rate.⁹
- Native Americans are more likely than any other racial or ethnic group to experience violence at the hands of someone of a different race.¹⁰
- Crimes reported in Indian Country are twice as likely to be violent in nature than are those reported in the rest of the United States.¹¹
- In Alaska, Natives are also more likely to be victims of crime than any other group, particularly Native women whose victimization rates in both urban and rural areas far exceed state and national averages.¹²
- Although the violent crime rate for Native Americans is highest in urban areas, the crime rate for rural Native Americans is more than twice that of rural whites.¹³

Note: The term American Indian is used here to accurately represent government data collection categories. Usually the term does not include Native Hawaiians and/or Native Alaskans.

to legal representation. Because of burgeoning crime and lack of prevention programs, jails in Indian Country regularly operate beyond capacity. In 2001, the 10 largest jails were at 142 percent capacity, and nearly a third of all tribal facilities were operating above 150 percent capacity. According to a DOJ study, in some Native jails resources are so scarce that inmates do not have blankets, mattresses, or basic hygiene items, such as soap and toothpaste.

Many Native Americans have lost faith in the law enforcement and justice system in Indian Country, in part due to its inadequacy and in part due to a perceived bias...Native Americans face disparate treatment by law enforcement officials at every level. In South Dakota, for example, a strong perception exists among Native Americans that there is a dual system of justice and that race is a critical factor in determining how law enforcement is carried out. Many contend that violent crimes involving Native Americans are dealt with differently from those involving whites and that violence against Natives is investigated and prosecuted less vigorously. Other problems have been evident, including racial profiling in Indian Country and disparities in arrests, prosecution, legal representation, and sentencing.

In Alaska, as with many rural Native communities, the administration of justice is complicated by the remoteness of villages and towns. As one Alaska Native noted, in Native areas, justice services are “both qualitatively and quantitatively inferior to those provided in the state’s non-Native communities.” Many Alaska Natives also believe that they are treated unfairly by the criminal justice system, and that when they are victims of crimes, their cases are low priority. Members of the Alaska Native community attribute the higher rates of incarceration among Natives to differential treatment by the criminal justice system, lack of access to adequate counsel, and racial profiling.

The U.S. criminal justice system conflicts in many respects with traditional views of justice held by Native American communities. Whereas the U.S. system is based on an intricate series of laws and procedures, Native systems of justice are often guided by custom, tradition, and practices learned through the oral teachings of elders. The goal of the Native justice system is to achieve harmony in the community and make reparations. For many Native Americans, lack of familiarity with the “foreign” and often adversarial method of justice characteristic of the federal government foster a cultural divide and further mistrust.

Native People and U.S. Domestic Law

By Andrea Smith, Ph.D.

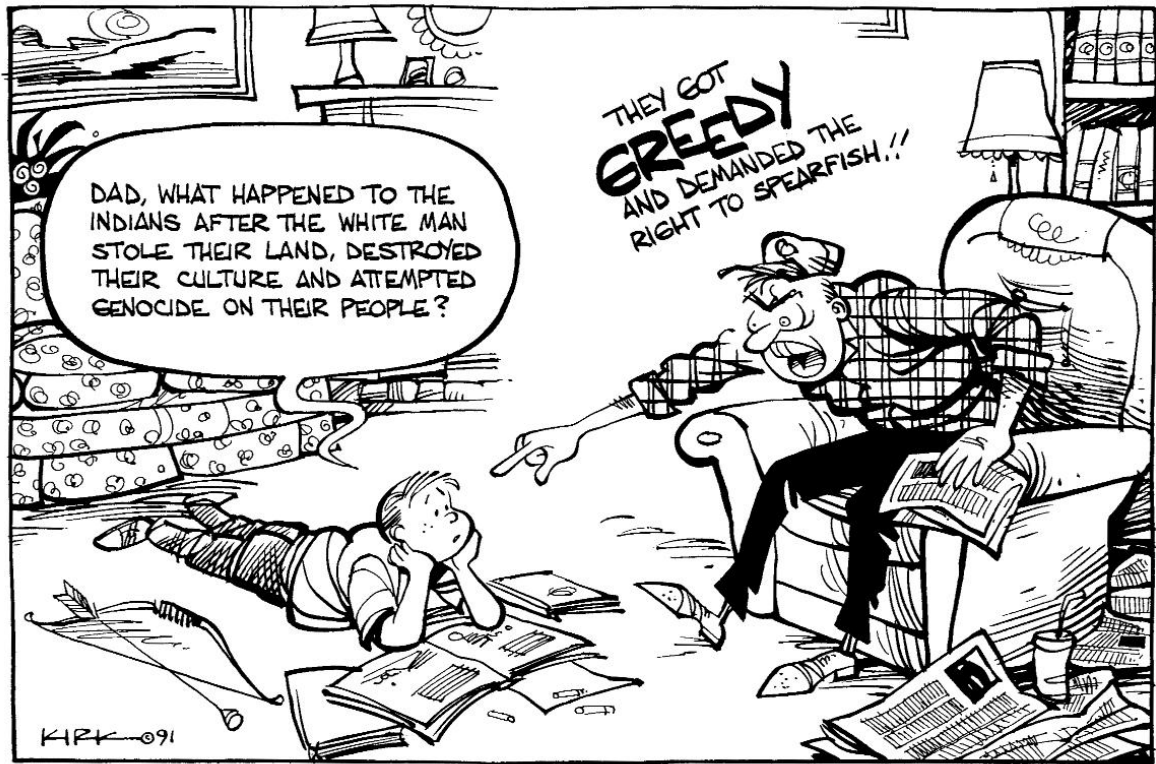
The U.S. legal system has repeatedly authorized, legitimized, and legalized the eradication of Native sovereignty. The relationship between the United States and Native peoples can be seen within three distinct frames:

- 1) Initially, the United States as an independent government signed a large number of treaties with Native nations, as it did with other foreign powers in Europe. These treaties, following long standing diplomatic precedent, imply an explicit recognition of the treaty partner as an equal and sovereign power with each signatory having certain rights and obligations outlined in the treaty. Additionally, the U.S. Constitution deems these treaties to be “the supreme Law of the Land” and as such treaty violations imply violating the Constitution itself. As, the United States conquered and annexed Native territories within and beyond the original 13 colonies, this frame began to present an obvious problem.
- 2) And so it began to deal unilaterally with Native peoples as “Domestic Dependent Nations” that were in a Trust relationship with the United States; not unlike the colonial protectorates that European powers established distinct from their colonies. This position was codified in two U.S. Supreme Court decisions, *Cherokee v. Georgia* in 1831 and *Worcester v. Georgia* in 1832. The first decreed that the Cherokees were not a sovereign nation, while the second ruled that they were still a nation under federal not state jurisdiction.
- 3) But in the 1903 *Lone Wolf v. Hitchcock* decision, the U.S. Supreme Court gave Congress plenary powers over Native peoples that included the right of the U.S. to unilaterally abrogate the rights of Native peoples expanding the meaning of Section 8, Clause 3 of the U.S. Constitution that gave Congress sole power to negotiate with Native nations. The United States has since interpreted this to mean that it owns all Indian lands which it reserves for use by Native peoples.

Using its legal system, the United States has established a pattern of taking rights and jurisdiction away from Native peoples and giving control and power to states and the federal government. These laws and cases are vital to understanding the connection between sovereignty and criminality, and are best seen within the context of policy positions that evolved according to U.S. needs.

The first period 1781-1828 was one where the United States engaged in making treaties with the Native nations. Yet, even in this initial phase, the U.S. Supreme Court ruled in *Johnson v. McIntosh* in 1823 that while the federal government alone could buy or sell Indian land, Native peoples themselves had no rights to land title and could simply live on those lands. The years 1828-1887 were characterized by the forced removal of Indian peoples to west of the Mississippi river, with President Jackson’s signing of the Indian Removal bill in 1830. The “Trail of Tears” involving the removal of the Cherokee from Georgia is the most well-known case but hardly the only one.

As the United States expanded westward it revised its policies yet again to deal with Native peoples. On the one hand, Indian people were increasingly attacked such as in the Sand Creek (1864) and Wounded Knee (1890) massacres against the Cheyenne/Arapaho and Lakota nations respectively. On the other hand, the United States also sought to assimilate Native peoples, in part through land allotment and restricting them to reservations. In 1887, the federal government passed the Dawes Allotment Act that parceled off Indian land that was traditionally communally owned into lots that were allotted to individuals. The vast majority of land was



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appropriated by the State for various purposes including opening it to White settlers; resulting in Native peoples losing 90% of their land base. Two years earlier in 1885, the U.S. government had wrested jurisdiction over a number of criminal acts from Native peoples through the Major Crime Act.

The period 1934-1953 saw the United States take a series of steps to, what can best be described as, Indian Reorganization—the name of the law passed in 1934 that allowed for many of these policies. The act created a whole new system of “self-governance” that both ignored and negated in many cases generations of Native self-governance systems and methods, based as it was on western models of governance. At the same time it also revoked some of the earlier policies of allotment. Many Native people, however, see this as a revision of U.S. policies to maintain federal control over Native lands which contain the vast majority of natural resources in the United States.

From 1953-1968 the U.S. government began implementing a series of policies that involved termination, compensation, or relocation of Native nations. 109 Native nations were terminated under these policies and lost control over their lands and resources. Simultaneously, the government also promoted relocation policies that pushed Native peoples to move to cities and urban areas. The third leg of this stool was compensation where the federal government sought to settle outstanding treaty claims by financially compensating Native peoples while not honoring their rights to land and self-determination. During this era, the federal government also unilaterally passed Public Law 280, which gave control of criminal jurisdiction over a large number of Native nations covered under the Act to states.

Things took a turn during 1968-1980 with the Nixon Administration, ironically, pursuing a policy of self-determination and passing in 1975 the Indian Self-Determination and Education Assistance Act. However, while the Act ended termination policies, it and Administration policies

in general paid more lip service to Native self-determination and under-funded programs that allowed Native peoples to have a greater degree of control over. Many Native nations have availed of the limited self-determination policies during this period to create their own systems of governance; although the 1968 Indian Civil Rights Act limits what tribes can do vis-à-vis developing self-governance systems. Yet, during this same period the U.S. Supreme Court, in *Oliphant v. Suquamish Indian Tribe*, ruled in 1978 that Native Americans had no jurisdiction to prosecute non-Indians for violation of criminal or civil laws occurring on Native reservations.

The current era from 1980 to the present has been marked by the ascendance of conservatives to power in all branches of the U.S. government. A key component of conservative ideology over the years has been federalism and the devolution of greater powers to the states, and as well the concept of states’ rights which has a dubious history of being a segregationist tool. The United States has used both these concepts to absolve the federal government of its responsibilities to Native peoples and to increase state control over Native peoples, lands, and resources. At the time of writing, the U.S. Supreme Court is hearing a case that could disallow tribal police from arresting other Native peoples who are not tribal members.

In the final analysis it is important to remember two things. When Native people make claims based on the treaties they have signed with the U.S. government, they are not asking for special rights but for what they are due under international and U.S. law which those treaties are part and parcel of; and that this is limited compensation for all they have lost since the arrival of White settlers in what is now the United States of America. Moreover, these treaties do not protect only Native peoples. The vast majority of natural resources in the United States lie on or under Native lands that are increasingly under assault by corporate mining, logging, and ranching interests. These treaties afford the ability to challenge corporate takeover and control of these resources, which would ensure that control of these resources, their uses and benefits would remain with Native peoples and by extension others in the United States.

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FEDERAL SENTENCING GUIDELINES

Similar to mandatory minimums, the Federal Sentencing Guidelines are a set of recommendations that federal judges were mandated to use, until January 2005, in sentencing. The guidelines are set by an independent federal agency within the Judicial branch, the United States Sentencing Commission, and not by federal judges or legislators, although Congress can direct the USSC to make changes in the guidelines. The USSC was created in 1984 by Congress through the passage of the Sentencing Reform Act to address the issue of disparity in sentencing. Prior to the federal sentencing guidelines which went into effect in 1987, judges across the federal judiciary did not have to use the same standards.

Native activists and others have long asserted that the federal sentencing guidelines disproportionately affect Native peoples, particularly due to the fact that crimes committed in Indian Country automatically come under federal jurisdiction (and often over and above state, local, or tribal jurisdictions). For example, two identical crimes may have different punishments based on their geographic location—an offense committed on a reservation will likely yield a harsher sentence than if committed outside its boundaries.

Federal Sentencing Guidelines and Native peoples in South Dakota

The South Dakota Advisory Committee to the United States Commission on Civil Rights conducted hearings in Rapid City that resulted in the release in March 2000 of a report, *Native Americans in South Dakota: An Erosion of Confidence in the Justice System* that addresses the issue of the disproportionate impact of federal sentencing guidelines on Native peoples.

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The report notes, “Federal sentencing guidelines, some speakers contended, are primarily to blame for sentencing disparities between Indians and non-Indians...U.S. District Judge Charles Kornmann of Aberdeen, who has been an outspoken critic of the guidelines, agrees. People prosecuted in the ... Federal court system often receive tougher sentences than those convicted of the identical crime in [s]tate courts, he told reporters. ‘Does it make any sense that these Indians are subject to greater penalties than the rest of us?’ the judge asked. ‘It’s ridiculous.’ State Senator Paul Valandra, who lives on the Rosebud Reservation, spoke at the public session and told the Committee, ‘The main thing I wanted to get up here today and talk about is Federal sentencing guidelines that we’re subject to on the reservations and how they are ripping our families apart.’ In addition to being locked away for years, many young Indian men have permanently lost their voting rights because of felony convictions, he added. Later, Cedric Goodhouse said the judge who presided over his son’s trial was forced to hand down an excessively tough sentence. At the sentencing hearing, Goodhouse said the judge told his son, ‘The sentencing guidelines leave no discretion or precious little discretion to the courts. I am adamantly against them. I have always been against them, but they are here, and until Congress in their infinite wisdom changes them, they will remain in.’ Senator Valandra asked the Commission to work toward getting the guidelines changed. For his part, he said he would solicit involvement of tribal governments to help judges regain the discretion and flexibility they once had.”¹⁴

Based on the hearings, the Committee recommended that “The discriminatory impacts of Federal sentencing guidelines must be rigorously scrutinized. Racial factors affecting the administration of justice must be eliminated to restore full confidence in both the Federal and State court systems. Carefully constructed research methodology must be designed to assess accurately whether disparities exist. (The Department of Justice’s Bureau of Justice Statistics might be an appropriate entity to design and conduct some of this research.)”¹⁵

As a result of the report, the USSC held a public hearing of its own on June 19, 2001 in Rapid City. Following the hearing, the USSC convened in 2002 a Native American Ad Hoc Advisory Group “to consider any viable methods to improve the operation of the federal sentencing guidelines in their application to Native Americans prosecuted under the Major Crimes Act.”¹⁶ According to the USSC, “The group’s final report concludes that the sentencing impact on Native Americans resulting from federal criminal prosecution varies from offense to offense and among jurisdictions.”¹⁷

Recent U.S. Supreme Court Rulings

In June 2004, the U.S. Supreme Court ruled in a 5-4 decision that crossed the traditional liberal-conservative divide on a case, which while it did not specifically address the federal sentencing guidelines, could affect them. Justice Scalia who authored the majority opinion was joined by Justice Ginsberg. Some of the dissenters, headed by Justice O’Connor, noted that it could have serious ramifications for the guidelines, and in fact since the decision some lower courts have interpreted the June 2004 *Blakeley* decision to hold that the federal sentencing guidelines are unconstitutional.¹⁸ Following *Blakeley*, the Supreme Court agreed in August 2004 to hear two other cases that could have an impact on the federal sentencing guidelines.

A January 2005 Supreme Court ruling changed the federal sentencing guidelines from mandatory to advisory. The Court ruled that the guidelines were “in part unconstitutional because they direct judges to increase sentences based on facts not found by the jury. The court fixed this problem by removing the part of the law that tells judges they must use the guidelines to impose sentence.”¹⁹ Although federal judges are no longer required to impose sentences that they believe over-punish, groups such as the Sentencing Project, believe the decision for the most part leaves the federal sentencing system intact and only offers remedies that are the “least disruptive to the federal courts.”²⁰ For example, mandatory minimum sentencing laws remain unaffected, and the decision “seems to be silent about their retroactive impact.”²¹

Moreover, eliminating the guidelines in and of themselves may not necessarily have a good outcome either. One possible result could be “the risk of more mandatory minimums, which Congress, despite widespread criticism, not only keeps in place but expands to more and more offenses.”²² Native peoples who are directly affected and liberals are not the only opponents of the federal sentencing guidelines. Erik Luna, the author of a report published by the libertarian rightist Cato Institute, notes that “Punishment in U.S. courts has run amok since federal lawmakers launched the current system in the 1980s, and the Supreme Court’s ruling could provide the impetus to raze this regime—and not a minute too soon... Prosecutors, not judges, have become the true sentencers in the federal system....Federal judges—the most qualified and trustworthy decisionmakers in national government—have been rendered impotent at sentencing.”²³

THE ANTI-SOVEREIGNTY MOVEMENT

Brief History and Main Arguments of the Anti-Indian Movement

By Zoltan Grossman, Ph.D.

Some historical context is needed to understand the modern anti-Indian movement, which has its roots in Western society's longstanding effort to exterminate indigenous cultures. In much of North America, the theft of Indian national territories was not carried out to open the land for white settlement, but rather the other way around. Native lands were coveted by railroad, mineral, logging, and other interests, which widely advertised the promise of free land. Settlers were sent to claim land within the sovereign territories of many Indian nations, often unaware of or ill-prepared for the hostile reception they would face. The inevitable clash justified a rescue by federal armed forces, thus securing the land for business interests. Tribal leaders were convinced, coerced, or tricked into signing a total of 371 treaties up through the 1870s, ceding almost all their land to the government, save for some small reservations. By Supreme Court ruling, these reservations constitute "dependent nations."

While some Indian resistance was crushed by dramatic massacres, for the most part it was subdued by a combination of disease, alcohol, food rationing, the cooperation of Indian collaborators, and the theft of children for boarding schools—a situation not radically unlike today. The Bureau of Indian Affairs (BIA), until its transfer to the Interior Department, was part of the War Department. White homesteaders were used to police Indian people—some taking the task more seriously and viciously than the Army would have them, and others coming to see Indian neighbors as good trading partners. Indians were given U.S. citizenship in 1924—some against their wishes—in addition to their Indian national citizenship. In 1936, federal authorities established tribal councils on the reservations, some superseding traditional forms of government.

Nevertheless, even against these overwhelming odds, the traditional cultures and religions (and even some governments) survived underground. Technologies and practices adapted to Western society, but the core values of Native peoples remained, including their strong relationship to the land. The traditionalists literally emerged from hiding in the 1960s and '70s, inspired by the example of African Americans, Latinos, and others. Members of the younger Indian generation were told by their elders of the definition of their Peoples not simply as tribes, but as sovereign nations (some with a larger land and population base than some United Nations member states). They found the legal basis of the supposedly "old and outdated" treaties backed by Article Six of the even older U.S. Constitution as part of the body of law constituting the "Supreme Law of the Land." They found that these treaties guaranteed certain rights on the ceded lands off the reservations, and strengthened their control over ownership of reservation land.

The modern Indian movement met heavy and sometimes physical resistance from all branches of government, including the BIA, FBI, state police, Justice Department, and some tribal councils. The 1973 Army-directed siege of Wounded Knee, South Dakota proved to be a defining moment. Soon afterwards, through the efforts of grassroots Native organizations, federal courts began to recognize the treaties as legally binding international documents, overriding many state and even

federal laws. Congress and the White House couldn't reverse most of these decisions even if they wanted to.

In the meantime, some of the same business interests that had initially colonized Indian lands found themselves becoming more exposed and vulnerable in their new Third World frontiers, and decided to return some operations to their safer old stomping grounds. In the 1970s and '80s, they took another look at cheap resources on Indian-controlled and Indian-ceded lands, including a large percentage of the coal, oil, and uranium in western North America. These companies correctly saw the Indian movement, and the treaties, as probable obstacles to their plans. It is in this context that the modern anti-Indian movement emerged.

Indeed, by asserting their treaty rights and tribal sovereignty, and joining forces with environmental groups and sometimes their rural white neighbors, some Native nations have been able to protect the local environment around their reservations. For example, after a long battle in the late 1980s and early 1990s with white sportfishers over treaty-backed fishing rights, Wisconsin Ojibwe joined with many of their former adversaries to protect the fish from metallic mining projects. By 2003, the multiethnic rural alliance not only defeated the proposed Crandon mine, but two tribes used their gaming revenue to purchase the 5,000-acre site.

Arguments of the Anti-Indian Movement

The modern anti-Indian movement was created out of a white "backlash" against gains made by the modern Indian movement since the 1960s. At least five major factors motivate anti-Indian groups. The first is the call for "EQUAL RIGHTS FOR WHITES"—that the increased legal powers of the tribes infringes on the liberties of the individual white American taxpayer. The use of civil rights imagery can reach such extremes that whites are described as an oppressed people victimized by "Red Apartheid," and the legacy of Dr. Martin Luther King, Jr., is invoked in support of an agenda to roll back Indian rights.

The second factor is **ACCESS TO NATURAL RESOURCES**. These resources can be fish or game, land or water, but the case is the same: no citizens should have "special rights" to use the resources. (It is not mentioned that non-Indians also can retain property use rights over land they sell.) The case is made in anti-treaty pamphlets such as "Are We Giving America Back to the Indians?," "200 Million Custers," and the ironically titled book *Don't Blame the Indians: Native Americans and the Mechanized Destruction of Fish and Wildlife* by Massachusetts writer Ted Williams.

The third factor is the issue of **ECONOMIC DEPENDENCY AND SOVEREIGNTY**. In a rural reflection of the "Welfare Cadillac" myths used against urban African Americans, all reservation Indians are said to wallow in welfare, food stamps, free housing and medical care, affirmative action programs, and gargantuan federal cash payments—all tax-free, of course. (No one has to pay state sales tax on reservations, but otherwise Indians have had virtually identical tax obligations as non-Indians.) While any quick drive through a reservation will show the Third World conditions Indian peoples have to live under, anti-Indian groups maintain that these conditions are caused by alcoholism and the breakdown of the Indian family, rather than the reverse. In the same breath, the groups denounce any tribal effort to build some economic self-sufficiency, through appropriate industries, small businesses, tourism campaigns, gaming, or the sale of natural resources. The message is clear and consistent: Indians should be kept under the poverty line, by any means possible.

The fourth factor is the **ATTITUDE OF CULTURAL SUPERIORITY**. Cultural bias comes out in many ways: racist team logos and mascots, the excavation of mounds and burial sites, disrespect of sacred objects such as feathers and drums, and efforts to restrict Native languages and bilingual education. Any Indian objection to these practices more often than not provokes a strong counter-reaction. The very existence of a non-Western belief system, rooted in the middle of the most powerful Western nation, is seen by anti-Indian groups as a fundamental obstacle to overcome.

The fifth factor is simple **RACISM**. This includes not only vicious slurs and violent harassment of Indian people, but also the widespread belief that Indians are unfit to govern themselves. Williams describes Indian people as “children,” as lazy recipients of outsiders’ hand-outs. In a right-wing context, this view can easily be translated into a myth that holds Indians as passive components in a conspiracy run by more intelligent non-Indians. The final step of advocating genocide is not that difficult to make. In the words of one Wisconsin protester, “Just wipe ‘em out.” Anti-Indian groups also make an issue out of Indian people who look white, accusing them of using their “blood quantum” to obtain government benefits. Yet Indian identity is generally more cultural than racial, and based on tribal definition and self-definition.

Most anti-Indian groups go to great lengths to deny any trace of racism, and will even point to members whose great-grandmothers were Indian in order to prove their point. While many white supremacist groups see an organizing windfall in anti-Indian movements, there are also some racists who will make an ‘exception’ for Indians, who they romanticize as noble savages resisting big government. They see Indians as a pre-Christian warrior race (not unlike Hitler’s images of ancient Teutonic warriors) that is being driven off the land. In 1982, Posse Comitatus leader James Wickstrom’s Posse Noose Report praised the Big Mountain Navajo fight against relocation as a struggle against Jewish interests in the Peabody Coal company. According to the *New York Times* (Oct 4, 1991), Alabama Klan leader Asa Earl Carter may have posed as the “Cherokee” Forrest Carter to write the best-selling mystical portrayal of Indian life *The Education of Little Tree*. These complexities only show the necessity of Indian unity with African Americans, Jews, Latinos, and others that have been targeted by racist organizations.

The face of anti-Indian prejudice in the U.S. has changed since the modern anti-Indian movement began in the 1970s-1980s. At that time, prejudice was directed against Native Americans as a “poor minority,” using the “welfare Cadillac” images previously used against African Americans. With the growth of Indian gaming in the 1990s-2000s, prejudice has been increasingly directed against Native Americans as a supposedly “rich” minority, deploying the “Shylock” images previously reserved for Jews. Two decades ago, Indians were criticized for being on welfare, now they are being criticized for getting themselves (and many of their non-Indian neighbors) off of welfare. The growing movement against Indian casinos exhibits a double standard by not similarly challenging state gaming operations, which legally open the door to tribal gaming, as specified in the 1988 Indian Gaming Regulatory Act. Like the myth of the moneylending “Rich Jew,” the growing myth of the “Rich Tribes” implies that all tribal members are wallowing in cash. The economic realities of Indian gaming are far more complex, with many reservations located far from population and tourism centers. Yet media portrayals of Native peoples have begun to resemble historic anti-Semitic portrayals of Jews (as well as portrayals of “wealthy” ethnic Chinese in Southeast Asia, or Arab and East Indian merchants in Africa). Like Western European Jews of the past, who had agriculture virtually closed to them, Native nations have been denied control over land (in their case through cessions, removals, and allotment), frustrating their land-based economic development. Left with few other economic

options, both American Indian tribes and European Jews had to engage in unpopular financial practices to develop their communities (circumscribed to reservations or ghettos). The majority society that had dispossessed the land base also objected to these financial industries, particularly when they could contribute to a recovery of land ownership.

[Anti-Indian] groups have united in a national coalition known as the Citizens Equal Rights Alliance (CERA). CERA concentrates on pressuring Congress to modify or abrogate treaties. Perhaps the most insidious national groups are those that use legitimate sports or conservation images to cover for their anti-Indian activity. Some environmental, sports, or resort owners organizations can turn overnight into anti-Indian groups, if not first approached with alternative information. Some ecological and animal rights groups—who took issue with tribal harvesting or jurisdiction over parklands—were dissuaded from continuing their campaigns after pressure from pro-Indian groups. Other such groups, such as the Sea Shepherd Society that militantly resisted Makah whaling in 1999—have worked directly with far-right anti-Indian politicians.

Another source of resistance to Indian rights comes from some archaeologists and anthropologists, who defend their professional “right” to dig up and display Indian people’s ancestors and sacred objects. They contend that the interest of science cannot be subordinated to the interest of the tribes. This is especially said to be true when the deceased cannot be directly tied to the tribe asking for their return, even though the tribes see themselves as the caretakers of all who are buried on their ancestral lands. When the Smithsonian Institution finally “agreed” in 1991 to return some bones for reburial, it set up a board made up of leading figures opposing reburial to review each claim. North Dakota reburial advocate Pemina Yellowbird said, “If this society has no respect for our ancestors who have passed on, it cannot have respect for us who are living.”

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DEBUNKING POPULAR CLAIMS OF THE ANTI-SOVEREIGNTY MOVEMENT

In the midst of this complexity, several anti-sovereignty organizations have emerged from a conservative backlash against Native sovereignty claims. These groups, with names like Citizen’s Equal Rights Alliance (CERA), One Nation United, or All Citizens Equal, assert that they are defending the rights of both Native and non-Native people. They call for equal rights for all, and no “special rights” for Indians, usually by criticizing the jurisdictional power of tribes over non-Indian property owners and the American tax payer at large. They dispute the claims of tribes to gaming and fishing rights as well as to other natural resources such as land and water use.

The impact of anti-sovereignty groups varies, but they do offer ways for non-Indians to channel their anti-Indian resentment. Such groups display classic claims of stealth conservative organizations:

- Inclusive mission statements, often citing the U.S. Constitution
- Denial of discriminatory intent
- Diverse membership, especially with representation from the group being criticized

ANTI-INDIAN CLAIM #1: American Indians nations are not and should not be considered sovereign. To consider them sovereign is unconstitutional.

Anti-Sovereignty movements are anxious to explain and use court cases such as *Oliphant v. Suquamish Tribe* to illustrate that American Indian nations are not completely sovereign, and are in many ways dependent upon the United States.²⁴ They go to lengths to explain the plenary power that Congress has over American Indian affairs, and explain that courts have found that the Bill of Rights “does not apply to Indian tribal governments.”²⁵ Some Anti-Sovereignty groups go so far as to declare sovereignty for American Indians unconstitutional. Upstate Citizens for Equality suggests that:

“While it might be successfully argued that the federal government could legally claim guardianship over the Indian tribes for a specific purpose and specified amount of time, no such argument can logically exist for its power to allow any sort of tribal sovereignty as it exists today, especially after its passing of the Indian Citizenship Act of 1924 conferring citizenship upon all Indians born within the United States.”²⁶

The Anti-Sovereignty movement uses concurrent judgments from cases like *Cherokee Nation v. Georgia* (1831), in which the judge declared that “there is not an instance of a cession of land from an Indian nation, in which the right of sovereignty is mentioned as a part of the matter ceded.”²⁷ This line is used to justify the idea that by making treaties with American Indian tribes, the United States was not granting the tribes sovereignty.

Arguments like these, or those that rely on other laws and court cases which have increasingly limited the sovereignty of American people, ignore the colonial and imperialist history which defines this debate. Moreover, even though American Indian sovereignty was not recognized through any explicit treaty or act of Congress, the United States and European governments recognized tribal sovereignty by making treaties with tribes.²⁸

ANTI-INDIAN CLAIM #2: Sovereignty is racist, and makes American Indians into second-class citizens.

The Anti-Sovereignty movement accurately describes jurisdiction, law and government on reservations as a messy mix of state, federal, and tribal control. But rather than look at how self-determination or increased sovereignty for American Indians might address these problems, the Anti-Sovereignty movement presents American Indians as “second class citizens,”²⁹ and suggests that the solution is to abolish sovereignty for American Indians. Some people, like those affiliated with CERA, argue for a Twenty-Eighth Amendment to the U.S. Constitution that would solve the problems of the current system and the “patronizing, destructive, racist nature of federal Indian policy.”³⁰ This amendment would completely abolish American Indian sovereignty.

In his decision *Granite Valley Hotel v. Jackpot Junction Bingo and Casino* (1997), Judge Randall is quoted by Upstate Citizens for Equality as saying: “The present version of ‘sovereignty’ denying reservation residents the benefits of the Minnesota Constitution, the United States Constitution, its Bill of Rights, denying them accountability from tribal government and exempting them from constitutional obligations of due process imposed on the rest of America, is the filthiest piece of misguided patronizing racism this side of hell.”³¹

Randall and Upstate Citizens for Equality argue that American Indians would receive more

equal, fair, and just treatment under the complete jurisdiction of the Bill of Rights and the United States government. This argument makes the assumption that the White, Euro-American system of the United States is superior to tribal governments.

There is no doubt that there are problems on reservations, and that much of federal Indian policy is problematic, especially laws which have assumed that “savage” culture was primitive and in need of the guiding hand of Euro-American White society. But the proposed solutions mask the real agenda of these groups, to gain access to natural resources by removing the legal protections that exist for American Indians.

ANTI-INDIAN CLAIM #3: American Indians are greedy “Super-Citizens.”

As Indian rights advocate Rudolph Ryser, explains:

“Where tribal claims and treaty disputes with the United States concern resources in ceded areas outside Indian reservations, Indian people are depicted as “super-citizens” who have more rights than non-Indian citizens of the United States. Here, the slogan *‘Equal Rights and Responsibilities’* claims a wider audience. By characterizing Indians as ‘super citizens,’ ‘greedy,’ and exploitative, populist bigotry becomes a means to an end. People who never thought of themselves as racist begin to advocate harassment and sometimes violence against Indian people.”³²

This is the reverse of the “American Indians are second-class citizens” argument above. Often, groups will not explicitly state that American Indians are “super-citizens,” but it can be evident in their other arguments. For instance, Upstate Citizens for Equality states that if an independent and sovereign Cayuga Indian Nation were to be established in New York, there would be “increased expenses [to be] paid by all NY taxpayers to support services for roads, water, sewer, emergency and fire protection on reservation land—these can be demanded by the tribe, at taxpayers’ expense.”³³

ANTI-INDIAN CLAIM #4: American Indians are part of our “equal rights” movement.

Many of these groups advertise American Indian supporters who are in favor of the idea of abolishing the reservation system. Roland Morris, a “full-blooded Anishinabe American citizen from the Leech Lake Band of Minnesota Chippewa”³⁴ and the Secretary of CERA, states in his testimony that “federal Indian policy views Native Americans as helpless wards.” He also believes that the current system has led to:

“... depression and loss of hope, [where] people are dying of alcoholism, drug abuse, suicide and violence. Some die quickly, others die slowly. Some live years but are dead in their hearts. If the current system is so good for Native people, why is this happening?”³⁵

CERA is particularly proud of its Native membership, advertising that their membership “includes Indians and non-Indians from both on and off reservations. This diversity helps us understand the impact of Indian policy from the ‘inside out’ and the ‘bottom-up.’”³⁶

Despite the presence of American Indians in the Anti-Sovereignty movement, it is not the case that American Indians, in a broader sense, are part of the movement. As Ryser observes, “Several ‘non-tribal Indians’ participate in the Movement as ‘legitimizers of factual distortion.’ Typically, the “non-tribal Indian supporter” is wealthy as a result of “helping my fellow Indian.” These activists gained their wealth by exploiting other Indians by means of, for example, buying

an Indian's individual land allotment and selling the same allotment to a non-Indian for a vastly higher price. Instead of 'allotment of land' one could substitute any of the following words: Timber, oil, gravel, water, fish, natural gas, or minerals. The Movement helps the 'non-tribal Indian supporter' avoid tribal government regulation."³⁷

ANTI-INDIAN CLAIM #5: Tribal councils are corrupt and need to be eliminated.

The Anti-Sovereignty movement portrays tribal governments as oppressive to American-Indian people. Another CERA author writes that "Like Medieval kings, tribal governments have largely unchecked, centralized power and are generally protected from being sued..." and that "the modern concept of tribal sovereignty involves a great deal of political power from Indian citizens to their largely unaccountable tribal governments."³⁸ Anti-sovereignty advocates claim that such councils perpetuate nepotism and poverty on reservations. Tribal councils are described as being without the checks and balances guaranteed by the United States' Bill of Rights, and stories from American Indian newspapers are used to illustrate that "corruption in tribal governments is the norm, not the exception."³⁹

It is true that some American Indians are opposed to the tribal council as the form of government. The formation of tribal councils resulted from the Indian Reorganization Act (IRA) of 1934, which forced American Indian nations to form tribal councils to replace their traditional governments.⁴⁰ Yet the Anti-Sovereignty movement is not concerned with improving the lives of American Indians. In the same article that called corruption in tribal governments the norm, the author writes: "The policies of tribal sovereignty and tribal sovereign immunity have hurt tribal members, impaired businesses trying to contract with tribal governments, stifled economic development on reservations, and denied basic rights to Indians and non-Indian patrons and employees of tribally-owned operations."⁴¹

The assumption by Anti-Sovereignty groups that tribal councils are corrupt appeals to stereotypes of American Indian criminality and poverty by suggesting that American Indians are unable to effectively govern themselves.

ANTI-INDIAN CLAIM #6: Indian Casinos are bad for the community and cause "crime."

Often Anti-Sovereignty groups list American Indian casinos as one of their main issues.⁴² Their stated goal is to prevent Indian casinos from operating in their states or to remove casinos that already exist. The websites of Anti-Sovereignty groups are not always clear on their justifications for opposing casinos. It is likely, however, that many objections to Indian casinos are self-serving financial ones rather than moral issues: the fact that casinos are taxed differently than other non-Indian-owned businesses; claims that casinos place undue burdens on local and state infrastructures; and resentment that tribal entities make substantial profits in ways unavailable to non-Indians.

Endnotes Available Online!

All citations and references are available at www.defendingjustice.org or by contacting PRA.

ORGANIZING ADVICE: Case Study Of Activism and/or Resistance

Q & A WITH LEAH HENRY TANNER, NEZ PERCE (NI MII PU)

Leah Henry-Tanner, an enrolled member of the Nez Perce Tribe of Idaho, is a long-time activist with experience in challenging the anti-democratic Right and organizing against White supremacists. Leah has worked on issues of tribal sovereignty, treaty, civil, and human rights and reproductive health. She is also a participant in the Native American Women's Dialog on Infant-Mortality group which addresses the high infant-mortality rates in Native American/Alaska Native families. A board member of several progressive organizations, including the Kitsap Human Rights Network (current chairperson), Communities Against Rape and Abuse, and the Portland, Oregon-based Western States Center, Leah currently works as a community advocate for the SIDS Foundation of Washington in Seattle.

PRA: What does sovereignty mean?

LHT: It means political autonomy and the right of tribal nations to self determination, without interference from federal, state, and local governments and their non-Native citizens.

PRA: Can you break that down? What does that really mean?

LHT: It means that tribes have ultimate authority in their territories.

PRA: What are you fighting for?

LHT: Full recognition of the rights of tribes: basically, the United States and its citizens need to honor the promises they made to tribal nations through the treaties they signed with them. These rights were not granted by the U.S. government, and include rights on reservations and ceded territories. Some of these rights include hunting and fishing rights and the right to gather roots, herbs, and other plants. It also includes the rights of tribes to make laws and govern within their territories; develop tribal economies; protect the health and welfare of their peoples; and protect their homelands.

PRA: What do you see as the main issues?

LHT: One of the interesting issues is jurisdiction and how that is really convoluted. The U.S. Supreme Court, which still uses the racist Marshall Trilogy as the framework for federal Indian policy, continues

to erode the rights of tribes. In *Oliphant v. Suquamish*, for example, the Supreme Court ruled that tribes don't have jurisdiction over non-tribal members in criminal matters. This has created legal confusion and allowed some non-tribal members who live on reservations to break tribal laws. For example, in Idaho, a prosecuting attorney refused to recognize the authority of Nez Perce tribal police who attempted to stop him for speeding through the reservation. He did not stop until he left the reservation boundary and was stopped by state police. Other issues include—and by no means is this list complete—land recovery and placing land into trust, economic development, protection of sacred sites, and stopping state incursion into Indian Country.

PRA: Who do you consider the Right?

LHT: From my perspective, a range of political groups, individuals, and elected officials broadly committed to preserving and expanding various forms of privilege and power. "The Right" is most commonly thought of as defending privilege based on property ownership. But we also need to recognize groups committed to White supremacy and male and heterosexual privilege. And, to realize that not all who oppose tribal rights are who we think of as "the Right." On the other side of the political spectrum, environmentalists have not been consistently good allies. Recently, organized labor has also attempted to invade Indian Country.

PRA: How do you encounter the Right in your work?

LHT: The Anti-Indian Movement is a complex and diverse movement, and because Indian issues are so localized, different issues pop up in different locations. In Idaho, the North Central Idaho Jurisdictional Alliance (NCIJA), one of the most pernicious anti-Indian organizations in the United States, is seeking to overturn the sovereignty of the Nez Perce tribe. The NCIJA consists of 23 local government entities. On the Yakama reservation, in eastern Washington State, local non-Native tavern owners organized opposition to the alcohol ban that the Yakama Nation attempted to enforce in their homeland. When the Suquamish Tribe, in the Puget Sound area, petitioned the state of Washington to regain one acre of land that was illegally taken, the Association of Property Owners

and Residents of the Port Madison Area (APORPMA) organized opposition to the Suquamish tribe's eventually successful effort. During the 2000 Washington State Republican convention, delegates passed a resolution calling for the termination of tribes. Even anti-Indian stalwart Slade Gorton (R-WA) distanced himself from this scandalous resolution. Again, these are just a few examples.

PRA: What is the nature of the opposition? What are their tactics? What is their goal?

LHT: They oppose the existence of tribal governments and the rights those governments exercise. They organize opposition in a variety of ways, some of which I mentioned earlier. It's my belief that their ultimate goal is the total destruction of Indian Country. They want to finish what the U.S. government started.

PRA: What is their rationale or motivation?

LHT: Anti-Indian activists couch their rhetoric in the language of equal rights and they think indigenous people have "special rights." Slade Gorton used the term "Supercitizen" when describing Native people. The treaty rights that Native peoples have are not "special rights," rather they are rights that were reserved in treaties negotiated by tribal leaders and the U.S. government and are no different than the rights and obligations in treaties the United States signs with other countries. According to the U.S. Constitution, treaties are the highest law of the land. The motivation behind the movement against Native rights differs depending on who is involved. Corporate mining and logging interests want access to natural resources, the vast majority of which, in the United States, sit under Native lands. White supremacists are obviously motivated by racism, while other conservatives who oppose multiculturalism and pluralism see Native sovereignty and identity as a threat to American hegemony.

PRA: What barriers do you face in challenging them?

LHT: It's challenging to organize opposition to State policy. It is really hard to find allies.

PRA: How have non-Native progressives been on Native sovereignty issues?

LHT: Even non-Native progressives get really confused. It seems that we have to constantly educate them. I think because treaty rights are different from civil and human rights, progressives haven't developed much analysis around Native issues.

PRA: Why don't people get it?

LHT: Because genocide was so successful against Native people in the United States, most folks today don't have any meaningful contact with indigenous people. We're the forgotten peoples in our own countries.

PRA: What advice would you give to progressive activists?

LHT: Remember that the United States is occupied territory. Learn about tribes and the issues that are impacting Indian Country. Most of all, listen when tribal people share their stories with you.

Additional Resources

Right-Wing Organizations

Citizen's Equal Rights Foundation/Citizen's Equal Rights Alliance

P.O. Box 93, Ronan

MT 59864

Phone: 605-374-5836

www.citizensalliance.org

CERA and CERF are affiliated groups that are part of the U.S. Anti-Sovereignty movement. They use a rhetoric of equal rights to argue that Native people should be citizens like all other American citizens, and that the sovereign status of tribes recognized by the federal government should be eliminated. CERA's focus is national, and they target specific legislation. Articles available through its website discuss why sovereignty has harmed rather than helped American Indians, and why it is unconstitutional. Ultimately they suggest that a constitutional amendment eliminating native sovereignty may be necessary to ensure the pledge of "one nation under God, indivisible, with liberty and justice for all." The Montana Human Rights Network and others have observed that groups like CERA/CERF are part of the Anti-Indian movement, and that their "systematic effort to deny legally established rights to a group of people [Native people] who are identified on the basis of their shared culture, history, religion and tradition" makes it "racist by definition."

Right-Wing Websites

www.IndianRelations.com

The Reservation Report, at: http://www.thecommunityforum.com/Reservation_Report.htm

The Native American Press/ Ojibwe News, at: <http://www.press-on.net/>

Progressive Organizations

Colorado American Indian Movement (AIM)

www.coloradoaim.org

denveraim@coloradoaim.org

American Indian Movement of Colorado (Colorado AIM) has rooted its political, social, cultural and economic program in four basic, essential, and non-negotiable principles: Spirituality, Sovereignty/Self-determination, Support and Sobriety. Any indigenous person from Turtle Island who embraces and actively supports these principles is welcome to join.

Center for World Indigenous Studies

PMB 214

1001 Cooper Point Road SW, Suite 140

Olympia, WA 98502-1107

Phone: 360-486-1044

Fax: 253-276-0084

www.cwis.org

CWIS publishes and distributes literature written and voiced by leading contributors from Fourth World Nations. An important goal of CWIS is to establish cooperation between nations and to democratize international relations between nations and between nations and states.

Fourth World Center for the Study of Indigenous Law and Politics

Department of Political Science

University of Colorado at Denver

Campus Box 190, P.O. Box 173364

Denver, CO 80217-3364

Phone: 303-556-2850

Fax: 303-556-6041

http://carbon.cudenver.edu/public/fwc/index.html

The Center is resource of authoritative information on indigenous peoples' affairs. The Center creates university-level curriculum, publishes a journal on indigenous politics with a global concentration, holds public forums and presents testimony before international legal organizations.

Honor Our Natives, Origins and Rights (HONOR)

3901 Chicago Ave S, Suite 202

Minneapolis, MN 55407

Phone: 612-827-2766

Fax: 612-827-2769

www.honoradvocacy.org

HONOR is an organization devoted to protecting the rights of American Indians and Alaska Natives by monitoring legislation and educating the general public about issues involving Indian people.

Indian Law Resource Center

602 No. Ewing St.
Helena, MT 59601
Phone: 406-449-2006
Fax: 406-449-2031
www.indianlaw.org

This organization provides legal advocacy for the protection of indigenous peoples' human rights, cultures, and traditional lands.

Midwest Treaty Network

P.O. Box 1045
Eau Claire, WI 54702
Phone: 715-833-8552 or 800-445-8615
www.treatyland.com

The Midwest Treaty Network is an alliance of Indian and non-Indian groups supporting Native American sovereignty. It works, mostly in the western Great Lakes region, to educate and organize those who serve as obstacles to treaty rights and sovereignty. Resourceful website.

Montana Human Rights Network

PO Box 1222
Helena, MT 59624
Phone: 406-442-5506
www.mhrn.org

MHRN is a grassroots statewide network of human rights organizations, including the Flathead Reservation Human Rights Coalition. MHRN monitors the activities of the Religious Right, militias, and White supremacist groups across the state. Published a report on the anti-sovereignty movement in Montana.

Native Americans Rights Fund (NARF)

1506 Broadway
Bolder, CO 80302
Phone: 303-447-8760
Fax: 303-443-7776
www.narf.org

NARF provides legal representation and technical assistance to Indian tribes, organizations and individuals nationwide.

National Congress of American Indians (NCAI)

1301 Connecticut Ave NW, Suite 200
Washington DC 20036
Phone: 202-466-7767
Fax: 202-466-7797
www.ncai.org

Founded in 1944, NCAI is the oldest and largest tribal government organization in the U.S. NCAI serves as a forum for consensus-based policy development among its membership of over 250 tribal governments from every region of the country. NCAI informs the public and the federal government on

tribal self-government, treaty rights, and a broad range of federal policy issues affecting tribal governments.

North American Indian Legal Services (NAIL)

435 Wright Street, No. 37
Denver, CO 80228
Phone: 720-840-5438
www.nailsinc.org

NAIL provides legal representation for North American Indian tribes and individual indigent people, to protect tribal resources, to promote effective and accountable tribal government practices and procedures, to improve tribal economic prosperity and to safeguard and ensure individual rights.

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Endnotes Available Online!

All citations and references are available at www.defendingjustice.org or by contacting PRA.

All of the content in this publication, plus additional information, can be downloaded from the *Defending Justice* companion website: www.defendingjustice.org.

CONSERVATIVE AGENDAS AND CAMPAIGNS

FAITH AND RELIGION

“If you pray hard enough, you won’t be poor.”

Faith and religion play a complex and controversial role in the criminal justice system. From the growing number of Christian ministries and bible-study groups in prison to church-based inner city programs for ex-prisoners to the recent controversy over the role of posting the Ten Commandments in public spaces, the influence of faith and religion, especially Christianity, is visible in all aspects of the legal and criminal justice systems. The 2001 establishment of the White House Office on Faith-based Initiatives is a clear indication that faith and religion, central to the right-wing political agenda, are going to be even more enmeshed in the nation’s criminal justice system.

Faith and religion have often been important sources of strength for those caught in the criminal justice system; Malcolm X’s religious conversion in prison is just one example of the pivotal role faith has played in the struggle for Black liberation. Critiquing the role of faith becomes tricky. When is faith empowering and when is it being used to oppress? Should we fight for increased religious access or a ban on the practice of religion in the criminal justice system? While we recognize the positive role faith and religion may play in an individual’s life, we also believe the Right’s manipulation of faith to push a conservative cultural and policy agenda must be exposed and resisted.

The Right’s faith-based policies are especially destructive because they accomplish multiple right-wing goals. They function to tear down the constitutional principle of Church-State separation. More importantly, these policies seek to destroy the social safety net activists have worked so hard to create and preserve; while at the same time further institutionalizing racism, sexism, and homophobia, and promoting neoliberal economic policies.

SECTION OBJECTIVE

In this section, we will explore how the State and various right-wing organizations exploit faith and religion in the criminal justice system to further a conservative Agenda.

IN THIS SECTION

- Role of the Right: Religious Activism
 - Christian Right and Prison Fellowship Ministries
 - Nation of Islam
- Role of the State: Faith-based Initiative
- Organizing Advice: Q&A with Stop Prisoner Rape
- Additional Resources

WHAT IS THE SEPARATION OF CHURCH AND STATE?

The phrase “separation of Church and State” refers to the widely accepted legal and constitutional principle that the government should remain neutral on issues of religion, God, or worship. Legally, this idea is secured in the First Amendment to the U.S. Constitution, as a part of the Bill of Rights added in 1789. It reads:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”

The first phrase, “Congress shall make no law respecting an establishment of religion,” is also known as the establishment clause. Government should not and cannot legally promote any faith or religious practice. When activists criticize the Faith-based Initiative as tearing down the wall between Church and State, they are referring to this principle. The second phrase, “...or prohibiting the free exercise thereof,” refers to the right to practice any religion one chooses without government interference. Some faith-based groups argue that the practice of their religion includes the provision of services on their own terms.

ROLE OF THE RIGHT: Religious Activism

There is no denying that faith-based and religious organizations are active, organized and often positive forces inside the criminal justice system. Organizations like Prison Fellowship Ministries (PF) and the Nation of Islam (NOI) are among the hundreds of religious organizations that provide support, services and hope for people affected by the criminal justice system. Some of these organizations even take a more progressive stance on some issues of criminal justice than most liberals or Democrats.

Yet, these are complicated issues. While these groups provide valuable services, they may simultaneously promote conservative social and political values that erode human rights for all. Typically, conservative religious groups have opposed reproductive, queer, and women’s rights movements. Most recently, many churches in communities of color which supported the civil rights movement have come out to oppose same sex marriage. In addition, some religious groups’ response to poverty and crime overemphasize the role of individual responsibility while ignoring larger historical, structural, and institutional forces of oppression. Still other groups discourage critical thinking by promoting a strictly Biblical literalist approach.

Progressive activists have often been accused of minimizing or ignoring the role faith plays in people’s lives. Many prison activists have pondered this issue and ask: if there are already so few of us concerned about those in the criminal justice system, can we really afford to work in isolation? Should we work with conservative religious organizations? Should we criticize them? Can we do both?

This section is intended to help activists be better informed about the most active religious organizations in the criminal justice system, especially Prison Fellowship Ministries and the Nation of Islam, and how these organizations are connected to and/or promote right-wing agendas.

The Christian Right and Prison Fellowship Ministries

Prison Fellowship (PF) is the most prominent evangelical organization within the Christian Right working to reform the prison system.¹ Unlike its discussions on abortion or homosexuality, the Christian Right has a surprisingly wide range of opinions on criminal justice issues. PF, and its affiliated policy arm Justice Fellowship (JF), are one such complex example. PF and Chuck Colson, the group's charismatic and influential leader, have often voiced liberal positions on specific criminal justice issues, and PF's approach to and analysis of crime and prisoners often mirror the actions of progressive activists. Still, on many other issues, such as reproductive rights, homosexuality, and traditional gender roles, they are staunch conservatives. This complex political reality presents many challenges and opportunities for progressive activists in building alliances with those seeking to reform the criminal justice system.

PRISON FELLOWSHIP'S MISSION

“To exhort, equip, and assist the Church in its ministry to prisoners, ex-prisoners, victims, and their families, and in its promotion of biblical standards of justice in the criminal justice system.”

Overview of Prison Fellowship

PF was founded in 1976 by Charles “Chuck” Colson, a former aide to the Nixon Administration. Colson served seven months in federal prison in 1974 when he pled guilty to Watergate-related charges (he pled to obstruction of justice charges, not the burglary itself). Colson's 1973 conversion to Christianity, along with his life-changing vow never to forget his fellow prisoners, led him to establish PF less than two years after his release. Colson has remained active in prison ministry and reform for almost thirty years, although he has also become a leading voice of the Christian Right, most recently coming out against gay marriage.

Back then, PF began with only a staff of six people.² Today, the organization has prison outreach and ministry programs in every U.S. state and 95 countries worldwide. PF's primary mission is to evangelize prisoners and their families but the group also provides much needed services, support, and community to its program participants. PF sees its work “both as an act of service to Jesus Christ and as a contribution to restoring peace to our cities and communities endangered by crime.”³ Justice Fellowship, PF's lobbying arm, works to influence policy by promoting “biblical standards of justice in the criminal justice system.” While JF has a rather progressive critique of the criminal justice system i.e., it is too costly, ineffective, and punitive, its solutions are completely biblically-based and usually lack any structural or systemic analysis. Colson has

HOW DO EVANGELICALS SEE THE BIBLE?

Evangelicals believe that the Good News of the Bible is that those who accept Jesus Christ will have everlasting life. Thus evangelicals feel an obligation to convert others, so they, too, can be saved. Evangelicals consider the Bible the literal word of God; and they read the Bible as saying that those who truly embrace Christ experience a spiritual sense of being “born again.” Evangelicals range from conservative to progressive, with some translating their religious beliefs into political activism. Fundamentalists are evangelicals who are distrustful of (and often angry about) sinful secularized society. Chuck Colson sees himself as an evangelical, but he does not identify as fundamentalist.

—Chip Berlet

also rejected both the liberal solution of rehabilitation and the law-and-order conservative push for tougher sentences and ideas about deterrence.⁴ In addition, any mention or analysis of racism is conspicuously absent from PF and JF materials, although people of color are prominently featured as participants and beneficiaries of PF programs. (See Analysis of Christian Right's Prison Activism.)

Colson has long argued that crime is fundamentally a moral and spiritual problem, rejecting what he calls "the dominant secular view that humans are basically good" and that "crime is caused by unjust social structures, by oppression and by poverty."⁵ Instead, all of PF's programs are "based on the premise that crime is first and foremost the result of moral choices, above sociological, environmental, or economic forces."⁶ PF believes individuals must be held accountable for their choices,⁷ and that the "best way to transform our communities is to transform the people within those communities."⁸ As a result, PF believes "biblical studies are the most vital part of the in-prison program and mentoring."⁹ PF believes that by turning to God, prisoners can have a "change of heart" that will allow them to become productive (and crime-free) members of society. This presents a direct conflict with progressive and radical critiques on what is considered "crime" and "criminal."

...all of PF's programs are based on the premise that crime is first and foremost the result of moral choices, above sociological, environmental, or economic forces.

Still, regardless of the emphasis on crime as a personal choice and God as the only solution to overcoming the temptations of crime, PF successfully humanizes prisoners and their families. PF recognizes very real problems; stresses the needs of prisoners, victims, and their families affected by the criminal justice system; and conducts programs that offer material and spiritual support. PF appears to regard prisoners without scorn, judgment, disgust or contempt, and opposes retributive forms of punishment. Instead, PF supports biblically-based restorative justice ideas that emphasize the needs of both the "offenders" and the "victims," although PF materials state that

ATTICA AND COLSON

The impact of his prison experience is most telling in Colson's view of the Attica uprising before and after his incarceration. In the Prologue to *Life Sentence*, Colson recounts President Richard Nixon praising Governor Rockefeller's brutal repression of the prisoners of Attica after the uprising in 1971. "Rockefeller did the right thing, Chuck," Nixon continued. "He'll catch it though from all those liberal jackasses in the press. But he's smart. The public wants no more nonsense from criminals. The public will cheer him on. 'Gun 'em down,' they'll say." "No doubt about it, Mr. President. Our people out there have had enough of being soft on criminals..." For the next several minutes, as we sipped coffee, the President talked about our anticrime program. I took notes profusely so I could relay his instructions. "Must get tough," I underlined at the bottom of one page. It was good politics. We believed that long sentences, increased police powers and tough prisons were the answer to the crime problem. Neither of us mentioned the 31 prisoners who had been killed, but I suggested that the President send personal letters to the families of the nine slain guards. A nice gesture."¹⁰

Colson's perspective on Attica shifted sharply after his prison experience. In recounting his visit to Attica, Colson identifies himself with the prisoners and the "slaughtered inmates." He criticizes the prison officials for denying the prisoners a monument to honor the inmates killed during the uprising. During his talk at Attica, the officials refuse to allow him to meet with the prisoners. Despite these orders, Colson jumps off the speaker's platform and enters the audience.

— Excerpted from Andrea Smith, "Bible, Gender and Nationalism in American Indian and Christian Right Activism," (Ph.D. diss., University of California, Santa Cruz, 2002), Ch. 2, "Set the Prisoners Free: The Christian Right and the Prison Industrial Complex."

“truly restorative change comes only through a relationship with Jesus Christ.” The emphasis on personal change, despite its criminal justice reform efforts, stops PF from discussing the role that historical, systemic and structural inequity play in the criminal justice system.

Despite its relatively liberal stances, it is important to remember that PF is part of a larger conservative evangelical movement whose primary aim is to convert people to Christianity while promoting a conservative political perspective. PF President Mark Early has compared PF’s model to Jesus’ own model of ministry. He writes, “we combine a ‘touching’ ministry with ‘teaching’ ministry—just as Christ did....This is why it seems perfectly natural for our prison ministry to exist side by side with our worldview ministry...It’s the model every church and parachurch group should imitate.” For activists, this may sound similar to community organizing models that first address fulfilling a social service need, and then use that experience to build power with the intent of instigating widespread social change.

Prison Fellowship Programs in the United States.¹³

Presence: All 50 states

Staff: 300

Volunteers: 36,000

Church Partnerships: 20,000

Annual Budget: \$48 million

*Outreach Programs*¹⁴

In-Prison and Post-Prison Programs: Thousands of volunteer mentors from local churches are trained by PF to support incarcerated prisoners. All programs have a biblical perspective. Class topics include marriage and relationships, and how to apply Christian principles to life. PF also encourages and equips local churches to work with Christian ex-offenders. Through a network of churches, chaplains, pastors, volunteers, and related ministries, PF helps to create a transitional community. Volunteer ex-offenders, who are successfully living in society, are a vital part of the program.

Inner Change Freedom Initiative: PF’s most controversial program. IFI contracts with the prison officials to create a separate unit within prisons.¹⁵ During nearly all waking hours, IFI conducts intensive, evangelical, Biblically-based instruction. In Iowa, participants receive privileges such as additional family visits, free telephone calls, and access to private bathrooms, computers, and big-screen televisions.¹⁶ The program is mainly staffed by Christian volunteers though PF provides the management and administrative support. PF, backed by the White House, claims the program significantly reduces recidivism, although a number of experts have debunked the methodology of the study IFI cites.¹⁷ IFI has also been named in a complaint drafted by Americans United for Separation of Church and State that claims the program violates the establishment clause of the First Amendment. IFI was first launched in a Texas prison in 1997, and now operates in Kansas, Iowa and Minnesota.

Angel Tree: Outreach program for the children of prisoners who are often the “saddest casualties of crime”¹⁸ through “no fault of their own.”¹⁹ In 2002, PF sent Christmas gifts to 32 percent of the children (more than half a million) of prisoners through partnerships with more than 13,000 churches.²⁰ During the year, PF also conducts mentoring, where mature Christians can “pour their lives into a young person,”²¹ and summer camping programs, including a 2003 football camp with the Atlanta Falcons where kids received Bibles, water bottles, t-shirts and footballs.²²

PF cites evidence that children of prisoners are more likely to be incarcerated, and that the cycle of crime can be broken by “sharing the love of Christ with the children.”²³

Operation Starting Line: PF heads up this national coalition of more than 25 evangelical Christian ministries and thousands of local churches. OSL’s goal is to introduce every prisoner in America to Christianity and “saturate the prisons with the message of Christ’s forgiveness and power.”²⁴ Using PF’s model of outreach, OSL uses music, comedy, and entertainers to recruit prisoners, and then provides support programming to “disciple” them. Collaborators include: Campus Crusade for Christ, DeMoss Group, Intercessors for America, the Moody Bible Institute, the National Black Evangelical Association, Navigators, and the Promise Keepers. Since OSL was founded in April 2000, it claims it has reached nearly 658,000 prisoners at 659 facilities in 26 states.

Prison Fellowship International: PFI is the global association of the 95 national PF organizations in various countries worldwide. PFI has NGO status with the UN Economic and Social Council. Global programs include: Angel Tree; GEO Trust, a micro-lending program for ex-prisoners; Global Assistance Program, where medical teams are sent to provide basic care for prisoners and families living in “unfathomable” third-world conditions; and, Sycamore Tree Project, a restorative justice initiative. PFI’s five regional offices are in Switzerland, Zimbabwe, New Zealand, Singapore, and Peru, and the headquarters are located in Washington, D.C.

*Advocacy Programs*²⁵

Wilberforce Forum: PF initiative that promotes and publishes their Christian worldview, biblical perspective, and Chuck Colson’s commentary on key moral issues, current events, public policy, and everyday life.²⁶ WF aims to politicize Christians by helping them “think and live Christianly not only in the church and family circles, but also in the public square.”²⁷ **The BreakPoint Program** produces Chuck Colson’s daily radio address which airs on 1,000 outlets with more than one million listeners. BreakPoint also develops and places Christian messages in the media. The Council for Biotechnology Policy division develops Christian responses on issues of cloning, stem cell research, and the use of human embryos.²⁸ Justice Fellowship, see below, develops Christian perspectives on criminal justice reform issues.

Justice Fellowship: Program of the Wilberforce Forum. Headed by former CA state representative Pat Nolan, JF is the criminal justice lobbying and advocacy arm of PF. JF advocates for prisoners’ rights and supports a Biblically-based restorative justice approach crime to “heal victims, hold offenders accountable, reconcile victims and offenders, and work to restore peace to our communities.” JF advocates for “common sense reforms” to the “costly, retributive criminal justice system” that locks “offenders in a box and forgets about them.”²⁹ JF primarily urges reform legislative action and activism through the electoral process. JF was founded in 1983 as an affiliate of PF.

PF and JF Stances and Positions

The following positions are either implicitly or explicitly supported by PF and JF.³⁰

Criminal Justice Related: PF supports the abolition of mandatory sentencing,³¹ the decarceration not only of drug offenders but of all non-violent offenders,³² a moratorium on prison construction,³³ voting rights for convicted felons,³⁴ minimum wage compensation for prison labor³⁵ and expansion of prison work reforms,³⁶ expansion of community sentencing programs,³⁷ improved

JUSTICE FOR WHITE EVANGELICALS ONLY?

The saga of Karla Fay Tucker, an evangelical white woman who was executed by the state of Texas on February 2, 1998, illustrates both the gender and race politics of evangelical discourse on prisons. Tucker, convicted of murdering two people with a pickaxe, was sentenced to death. On death row, she converted to Christianity and became a *cause celebre* among the Christian Right. Staunch death penalty advocates such as Jerry Falwell and Pat Robertson advocated for clemency. According to Robertson, "...I do think that any justice system that is worthy of the name must have room for mercy....In the case of Karla Faye Tucker, she is not the same person who committed those heinous axe murders...she is totally transformed, and I think to execute her is more an act of vengeance than it is appropriate justice."

Meanwhile, the numerous men of color who also become born again while in prison have not managed to capture the attention of the Christian Right. [It would seem] only white prisoners are "truly transformed" by Jesus and attain full citizenship in "Christian America." Prisoners of color, even when they become "saved," seem by virtue of their race unable to fully shed the sin of their past; there is no room for them in the criminal justice system. In this discourse, true Christianity is predicated on whiteness.

—Excerpted from Andrea Smith, "Bible, Gender and Nationalism in American Indian and Christian Right Activism," (Ph.D. diss., University of California, Santa Cruz, 2002), Ch. 2, "Set the Prisoners Free: The Christian Right and the Prison Industrial Complex." Reprinted with Permission.

access to health care for prisoners,³⁸ affordable and accessible telephone access,³⁹ the protection of prisoners' rights to DNA evidence and qualified counsel,⁴⁰ compassion and treatment for sex offenders, and legislation to monitor and reduce prison rape.⁴¹ PF and JF have not taken a clear position on the death penalty and Colson has changed his mind several times on the issue. PF has, over the years, presented Biblical justifications for supporting, opposing and permitting the death penalty.⁴²

On Sex Offenders: A recent issue of PF's magazine, *Jubilee*, addressed the difficult issue of sexual abuse. Tracing the story of a former sex offender transformed by Christ, the issue humanized the causes and cycles of sexual abuse while emphasizing the need for caring intervention instead of banishment. The issue maintained a compassionate and unscornful tone, as the *Jubilee* editor writes, "We don't give up hope for any offender—sex offender or otherwise. PF believes the only way to break the cycle of crime is by the love of God in Christ transforming offenders, one life at a time." The issue also profiled a group of Canadian Christians who form community circles around sex offenders with the aim of integrating them back into society, not by policing the offender, but by providing counseling and holding them accountable.⁴³

Relationship between crime and prisons: According to anti-violence and prison expert Andrea Smith, "Unlike many liberal reformers, Colson and his supporters question the relationship between prisons and crime reduction....A number of studies have demonstrated that more prisons and more police do not lead to lower crime rates....Colson and other evangelical prison activists are clearly familiar with this research: 'I'm absolutely convinced that the principal cause of crime in America is the prison system itself.' PF asserts: 'Research has shown little correlation between crime rates and the number of people housed in a state's prison.' Daniel Van Ness, former director of Justice Fellowship, contends that a study published by Rand Corporation in 1986 found that offenders who were given prison sentences actually committed crimes faster and more often than similar offenders who were put on probation. He argues that as many as 80 percent of all people in prison should not be there. And at the 1999 JF Forum on Restorative Justice, Van Ness also deconstructed the 'fear of crime,' noting that fear of crime is highest in communities with the lowest crime rates."⁴⁴

The philosophical basis of PF's ministry is restorative justice. PF defines restorative justice as "a Biblically-based response to crime that draws together victims, offenders, communities, and government to repair the harms caused by crime."⁴⁶

In PF's version of restorative justice, "the victim—not necessarily the law—is vindicated, and the goal goes beyond punishment to restoring peace, or *shalom*, to the community."⁴⁷

"PF argues that criminal offenses should not be defined as 'crimes against the state,' but instead should focus on developing reconciliation programs between the victim and offender. The offender should cease paying his or her debt to society and pay the victim back directly."⁴⁸ PF believes this concept comes from God and is rooted in scripture, although Colson erroneously believes that restorative justice is inherently and originally Christian. PF's version of restorative justice focuses very heavily on the individualization of crime and the idea that crime is a moral choice. And while many of PF's stances are liberal, for many evangelicals restorative justice "involves nothing more radical than an increased attention to victims' rights."⁴⁹

On other social issues, PF is consistent with the Christian Right's positions: opposition to abortion and same sex marriage and support for Faith-based Initiatives, the Bush Administration, and the "War on Terrorism."

How Does PF Justify its Positions on Criminal Justice?

In an unpublished doctoral dissertation, scholar/activist Andrea Smith has analyzed the Christian Right's prison activism. Recognizing that Prison Fellowship is part of a tradition of Christian missionary work and social service provision in prisons, she observes that the Bible has been used by different groups to justify competing "political positions." Some groups argue for "tough on crime" approaches, some for compassion and leniency. Some are pro-death penalty, while others are vehemently opposed, based on their reading of the same text. And Colson has disagreed with other evangelicals on a number of issues.

Looking more closely at Colson's model of prison work, Smith has identified five areas of analysis about his approach.

- **Christian Dominionism** Colson's opinions about the role of the State and prisons are determined by his conservative religious beliefs. Colson wishes the restoration of Christian values in government, and, like many other conservative evangelicals, is suspicious of government power. "I don't trust our own government... Government...remains a corrupt and basically sinful institution."⁵⁰ Smith explains, "Although Colson's position on capital punishment has changed several times over the years, his suspicion of the government compels him and his associates to advocate many progressive positions regarding prisons, under the rubric of 'restorative justice.'"⁵¹ In his vision, prisons would be less punitive, and more compassionate,

COLSON: 'PRISONS AS INHERENTLY INHUMANE'

In [his autobiography] *Life Sentence*, Colson does not simply critique 'inhumane' prisons; rather, he characterizes prisons as inherently inhumane. He describes how he was sued for slander for decrying the prison conditions at Fulton County Jail in Georgia. Many local residents, including the father of Martin Luther King, Jr., took issue with him, arguing that 'this is a good jail.' Colson's reply: 'I have yet to see a good jail. It is terrible to herd men together like cattle. If you treat men like animals they become animals.'⁴⁵

—Excerpted from Andrea Smith, "Bible, Gender and Nationalism in American Indian and Christian Right Activism," (Ph.D. diss., University of California, Santa Cruz, 2002), Ch. 2, "Set the Prisoners Free: The Christian Right and the Prison Industrial Complex." Reprinted with permission.

based on the concepts of restorative justice. Colson has said, “I have yet to see a good jail. It is terrible to herd men together like cattle. If you treat men like animals. They become animals.”⁵² Colson, however, does not embrace Christian Reconstructionism, a militant form of dominionism that would totally replace current law with Biblical law.

- **Immorality as a Cause of Crime** Colson has repeatedly indicated that the social fabric’s disintegration is the result of man’s misbehavior in the eyes of God. The enemies of our society are those who are morally flawed, whose misdeeds threaten God’s covenant with America. Smith explains it this way, “Since poverty is the result of moral failings, crimes based on poverty are not the result of economic inequities, but of immorality.”⁵³ Colson identifies Black prisoners as an important challenge. While he may not consciously be aware of his message, by using anonymous Black figures in his autobiography, and by leading a prison organization that is primarily White, his campaigns reinforce the belief that the enemies of a safe society are people of color.
- **Conversion as the Goal** Evangelicals believe that a personal relationship with Jesus is the foundation of a new life for the reformed prisoner. Colson’s notion of rehabilitation rests on the conversion experience as the way to turn a prisoner into a law-abiding citizen. This approach is attractive to prison administrators who see Christian ministries as successful controls on prisoner unrest. “In the end, the PF message is that prisoners need only Christian fellowship, not advocates to assist them in resisting oppressive conditions.”⁵⁴
- **Family Breakdown** is a Cause of Crime Colson agrees with the widely-held belief among conservative evangelicals that family breakdown is a primary source of crime. Healthy families by this definition use a patriarchal model. Smith suggests that for Colson and others, “The nuclear family is the key to encouraging offenders to live by societal norms.”⁵⁵ Challenges to traditional “family values,” like divorce, feminism, abortion, and homosexuality threaten the social fabric and breed criminal activity.
- **An Individualized Approach** Evangelical prison reform efforts focus on the individual and his/her relationship to the victim of a crime and to God. This individualized approach is quite different from the liberal analysis of crime which identifies such social factors as poverty and racism as some of the root causes of criminal behavior. Although he is aware of the importance of the relationship between society and prisoners, Colson and his co-author Ellen Vaughan wrote in the *Christian Herald* in 1987, “As Christians we believe changes in people—and thus in society—come not through political, exterior structures but through changes in the heart.”⁵⁶ Focusing on the individual creates a problem for restorative justice programs, according to Smith. Restorative justice programs depend on a community that is healthy enough to hold an offender accountable for his/her actions.

Can We Work With Them? Implications for Mobilizing Evangelicals Against the Prison Industrial Complex

By Andrea Smith

Note: The following article is excerpted from Andrea Smith, "Bible, Gender and Nationalism in American Indian and Christian Right Activism," (Ph.D. diss., University of California, Santa Cruz, 2002), Ch. 2, "Set the Prisoners Free: The Christian Right and the Prison Industrial Complex."

Charles Colson's work, with all its problems, is important because it challenges the support for the prison industrial complex within conservative circles. Prison Fellowship (PF) and Justice Fellowship (JF) are willing to work with all sectors involved in opposing prison expansion. They have been very successful in dominating Christian periodical literature on this level, even though it is PF's ministry rather than JF's political activism that seems to receive the greater praise and attention. For instance, right-wing *World Magazine* staffer Roy Maynard praises PF in one article,⁷¹ but in others he opposes many of JF's platforms by advocating mandatory minimum sentencing, increased application of the death penalty, reducing appeals available to those sentenced to death, and increasing the prison sentences of non-violent offenders (including drug offenders) and youth.⁷²

Christian periodical literature is a faulty barometer of grassroots evangelical sentiment about prisons because people involved in prison ministry are the ones most likely to write articles about prison. These writers are more likely to hold progressive positions on prison than are the magazine's readers. This disparity is evident in many of Colson's statements regarding the difficulties he faces in garnering evangelical support for prison reform. Colson notes how evangelicals are much more interested in his conversion story than in his prison work.

Similarly, at the 1999 JF Restorative Justice Forum, the participants and speakers were clearly not in complete accord regarding the importance of restorative justice. One participant who spoke out as a victim of crime claimed to be a proponent of restorative justice, but what she advocated was not recognizably different from standard "get tough on crime" policy. Her notion of restorative justice seemed to be limited to allowing victims to make victim impact statements. In fact, one speaker who develops community policing programs in Washington DC argued that although we now hear more talk about community policing and restorative justice coming from bureaucrats within the criminal justice system, the principles and models of restorative justice have been warped and co-opted by the system to serve punitive ends. It appears that many evangelicals who become involved in restorative justice are not always attracted to it in its purest form. For them, restorative justice involves little in the way of decarceration and greater justice for offenders; in fact, it involves nothing more radical than increased attention to victims' rights. At the JF Forum, I asked Daniel Van Ness, former president of JF, what he thought the level of support for restorative justice was among evangelicals. He said that JF has spent so much energy trying to pass various forms of legislation it has not done the work necessary to build support for its programs at the evangelical grassroots. Recently, though, JF seems to have reorganized its program priorities to emphasize grassroots education. Since

Since evangelicals are not known for their support for prison reform, the work of PF and JF, however flawed, is an important starting point for mobilizing evangelical support for prison reform and possibly for prison abolition.

COLSON'S VIEW: THE WHITE MAN AS THE SAVIOR

The notion that the welfare of the nation is under constant threat from internal enemies is integral to the Christian Right's story of America. America is tormented by disease which threatens its covenant with God. Crime is an integral part of this story, as it is the primary indicator of social disintegration. Regardless of whether or not crime rates are in fact going up, the perception that crime rates are skyrocketing is central to the theological drama in which America is plummeting from God's favor.⁵⁷

These internalized enemies remain racialized because the face of crime and social decay is colored. Poverty, crime, and color are closely correlated in Christian Right rhetoric. This rhetoric clearly equates "the poor underclass" with "Black." Conservative articles on poverty, "illicit sex and drugs," urban unrest and crime always locate these "vices" in, and identify them with, African American or people of color communities.⁵⁸

At the same time that the rhetoric of the Christian Right conflates "poor" and "Black," it obscures the relationship between poverty and violence, thereby suggesting that violence is the sad consequence of indwelling moral failure rather than a learned response to deprivation. It is only a short step to the conclusion that Black people are by nature morally flawed.

Christian Right ideologies trace the roots of poverty among people of color to their "welfare mentality" and ignore the effects of corporate downsizing and the relocation of jobs to the Third World or the suburbs. So, the reasoning goes, if there are no structural reasons for poverty – and you won't see any if you keep your eyes really tightly shut – then poverty must be the fault of the poor. As [Christian Reconstructionist theologian] Gary North states, there is a "right relationship between wickedness and poverty"⁵⁹ – which of course means, between wickedness and skin color.

Since poverty is the result of moral failings, crimes based on poverty are not the result of economic inequities, but of immorality. Not surprisingly, then, the face of both poverty and crime is colored. Prisoners ("criminals," when described in general terms) are people of color.⁶⁰ People of color are essentially the disease that threatens God's covenant with America. In Colson's collection of prisoner stories, *Changed Hearts*, people of color are quite literally the disease, spreading AIDS through contaminated needles or homosexual behavior.⁶¹

This drama is most acute in stories relating an individual prisoner's conversion. For while the face of crime remains colored, the face of the individual prisoner who transcends her/his situation (or was unjustly convicted in the first place) is usually white.⁶² The ones who "save" prisoners are usually white as well.⁶³ These white "saviors" often have to pray "for the Lord's protection" as they bring their message to prison or to the inner city.⁶⁴

In *Life Sentence*, Colson repeatedly uses anonymous Black figures to legitimize his ministry and show that he can save the Black prisoner.⁶⁵ It is Black prisoners who are particularly threatening to him, or who run away while taking part in PF's programs. And it is Black prisoners who are always racially identified. The only African American Colson identifies as playing a significant role in PF is depicted as a troublemaker.⁶⁶ Yet Colson, the white savior of Black prisoners, proves himself when a Black man tells him that he is "right on."⁶⁷

John Perkins notes that even though almost half of the prison population consists of African American males, parachurch prison ministries are almost entirely white. African Americans in prison ministry, he states, are supported by white organizations.⁶⁸ Prison Fellowship volunteers are ninety percent white although the majority of the people they serve are people of color.⁶⁹ Thus, white people are saving society from the crime and decay caused by people of color.

Similarly, prisoner conversion stories are a microcosm of the larger story of Christian America; it is the white citizens of Christian America who will rise above the miserable conditions of their lives and restore America to its rightful relationship with God. This situation is complicated by the growing rhetoric of race reconciliation which seeks to incorporate some communities of color, primarily middle-class African American males, into the Christian Right platform.⁷⁰ Nevertheless, the citizenship conferred upon such sectors is a tentative one, easily revoked.

—Excerpted from Andrea Smith, *Bible, Gender and Nationalism in American Indian and Christian Right Activism*, (Ph.D. diss., University of California, Santa Cruz, 2002), Ch. 2, "Set the Prisoners Free: The Christian Right and the Prison Industrial Complex." Reprinted with permission.

BIBLICALLY-BASED RESTORATIVE JUSTICE?

The difficult relationship between restorative justice and Christian imperialism was quite apparent at the 1999 Justice Fellowship (JF) Forum on Restorative Justice. On one hand, some speakers argued that restorative justice is not possible “without Christ.” Colson’s keynote speech at the conference was primarily dedicated to explaining why Christianity is the “natural law” and superior to all other religious traditions. He then credited Christian restorative justice advocate, Daniel Van Ness, with inventing the principles of restorative justice. On the other hand, many speakers, including Van Ness himself, do not see restorative justice as inherently Christian. Van Ness informed me that he needs to correct Colson’s assumption that Van Ness started the restorative justice movement. He and many speakers credit indigenous models of justice as being one of the primary sources of the restorative justice movement.

Those individuals who see restorative justice as a much broader movement are aware that communities of varying religious and political allegiances have an interest in supporting restorative justice, and consequently Christians in this movement need to develop ways to work in strategic alliances. In fact, many non-Christians attended the JF forum. Pat Nolan, the current president of JF, opened the conference by apologizing to non-Christians if they felt oppressed by the Christocentric language of the conference. He said that JF means no disrespect to non-Christians, but, he argued, if JF is going to persuade evangelicals to shed their support for the “prison industrial complex” and support principles of restorative justice, JF must use biblical language to support its agenda as evangelicals will support restorative justice only if they think it is biblical. When one audience member expressed some feelings of marginalization at the conference because she was non-Christian, a variety of JF staffers tried to reassure her that people of all faiths were welcome to work with JF. Because this issue is of interest to so many diverse communities, evangelical advocates of restorative justice may find themselves forced to adopt positions and rhetoric that are more sensitive to issues of Christian imperialism than do other sectors of the Christian Right.

— Excerpted from Andrea Smith, “Bible, Gender and Nationalism in American Indian and Christian Right Activism,”(Ph.D. diss., University of California, Santa Cruz, 2002), Ch. 2, “Set the Prisoners Free: The Christian Right and the Prison Industrial Complex.”

evangelicals are not known for their support for prison reform, the work of PF and JF, however flawed, is an important starting point for mobilizing evangelical support for prison reform and possibly for prison abolition.

Victims’ Rights as an Entrypoint

The work of PF and JF is also instructive in its ability to appeal to “law-and-order” Christians. PF and JF find ways to use victim-rights language to garner support for their position. Colson’s study guide on prisons begins by focusing primarily on issues that are uncontroversial among evangelicals, such as caring for victims of crimes. After establishing his sympathy toward crime victims, Colson then develops a more controversial critique of prison.⁷³ Similarly Daniel Van Ness, begins his book on prison reform, notably entitled *Crime and Its Victims*, with a discussion of the victims of crime; having established his concern for the victims, he proceeds to propose a list of prison reforms that he claims benefit the victims themselves. Similarly, the JF Forum gave prominent speaking positions to crime victims in order to demonstrate that restorative justice is victim-centered.

Despite their problems, the fact that prison ministries give so many people exposure to prisons may in fact be critical in changing public sentiment about prison conditions. *Faith Today* published a poll stating that 75 percent of its respondents felt that prison conditions were too comfortable. However, it also found that the majority of people who thought prison conditions were inhumane had actually visited a prison, while the majority of those who thought prisons were too comfortable had not.⁷⁴ These findings suggest that exposing people to prisons is an impor-

tant step in transforming their consciousness about them. As Colson himself notes, he would never have become involved in prison reform had he not served time. In fact, Colson uses this insight to alter public policy on prisons by organizing prisoners to visit legislators at Capitol Hill.

Evangelicals for Social Justice?

Although evangelical reformers often ignore the social context of crime and punishment, it is nearly impossible to become involved in prison work without eventually having to confront the evils of capitalism, racism, and other forms of social injustice.⁷⁵ Articles on the death penalty routinely point to the racism endemic in its application.⁷⁶ Al Heystek wrote a critique of the racialization of the war on drugs, noting that “It’s quite evident that incarceration for drug using or selling does nothing to improve the socio-economic factors that are part of the problem in the first place.”⁷⁷ In Van Ness’ succinct formulation: “The rich get richer and the poor get prison.”⁷⁸ James Skillen argues that evangelicals concerned with prison reform must link this cause to other social justice issues: “We must also work for a just education policy, for just health care policies, for economic justice, for environmental justice.”⁷⁹ Colson and company also critique the media hype over crime and prisons, and specifically the venal uses to which “law and order” rhetoric are put: “Do we dare say we ought not to be putting more people in prison? Politicians have played this tune so long, and it always gets applause. But how long does it take you to educate the public and get over that?”⁸⁰ Colson has been outspoken against the “get tough on crime” rhetoric of presidential candidates and was particularly critical of George Bush’s use of Willie Horton in his presidential campaign.⁸¹

In the course of his prison reform advocacy, Colson has often confronted prison officials, in some cases leading to their dismissal.⁸² His ministry has also not balked at advocating for the release of certain prisoners and for the amelioration of living conditions for others.⁸³ *Life Sentence*, in its attention to the horrific conditions of prisons such as Attica, Stillwater, Georgia’s Fulton County Jail, Atlanta Prison, and Lorton, makes it quite clear that prisons are no country clubs.⁸⁴ In the case of Stillwater, Colson’s advocacy led to the closing of its solitary confinement.⁸⁵

He also points to the economic incentives for the proliferation of prisons. “Some states are blindly spending billions for new prisons. That’s good news for the architects and builders who are generous contributors to the campaigns of local politicians. But it’s bad news for the public.”⁸⁶

JF: SOCIAL JUSTICE OR JOB PLACEMENT?

From my observations at the JF Forum, I believe that many of the prominent members of JF are conservative Christian Right Republicans who, for one reason or another, found themselves in prison.

JF’s current president, Pat Nolan, was a former conservative member of the California assembly before he was caught in a sting operation and sentenced to prison for racketeering. At the JF forum, he noted that prior to his incarceration, he was a strong proponent of “get tough on crime” and “victim’s rights” legislation. When he was in prison, someone sent him a JF brochure that convinced him he had been addressing issues of crime and punishment from the incorrect paradigm. He now believes, for instance, that the Victims Rights Act (Proposition 15) he sponsored has actually done nothing to help victims, but has served only to strengthen prosecution.

Ernest Preate, another JF staffer, was the former Attorney General of Pennsylvania who successfully argued for the constitutionality of Pennsylvania’s death penalty before the U.S. Supreme Court. However, he too ended up in prison where he became aware of the racism endemic in the criminal justice system. Through this experience, he became born again, and as he stated at the JF Forum, “if Christ can forgive me, I have to forgive others.” Now, he is a staunch opponent of the death penalty, a major critic of the “war on drugs,” and particularly concerned with ending racism in the criminal justice system. It appears that the most effective way to dismantle the prison industrial complex is to incarcerate as many conservative Christian Republicans as possible

— Excerpted from Andrea Smith, *Bible, Gender and Nationalism in American Indian and Christian Right Activism*, (Ph.D. diss., University of California, Santa Cruz, 2002), Ch. 2, “Set the Prisoners Free: The Christian Right and the Prison Industrial Complex.”

At the Justice Fellowship Forum, issues of institutional racism and classism within the criminal justice system were also widely discussed. Participants even used the terminology “prison industrial complex” to describe the system they opposed. Even when prison ministries focus on converting individuals to Christ rather than changing the system, they often find themselves forced to confront the system in order to do even conversion work effectively. These tensions suggest that prison ministries may be a starting point for evangelical activists hoping to pursue prison reform and other social justice issues.

Potential Alliances

Interestingly, the nature of this issue puts evangelical prison activists in dialogue with individuals of more radical persuasions. Some participants I talked to at the JF Forum had also attended the more radical conference *Critical Resistance: Beyond the Prison Industrial Complex* in 1998. Pat Nolan mentioned that he has worked with feminist lawyer Gloria Allred on prison issues. Speakers talked at length about the need to develop relationships with mainline denominations, non-Christian groups, and even leftist organizations, for just as support for the prison industrial complex has been bipartisan, so too has opposition to it been bipartisan. This issue may be unique in its ability to bring evangelical Christians into dialogue with groups they would normally avoid.⁸⁷

If the Right can be so successful in using tensions within evangelical discourse to garner support for its political platforms, political progressives should begin to think about the possibilities of doing the same. While the tensions within evangelical discourse do not add up to a comprehensive program for social transformation, they indicate points of strategic intervention that progressives might seize upon to create “hegemonic blocs” not only against the prison industrial complex, but against other forms of social and political oppression as well. These relationships *could* prove significant in pushing evangelical politics to the left. By hinting at this possibility, I do not mean to suggest that such an outcome would be easy to achieve or even likely. But unfortunately, because progressives have not yet identified points of resistance in arenas such as these, they have not even begun to think about how to make use of them.

ELDRIDGE CLEAVER’S CONVERSION

Black Panther Party leader Eldridge Cleaver’s conversion to Christianity is portrayed as an example of how Christ can save people from destructive revolutionary fervor. Cleaver states, “You see, it’s not by accident that my appreciation of democracy coincides with my conversion.”⁸⁸ He notes that “I’ve reached another progression where I now recognize the limitations on the political and economic solutions and I’ve now isolated the spiritual and moral dimension as being the fundamental aspect of the whole problem.”⁸⁹ Social change is no longer necessary, and with its demise, prison reform becomes less necessary. “Be not deceived into thinking that by changing the prison regime you’re going to change behavior.”⁹⁰ Cleaver’s story also plays a prominent role in Colson’s autobiography. Prior to his conversion, Colson remembers Cleaver as a thuggish sexual predator filled with hate. His sharpest memory of Cleaver was his statement at a rally, “Kill the pigs, rape the white woman.”⁹¹ The basis of the Black Panther’s politics completely escapes Colson. Fortunately, from Colson’s viewpoint, Cleaver realizes that the horrors of Communism are far greater than “even in the worst of American ghettos.”⁹² When Cleaver returns from exile, his reading of Colson’s *Born Again* is supposedly central to his conversion to Christianity and his allegiance to the ideals of “America.”⁹³ In this narrative, Colson’s version of prison ministry promises to save America from the Black militancy that is promoted by prison repression.

— Andrea Smith, *Bible, Gender and Nationalism in American Indian and Christian Right Activism*, (Ph.D. diss., University of California, Santa Cruz, 2002), Ch. 2, “Set the Prisoners Free: The Christian Right and the Prison Industrial Complex.”

The Nation Of Islam

The Nation of Islam (NOI) and its offshoot, the Five Percent Nation, is active in prisons across the United States. While certain trends within Black Nationalism can and have been progressive, many others, including the Nation of Islam earlier under Elijah Muhammad and now under Louis Farrakhan are in fact fundamentally conservative. The Nation of Islam has until recently held the position that in order for Blacks to achieve self-determination, they must separate themselves from White culture. The NOI encourages Black entrepreneurship as a way to create an alternate economy.

The NOI rejects Christianity as a White religion and offers a creed that is less connected to traditional Islam than it is to a set of principles for Blacks to live by. Despite its radical demeanor, the NOI broadcasts fundamentally conservative themes: racial determinism, the belief that individuals, not collective action, solve social problems; and reverence for a patriarchal family structure.

For prisoners' allegiance, the NOI competes not just with Christian groups but with a growing number of Islamic sects brought to prison by their adherents.

Unlike Colson's PF, the NOI does not receive faith-based funding to support its prison work. In fact, it was at the center of a controversy at the opening of the White House Office for Faith-based Initiatives, when it was suggested that the NOI be able to receive funding. When the public was asked if it would approve of the NOI receiving federal faith-based funding for social service work, only 29 percent said yes.⁹⁴

Despite its radical demeanor, the NOI broadcasts fundamentally conservative themes: racial determinism, the belief that individuals, not collective action, solve social problems; and reverence for a patriarchal family structure.

Overview: NOI and Prisons

The Nation of Islam has targeted prisons as a recruitment ground since the 1940s when Elijah Muhammad was convicted of draft evasion and jailed for three years. Personal experience with prison and the attitudes of Black prisoners convinced Muhammad to focus on prisons.

The NOI has taken a number of positions on justice, the law, and prisons:⁹⁵

- We want justice. Equal justice under the law. We want justice under the law. We want justice applied equally to all, regardless of creed or class or color.
- We want freedom for all Believers of Islam now held in federal prisons. We want freedom for all black men and women now under death sentence in innumerable prisons in the North as well as the South.
- We want an immediate end to the police brutality and mob attacks against the so-called Negro throughout the United States.
- We believe that the Federal government should intercede to see that black men and women tried in white courts receive justice in accordance with the laws of the land—or allow us to build a new nation for ourselves, dedicated to justice, freedom and liberty.

In his call for the 1995 Million Man March, Louis Farrakhan noted that, “The winds of the Republican Party which swept into power calling for more harsh punishment for criminals, and the building of more prisons, say that anyone who has been guilty of a criminal offense three times will be imprisoned for the rest of his or her natural life. Prisons are now private enterprise, which means that it is becoming big business now to build prisons to incarcerate the Black, the weak, the poor and the ignorant. This new wave of anti-crime legislation is to legitimize a return to slavery in the name of crime-reduction. It is our intention in the Nation of Islam and among concerned Black clergy, politicians, and other leaders to reduce crime and violence in our community by increasing the level of productivity, particularly in the Black male.”⁹⁶

Recent articles, editorials, as well as opinion pieces in the NOI’s publication, *The Final Call*, similarly have critiqued crime-related legislation that is seen as harmful to or skewed against Blacks. This includes Senator Charles Schumer’s (D-NY) “Criminal Street Gang Abatement Act of 2004.”⁹⁷

ANALYSIS OF NOI: Conservative Right-Wing Black Populism

Dean Robinson has described The Nation of Islam as a right-wing populist movement in his book, *Black Nationalism in American Politics and Thought*:

“In contrast to the march on Washington in 1963, the [1995] Million Man March had no clear policy agenda. Where the marchers in 1963 assembled to pressure President John F. Kennedy and the Congress for civil rights legislation, and where the 1963 march culminated roughly a decade of sustained grassroots mobilization, the Million Man March represented neither. If anything, Farrakhan and the march reproduced conservative tendencies in black nationalism and black politics more generally.... In fact, very few of the speeches that day referred explicitly to the effects of conservative policy on black life in America.

“Further, the absence of women at the March signaled the continuing existence of a deep and enduring sexism prevalent in black uplift ideology. The marchers agreed that black men had particular responsibilities in need of address; and in this and other respects, the Million Man March articulated sentiments not unlike those of the evangelical Christian men’s group the Promise Keepers, who are determined to reassert themselves as proper heads of their households and who root that alleged mandate in scripture....

“Further, the NOI has flirted with elements of the far right over the years. The NOI, as Malcolm X disclosed, met with leaders of the Georgia Klan in 1961.... More recently, in 1990, Farrakhan granted an interview to the far right *Spotlight* in which he suggested that blacks had to improve their condition ‘so that the communities of the world will not mind accepting us as an equal member among the community of family of nations.’ During the early 1990s, the NOI also fostered exchanges with supporters of far right activist Lyndon LaRouche.

“In light of Farrakhan’s apparent aspirations for political power, and in light of his efforts to

BLACK NATIONALISM

Black Nationalism is an ideology, or set of beliefs, that calls for African Americans to separate themselves from White society in order to attain political, cultural and economic self-determination. Black Pride, a core element of Black Nationalism, has its roots in African identity and encourages self esteem and the reclamation of Black manhood. The Nation of Islam under Louis Farrakhan identifies closely with a Black Nationalist ideology that incorporates the conservative religious themes of a vengeful God and the necessity for personal responsibility based on strict moral principles.

move his organization in the direction of orthodox Islamic practice, it may be that Louis Farrakhan’s vision is more akin to that of the religious right, but with a left-of-center, populist inflection. Farrakhan tends to agree with leaders of the religious right on social issues like homosexuality, drug use, and the goal of strengthening marital bonds. Like [Pat] Robertson and other religious right leaders he argues that the black poor need to do more by themselves to solve their problems, on the ground that poverty is largely a function of bad behavior. However, Farrakhan also thinks that government ought to address matters of racial, gender, and economic inequality.”⁹⁸

FIVE PERCENTERS

Researcher Alex Todorovic has studied the Five Percenters.

“Five Percent Nation is a loose-knit religious organization that split from the Nation of Islam (NOI) in 1964. The group’s lack of structure and young members have prompted the South Carolina Department of Corrections to label the group a ‘security threat,’ and treat it as a ‘gang’.... While Five Percenters do not claim any scripture unique to their religion, followers often read the *Quran* or [Nation of Islam founder] Elijah Muhammad’s *Message to the Black Man*, the same texts read by NOI members.... By the mid-seventies Five Percenters had become part of the African-American inner city experience.... Contemporary rap artists like Rakim, Big Daddy Kane and Lakim Shabazz have used the Five Percent flag on their album covers and have written lyrics influenced by its doctrine. Five Percent continues to be dominated by young adherents. Part of the religion’s allure is that there is no leader and the group’s meetings, called parliaments, generally occur in public places.”⁹⁹

All of the content in this publication,
 plus additional information, can be downloaded
 from the *Defending Justice* companion website:
www.defendingjustice.org

ROLE OF THE STATE: Faith-based Initiatives

The Faith-based Initiative refers to the George W. Bush Administration's broad set of policies to increase government support and funding of faith-based programs. Though Bush was unsuccessful in passing broad legislation in Congress during his first term, his Administration was successful in increasing government funding for religious groups and building grassroots support for the idea. By establishing an entire White House office dedicated to the issue, the Administration sidestepped Congress and administratively opened doors for religious groups. By easing federal agency regulations through executive orders, the Bush Administration increased the amount of government funding (with fewer restrictions) for the social service activities of religious groups.

The White House Office on Faith-based Initiatives states that it focuses its efforts on the following populations: at-risk youth, ex-offenders, homeless, hungry, substance abusers, those with HIV/AIDS, and welfare-to-work families. All of these populations are directly connected to and targeted by the criminal justice system.

Regardless of who delivers the programs (whether it is corporations, religious and community organizations, or the government), faith-based prisoner-reintegration programs, drug-treatment programs, welfare programs, and youth-mentoring programs are helping and serving people who are under the control of the criminal justice system in one way or another.

What is the Faith-based Initiative?

In January 2001, just nine days after being sworn in as the new president, George W. Bush launched the Faith-based Initiative. A central feature of his domestic policy agenda, the Faith-based Initiative was Bush's plan to make it easier for religious groups to receive federal funds to deliver social services. There were three major components to the plan: loosen regulations that made it difficult for religious groups to work with various government agencies; propose new tax incentives to encourage greater charitable giving; and enact into a law a controversial idea known as "charitable choice." "Charitable choice" was a clause that would allow religious charities to compete with secular organizations for government money to deliver a wide range of social services.¹⁰⁰ Though the provision had first appeared in the 1996 welfare reform laws, the Clinton Administration severely limited its impact by excluding organizations that were directly involved in religious activities from competing for grants. In contrast, Bush argued that religious groups had been discriminated against, and to rectify the situation, he proposed removing those safeguards so that all groups would be eligible for funding.

To oversee his plan, Bush, surrounded by Christian, Jewish, and Muslim representatives, signed an executive order that established the White House Office on Faith-based and Community Initiatives (OFBCI) in January 2001. The goal of this new office was to help religious organizations break through "bureaucratic barriers" that prevented them from receiving government money and contracts. The office would focus on supporting "community-based" solutions to poverty and drugs with a stated goal of working with prisoners and ex-offenders.

Though many churches and organizations embraced the plan mainly because it was accompanied with funding resources, the Faith-based Initiative was met with much ideological concern. Initially, both liberals and conservatives were apprehensive about the plan (though many conser-



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Faith-Based Initiative

vatives eventually would climb onboard). Liberals were concerned the proposal violated the constitutional separation of Church and State, while allowing religious groups to discriminate in their hiring processes even though they would get government money. On the other hand, some conservatives fretted that “unqualified” groups (read non-Christian groups such as the Church of Scientology, the Nation of Islam, and the International Society for Krishna Consciousness) would be eligible for funding. Some groups on both sides worried that this would mean that the government would have more influence on their group’s workings.

With or Without Congressional Approval

In July 2001, after the House of Representatives passed a version of the initiative, President Bush tapped Senators Rick Santorum (R-PA) and Joseph Lieberman (D-CT) to hash out a bipartisan compromise. In 2003, after more than two years of Congressional bickering, the Senate passed the Charity, Aid, Recovery and Empowerment (C.A.R.E.) Act, which left out the controversial provision of “charitable choice.” Since then, the watered-down version of the original proposal has been stuck in conference committee and been considered effectively dead.

Still, even though the Bush Administration failed to get enough support to pass sweeping legislation, the Bush team has been able to accomplish many of its original goals by sidestepping Congress. By the third anniversary of the establishment of the White House Office, the Bush Administration had succeeded in establishing seven Centers for Faith-based and Community Initiatives at various federal agencies, created numerous websites, provided technical assistance for religious groups at conferences, published extensive guidebooks to help religious groups apply for funding, and earmarked billions for faith-based institutions. In early 2004, Bush put the finishing touches on regulations instructing all federal agencies not to “discriminate against” religious groups.¹⁰¹ By issuing executive orders and exercising administrative powers, the Bush

Administration has been able to steer clear of any opposition and quietly make the changes it desires without requiring public or Congressional support.

While the actual impact of the Faith-based Initiative might remain as yet unclear, there is no question that the initiative serves to further the broader strategic agenda of the Right. Many organizations that represent Bush’s electoral base are rewarded with this initiative. The forces behind this agenda have gained tremendous ground, even though there will inevitably be compromises and concessions that they will have to make along the way.

HISTORY

It is not new for churches and church organizations to receive government contracts to provide social services. The origins of the Faith-based Initiative can be traced back to the early 1990s,¹⁰² and for many years religiously-affiliated groups, like Catholic Charities or Lutheran Social Services, have received funds to provide programs like food distribution, foster care, and drug programs.¹⁰³ However, safeguards were created to prevent the charity’s preaching of its religion. The Faith-based Initiative seeks to dismantle such restrictions.

GAPP Report

“The idea of contracting with religious groups to deliver government services was a proposal

WHO’S BEEN IN THE HOUSE?

In addition to the appointments of longtime “charitable choice” supporters Tommy Thompson as Secretary of Health and Human Services and John Ashcroft as Attorney General, George W. Bush’s first administration stocked the White House Office on Faith-based and Community Initiatives (OFBCI) and its branch offices with seasoned veterans of the conservative movement and the Religious Right. Some of the key appointments were:

John Dilulio: In the mid-1990s, Dilulio, a Democrat, gained a measure of notoriety and a seat at the conservative policy-making table due to his hard-line position on juvenile crime. When he predicted, albeit incorrectly, that there would be a massive crime wave of “unprecedented brutality” by children and teenagers, whom he called a “generational wolf pack,” his star rose within conservative circles and the “we’re tougher on crime than you are” bunch in Congress. Dilulio resigned under fire, mostly from conservatives, in mid-summer 2001.

Don Eberly: Eberly, who served as Deputy Director for the Office of Public Liaison during the Reagan Administration, was named Dilulio’s Deputy Director. Eberly is one of the primary advocates of [a conservative definition of] “civil society,” which will shrink government by handing over responsibility for the social safety net to faith-based organizations, corporate and community groups, and philanthropists. Eberly has written several books on the subject including *America’s Promise: Civil Society and the Renewal of American Culture*.¹⁰⁶ He was also a founder of the National Fatherhood Initiative (NFI) and author of *The Faith Factor in Fatherhood*.¹⁰⁷ The NFI was founded in 1994 “to lead a society-wide movement to confront the problem of father absence.”¹⁰⁸ The group’s mission is to “improve the well-being of children by increasing the proportion of children growing up with involved, responsible, and committed fathers.” Wade Horn, also a founder and former President of the NFI is Assistant Secretary for Family Support in the Department of Health and Human Services.

Carl Esbeck: Prior to his appointment as head of the Faith-based Initiatives office in the Department of Justice, Esbeck worked with the conservative Federalist Society’s Religious Liberties Practice Group and was the director of the Christian Legal Society’s Center for Law and Democracy.

Source: Berkowitz, Bill. 2002. “Tilting at Faith-based Windmills: Over a year in the Life of President Bush’s Faith-based Initiative.” *The Public Eye* Vol. XVI (Summer 2002), pp. 22-26.

that came out of a group called the National Leadership Task Force on Grassroots Alternatives for Public Policy (GAPP). GAPP was convened in the early 1990s by the Washington, D.C.-based National Center for Neighborhood Enterprise (NCNE). The NCNE is headed by Robert L. Woodson, Sr., a well-known Black conservative, and it is heavily funded by conservative foundations, in particular the Bradley Foundation. According to the NCNE, Woodson was asked by then House Speaker Newt Gingrich to make specific policy recommendations supposedly designed to help streamline the delivery of government services to the poor.

However, “in reality, the task force was meant to be a “community” cover for a plan to shift the responsibility of providing social services from the government to private organizations, while bolstering the influence of conservative religious groups in communities of color as a means of social control.”¹⁰⁴

Journalist Phil Wilayto has traced the origins of this initiative. In 1995, GAPP published a report that recommended “federal money intended to help poor people should by-pass both state and local (elected) government and go directly to hand-picked community-based organizations. These groups need not be staffed by professionals with any particular training. They shouldn’t have to be bothered with burdensome regulations, certifications or inspections. And they could be religious groups, ignoring the constitutional separation between church and state.”

“Specifically, the Report asserted that ‘Public policy must support their [community-based organizations’] efforts by removing barriers of certification, licensing and regulation; by removing restrictions on faith-based organizations; and by allowing them to receive tax-empowered donations and compete for block grants and voucher funds.’ This is exactly the program of George W. Bush’s “new” Faith-based Initiative.”¹⁰⁵

Analysis of the Faith-based Initiative

Analyzing the role and significance of the Faith-based Initiative is a complex issue. It is easy to get trapped in arguments about the “pros and cons” of the Faith-based Initiative, while subsequently losing sight of the larger ideological issues behind the initiative. There are many arguments that challenge the legality and impact of the Faith-based Initiative. While you may or may not agree with all of them, many of these arguments have been effective in mobilizing opposition to the initiative.

Arguments against the Faith-based Initiative

By Americans United for Separation of Church and State

Bush’s plan violates the historical separation of church and state mandated by our Constitution.

Under the First Amendment, American citizens are free to decide on their own whether or not to support religious ministries, but the government cannot do anything that would establish religion or favor a particular faith tradition. Bush’s faith-based plan challenges the constitutional principle of church-state separation.

When unveiling his legislative plan, Bush said, “Government, of course, cannot fund, and will not fund, religious activities.” This distinction (of funding religious groups as opposed to religious activities), however, is one without a meaningful difference. In most instances, the services

provided by religious ministries are explicitly religious. The president, therefore, cannot honestly suggest that he will “change lives” by funding religious groups and maintain the façade that he is not also funding religion.

Federally funded employment discrimination is unfair.

The Constitution’s separation of church and state clause is further violated under the president’s proposal, because churches will be legally permitted to discriminate on the basis of religion when hiring, despite receiving public dollars. A Bob Jones-style religious group, for example, will be able to receive tax dollars to pay for a social service job, but still be free to hang up a sign that says “Jews and Catholics Need Not Apply.” In other words, an American could help pay for a job (through her or his tax dollars) but be declared ineligible for the position because of his or her religious beliefs.

Religion could be forced on those in need of assistance.

Under Bush’s approach, religious institutions that receive taxpayer support to finance social services would still be free to proselytize people seeking assistance. The religious freedom of beneficiaries would therefore be seriously threatened, because they might come under immense pressure from those providing services they need to convert. Although the president has promised “secular alternatives” for those who don’t want to be forced to go to a house of worship for help, it may be hard to implement. In some instances, particularly in rural and less populated areas, the closest “secular alternative” can be a great distance away.

Bush’s plan opens the door to federal regulation of religion.

Government always regulates what it finances. This occurs because public officials are obliged to make certain that taxpayer funds are properly spent. Once churches, temples, mosques and synagogues are being financed by the public, some of their freedom will be placed in jeopardy by the almost certain regulation to follow. Houses of worship that have flourished as private institutions may suddenly have their books audited or face regular spot checks by federal inspectors in order to ensure appropriate “accountability.”

Bush’s plan pits faith groups against each other.

The Bush plan calls for competition between religious groups to battle it out for a piece of the government pie. Pitting houses of worship against each other in this fashion is a recipe for divisive conflict.

There’s no proof that religious groups will offer better care than secular providers.

Many supporters of Bush’s proposal have insisted that faith-based institutions are better, and far more successful, than secular service providers. However, little empirical research supports these claims. Few studies have examined whether religious ministries are more successful than secular groups in providing aid or producing better results, and it is unwise to launch a major federal initiative with so little research in the area.

There is also no proof that America’s religious communities will be ready, willing or able to assist the many individuals and families who now receive secular aid from the government. No one knows if ministries will have the resources or staff to accommodate a large influx of people

who will have little choice but to seek their assistance if Bush's plan is implemented.

Complicating matters, houses of worship are exempt from compliance with the Americans with Disabilities Act. A person in need confined to a wheel chair, for example, may not be able to get in a church's front door to receive assistance, even if he or she is willing to put up with religious indoctrination.

Americans United for Separation of Church and State is a religious liberty watchdog group that educates Americans about the importance of Church-State separation in safeguarding religious freedom. Printed with permission.

HOW THE FAITH-BASED INITIATIVE FURTHERS A CONSERVATIVE CRIMINAL JUSTICE AGENDA

The White House Office on Faith-Based and Community Initiatives states that it focuses its efforts on the following populations: at-risk youth, ex-offenders, homeless, hungry, substance abusers, those with HIV/AIDS, and welfare-to-work families. All of these populations are directly connected to and targeted by the criminal justice system. Because organizations that work with these groups are the potential recipients of faith-based funding, it is valuable to look carefully at the implications of this initiative for vulnerable populations and the Right's agenda.

Characterized as a "bold effort to transfer a sweeping range of government social services directly into the hands of America's churches,"¹⁰⁹ the Faith-based Initiative is one of the political Right's ideological masterpieces. While most of the criticism has focused on the separation of Church and State issues, the problems of this concept go far beyond that.

A long-time goal of neoconservative strategists,¹¹⁰ this initiative has broad support because it serves the needs of various sectors of the Right. Secular, Corporate, and Religious Right constituencies all advance their own particular agendas through the Faith-based Initiative. Secular and corporate conservatives see the privatizing and deregulation of social services as a way eventually to erode the social safety net while restoring unrestricted capitalism. The Religious Right gains more power, resources, and outlets to systematically promote and implement their specific interpretation of religion and its associated values.

The concept of charitable choice has "deep roots that reach into leading right-wing foundations, think tanks, and leadership networks developed over the past three decades to foist [conservative] social theories and theologies onto the American body politic."¹¹¹ While the Bush Administration may not have succeeded in securing all of its goals, it did succeed in mainstreaming the idea in the media and public opinion. In other words, we can be sure that since they got their foot in the door, they will only succeed in pushing that door open further.

However, it is not enough to simply say that the initiative is a bad idea because it comes from the Right. In addition, we must be able to articulate what is wrong with the initiative itself and show that that the assumptions these policies are based upon victimize, as usual, people of color, women and children, and poor people.

The Faith-based Initiative emphasizes personal responsibility while discouraging a structural and institutional analysis of racism and inequity.

- *Many faith-based agencies that work with prisoners focus on a prisoner's individual need to assume responsibility for one's life both in and out of prison. The*

Faith-based Initiative does not usually fund projects that challenge the nature of prisons, the social causes of poverty, or groups that use a systemic analysis of crime. As Bush himself said to a Black church audience, “We want to fund programs that save Americans one soul at a time.”¹¹²

By implicitly assuming that faith and “tough love” are the best solutions to poverty, the Faith-based Initiative challenges widely accepted social service models.

- *The charitable choice provision might allow faith-based providers to offer faith instead of real treatment.* Because the charitable choice provisions allows for the substitution of “life experience” in place of training and education in the hiring standards of faith-based contractors, there is no assurance of the safety or efficacy of services presented. For example, a group in Texas considered drug addiction as an issue of moral failure instead of a disease, and subsequently provided Bible reading and prayer as treatment. If a patient addicted to heroin is offered Bible Study class instead of methadone, the results could be deadly.¹¹³
- *Offering faith-based programs in the criminal justice system support the Right’s punitive policy of slashing programs and services budgets.* It’s cheaper to run religious study groups than provide people with real skills and job training they need to make it on the outside. By replacing whatever little programming that currently exists with faith-based programs, conservatives can continue to cut social service budgets while increasing spending for “crime control.”
- *The fact that a group calls itself religious doesn’t necessarily mean it has the interests of poor and prison-involved people at heart.* Many organizations have been accused of fraud and ill-treatment as well as mishandling public money to preach to and convert people.¹¹⁴

The Faith-based Initiative advances the right-wing goal of eroding the social safety net and essentially relieves the government of any obligation to “promote the general welfare.”¹¹⁵

- *The Faith-based Initiative creates the illusion that donations alone can solve this nation’s social problems, and that therefore government assistance can be eliminated.* The Faith-based Initiative established greater special tax credits for charitable contributions. While encouraging greater philanthropy is not inherently problematic, such a proposal perpetuates the false notion that if Americans donated a bit more, our social problems would be alleviated. It implies that if more religious organizations entered into social services, they would somehow be able to reverse the negative effects of poverty,¹¹⁶ and its associated effects, on prison populations.
- *The initiative replaces the concept of entitlement, the right to government services, with the old, pre-1935 philosophy of religious charity.* Relieving the government of its social responsibilities allows conservatives to focus on the “proper” function of government: protecting corporate interests at home and abroad—inevitably boosting repressive operations of the police and the military. Conveniently forgotten is the fact that the reason government instituted social programs [like Welfare, Social Security, Medicaid/Medicare, and other New Deal programs] in the first place was because “private charity had failed miserably at providing a rudimentary social safety net.”¹¹⁷

- *Urgent social issues like poverty, education, and violence cannot even be effectively addressed by the uncoordinated actions of small organizations.* In a recent study from Pennsylvania State University, the researchers concluded that religious organizations not only lack the national, state, or local infrastructure required to substitute for the government’s current social safety net, they would also have to significantly shift their funding priorities even to begin to meet such a need. The Right repeats the “faith-based is better” argument to further its agenda of dismantling the social safety net, but it does so without any empirical evidence.¹¹⁸ Simply put, the needs of poor and prison-involved people cannot rest entirely on the whims of individual and corporate philanthropy.

The neoliberal goals of privatization and deregulation are ideologically and practically strengthened by the Faith-based Initiative.

- *Turning over social service to religious charities is the first step in the privatization of government services.* Privatization, the transfer of property and services from public to private entities, is a mechanism that the Right uses attack government assistance and increase profits of commercial entities. The Faith-based Initiative is just one example of a larger financial and political agenda, backed both by conservative Republicans and many Democrats, to privatize, or in some cases eliminate, government functions that do not involve punishment, security, and defense.¹¹⁹ In many ways, this initiative does a tremendous amount of promoting and marketing of the concept of privatization. Since religious charities, instead of obviously private profit-driven corporations, are the beneficiaries of the contracts, it makes it more difficult to critique the concept of privatization, although, either way, once services become privatized, it becomes increasingly difficult to demand accountability.
- *The deregulation of social services means that standards in the delivery of service to poor and prison-involved people will be lowered.* Proponents claim deregulation is necessary to help faith-based groups break through bureaucratic barriers but it can negatively affect the type of care that people with limited choices receive. People in prison are a captive audience, and they have no choice but to accept the limited range of services, if there are any at all, that are presented. For example, faith-based groups are exempt from certain government licensing and performance standards, and faith-based day care centers have even claimed exemptions from health and safety laws. Even though proponents of the initiative would argue otherwise, deregulation isn’t really about reducing bureaucracy, “leveling the playing field,” or improving services. Instead, it’s just another way to reduce the government’s control of and commitment to the quality of social services to be provided to already marginalized communities.

The language of the Faith-based Initiative implicitly supports the conservative goal of devolution and the eventual elimination of federal oversight powers.

- *Transferring federal programs to the states hurts our communities.* There has been a recent trend to transfer federal money to states in the form of block grants. While enabling the cutting back of federal programs and involvement, this allows the federal government to pass those funds directly to the states. Such devolution of power and resources from the federal to state governments is a long-held conservative goal. This can be problematic because the transfer can actually increase overhead costs involving a whole new bureaucracy at the state level, and for cash-starved states it is tempting to divert the funds for other purposes such as filling budget-

YOU DECIDE: IS PRISON CHAPLAINCY STATE-SPONSORED RELIGION?

For church folk, a major criminal justice issue crying out for honest creative attention is the place of ministry within the confines of punitive institutional settings. The institution of government-employed prison chaplaincy is the dominant model used for recruiting, gatekeeping and coordinating other religious services provided by groups from the community. Prison chaplaincy has undergone recent challenges, some from states unwilling to pay for government chaplaincy positions, and some from observers and participants in prison ministry who have a different set of problems with this arrangement.

Some argue that this conventional system of state paid prison chaplaincy is structurally inadequate in several respects: 1) by giving churches an excuse to do nothing themselves, it fosters an irresponsible hands-off posture on the part of churches relative to prison ministry; 2) it inherently compromises chaplains' ability to gain the trust, confidence and respect of many prisoners, due to their employer; 3) it renders chaplains virtually powerless to speak forthrightly in the face of perceived prison abuses and injustices without running a high risk of losing their jobs. To the extent that they exist, these structural flaws, which can limit both the pastoral and the prophetic dimensions of ministry in a prison context, have their effect no matter how much faith, commitment, skill and integrity an individual chaplain may have.

On the other hand, many state chaplains counter that they can uphold prisoners' rights and humane treatment more effectively by quiet persuasion of the authorities from inside the system than they could from a posture of more independence. They also note that in those few states (e.g., Virginia and Colorado) where state employees have been replaced by private sector prison ministers on contract with the state, the ministers have tended to be fundamentalist and overly evangelically oriented in their vision of ministry in such settings.

From a restorative justice perspective that takes seriously the whole church's responsibility for ministry in prisons and jails, there should be more than these two alternatives of 1) a professional chaplaincy structurally beholden to Caesar and theologically and politically controlled by his agenda, on the one hand, and 2) a narrow fundamentalist ministry which focuses on saving the souls of a captive audience and looking the other way when confronted by evidence of abuse to their bodies, their minds and their spirits. The integrity of prison ministry as such demands that churches—especially the United Methodist Church with its historic Wesleyan commitment to ministry in the prisons—strengthen and revitalize the calling and the profession of ministry, and of the church itself, by forging creative solutions to these structural obstacles to the exercise of faithful, effective prison ministry.

—Harmon Wray, *Restorative Justice: Moving Beyond Punishment* (General Board of Global Ministries, United Methodist Church, 2002), p. 107-108. Reprinted with Permission.

gaps. Faith-based groups implicitly support the decentralization of social services because they often stand to benefit. Bush claims this is because communities are better positioned to serve the communities, but the negative impact on those communities is rarely discussed.

The Faith-based Initiative is another attempt to systematically desecularize public life and impose a specific biblical view for political gain.¹²¹

- *The Faith-based Initiative supports the goal of using social services as a platform for anti-abortion politics.* In early 2001, Bush spoke candidly about this issue largely because he did not know that his comments were being heard by White House reporters in the pressroom. During the private meeting with Catholic leaders, Bush indicated that the Faith-based Initiative will support the anti-abortion movement. Bush said, “See, this Faith-based Initiative really ties into a larger cultural issue that we are working on...It begins to affect the life issue...When you’re talking about welcoming people of faith to help people who are disadvantaged, the logical step is also those babies.”¹²² In addition, a recent study showed that although emergency contraception is standard treatment for rape, some Catholic

hospitals do not offer rape victims that choice unless they ask for it. Already Bush has reinstated the global gag rule preventing agencies receiving U.S. money from even mentioning “abortion” in their reproductive rights work with women abroad.

It legitimizes and encourages traditional (heterosexual nuclear) family and anti-queer politics.

- *Many conservative denominations across faith traditions preach a very patriarchal message that men should be God-like figures, and that women and children must be subordinate to and obey them. Imagine such a perspective influencing an organization that would be working with domestic violence victims. Similarly, a wide range of faith-based groups claim the right to discriminate against queer people or anyone who disagrees with their views. Turning over social service programs to unregulated religious groups that preach such beliefs raises cause for concern.*

In effect, the initiative supports the anti-labor and anti-trade union politics of most conservatives.

- *Transferring services from public to private entities means weaker public sector unions and fewer living-wage jobs. Since government agencies are usually unionized, employees, many of whom are people of color, receive higher than average wages and benefits. Private religious organizations are rarely unionized, and employees are sometimes expected to work more for less compensation. In the case of voucher schools, this has translated into reduced wages, fewer benefits, and longer hours for those who work in schools.¹²³ In addition, many activists believe it is no coincidence that the most socially progressive public sector unions, like the American Federation of State, County, and Municipal Employees (AFSCME), the American Federation of Government Employees (AFGE), and the Service Employees International United (SEIU), are being “targeted at the same time that African-American women are joining unions in the greatest numbers.”¹²⁴*

The Faith-based Initiative is an attempt to promote conservative values while increasing the State’s control of people of color leadership and churches.

- *This initiative props up people of color “leaders” beholden to government funding that will spread conservative values. Since it is the Bush Administration deciding who actually receives funding, it is likely that most organizations that “promote the spread of conservative social values” will be regarded as authentic leaders regardless of community perception. These recipients will also be increasingly beholden to the State for their livelihood, thus creating a layer of “leaders”¹²⁵ who are amicable to conservative policies. In addition, such “leaders,” since they are people of color, also help White conservatives deflect accusations about the racism that pervades political conservatism, and at the same time make inroads into communities of color.*
- *The effort is an attempt to build “Republican political machines in inner city communities.”¹²⁶ The Faith-based Initiative will drive a “wedge between black churches and the political legacy of the civil rights movement, with its emphasis on enfranchisement, representation and redress.” The most visible people of color clergy who support Faith-based Initiatives are also conservative, and they undermine the historical progressive role black churches have played in liberation movements. For example, Boston’s Eugene Rivers, a conservative Pentecostal minister, is a “vociferous opponent of the civil rights establishment” and many progressive activists believe his spokespersonship and leadership should be challenged.¹²⁷ Yet, as*

an increasing number of conservative faith-based groups in communities of color gain resources, they will inevitably assume power and a certain credibility that may not be accountable and authentic thus being able to further, regardless of intent, conservative ideology.

The Faith-based Initiative discourages dissent and democracy.

- *Religious institutions are less likely to “bite the hand that feeds them.”* By extending the State’s control over religion, the initiative seeks to diminish the prophetic and critical voice of religious organizations. As religious institutions become increasingly dependent on funding from the State, it follows that the organizations would tend to be less willing to criticize the State when it is wrong because they risk losing their funding if they are critical of State policies or actions.

Why Is It So Appealing?

The Bush Administration convincingly argued, despite a lack of evidence, that religious groups were being discriminated against, and that bureaucratic red tape was impeding the much needed services that religious groups could provide. By cloaking the initiative in the rhetoric of equality, the Right in many ways replicated arguments used to support affirmative action. By repeatedly employing phrases such as “leveling the playing field” and “equal footing,” proponents presented their effort as one of fighting discrimination, obscuring the real issue of Church-State separation.

Proponents were also successful in co-opting progressive ideals and language. By repeatedly stating a desire to “support grassroots leaders,” and emphasizing that local organizations are best suited to deal with the social problems in their community, the Right was able to convincingly argue its position.

Lastly, we cannot forget that the initiative was tied to financial resources that inevitably provide incentives to support the policy.

Endnotes Available Online!

All citations and references are available at www.defendingjustice.org or by contacting PRA.

ORGANIZING ADVICE: Allying With the Christian Right?

Q & A WITH STOP PRISONER RAPE

In 2003, Stop Prisoner Rape (SPR), a national human rights organization, allied with a wide range of groups—including a number of conservative organizations—to successfully lobby for the passage of the Prison Rape Elimination Act (PREA). The PREA is a piece of legislation intended to monitor and reduce the incidence of sexual assault in U.S. jails and prisons. The bill was passed unanimously by the House and Senate, and was signed into law by President Bush on September 4, 2003. Advocating for laws and policies that will create accountability in corrections is a central component of SPR's approach to this issue. In addition, SPR works to change public attitudes about sexual assault behind bars and push for access to resources for survivors of abuse. SPR was very pleased by the success of the PREA. SPR is based in Los Angeles, California.

PRA: Can you give us a background on the issue?

SPR: Sexual abuse in detention is a problem that affects one in five men and as many as one in four women in some facilities, yet few corrections departments have taken the issue seriously enough to create appropriate policies on abuse. Rape in detention—and the failure of the government to address it—represents one of the most egregious human rights violations in the U.S. today. With little institutional protection or recourse, victims have been left beaten and bloodied, they have suffered long-term psychological harm, they have been impregnated against their will, and they have contracted HIV.

The drive for federal legislation to address the problem, which took two sessions of Congress to succeed, came as a major shift in the government's attitude toward this form of abuse. Stop Prisoner Rape had pushed hard to see the law passed, conducting an advocacy campaign that generated thousands of letters to President Bush in support of the bill and holding an event on Capitol Hill in which survivors of rape behind bars spoke out about the abuse they had experienced. Many progressive and human rights-oriented groups—from Amnesty International and Human Rights Watch to the National Council for La Raza and the NAACP—also endorsed the legislation.

PRA: Why did you ally with the Christian Right?

SPR: SPR is a nonpartisan group, with supporters that span the political spectrum and a mission that is narrowly focused on ending the sexual abuse of men, women, and youth behind bars. In the pursuit of that goal, we are interested in allying with those groups that will help push policy forward and change public attitudes. Unquestionably, this narrowness of focus makes it easier to find common ground with a wide range of interest groups.

Critical to the passage of the PREA was the support it received from conservative groups, including Focus on the Family, Gary Bauer's organization, American Values, and Prison Fellowship Ministries, the Christian group run by former Nixon special counsel Chuck Colson. Conservative writers like staunch affirmative action opponent Linda Chavez editorialized in favor of the bill and the website of the *National Review* also chimed in to encourage its passage.

These conservative groups and individuals were important because they pushed Republican legislators to view the legislation sympathetically. Instead of framing the bill as a “soft on crime” measure—something that almost all American politicians find unpalatable—these groups sometimes argued in religious terms. Chuck Colson, for example, wrote a column that described the welfare of prisoners as “Jesus' special interest.” SPR was aware that many groups on the right were working in support of this bill, but we were encouraged rather than intimidated by that fact. To us, it suggested the possibility that the PREA was politically viable—something that was almost a miracle given the exceptional hostility of the American electorate toward individuals convicted of crimes.

PRA: What was it like working with them?

SPR: All of these groups—on both sides of the political spectrum—had certain interests and goals that were unrelated to the work of SPR, and in some cases the opinions these groups hold on other issues—such as LGBT rights—were at odds with the values that underlie SPR's work. Occasionally, for example, we would hear the expression “homosexual rape” used to describe sexual assault behind bars—a term that inaccurately implies that gay inmates are the typical perpetrators of prisoner rape. In fact, gay male inmates are likely to be the victims of sexual

assault behind bars, while aggressors generally think of themselves as straight. SPR pointed out misleading terminology when reviewing early drafts of the federal legislation, and we found a great deal of responsiveness to our concerns.

In some cases, we disagreed with allies on points of strategy. When SPR wanted to hold an event on Capitol Hill to support the passage of the PREA and to give survivors a chance to tell their story, the head of a conservative organization and a staff member from the office of a Republican legislator strongly disagreed with our timing and urged us to reconsider. We held the event anyway, helping to make the experience of survivors of rape behind bars part of the discourse on the legislation. The individuals who disagreed with us ended up attending the event, and it was a powerful affirmation of the power of the survivors' voices.

PRA: How did working with them affect your own work?

SPR: While SPR does not have any objections to working with partisan groups, it is important that our work not be a tool of a political agenda that is extraneous to our mission. We would not want our support for the PREA to be construed as an endorsement of the positions that other PREA supporters—on the left or the right—may take.

But allying with these groups did not require SPR to make compromises or to tone down our message. Several gay survivors, who might not be the best spokespeople for the concerns of American Values, for example, took the lead in much of our advocacy work. We framed our argument in terms of human rights, and we reached out to anyone who was willing to listen, regardless of political affiliation. Fortunately, on this issue, we found sympathetic listeners on both sides of the spectrum.

At the same time, working with overtly conservative groups—and understanding the ways in which our priorities may differ from theirs—has reinforced the value of making our commitment to equality and nondiscrimination as explicit as possible in our work.

To underscore this commitment, we've added language on our website to spell out SPR's emphasis on combating the sexual abuse of the LGBT community behind bars. We also continue to include a diverse group of survivors in our advocacy, pushing for the rights of all people, regardless of their background, to be treated humanely. The point is to make our

concerns obvious and avoid being misconstrued by groups on the right or the left.

PRA: Do you foresee SPR working with them again?

SPR: SPR hopes to continue working with groups from diverse political backgrounds, and, in fact, we believe that this broad support will be necessary for the PREA to be effectively implemented. Already, SPR has seen indications—in cuts to funding and in deadlines missed—that putting the PREA to work is going to be as much of a challenge as getting the law passed in the first place. Conservative groups can help keep the pressure on government officials to take this issue, and this law, seriously.

PRA: What advice would you give to other groups in similar situations?

SPR: Strategic decisions have to flow from an organization's mission, and some missions will be more open to collaboration than others. In our case, because we focus narrowly and are not organizationally concerned with broader issues, a wide range of allies is possible—at least in the push for legislation.

That perspective, obviously, is rooted in a pragmatic approach to politics, and it isn't for everyone. Other prison groups we work with have broader missions that may even include the abolition of prisons from society—a perspective that has limited support among the general public and would certainly face hostility from conservative camps. Some of these prison groups, informed by a hard left or anarchist perspective, have also been critical of SPR because we are willing to use the legal system in the pursuit of reform. But, just as we do not change our approach to appease conservative interests, neither do we alter it to conform to the expectations of the Radical Left.

SPR's mission, which is concerned solely with ending sexual abuse in detention and which is rooted in a human rights perspective, can be appealing to diverse allies. This has been crucial in the push for federal legislative change, which, in today's climate, can not happen without a certain degree of bipartisanship. Not all groups can operate this way or will want to, but the willingness to focus on a particular issue and ally with a wide range of supporters proved effective in securing the concrete legislative change we sought.

Additional Resources

Americans United for Separation of Church and State

518 C Street NE
Washington, DC 20002
Phone: 202-466-3234
Fax: 202-466-2587
<http://www.au.org>

Americans United for Separation of Church and State is a religious liberty watchdog group that educates Americans about the importance of Church-State separation in safeguarding religious freedom.

Equal Partners in Faith (EPF)

1040 Harbor Drive
Annapolis, MD 21403
Phone: 877-304-5831
<http://www.equalpartnersonline.org>

EPF is a multi-racial national network of religious leaders and people of faith committed to equality and diversity. EPF actively opposes the manipulation of religion to promote inequality and exclusion.

Interfaith Alliance

1331 H Street, NW, 11th Floor
Washington, DC 20005
Phone: 202-639-6370 or 800-510-0969
<http://www.interfaithalliance.org>

Interfaith Alliance works to promote interfaith cooperation around shared religious values to strengthen the public's commitment to civic participation, freedom of religion, diversity, and civility in public discourse. IA is comprised of local religious leaders and activists.

Texas Freedom Network

P.O. Box 1624
Austin, Texas 78767
Phone: 512-322-0545
<http://www.tfn.org>

The Texas Freedom Network (TFN) is a statewide alliance concerned about the growing social and political influence of religious political extremists. TFN has worked to expose the Far Right's so-called "pro-family" agenda for its decidedly anti-family, anti-child proposals.

Vanderbilt Program in Faith and Criminal Justice

c/o Harmon L. Wray
1109 Graybar Lane
Nashville, Tennessee 37204
Phone: 615-297-7010
Email: hwray@comcast.net

The Vanderbilt Program in Faith and Criminal Justice is affiliated with the nondenominational Vanderbilt University Divinity School and is a new project directed by 2005-2006 Soros Justice Senior Fellow Harmon Wray. It works strategically in consultation with a variety of both official and grassroots leaders of faith communities, especially those based in the Southern U.S., to foster progressive, faith-based perspectives and ministries on criminal justice issues.

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Endnotes Available Online!

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CONSERVATIVE AGENDAS AND CAMPAIGNS

WOMEN AND REPRODUCTIVE RIGHTS

Throughout U.S. history, government policies, government agencies, and private organizations have sought to control women’s sexuality and reproduction. Many institutions have targeted women of color and lower-income White women for control, limiting the numbers of children they have and devaluing their roles and needs as mothers. As prisons and the entire criminal justice system have become more powerful and pervasive as institutions of social control, they too have played an increasing role in controlling and policing women’s reproduction, including arresting pregnant women who use drugs. Because poor women and women of color are disproportionately represented in the criminal justice system and in prison, reproductive control policies in these arenas affect these women even more heavily.

The prosecution of women for using drugs when they are pregnant illustrates several important trends in contemporary U.S. politics: designing policies to punish instead of provide assistance; focusing on blame and individual responsibility instead of collective solutions to social problems; and using the criminal justice system to deal with what are really complex social, psychological, and medical problems. Increasing money for law enforcement and incarceration instead of social services, and shifting services like drug treatment into the criminal justice system, only makes it more difficult for people with addictions to get the treatment they need to stay out of the system in the first place.

Being sent to prison negatively affects a woman’s reproductive rights—from the ability to get an abortion to the ability to have or keep one’s children. The assumption that women in prison are unworthy of parental rights fits into a long history of suppressing poor women of color’s rights to be mothers. This attitude is exemplified by Project Prevention/C.R.A.C.K., an organization that pays women who use drugs to become sterilized and recruits directly at jails, prisons and drug treatment centers. The greater involvement of the prison system also ensures that women whose reproduction might once have been labeled “irresponsible” will now be criminalized.

The Right resolutely opposes reproductive rights. In addition to opposing legal abortion, the Right promotes policies that reward the formation of patriarchal, heterosexual, two-parent families and penalize, or at best ignore, other family structures. But historically, there has been little overlap between progressive criminal justice activists and those fighting for reproductive rights. Complicating the matter are different tendencies within the reproductive rights movement: a mainstream perspective focusing on “individual choice” and “privacy,” led largely by White middle-class women, and another perspective focused on social justice, which defines reproductive rights as the right to have and rear children as well as the right not to, spearheaded largely by lower-income women, women of color, and their allies. As the criminal justice system expands and the Right’s law-and-order and anti-reproductive rights agendas converge, it will take a broad-based movement to effectively oppose this threat to justice.

Rachel Roth, Ph.D., of Ibis Reproductive Health co-authored this chapter. Special thanks to former PRA Intern Al Maraganis for her contribution as well.

SECTION OBJECTIVE

This section will discuss the role the State and private organizations play in punishing and controlling reproduction, prosecuting women who use drugs while pregnant, and expanding the right-wing fetal rights movement.

IN THIS SECTION

- Framing Article: “Punishment, Reproductive Control, and the Construction of Unfit/Fit Mothers”
- Role of the State: Criminal Prosecution of Pregnant Women
- Role of the Right: Project Prevention (formerly known as C.R.A.C.K.)
- UVVA: The Intersection of Tough on Crime and the Anti-Abortion Movement
- Organizing Advice: Q&A with the Rebecca Project
- Additional Resources

Punishment, Reproductive Control, and the Construction of Unfit/Fit Mothers

By Rachel Roth, Ph.D.

History

Reproductive control is integral to the history of the United States; it has played a role in nation-building, politics, and social control.¹ From the beginning, the colonization and creation of the United States depended on controlling the reproduction of Native peoples and African slaves. Political elites justified the reservation system and genocidal treatment of Native people as necessary to fulfill “manifest destiny” and westward expansion. Both the colonial and U.S. governments displaced, relocated, and exterminated Native peoples. In the 1830s, President Andrew Jackson encouraged his troops to kill women and children, in order to decimate current and future generations of Native peoples.² Reproductive control of enslaved African women took a different form: plantation owners sought to ensure that women *would* bear children in order to reproduce the labor supply with a new generation of slaves. Women suffered sexual assaults and exploitation but had no control over the fate of their children, who could be sold off at the owner’s will.³

As the country grew more diverse through immigration, political and social elites seeking to maintain their hold on power developed the idea of “race suicide” and ushered in the era of eugenics. The eugenics movement encouraged “worthy” White Anglo Saxon Protestant (WASP) women to bear more children while discouraging and in some cases preventing other groups of women from having children. Beginning in 1907, 23 states passed laws mandating the sterilization of people deemed inferior and unfit, including the vague category of “feeble-minded” women. Although officially a term describing mental capacity, “feeble-minded” was also a code for women’s sexual activity. In the early 20th century, working-class White women who had sex

and bore children outside of marriage might have found themselves targeted for institutionalization and sterilization or for imprisonment in women’s “reformatories,” where they could be held indefinitely until the authorities found them sufficiently rehabilitated to return to society.⁴ By 1960, more than 60,000 people had been subject to “eugenic” sterilization in state institutions for the mentally ill or mentally retarded—institutions which included so-called “feeble-minded” girls and women. “At best,” concludes historian Elaine Tyler May, “only a few of these individuals consented.”⁵

Over the course of the 20th century, compulsory sterilization shifted from institutionalized White women to poor women of color receiving public assis-

THE STERILIZATION OF NATIVE WOMEN⁶

No one knows for certain how many Native women have been sterilized without their informed consent. Several studies estimate that during the 1970s, between 25-50 percent of Native women were sterilized; an activist with Women of All Red Nations estimates that on some reservations, the figure is closer to 80 percent. One problem with these studies, though, is that they do not say how old the women were when they were sterilized. Because many women in the U.S. choose sterilization after they have had children, it is not uncommon to see high rates of sterilization among women in their later reproductive years (up to age 44) or after. Another problem is that most studies are based on one or two Indian Health Service facilities, making generalizations difficult.

On the other hand, Census data reflect a steep decline in Native women’s birth rates between 1970 and 1980, far steeper than among White women. Although the researchers who analyzed the data do not specify sterilization as an explanation, it should be considered as a possible factor.

tance.⁷ Thousands of Native, Puerto Rican, Mexican American, and African American women were sterilized at government expense, often without their informed consent—or even without their knowledge. Indeed, the sterilization of African American women in the South was so widespread that it even has a code name—the “Mississippi appendectomy.” The early 1970s were an especially grim time for Native women—research and anecdotal reports paint a disturbing picture of sterilization abuse at federally funded health centers, including of many young women in their twenties and even their teens. Women tell stories of being pressured to agree to sterilization during the pain of childbirth, or threatened with the loss of welfare benefits if they did not “agree.”⁸ Andrea Smith of Incite! explains that attacks on women’s reproductive rights are part of the history of genocide, affecting entire tribes and peoples as well as individual women and their families.⁹ Coercive sterilization stands alongside other efforts to destroy Native peoples and cultures, such as the government’s “wholesale removal” of children and placement in boarding schools that prohibited all native languages, religions, and customs.¹⁰

One group notably absent from this discussion is Asian Americans. For much of the 19th and 20th centuries, the United States controlled Asian reproduction by restricting immigration from Asian countries. Laws against Chinese immigration provide a stark example. Although men came to the U.S. from China in the 1800s to build railroads and do other essential work, they were not rewarded with citizenship, nor could they easily establish families. Few women came to the western frontier in these years. Some Chinese women were “kidnapped, lured, or purchased from poor parents” to work in indentured servitude as prostitutes in the largely male communities. Congress responded with the Page Law of 1875, which officially targeted organized prostitution but effectively ended the entry of unmarried Asian women into the country. A few years later, Congress suspended almost all Chinese immigration with the passage of the Chinese Exclusion Act of 1882, which restricted entry to those in the “merchant class.” Women made up less than ten percent of Chinese residents in the U.S. in the 19th century, and did not approach parity with men until 1980. Subsequent laws and quotas limited immigration from other countries, keeping the numbers of Asian women and Asian families low until Congress opened up immigration in 1965.¹¹

The policies and practices described here served many agendas, including regulating the labor force. Implicit or explicit in many of these policies is the idea that certain women do not deserve to be mothers, or are not fit to be mothers, and should not expect any support from the government if they have children. Many public policies have embodied an overt social control agenda to curtail reproduction among women considered unfit or unworthy of motherhood. The overt racism, conquest and slavery that fueled control of women’s bodies in the past is reproduced in contemporary times through the criminalizing of women’s conduct and thereby their bodies, health and sexuality.

Many public policies have embodied an overt social control agenda to curtail reproduction among women considered unfit or unworthy of motherhood. The overt racism, conquest and slavery that fueled control of women’s bodies in the past is reproduced in contemporary times through the criminalizing of women’s conduct and thereby their bodies, health and sexuality.

Punishing “Unfit” Mothers Today

The women targeted by public policy as “unfit mothers” today still come largely from the ranks of the poor and from communities of color. Single mothers, welfare recipients, immigrants, and women who use drugs all find themselves the objects of punitive and counter-productive policies, and they increasingly find themselves trapped in the criminal justice, probation, and prison systems. Once in these systems, they may find themselves marked for life, second-class citizens with compromised reproductive rights.

The original New Deal welfare programs of the 1930s privileged White widows as “truly needy” and “deserving” and discriminated against other women. These biases are still with us. For instance, although White women make up the majority of welfare recipients, the picture of a “welfare mother” and especially “welfare queen” in the public imagination is almost always of a Black woman. Beginning in the late 1960s, the news media actively shaped this perception by choosing to run photographs of African Americans in a majority of stories about poverty and welfare. Research on how states choose to implement welfare reform finds that race is a very significant predictor of state social policy choices; states with higher percentages of welfare recipients who are African American are more likely to adopt “get-tough” welfare policies.¹²

Stereotypes about particular groups of women lead to specific policies to punish and control their behavior. As the following chart shows, if women are deemed to be sexually irresponsible, then the solution must be to penalize them for having babies. Encouraged by the federal government, 24 states have adopted “family caps,” policies which deny women additional resources if they have a baby while they are receiving welfare.¹³ To consider another example, if women are deemed to be lazy, then the solution must be to make them work outside the home. Even though conservative ideology maintains that “good mothers” are supposed to be available for their children, women who receive public assistance are forced to work at outside jobs, even when they have babies as young as three months old. And if immigrants are deemed to be coming to the U.S. just to mooch off of public services, then the solution must be to deny them assistance, even if they have entered the country legally and contributed to the economy and their communities.

Rather than individually assessing a woman’s needs, welfare policies deem some women categorically unfit or undeserving of assistance. The federal welfare law imposes a five-year lifetime limit on the receipt of Temporary Assistance to Needy Families (TANF), regardless of any individual’s specific circumstances. In another example, the federal law makes women with a felony drug conviction ineligible for TANF or food stamps, regardless of whether they are involved with drugs or able to take care of their children. In order to give these women eligibility, states must take the initiative to pass a special law. Few states have done so. This provision undermines the rights of poor women to be mothers, and is having a particularly devastating impact on the families of African American and Latina women, who make up nearly half of those affected.¹⁴ As many as 92,000 women lost eligibility for benefits during the first three years of implementation.¹⁵ It also makes poor children even more vulnerable to the possibility of homelessness, family disruption, and government intervention; some 135,000 children were affected by the ban in the first three years.¹⁶ By denying women the resources and assistance they need to care for their children, the ban makes it more likely that women who have criminal records will lose custody of their kids. Policies like these continue to punish women long after they finish serving their prison sentence, creating, in effect, a kind of life sentence that permanently criminalizes women even when they are “free.”

| Stereotype | Attributed Character and Behavioral Defects | Policies to Remedy Alleged Defects |
|---|--|--|
| <p>Welfare Queen Myth: A young woman of color who is dishonest, dependent, a drug user, sexually promiscuous, unwilling to work, undisciplined, willing to have additional children to increase her welfare grant, and willing to stay on welfare indefinitely. Or she is an excessively fertile immigrant who refuses to work or learn English. Or both.</p> | <p>Lazy/unwilling to work Undisciplined Dependent No ambition/ignorant Sexually promiscuous Dishonest Drug user “Foreign freeloader”</p> | <p>Work requirements. Sanctions; teen mothers must live with parents. Diversion tactics; work requirements; time limits. Cut access to higher education; promote dress-for-success classes. Abstinence-only program; family cap. Anti-fraud prosecution and long-term penalties for getting caught while working on TANF. No aid for convicted users. New immigrants disqualified from program; non-enforcement of language rights for applicants whose first language is not English.</p> |

Source: Gary Delgado and Rebecca Gordon, “From Social Contract to Social Control: Welfare Policy and Race,” in *From Poverty to Punishment: How Welfare Reform Punishes the Poor*. (Oakland: Applied Research Center, 2002), 27-31. Reprinted with permission.

The role of the criminal justice and prison systems in punishing mothers is especially clear in prosecutions of women for using drugs when they are pregnant. Although no state has passed a law specifically making it a crime for a pregnant woman to use drugs, this has not stopped prosecutors in at least 40 states from charging women with such crimes as “fetal abuse” and even homicide in cases of stillbirth. Women of all backgrounds use drugs and alcohol, but the prosecutions have been primarily directed at poor African American women. In addition, courts in many states have terminated women’s parental rights on the basis of a positive drug test at birth. In these cases, women do not face a criminal prosecution but they lose forever the right to contact, let alone rear, their children. Once again, blanket policies that equate a positive drug test with parental unfitness deny mothers and children the individualized assessments and government assistance that are supposed to govern child welfare proceedings. (See following section: “The Role of the State: Criminal Prosecution of Pregnant Women.”)

Not satisfied with the governmental response, some people have decided to take matters into their own hands. Barbara Harris, a conservative from Orange County, California, started an organization, bizarrely named C.R.A.C.K., which stands for Children Requiring A Caring Kommunity (now called Project Prevention). This group pays women who have or have ever had a drug or alcohol problem \$200 to either be sterilized or use long-acting birth control. They have helped to start groups all over the country, and have even begun recruiting at jails, taking advantage of women at an especially vulnerable time. (See “The Role of the Right: Project Prevention.”)

Whether jailed for drug problems or other reasons, imprisonment takes a heavy toll on women’s reproductive rights. Women in jail and prison report that inadequate medical care and crowded conditions threaten their well-being, including their ability to bring a pregnancy safely to term and to maintain their fertility, and changes in federal and state foster care laws jeopardize their parental rights.¹⁷ Drug treatment is in short supply, especially for pregnant women and for women with young children, yet that does not stop women from being penalized for failing to obtain treatment or somehow kick their habits on their own. Both the public and the private

responses to women with drug addictions punish women for health problems instead of providing services to help women take care of themselves and their families. With state governments shifting more of their treatment dollars into drug courts, jails, and prisons, women may find that they have an even harder time getting help outside of the criminal justice system.

Impact

Conservatives like Charles Murray and former Vice President Dan Quayle have been successful at convincing Americans that single mothers are the source of major social problems. As Murray put it in 1993, “illegitimacy is the single most important problem of our time—more important than crime, drugs, poverty, illiteracy, welfare or homelessness—because it drives everything else.”¹⁸ In this view, preventing women from having children outside of marriage is policy goal number one, not preventing corporations from “outsourcing” jobs to other countries, increasing the supply of affordable child care, or ending the misguided war on drugs. Even though it is easy to laugh at Quayle’s speech criticizing the television character Murphy Brown for “glamorizing” single motherhood, the ideas in his speech are reflected in the law that Congress passed in 1996 to change the welfare system.

At the same time that conservatives aim to individualize what are really broad-based social and structural problems, the mainstream pro-choice movement emphasizes individual choice as its core theme. While the question “who decides” is a good one, it needs to be broadened beyond abortion to the full range of reproductive decisions, including the decision to have children. This is not to say that abortion rights are not under attack, because they are. But focusing narrowly on women’s right to choose free from government interference does not provide ground to argue either for women’s rights to receive reproductive health services, including abortion, or for women’s rights to be mothers. As prisons take on greater significance as institutions of social control, women who have drug problems or any history of trouble with the law will find that their ability to exercise their reproductive rights and to be mothers is in serious jeopardy.

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ROLE OF THE STATE: Criminal Prosecution of Pregnant Women

In over 40 states, women have been arrested for conditions, circumstances or actions taken while pregnant, especially for drinking alcohol or using drugs. While no one suggests it is desirable for pregnant women to use drugs, many have questioned the purpose of prosecuting women for doing so. The drive to prosecute women accelerated during the late 1980s and 1990s, during a period of backlash against feminism and welfare rights. In these cases, prosecutors apply laws on the books in novel ways that violate women's due process rights to be treated fairly—for instance, charging women with drug possession on the basis of a positive drug test, even though this falls outside the ordinary meaning of the term “possession.” Although courts of appeal have discredited the prosecutions in every state but one, they continue to crop up in new states—and even in states where judges have previously dismissed them. These courts have rejected the use of these laws to charge women with child abuse and/or distributing drugs to minors. In 2001, the Supreme Court struck down a public hospital's policy to test pregnant women for drugs and share the results with police without obtaining a search warrant.¹⁹ But not all women have attorneys or public defenders with the expertise to help them challenge these charges, and many have plea bargained and accepted penalties that should never have been imposed.²⁰

The one state where courts have upheld the prosecutions as valid and legitimate is South Carolina, and dozens of women have been arrested in that state alone. They are typically poor, disadvantaged, African American women who rely on public hospitals for their medical care. In one of the worst cases, Regina McKnight is serving twelve years for the crime of “homicide by child abuse” because her stillborn infant tested positive for cocaine derivatives (See “What Happened to Regina McKnight?”). Expert testimony now makes clear that the stillbirth was the result of an infection unrelated to the drug use.

Across the entire nation, the prosecutions reflect a profound racial bias, because, although women of all backgrounds drink or use drugs during pregnancy, the majority of the prosecutions thus far documented have been against low-income women of color—many of whom used crack cocaine. They rest on the false proposition that exposure to crack during fetal development is uniquely harmful and irreversible, and that exposed babies today are the “super-predators” of tomorrow. (See “Youth” section.)

The prosecutions also reflect a profound hypocrisy and desire to apply criminal justice techniques in every domain. Some women have been arrested and jailed while they are pregnant, on the false theory that jails provide healthy, drug-free environments that will “protect” the fetus. Other women are arrested after they give birth, usually on the basis of a positive drug test. Prosecuting women after their babies are born does nothing to improve fetal health, since the baby is already born. It makes women afraid to seek help, punishes women for their addictions, and undermines families, contrary to public policy principles that emphasize providing services to keep families together.

These prosecutions turn the health problem of addiction into a law enforcement problem. They funnel resources into prosecution and imprisonment instead of treatment and other forms of support, such as housing and child care, that might keep poor women and their families out of the criminal and child welfare systems to begin with. Indeed, women may find that their only chance of getting into a treatment program is if they are arrested first, because states have shifted drug treatment dollars into the criminal justice system.

WHAT HAPPENED TO REGINA MCKNIGHT?*By Lynn Paltrow*

Often when prosecutors are considering precedent-setting cases they choose a test case in which there will be little public sympathy or support for the defendant. This was the case in South Carolina when prosecutors chose to blame Regina McKnight for the death of her newborn. McKnight was an indigent African American woman with numerous health problems, limited education, and a drug problem that began after her mother was run over by a truck on the edge of a highway. McKnight went to her local hospital in 1999 and experienced a stillbirth. As in a significant percentage of stillbirths, there was no obvious cause for the pregnancy loss.

Instead of counseling McKnight, or offering to find her the medical and drug treatment she desperately needed, the focus almost immediately turned to gathering evidence against her. Hospital staff and the state knew that she had a drug problem. And with a positive test for metabolites of cocaine in hand, the state concluded that her pregnancy loss should be treated as a case of homicide and that her drug use would be identified as the cause of the stillbirth.

McKnight was put on trial. Her public defender argued that the case should be dismissed since the state's homicide by child abuse statute was never intended to be used to punish women who experienced stillbirths. The trial court rejected this and the proceedings went forward with the focus on whether or not cocaine caused the stillbirth. The first trial ended in a mistrial when at least one of the jurors went on line to do independent research on the question of cocaine's effects. At the second trial the public defender only called one expert who said cocaine did not cause the stillbirth. Experts, however who could have testified that the stillbirth was, without doubt, the result of an infection unrelated to drug use were never called to testify. One of the state's doctor's however testified that, "cocaine in and of itself can kill you" after only one use. He was forced to concede that he did not have any medical knowledge that would support this assertion and that, in fact, the sole basis for this opinion were press accounts about the death of basketball player Len Bias. The state's case rested on the claim that since they could not identify the cause of the stillbirth, it must have been cocaine. They made this argument without conducting tests and examinations that could have ruled out many more likely causes.

Despite the lack of evidence, the judge permitted the case to go to the jury, which deliberated for less than 15 minutes before returning a guilty verdict on May 16, 2001. McKnight became the first woman in America to be convicted by a jury of homicide by child abuse based on her behavior during pregnancy. She was sentenced to 20 years imprisonment, with the final eight years suspended.

The case was appealed to the state's Supreme Court. Numerous medical and public health groups joined an amicus brief in support of McKnight. The South Carolina Medical Association joined by other local and national health organizations filed a brief that carefully evaluated the evidence in the case. This brief concluded that not only was there no evidence that cocaine caused the stillbirth, but that as a matter of science there was little evidence that cocaine itself could even theoretically have been the cause of this kind of stillbirth.

Despite flaws in the trial, the lack of evidence, a clear legislative history that the state's homicide by child abuse law was not intended to punish pregnant women (including those who use illegal drugs), and the overwhelming opposition of leading medical groups, a majority of the South Carolina Supreme Court upheld the conviction and the new interpretation of the state's homicide law. In January 2003, the Court held that under South Carolina law a viable fetus is a "child" and thus the state's homicide by child abuse statute could be used to prosecute anyone—include the pregnant woman herself—who causes the loss of a pregnancy.

While some state politicians insist that this expanded homicide statute will be applied only to pregnant women who use illegal drugs or who fail to make a good-faith effort to get help, others admit that the decision permits prosecution of any woman whose behavior can be characterized as the cause of a stillbirth. As the local prosecutor said, "Even if a legal substance is used, if we can determine you are medically responsible for a child's demise, we will file charges."

Moreover, the decision makes women the guarantors of a pregnancy's outcome. In rejecting McKnight's arguments, the court noted that the statute's definition of harm as, "inflicting or allowing to be inflicted on the child physical injury" and "failing to supply the child with adequate health care" could both "clearly be applied to an unborn child." Neither of these provisions is

limited to illegal drug use. The pregnant woman who “allows” herself to be battered or the woman who misses prenatal care appointments are both now vulnerable to prosecution for murder should something go wrong in their pregnancy.

The decision also reinforces false and misleading information about drug dependency in general and cocaine’s effects in particular. Ignoring the medical evidence submitted by leading health experts and organizations, the court relied instead on drug war rhetoric. For example, quoting from one of its own earlier decisions, the court asserts that “[t]he drug ‘cocaine’ has torn at the very fabric of our nation.” The decision also reinforces the class- and raced-based notion that medical treatment for poor people of color who have drug problems is synonymous with jail. As the judge said revealingly at McKnight’s sentencing, “at least with [twelve] years hopefully you can get beyond this substance problem that you have.” Most disturbing is the fact that the decision provides a grotesque example of the excesses of the war on drugs. It has transformed a pregnant woman who uses drugs into a murderer.

The court’s combined disdain for drug users and poor pregnant woman is palpable. No one in this case, not even the prosecution, believed that McKnight had any intention of harming the fetus. Nevertheless the court viewed a pregnant woman’s use of an illegal drug, as evidence of “extreme indifference to human life,” the intent necessary to convict for homicide by child abuse. Specifically the court viewed her drug dependency—what she did to her own body—as no different than the actions and intentions of a mother who might have facilitated the sexual abuse and murder of her own child. Had Regina McKnight intentionally sought to end her pregnancy by having an illegal third trimester abortion, her sentence would have been two years in jail. Because she lacked any intent to harm at all, but was a drug user, her sentence was 20 years.

On October 7, 2003, The U.S. Supreme Court denied McKnight’s appeal, exhausting any further legal avenues for her. The case demonstrates that the government will spare no expense in its efforts to expand the war on drugs and women. While the state is willing to have taxpayers pay for McKnight’s imprisonment at \$14,000 a year—at a minimum, it would not dream of funding the treatment or services that she so desperately needed.

Lynn Paltrow is the Executive Director of the National Advocates for Pregnant Women.

Debunking Myths About Pregnant Women and Drugs

By National Advocates for Pregnant Women

MYTH #1: ALL DRUG-EXPOSED CHILDREN ARE SERIOUSLY DAMAGED AT BIRTH AND FOR THE REST OF THEIR LIVES.

Some newborns exposed prenatally to some substances do suffer adverse short or long-term consequences. These infants include those whose mothers lacked access to quality prenatal care and adequate nutrition, smoked or drank while pregnant, or used fertility-enhancing medications that cause multiple births associated with prematurity and other health risks. However, sensational, inaccurate, and misleading news reports, especially about crack/cocaine, have convinced many people of the necessity of punitive responses to the problem of drug-exposed children. Today, dozens of reputable studies establish that the impact of cocaine on newborns has been greatly exaggerated and that other factors are responsible for many of the ills previously associated with cocaine use—with poverty chief among them.

MYTH #2: WOMEN WHO USE DRUGS CAN SIMPLY STOP.

Women who are addicted to drugs cannot simply stop using them. Addiction is a chronic relapsing disease from which recovery takes time. Nevertheless, addiction is frequently regarded as a moral failing, and pregnant addicted women are presumed to be selfish and uncaring. Many of these women, however, were sexually abused as children or beaten as adults, and turn to drugs

to numb the pain of the abuse and trauma they were experiencing. Then, they become addicted or dependent.

Once addicted, pregnant women face numerous barriers to getting help. The lack of adequate treatment for women has been well documented, despite evidence of drug treatment's success and cost-effectiveness. Research shows that comprehensive treatment programs that do not separate mothers from their children help women and their families. They are also cost-effective, especially when compared to the staggering financial and social costs of imprisonment and separating mother and child.

Even when there is meaningful treatment available, recovery is a process that occurs over time with relapse an expected part of the process. Pregnant women should not be jailed and punished when they exhibit symptoms of a disease. Similarly, pregnant women should not be singled out for a form of medical vigilantism that requires them to accept and comply with treatment that may not even be medically appropriate for them or face arrest and imprisonment.

MYTH #3: THREATENING PREGNANT WOMEN WHO USE DRUGS WITH CRIMINAL PENALTIES WILL PROTECT THEIR CHILDREN AND IMPROVE THEIR HEALTH.

Far from protecting children, the threat of prosecution deters women from seeking prenatal care and what little drug treatment may be available. That is why leading health and child welfare groups oppose the use of criminal laws to address this public health question. These organizations include the American Medical Association, the American Academy of Pediatrics, the American Public Health Association, the American Nurses Association, and the American Society on Addiction Medicine. Similarly, organizations such as the Center for the Future of Children and the March of Dimes that are concerned specifically with children's health oppose the use of criminal laws in this area. As the March of Dimes explains: "Targeting substance-abusing pregnant women for criminal prosecution is inappropriate and will drive women away from treatment."

Fortunately, research demonstrates that even when women can't abstain completely from drugs, they can nevertheless have healthy pregnancies if they get prenatal care and help for other problems, especially those associated with poverty. Putting women in jails and prisons where health care is notoriously inadequate and where drugs are nevertheless often available is certainly not good for a pregnancy. Similarly forcing a pregnant woman to go cold turkey in prison or out of fear of arrest can in some cases cause her to have a miscarriage.

Finally, there already exist numerous laws criminalizing drugs. Clearly criminalization has not been a successful strategy in curing addiction. There is no evidence that yet another punitive law will work any better.

MYTH 4: PROSECUTING PREGNANT DRUG USERS WILL NOT INTERFERE WITH WOMEN'S REPRODUCTIVE RIGHTS.

The premise underlying criminal laws that punish drug using pregnant women is that fetuses may be viewed as separate legal entities with rights hostile to and in conflict with those of the pregnant woman. Each decision that recognizes such interests eats away at the basic premise of *Roe v. Wade* and the health and interests of women and their future children. Moreover, for some women, having an abortion which she does not want may be the only way to avoid arrest and imprisonment for continuing a pregnancy to term.

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ROLE OF THE RIGHT: Project Prevention (formerly known as C.R.A.C.K.)

Unlike progressive activists, some right-wing activists believe government policies and practices that punish pregnant women are too lenient. One such group is Project Prevention, formerly known as Children Requiring a Caring Kommunity (C.R.A.C.K.). The group changed its name recently in response to critics and activists.²² C.R.A.C.K. was the brainchild of Barbara Harris, a woman who founded the group after failing to convince California legislators to make it a crime for women to give birth to “drug-damaged” babies. Founded in 1997, Project Prevention now has 23 chapters around the country, including affiliates in Chicago, San Francisco, Houston, Las Vegas, Nashville, New Orleans and Detroit.²³

Project Prevention’s goal is to permanently or temporarily sterilize women with substance abuse problems. Its method is to offer a \$200 cash incentive for any of the following birth control methods: Depo-Provera, IUD, Essure, tubal ligation, or Norplant (no longer on the market).²⁴ The organization claims sterilization is a better alternative to incarcerating women who use drugs while pregnant because it is “extremely cost effective and does not punish the participants.”²⁵ Project Prevention has started receiving referrals from publicly funded jails, probation centers, drug treatment centers and hospitals.²⁶

The organization has a history of soliciting its clients in lower-income Black and Latino communities by placing billboards and posting flyers.²⁷ Some of the billboards read, “If You are Addicted To Drugs, Get Birth Control—Get \$200 Cash!” A more controversial slogan, now out of circulation, read: “Don’t Let a Pregnancy Ruin Your Drug Habit.” Since its founding,

WHY BARBARA HARRIS STARTED C.R.A.C.K.

Barbara Harris was working as a waitress in a southern California pancake house when she stumbled on the cause that would become her passion: saving America from the scourge of “crack babies.” It was 1990, and she and her husband were asked to become foster parents to an eight-month-old girl born to a crack-cocaine-addicted mother. Over the next two years, they took in three more children born to the same woman including one suffering from a neurological disorder that the Harris’s were convinced was the result of damage incurred during pregnancy...

The idea that poor, drug-addicted women—most of them living in inner-city neighborhoods antithetical to the white suburban landscape of Harris’s home in Orange County—were having baby after baby without regard for their own or their children’s well-being became her crusade. “These women literally have litters of children!” she later said in a series of provocative interviews. “They’re not acting any more responsible than a dog in heat.”

To Harris’s detractors, she is pandering to the worst stereotypes of decayed inner-city living and has no regard for the scientific literature on crack cocaine and pregnancy rates for addicts. They say she is discriminating against poor women who are not necessarily in the best position to make decisions about their future - or about what to do with the \$200...To which Barbara Harris says: nonsense. All she is interested in, she says, is preventing children from suffering because of the gross irresponsibility of women too spaced out to control their own fertility...

She explains that, although sterilization is usually freely available at any time, money is the inducement many women need to follow through. “They’re not willing to take the time out of their busy lives. They know it’s something they ought to do, but all they are thinking about is how to get drugs. I’ve had letters saying, ‘Thank you for helping me to do the first responsible thing about my addiction.’”

—Excerpted from Andrew Gumbel, “America’s New Family Values,” The Independent, November 25, 2003. Reprinted with permission.

FREQUENTLY ASKED QUESTIONS (Excerpts from Project Prevention’s Website)

Some say that these people are not capable of deciding on long-term birth control?

[Project Prevention:] If you can not trust someone with their reproductive choices, how can you trust them with a child?

Are you targeting blacks?

[Project Prevention:] Definitely not. It is racist, or at least ignorant, for someone to learn about our program and assume that only black addicts will be calling us. Not all drug addicts are black.

Project Prevention targets a behavior not a racial demographic. If someone is a drug addict or alcoholic and could get pregnant, then we hope they will take our cash incentive offer and get on birth control until they get off drugs.

Why aren’t you spending your money on drug treatment?

[Project Prevention:] We spend billions of dollars every year in this country on drug treatment and opening new drug treatment programs. Our Fresno director cared for the fifth baby born to an addict who lived only three short years. The cost to keep Zachary alive was \$3.4 million! For every Zachary we prevent from being conceived, society saves millions of dollars that can be put towards drug treatment. Project Prevention offers every person in our program referrals to drug treatment programs and will assist them in getting into one if they choose to, but our main goal is to get addicts/alcoholics on birth control.

Are you saying that “all drug-exposed children are permanently damaged or likely to die?”

[Project Prevention:] Barbara Harris has living proof in her home that many of these children turn out to be super stars. If these children get into a loving home at birth or while still very young their chances of having fewer problems is greater. Many of these children will go into the foster care system. They go from foster home to foster home, some living in 12 or more different homes by age 18 which gives some of them a whole new set of emotional problems. Then at age 18, a large percentage of these children end up homeless.

Is it preferable to add numerous unwanted children to our already over burdened foster care system? If we can prevent child abuse for \$200, isn't this the best \$200 we can spend? This sad logic compels the day to day operations of Project Prevention.

Your program just makes me angry!

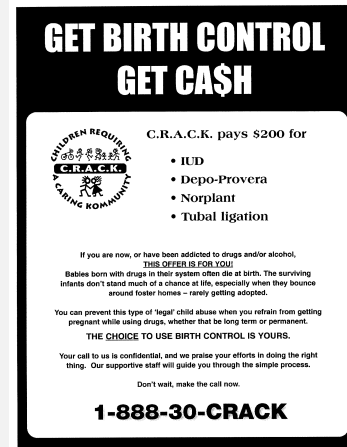
[Project Prevention:] There are some people who speak out against our organization that have never taken the time to contact us with their concerns. If they had they would have learned that although our number one priority is getting addicts/recovering addicts and alcoholics on long-term birth control, we do so much more than just that!

What many people fail to consider are the negative effects on a woman's self-esteem to continually have babies that are taken away from them. That only leads to the addict feeling worse about themselves and continuing to use drugs or alcohol!

Some people say we send a message that women who are addicted to drugs and alcohol "aren't worthy to have children". However, when Child Protection Services takes a child from its mother at delivery, they are in effect telling the mother she is not fit to be a parent! We feel this experience will do nothing to improve the mother's outlook on life, instead it will only contribute to their feelings of guilt and she will continue to use drugs or alcohol in an effort to forget the loss of yet another child.

When a woman has access to long-term birth control, she has the time and opportunity to make personal decisions in life that might allow her to move beyond her addiction, at which point she may become capable of raising a family without fear of having her children forcibly removed from her care.

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C.R.A.C.K./Project Prevention has paid almost 1,350 people to be sterilized and about 50% of those individuals were people of color (26 were men, although the group no longer pays for vasectomies).²⁸ Although Harris insists that she offers her services to anyone, according to investigative journalist Andrew Gumbel, “it appears, from her flyer campaigns and from the statistical breakdowns of her own numbers, that her organization focuses primarily on the inner city and on ethnic minorities.”²⁹ Indeed, at a training in Seattle, volunteers were encouraged to do market research to identify areas with the highest drug-related arrest rates. The how-to manual states, “the offer of \$200 appeals more to the poor than it does to the rich.”³⁰ Project Prevention denies that Blacks are targeted for sterilization,³¹ and Gumbel has pointed out that Harris especially “takes great delight in squashing the racism accusation” by pointing out that her husband and adoptive children are all Black.³² In many ways, Harris rationalizes her legitimacy because she has “‘walked the walk’ with her adopted family.”³³

Project Prevention’s success can partly be explained because Harris has received the Right’s stamp of approval. Funding for Project Prevention has poured in from wealthy conservatives ,including at least \$10,000 from radio personality Dr. Laura Schlessinger, \$75,000 from the Allegheny Foundation, a project of the conservative billionaire Richard Mellon Scaife, and \$125,000 from Jim Woodhill, a Houston-based venture capitalist and self-proclaimed member of the “Republican Rebel Alliance.”³⁴ Harris has also received significant attention in the media. In addition to appearing on “Oprah,” Harris has been embraced by conservative talk radio hosts and newspaper columnists.³⁵

At the center of the controversy over Project Prevention is whether sterilization is an ethical solution for women of child-bearing age with substance abuse problems. Because of the U.S.’s long history of trying to restrict poor women from having children, reproductive rights activists, feminists, advocates for the poor, and social workers have all joined together to oppose Project Prevention/C.R.A.C.K. The main critique is that Harris’s project in effect is “reproductive discrimination against the poor—what Germaine Greer once described as middle-class resentment at ‘having to shell out for the maintenance, however paltry and meager, of the children of others.’”³⁶ By targeting women in vulnerable economic and psychological situations, Project Prevention’s program in effect offers women bribes in exchange for their right to have children. Doctors and medical professionals fear women are being financially coerced to become sterilized because overusing drugs may compromise women’s ability to make decisions.

According to Lynn Paltrow, Project Prevention’s material broadly suggests that “a particular portion of the population should not be, or is not worthy of, reproducing the human race. The recent phenomenon of recruiting at jails, probation centers, and detention centers feeds off of stereotypes about poor women and women of color as both disposable and incompetent populations. The risk is that this will easily be interpreted to mean that this group is unworthy of being regarded as fully human.”³⁷ Indeed, Project Prevention isn’t as concerned about the health and stability of the women it sterilizes as it is about simply preventing those women from having children. Project Prevention does not monitor how the cash is paid to women,³⁸ and Harris readily admits that the women may be using the money to satisfy a drug addiction,³⁹ and she “does not subscribe to the conventional wisdom that addiction is a disease.”⁴⁰

Analysis of Project Prevention/C.R.A.C.K.

C.R.A.C.K. contributes to the increased criminalization of women who may be pregnant and are struggling with chemical addiction. However, it is important to understand that activists who oppose C.R.A.C.K. are not advocating for pregnant women to use drugs. Instead, what they oppose is C.R.A.C.K.'s simplistic approach to the issue and dehumanizing "solution" of sterilizing women. It is important to explore the relationship between population control, the prison industrial complex and attacks on reproductive health. Advocates for women recognize that the intersection of pregnancy and drug use is a complex situation, and they believe that stigmatizing, prosecuting, and incarcerating women is detrimental to them and their families. Below are the most common arguments used to challenge C.R.A.C.K.

ARGUMENTS CHALLENGING C.R.A.C.K.

By Committee on Women, Population and the Environment

C.R.A.C.K.'s mission is essentially eugenic.

Reminiscent of eugenic programs from the early twentieth century, C.R.A.C.K. seeks to diminish the number of "undesirables" from the overall population.⁴¹ Eugenics is based on prejudiced and unsubstantiated beliefs that people inherently belong to a superior or inferior race and class. It is also fueled by a fear that the "inferiors" will breed excessively, thereby "threatening" the proportion of "superiors." Repressive repatriation laws, restrictive immigration quotas and coerced sterilizations formed the basis of eugenics in the United States.

Now, we have private, monetary incentive programs offering young, educated, and privileged women \$2,500 to 50,000 to "donate" their eggs to the infertility industry, while a program such as C.R.A.C.K. offers poor women with substance abuse problems \$200 not to have a child.⁴² Monetary incentives by their very nature have more to do with coercion than choice. Poor women with substance abuse problems are not likely to be able to make an informed decision with regard to their reproductive capacity, if offered cash as an incentive. C.R.A.C.K.'s disregard for the women it targets is evidenced in Barbara Harris' statement: "We don't allow dogs to breed. We spay them. We neuter them. We try to keep them from having unwanted puppies, and yet these women are literally having litters of children."⁴³ C.R.A.C.K. denies poor, marginalized women with substance abuse problems their procreative ability, and this is a human rights violation.

C.R.A.C.K. limits birth control options.

C.R.A.C.K. irresponsibly limits birth control options by compensating women only for long-term, provider-controlled methods: tubal ligation, Essure, Depo-Provera and IUDs. Barrier methods and methods which protect against HIV infection and other sexually transmitted diseases are not offered.

C.R.A.C.K. increases the health risks of women with substance abuse problems.

The drug-addicted women that C.R.A.C.K. targets are likely to already suffer from poor health conditions and inadequate access to health care. However, C.R.A.C.K.'s high-tech birth control "options" require health care screening for contraindications and monitoring for side effects. C.R.A.C.K. may actually increase a woman's risk of contracting HIV or other STDs, since it exclusively advances birth control methods which provide no protection against these infections.

C.R.A.C.K. impedes the goals of substance abuse treatment.

C.R.A.C.K.'s quick-fix approach effectively gives up on treatment as a solution to addiction. So long as women with addiction problems stop having children, nothing else seems to matter. It does not recognize addiction as a medical problem which responds to appropriate treatment.

C.R.A.C.K. capitalizes on the false notion of “crack babies” as wasted lives.

Recognizing that using drugs while pregnant can harm an infant is very different from C.R.A.C.K.'s message that women on drugs should not have babies or that their babies are permanently damaged. The notion of “crack babies” as wasted human lives came about in the late 1980s when news reporters exaggerated the effect of crack cocaine on infants and preschoolers. They emphasized the most alarming predictions of doctors and researchers that infants of women who used crack cocaine would experience learning disabilities, attention and behavior disorders, and would have to be written off as a “lost generation” or a “biological underclass.” Today, there is practically scientific consensus that crack cocaine does no more damage to infants than heavy cigarette smoking and does less damage than heavy alcohol use. C.R.A.C.K. perpetuates the “crack babies” myth, further stigmatizing the children labeled as such and contributing to misinformation among the public.

Oppression, not the reproductive capacity of women, needs to be eliminated.

Women with substance abuse problems need drug treatment, decent jobs, educational opportunities, mental health services, and childcare services. It is the lack of these services and the denial of human dignity, which exacerbate conditions of poverty, racism, social status and gender discrimination. Activists oppose C.R.A.C.K. because it ignores the root causes that contribute to women's addiction while perpetuating dehumanizing stereotypes about women.

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The Unborn Victims of Violence Act (UVVA) The Intersection of Tough on Crime and the Anti-Abortion Movement

Assessing the fetal rights movement in 1990, *Nation* columnist Katha Pollitt argued that focusing on rights for fetuses “allows the government to appear to be concerned about babies without having to spend any money, change any priorities, or challenge any vested interests.”⁴⁴ Her observations are just as true today. Indeed, states with laws that respect women’s abortion rights are more likely than anti-choice states to adopt policies that help vulnerable children once they are born. Rather than help children, what fetal rights strategies do is erase women, expand the reach of the criminal justice sector, and undermine legal abortion—major goals of the Right.

WHAT PROBLEM IS THE UVVA SUPPOSED TO ADDRESS?

Since late 2002, the case of Laci Peterson has riveted national attention: a beautiful 27-year-old California woman who was eight months pregnant when she disappeared mysteriously on Christmas Eve, and whose body was not discovered until almost four months later. Peterson’s murder shocked and saddened not only those who knew her, but many others as well, horrified by the thought of her life cut short just as she was on the brink of bringing a new life into the world.

Although the Peterson story gained national attention, sadly, it is not unique. As women’s advocates have long known, violence often begins or escalates when a woman becomes pregnant. Indeed, recent research in several states finds that murder is a leading cause of death among pregnant women, who often die at the hands of their intimate partners. Other women survive the assault, but miscarry as a result. Because screening for violence is not always a routine part of prenatal care, we do not have adequate systems in place to identify and help women who are in danger.⁴⁶

As the problem of violence against pregnant women becomes better known among the general public, policy-makers have the opportunity and the responsibility to ask how it can best be solved. Unfortunately, forces on the Right instead chose to capitalize on the Peterson tragedy to promote their own anti-abortion agenda in the guise of the Unborn Victims of Violence Act, a bill that had stalled in previous years.

Signed by President Bush in 2004, the UVVA writes into federal law the idea that embryos and fetuses are separate, distinct, and completely independent from the pregnant women in whose bodies they grow. It is already a crime to assault another person, of course; what the UVVA does is create the impression that someone can commit “violence against a fetus” without doing violence to a pregnant woman. Specifically, the law creates a new federal crime of injuring or causing the death of “a child in utero” at all stages of gestation, treating a fertilized egg as a person for purposes of federal law enforcement.

WHAT’S WRONG WITH THE UVVA?

Because the law does nothing to actually prevent violence against women, domestic violence groups opposed the law and urged Congress to restore funds for programs that help battered women instead. The National Network to End Domestic Violence explained that, “Legislation and policy should be focused on recognizing violence against women as the serious crime it is, and need not rely on loss of a pregnancy to vigorously prosecute these crimes.” When women do

lose a pregnancy as the result of an assault, the Network favors enhancing existing assault laws so that the assailant faces a harsher sentence for the additional injuries inflicted on the woman.⁴⁷ Democrats in Congress introduced just such a bill, only to see it defeated at the urging of groups like the National Right to Life Committee.⁴⁸ The Democratic proposal was designed to recognize that women suffer two harms: the physical and emotional pain of assault, and the pain of losing a pregnancy and the opportunity to raise a child.

In addition to undermining abortion rights without doing anything to prevent crimes against women, advocates worry about one other possible implication of UVVA. The text of UVVA states that it should not be construed to permit the prosecution of “any woman with respect to her unborn child;” however, this kind of language has not stopped similar laws at the state level from being used against women. In one recent case, for instance, a Texas woman who used crack cocaine during her pregnancy was charged with delivering a controlled substance to a minor. Even though the Texas penal code makes clear that women are not to be prosecuted under these circumstances, a district attorney charged her under a provision of a different code. The woman’s lawyer and a legislator who sponsored the fetal injury law both say that the prosecutor is misinterpreting the law. “We intended for the mother of the child to be held harmless in cases like this,” explains the legislator’s chief of staff Scott Gilmore.⁴⁹ For this reason, Lynn Paltrow of National Advocates for Pregnant Women concludes that, “Far from safeguarding pregnant women or children, the UVVA creates the legal foundation for policing pregnancy and punishing women who carry their pregnancies to term.”⁵⁰

Other groups launch an even more systemic critique of increasing the law enforcement approach to interpersonal violence, asking whether it can ever benefit women who already live in communities suffering from high levels of police surveillance and imprisonment. (See Critical Resistance—Incite! Statement on Gender Violence and the Prison Industrial Complex at www.defendingjustice.org)

Although more than 30 states have laws similar to UVVA on the books, this new federal law represents a major victory for abortion opponents and forces on the Right. During the course of a five-year battle, conservative forces gained sufficient power in Congress and the White House to pass the bill and along with it, to shape the national debate as one about rights for fetuses instead of the rights, needs, and experiences of women.

The Politics of Fetal Rights and the Anti-abortion Movement

In order to fully understand what is wrong with UVVA and the prosecution of pregnant women, it is important to understand how these developments fit into the larger context of the politics of fetal rights and the anti-abortion movement. Just as prosecuting pregnant women for drug use fails to help children, so does the UVVA fail to help pregnant women. Both tactics, however, create independent rights for fetuses—a step that may help to outlaw abortion. Both also embody a punitive approach to complex social problems, dump money into law enforcement and imprisonment, and boost the overall criminal justice agenda.

Historically, fetuses have not been regarded as separate from pregnant women. Indeed, the United States Supreme Court has never held that a fetus is a person. In the landmark 1973 decision *Roe v. Wade*, which legalized abortion, the Supreme Court held that fetuses represent potential life and recognized a State interest in that potential. The Court has made it clear in every case that the State’s interest in potential life never outweighs the State’s interest in women’s

lives and health. This is why courts routinely strike down laws that restrict abortion without explicitly acknowledging that women may need abortions to protect their health.

Roe v. Wade catalyzed a movement against legal abortion and for fetal rights. If opponents could establish the position that a fetus has a right to life, then it would follow that abortion must be outlawed. But fetal rights advocates have pushed for a broader range of rights for fetuses, such as the right to be born with a sound mind and body or the right to be conceived and gestated within an optimal “uterine environment.” Although no one can guarantee that a baby will be born healthy, that has not stopped advocates and sometimes government officials from trying to impose such rights by restricting women’s actions and penalizing them if they fall short.⁵¹ Nor has the alleged interest in healthy babies translated into programs that would advance maternal and child health.

Fetal rights advocates do not necessarily form one coherent movement, but a collection of individuals and organizations who may agree on some issues and differ on others. For instance, the National Right to Life Committee opposes abortion but does not support prosecuting pregnant women for using drugs because such prosecutions might drive women to terminate their pregnancies. Doctors, hospital administrators, local prosecutors, law professors, and social workers who might not oppose legal abortion sometimes support imposing unique obligations and penalties on pregnant women. Finally, other individuals and organizations, such as corporations, may have their own reason for advocating rights for fetuses—namely, they do not want to be held liable for birth defects that might be attributed to the hazardous substances and toxins to which their workers are exposed.

Strategies and positions

Fetal rights proponents rely on a two-pronged strategy: personify fetuses and dehumanize women.⁵³ That is, treat fetuses as if they were independent beings with rights of their own that are equal—or superior—to the rights that women hold. Their tactics include everything from violence, intimidation, and harassment of abortion providers and patients; lobbying state and federal policy-makers; litigation and court orders to restrain individual women; and disinformation campaigns and manipulation, such as setting up “crisis pregnancy centers” that discourage women from getting abortions.

ROE AND CASEY

Americans hold many myths about *Roe v. Wade*, the 1973 Supreme Court decision legalizing abortion. In that case, the Court neither held that women have a right to “abortion on demand” nor that fetuses have rights of their own that must be balanced against women’s rights. Indeed, the Court has never held that a fetus is a person with rights. Instead, the Court laid out these principles:

- 1st trimester: women can decide to have an abortion without State interference;
- 2nd trimester: the State can reasonably regulate abortion to protect women’s health;
- 3rd trimester: the State can regulate and prohibit abortion after fetal viability, but must always permit abortions necessary to protect women’s health and lives.

In 1992, in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, the Court abandoned this three-part framework and weakened women’s rights by giving states the green light to regulate and try to discourage abortion at any stage of pregnancy. States can restrict women’s access to abortion so long as they do not impose an “undue burden” on women’s rights. As a result, many states now require women to listen to “counseling” designed to get them to change their minds and to wait 24 hours after being “counseled” before having the abortion. States are still obligated to allow abortions to protect women’s health and lives.

At some level, every specific position involves personifying fetuses and attempting to establish legal precedents that fetuses have rights, precedents that may be used to further restrict women and undermine abortion. Across the country, proponents have launched successful efforts to:

- Restrict women’s access to abortion;
- Criminalize women’s conduct during pregnancy so that State authorities can intervene;
- Implement “preventive detention” of pregnant women in jail or psychiatric hospitals if they use drugs or otherwise arouse suspicion;
- Adopt laws that recognize fetuses as independent victims of crime;
- Adopt regulations that recognize fetuses as independent beneficiaries of public programs, such as those that allow states to “enroll” fetuses in the Children’s Health Insurance Program;
- Adopt laws that privilege fetuses over women, such as state living will laws that automatically exclude pregnant women from exercising their right to die;
- Obtain court orders forcing women to submit to medical interventions against their will (and often their religious beliefs), such as cesarean operations or blood transfusions.

In 2004, a Utah case merged some of the worst of these trends, when Salt Lake City prosecutors charged a woman with murder for allegedly refusing to undergo a cesarean and giving birth to a stillborn baby.⁵⁴ This case represents the incursion of fetal rights theories into new territory—applying criminal laws to the area of patient rights.

Conclusion

As these examples show, fetal rights politics undermines women’s rights, safety, and personhood without meeting its stated goal of helping fetuses, let alone children and families. There seems to be an inverse relationship between attention focused on fetuses—for instance, the fetuses of poor Black women who use drugs—and the children those fetuses become, reflecting the charge that fetal rights advocates are only “pro-life” until babies are born into families that need social support.

Even were it sincere, fetal rights advocacy would be a misguided strategy to solve social problems. If the goal is to increase access to health care and thereby improve birth outcomes, the logical solution is to enroll pregnant women in health plans. If the goal is to prevent violence against pregnant women, the logical solution is to adopt stricter gun control and provide meaningful assistance to battered women.

Ultimately, on this issue the Right has two goals: to move the fetus closer to the status of independent legal person, of citizen, so that abortion will once again be a crime, and to promote a view of the world that addresses health and human needs through the lens of crime control. These goals make clear the need for progressive activists to work together across their issue areas.

Endnotes Available Online!

All citations and references are available at www.defendingjustice.org or by contacting PRA.

ORGANIZING ADVICE: Resisting Partisan Politics

Q & A WITH THE REBECCA PROJECT FOR HUMAN RIGHTS

The Rebecca Project for Human Rights (RPHR) is a legal and advocacy organization for poor and low-income families struggling with the intersecting issues of economic marginality, substance abuse, access to family-oriented treatment, and the criminal justice system. RPHR integrates local grass-roots organizing with national policy work. RPHR represents the voices of families in the District of Columbia to illustrate the larger national need for public policy reform while challenging the insularity and disconnectedness that too often characterizes Washington, DC politics and national policymaking.

PRA: What is your current work?

RPHR: The Rebecca Project is a comparatively young organization (four years old). Crossing the River and Sacred Authority constitute our two primary constituent driven projects. Crossing the River is a twelve-month leadership development workshop for mothers in treatment that utilizes the written, spoken, and expressed word to give mothers a space to claim their voice and agency.

Sacred Authority is RPHR's leadership project of mothers who completed comprehensive treatment and who are stabilized in their recovery. These mothers seek to advocate for the needs of other families with drug addiction issues and bridge the wide divide between Congress, policymakers, and the real lives of low-income families with substance abuse issues. The mothers present the uncontested truth of their own experiences by conducting meetings and briefings with Congressional staffers and national policymakers on the issues of poverty, substance abuse, and recovery.

PRA: What is the situation of the women with whom you work?

RPHR: Our members are parents in recovery from substance abuse, many of whom were also incarcerated as a result of their addiction. Most of the parents are single mothers who achieved their recovery from family-based treatment programs where they could heal without being separated from or losing their children.

Twenty-five years ago, the presence of women—especially mothers—was an aberration in the

criminal justice system. Approximately two-thirds of all women sentenced in federal court were given probation, and women comprised less than 5 percent of all prisoners. That was before the war on drugs. Since 1986, following the introduction of mandatory sentencing to the federal drug laws, and its adoption by many states at about the same time, the number of women in prison has risen 400 percent and for Black women, the figure is 800 percent! Most of the women and mothers incarcerated for non-violent drug offenses are also suffering with substance abuse issues. In federal prison, for example, 87 percent of the women are struggling with issues of drug abuse. Rather than offering them treatment and rehabilitative services, they are criminalized for their addiction, and then incarcerated.

PRA: How does this play out locally where you are?

RPHR: In the DC Women's Jail, for example, the majority of women behind bars are mothers to minor children and they are untreated addicts. Their incarceration is a result of a drug or drug-related felony. These mothers behind bars clearly illustrate that it is easier to end up in jail and be separated from their children than to access appropriate, family-based treatment. However, even in jail, the mothers are denied the opportunity to heal from their addiction. There is no treatment available in the DC jail or aftercare treatment for the mothers at the end of their incarceration. Many of the women will therefore return to their communities, without their children and still addicted to their drug of choice.

PRA: What are you advocating for?

RPHR: We are working, tirelessly, for comprehensive family-based treatment capacity expansion; family-based treatment alternatives to incarceration; sensible and just policy reform for parents struggling with substance abuse issues.

PRA: How does your work connect to the struggle for reproductive rights?

RPHR: The antebellum South deliberately constructed Black women's sexuality as lewd, erotic, and innately lascivious. These denigrating images and constructions of African American female sexuality were critical to slavery's sexual economy wherein Black women were bred, raped and sexually

abused. The denigration of Black women's sexuality inextricably linked to the devaluation of the Black woman's identity as a mother and her right to motherhood. Unfortunately, the historical practice of separating mothers of color and our children reaches into post-bellum public policy. Most recently and alarming is the systematic incarceration of mothers for non-violent drug felonies.

When mothers are placed behind bars for untreated addiction, their children are either placed in foster care or kinship care. During the period of incarceration, it is a struggle for incarcerated mothers to maintain an abiding connection to their children. Women's prisons are often located in rural areas far from the cities in which the majority of inmates lived, making it difficult to maintain contact with their children and jeopardizing the prospects of successful reunification. Incarcerated mothers with children in foster care are often unable to meet court-mandated family reunification requirements for contact and visitation with their children, and consequently lose their parental rights. Most of these women and children are of color.

Indeed, a new and representative reproductive rights movement must honor that for women of color, the right to be a mother has been placed into question. The right for women of color to raise their own children, and to raise them with dignity, is key to a reproductive rights movement which recognizes the particular ways in which women of color are denied the right to mother.

PRA: How has Capitol Hill reacted to your advocacy?

RPHR: The interaction between the lawmakers and mothers in recovery is always transformative. There is a bipartisan lack of education on the particular ways in which parents suffer from addiction and the lack of family-based needs when seeking treatment and healing. For many of these lawmakers, *just* listening to the families allows for them to witness the impact of legislation on the real lives of poor parents struggling to stay clean and raise their children with dignity.

Our experience has been that Congressional staffers need to, and mostly want to, understand these policy issues from the lens of the lived experience. Supportive Democrats and Republicans have sought to understand the human and moral dimensions of the struggle around addiction and healing. We are committed to that politics of transformation, and the insistence that staffers learn these issues from a

very human framework, rather than minimize these policy issues into vague abstractions.

PRA: How has the Right responded to your framework?

RPHR: Interestingly, the Right has been very supportive in understanding the issue of substance abuse in the lives of low-income families and supporting efforts for family-based treatment. Indeed, the so-called Right has, at times, outdone Congressional Democrats in their support. We have been very successful in our advocacy work because we have brought the Right into our efforts and connected their issues of morality and family values to the need for families suffering with addiction to be given the chance to heal as a whole family. I think the Left makes a terrible mistake in dismissing opportunities for connection and alliances with persons on the right. We have tried to do the work outside the tired confines of one-dimensional and ideological analysis.

PRA: Why haven't you gotten support from the Democrats?

RPHR: When Democratic lawmakers demonstrate a lack of support for our concerns, it is because we are perceived as politically disposable to them. Low-income mothers suffering with addiction are politically unpalatable and stigmatized. An alliance with our communities is therefore construed as a burden, as an example of being soft on crime or supportive of bad mothering. Fortunately, there are Democrats who do respond to our issues from a place of moral conviction, an expansive notion of family values, and an understanding that the Democratic party must reclaim its place of defending the disenfranchised.

PRA: So who do you consider the opposition?

RPHR: Our opposition is those persons uncomfortable with the authentic voices of those suffering with substance abuse and recovery issues. Our opposition is those persons attached to a narrative which denies humanity to our parents and children. I cannot say that there is a political party or ideology that makes up our opposition. Our work is very bipartisan: we have allies in most expected as well as unlikely of places. Rather than approach the work from the ideological praxis of Right versus Left, we are trying to explore an approach that prioritizes the politics of humanism.

PRA: What is it going to take to create the changes you seek?

RPHR: Well, for the first time since 1997, we have achieved federal funding for family-based treatment. As a result, 14 more family-based treatment programs are available for our families to heal together. However, what we need is an entirely new discourse, owned by neither political party, which emphasizes our worth as mothers, as children, and as families. When we can create a culture which does not create hierarchies out of our children's needs and opportunities; when there is a sense that our healing, that my own well-being, that my own family's well-being relies on, depends, is inextricably tied to others. Then, perhaps, our families will know the dignity that they so deeply deserve.

All of the content in this publication,
plus additional information, can be downloaded
from the *Defending Justice* companion website:
www.defendingjustice.org.

Additional Resources

California Coalition of Women Prisoners (CCWP)

1540 Market St., Suite 490
San Francisco, CA 94102
Phone: 415-255-7036 ext. 4
<http://www.womenprisoners.org>

CCWP raises public consciousness about the cruel and inhumane conditions under which women in prison live.

Civil Liberties and Public Policy Program

Hampshire College
893 West Street
Amherst, MA 01002
Phone: 413-559-5416
<http://clpp.hampshire.edu>

A national organization that educates and trains new generations of reproductive rights leaders, the Civil Liberties and Public Policy Program organizes an annual activist reproductive rights conference for students and young advocates, provides student internships under its Reproductive Rights Activist Service Corps, publishes a campus newsletter for young activists, and trains emerging leaders under its New Leadership Networking Initiative. CLPP is affiliated with the Population and Development Program at Hampshire College. Both programs connect reproductive rights activism to other social change work.

Legal Services for Prisoners with Children (LSPC)

1540 Market St., Suite 490
San Francisco, CA 94102
Phone: 415-255-7036
<http://www.prisonerswithchildren.org>

LSPC advocates for incarcerated parents, children, family members and people at risk for incarceration with a focus on women prisoners and their families.

Committee on Women, Population and the Environment (CWPE)

P.O. Box 55108
Atlanta, GA 30308
Phone: 404-222-9089
<http://www.cwpe.org>

CWPE is a multi-racial alliance of feminists that works to expose the human rights violations that follow from population-based analyses. One of CWPE's initiative is to resist the unethical tactics of the cash-for-sterilization program known as C.R.A.C.K.

National Advocates for Pregnant Women (NAPW)

153 Waverly Place, Sixth Floor
New York, NY 10014
Phone: 212-255-9252
<http://advocatesforpregnantwomen.org>

NAPW works to protect and advance reproductive liberty and the rights of women through: litigation and litigation support, challenging efforts to establish fetal rights under the law and to expand the war on drugs; public education on case law, legislation, and social science data regarding the war on abortion and the war on drugs; and grassroots organizing, supporting women directly affected by punitive policies.

Ibis Reproductive Health

2 Brattle Square
Cambridge MA 02138
Phone: 617-349-0040
<http://www.ibisreproductivehealth.org>

Ibis works to increase the reproductive health choices open to women, and to enhance women's autonomy in exercising these choices. Ibis conducts original research, both clinical and social science, analyzes and critiques policies and protocols that limit reproductive choice, and interprets and disseminates research findings that can help shape laws, policies, and practices.

Rebecca Project

1752 Columbia Road, NW, Third Floor
Washington D.C. 20009
Phone: 202-265-3907
<http://www.rebeccaproject.org>

The Rebecca Project for Human Rights is a national legal and advocacy organization for families struggling with the intersecting issues of economic marginality, substance abuse, access to family-based treatment, and the criminal justice system.

Statements

Critical Resistance and Incite! Women of Color Against Violence. "Gender Violence and the Prison Industrial Complex." Available at: <http://www.incite-national.org/involve/statement.html>

This statement focuses on the intersection of both State and interpersonal violence, particularly violence against women. The statement calls for strategies that challenge the criminal justice system and that also provide safety for survivors of sexual and domestic violence. It critiques the anti-violence movement for its reliance on the criminal justice system and provides recommendations for action.

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Endnotes Available Online!

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CONSERVATIVE AGENDAS AND CAMPAIGNS

“WAR ON TERRORISM” AND IMMIGRANTS

“September the 11th was not the beginning of global terror, but it was the beginning of the world's concerted response. History will know that day not only as a day of tragedy, but as a day of decision when the civilized world was stirred to anger and to action.”¹

—President George W. Bush commemorating September 11

George W. Bush was right about the fact that global terrorism did not begin on September 11, 2001. But he is wrong in implying that the response—the War on Terrorism—began that day. It, the war on drugs, the war on crime, and other such domestic and foreign policies are deeply rooted in U.S. history. While many agendas and policies advocated and implemented by various administrations, including the Bush Administration, might be identified as having right-wing origins, many others, especially when it comes to foreign policy, are harder to pinpoint as being specifically rightist. They are instead much more structural and/or systemic in nature, and are rooted in the historical evolution of the United States from its original founding to its “sole superpower” status at the present time.

Terrorism has been a horrific reality for the world beyond our borders since long before September 11, 2001. And now it is an equally terrifying reality for Americans. It is important to understand that people’s fear of terrorism, whether they live in the United States or elsewhere, is genuine—whether that terrorism is perpetrated by non-State actors like Al Qaeda, or State actors, i.e., governments. It is equally important to understand that governments around the world, including the United States, have exploited this fear to impose draconian laws that infringe on people’s civil liberties and violate their civil rights, and that help to maintain the social, racial, economic, and political status quo that benefit the wealthy and the ruling elite. As Natsu Taylor Saito explains:

“Since September 11, the Bush administration has convinced Congress to pass hundreds of new laws giving the executive branch dramatically expanded powers. The administration has unilaterally assumed the power to detain thousands of people, hold them indefinitely and incommunicado, deny them access to the courts, and interrogate them. We are told that all of these measures are necessary to protect us, the American people, and the most basic ‘American values’ of freedom and democracy.”²

“But who is an ‘American’ for purposes of governmental protection and constitutional rights? To understand just who and what are being protected by the ‘war on terror’ today, we need to look at these measures in the context of the United States’ long history of conflating race, ‘foreignness,’ and disfavored ideologies [like Communism and Socialism]; its consistent use of law enforcement and intelligence powers to suppress movements perceived as political threats; and its more general use of the criminal justice system to preserve the status quo.”³

Special thanks to former PRA intern Johnny Yong for his contribution to this chapter.

SECTION OBJECTIVE

This section will discuss the historical context for the present-day “War on Terrorism.” It also explains how the Right and the U.S. government have exploited certain key events and people’s genuine fear, to pursue an agenda that includes domestic repression, increased hostility to immigrants, and the militarization of the U.S.-Mexico border.

IN THIS SECTION

- Framing Article: Homeland Security: Low-Intensity Conflict Targets Non-Citizens
- Role of the State: USA PATRIOT Act
- Role of the Right: Activating Citizens
- Immigration as a Criminal Issue
- Organizing Advice: Q&A with Border Action Network
- Additional Resources

HOMELAND SECURITY: Low-Intensity Conflict Targets Non-Citizens

By Matthew Lyons

Since the attacks of September 11, 2001, the so-called war on terror has provided the U.S. government with a rationale for dramatically increasing state repression. This repression, linked with an upsurge of nationalism and nativist scapegoating, affects everyone in the United States but most sharply targets Muslim, Middle Eastern, and South Asian immigrants, especially non-citizens.

In the name of fighting terrorism, the federal government rounded up thousands of Middle Eastern and South Asian men, many of whom were held incognito for months and reported being beaten or denied basic necessities. The government established programs to photograph and fingerprint hundreds of thousands of non-citizens and a military intelligence project to track individuals by collecting and analyzing massive quantities of personal information. New laws and executive orders have seriously weakened freedoms of speech and association, freedom from unreasonable searches, the rights to legal representation and a speedy and public trial, and many other basic rights—above all for non-citizens.⁴

Much of this dynamic is not new. Many of the United States' previous wars—such as the First and Second World Wars, the Korean War, the Vietnam War, and the U.S.-backed wars in Central America in the 1980s—have seen upsurges in domestic repression, and many of these crackdowns have focused most heavily on foreigners or immigrants.

The current crackdown, however, blurs the line between war and repression more than ever before. Pointing to the September 11 attacks, which targeted the centers of U.S. financial and military power and killed thousands of U.S. civilians, federal officials have told us that terrorism must be fought both outside and inside U.S. borders. “The war on terrorism,” as one critic has put it, “is a war without boundaries, belligerent nations and time limits.”⁵ In this war, we are told, the front line can be anywhere and there is no clear line between combatants and civilians. Exploiting popular fears and legal ambiguities, the government has staked out a large gray area between military and police work, where it has moved aggressively to tighten control over large sections of the civilian population.

There is a name for this kind of operation: low-intensity conflict (LIC). While low-intensity conflict is usually associated with U.S.-backed operations overseas—such as in Central America or Southern Africa—LIC principles have long guided border enforcement policies within the United States itself. These policies have focused largely on controlling immigrants.

The post-September 11 crackdown builds on this recent history of militarized border enforcement. The connection is dramatized by the integration of three leading border enforcement agencies—the Immigration and Naturalization Service (INS), the Customs Service, and the Coast

While low-intensity conflict is usually associated with U.S.-backed operations overseas—such as in Central America or Southern Africa—LIC principles have long guided border enforcement policies within the United States itself.

Guard—into the new Department of Homeland Security.

What Is Low-Intensity Conflict?

U.S. military planners apparently coined the term “low-intensity conflict” in the early 1980s, although its roots are much older. LIC has encompassed many different types of operations, including counterinsurgency (such as El Salvador in the 1980s), anticommunist insurgencies (the Nicaraguan Contras in the same period), punitive strikes (the 1986 bombing of Libya), and so-called peacekeeping operations (Somalia in 1992-1993 or Bosnia since 1995).⁶

Low-intensity conflict seeks to minimize U.S. troop deployment and military casualties and focuses on controlling targeted civilian populations rather than territory. It generally involves the coordination or integration of police, military, and paramilitary forces, as police become militarized and the military takes on law-enforcement and other unconventional roles. In addition, LIC often combines open force with propaganda campaigns and seemingly benign projects such as community development and civic reform efforts, as a way to win civilian support. In this sense of a multipronged military, political, economic, and psychological offensive, one military officer described low-intensity conflict as “total war at the grass-roots level.”⁷

Iraq has been a constant, major target of U.S. low-intensity warfare since 1991. Before the 2003 invasion of Iraq, Republican and Democratic administrations alike used a combination of economic sanctions and periodic air strikes to “contain” the Iraqi government—at the cost of hundreds of thousands of Iraqi lives.⁸ In this and almost all other cases, the United States’ LIC operations have overwhelmingly targeted people of color.

Militarizing Border Enforcement

Ever since the 1798 Alien and Sedition Acts, the U.S. government has persecuted immigrants and foreigners repeatedly. For the past quarter century, undocumented immigrants (and those suspected of being undocumented immigrants) have faced an increasingly powerful repressive federal apparatus, especially in the U.S.-Mexico border region. Growing anti-immigrant racism, an aggressive foreign policy focus on Central America, the War on Drugs, and the end of the Cold War all helped define border enforcement as a national security issue. By 1998, the INS had more armed agents than any other federal law enforcement agency. Since 1994, largely as a result of harsh border control policies, 2,000 migrants have died trying to enter the United States from Mexico.⁹

As sociologist Timothy J. Dunn argues, U.S. border enforcement policy since 1978 represents an application of low-intensity conflict doctrine within the United States.¹⁰ Dunn examines a number of developments in border control policy since 1978 that, in combination, embody LIC principles:

INS funding grew steadily, with a disproportionate share of increases awarded to the Enforcement Division (which includes the Border Patrol) at the expense of services.

The Border Patrol more than tripled in size and became increasingly militarized in its weaponry and equipment and in its creation of elite “special forces” units. The Border Patrol’s power to conduct searches and make arrests expanded dramatically.

The INS became increasingly geared toward long-term, punitive detention of suspects.

The INS engaged in a variety of efforts to coordinate and integrate forces with other federal, state, and local law enforcement agencies. The INS placed intelligence operatives in Mexico and Guatemala and shared intelligence with the CIA, the State Department, and the Pentagon.

The military became increasingly involved in domestic police work. Although barred from making arrests, searches, and seizures, the military increasingly provided civilian agencies with equipment, training, and intelligence, and took on a leading role monitoring the inflow of illegal drugs into the United States.

The INS planned and carried out large-scale roundups of civilians, such as the 1989-1990 arrest and deportation of thousands of Central American refugees in the Lower Rio Grande Valley. In 1992, the INS rounded up and deported at least 700 undocumented immigrants during the Los Angeles upheaval that followed the acquittal of Rodney King's police attackers.

To some extent, these changes have been fueled by right-wing hate campaigns against "illegal aliens." But both liberals and conservatives, Democrats and Republicans, have supported the militarization of border enforcement.

Low-Intensity Conflict Goes National

The growth of state repression since September 11, 2001, intensifies low-intensity conflict and extends it throughout the United States. The War on Terrorism blurs the line between external and internal threats and between combat and law enforcement, involving both military and civilian agencies in a comprehensive effort to control Muslim, Middle Eastern, and South Asian non-citizens and immigrants.

President George W. Bush himself drew the connection between fighting terrorism and low-intensity conflict almost immediately. In October 2001, within days of appointing Tom Ridge to head the new Office for Homeland Security, Bush gave Secretary of the Army Thomas White two new jobs: Defense Department interim executive agent for Homeland Security and acting assistant secretary of Defense for Special Operations and Low Intensity Conflict.¹¹

The recent crackdown has incorporated many of the same LIC elements seen in border enforcement—this time on an even larger national scale: mass round-ups and punitive detentions, expanded powers of arrest and surveillance, integration and militarization of civilian law enforcement, and growing involvement of the military in domestic intelligence and police work.

The round-ups began first. In the weeks after September 11, 2001, the FBI and INS detained at least 1,200 non-citizens from Middle Eastern and Muslim countries. The vast majority of them were held for alleged immigration violations, often secretly and under conditions that Amnesty International described as "harshly punitive" and a violation of basic rights. Many of them were deported; almost none were charged with any crimes connected with terrorism. In December 2002, the INS began a new round of mass arrests as part of a program requiring young men from Arab and Muslim countries to register with the government.¹²



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Through executive order and statute, the federal government has sharply expanded its own repressive powers. The USA Patriot Act—which passed the Senate with only one dissenting vote—gives the executive branch unprecedented latitude to conduct searches, wiretapping, and other surveillance, and to share information between criminal and intelligence operations. The law creates a vague new crime of “domestic terrorism,” which encompasses illegal acts “dangerous to human life” if they “appear to be intended...to influence the policy of a government by intimidation or coercion.” The Patriot Act comes down hardest on non-citizens, who may now be detained virtually indefinitely without due process and deported for almost any association with political groups the government defines as terrorist.¹³

Acting in the spirit of the Patriot Act, Attorney General John Ashcroft issued a new rule, nullifying attorney-client privilege. Now the Justice Department may, without judicial oversight, wiretap conversations between prison inmates and their attorneys when there is “reasonable suspicion to believe” that such conversations “further facilitate acts of violence or terrorism.” The Justice Department also subjected thousands of young Arab men to “voluntary” questioning based solely on their gender, national origin, and time of entry into the United States, sought to use student advisors to investigate international students, and urged Neighborhood Watch groups—in the name of terrorism prevention—to report on people who were “unfamiliar” or who acted in ways that were “suspicious” or “not normal.” FBI officials, meanwhile, openly discussed ways to coerce arrestees into talking, “using drugs or pressure tactics such as those employed by Israeli interrogators”—i.e., torture. Such developments, not surprisingly, have brought a pervasive climate of fear to many Muslim and Arab American communities.¹⁴

The Department of Homeland Security (DHS), signed into law in November 2002, embodies the trend toward integrating and militarizing civilian law enforcement. With 170,000 employees and

a budget initially estimated at \$37 billion, DHS is the third-largest federal department. DHS has subsumed 22 federal agencies, including the INS, the Coast Guard, Customs, the Federal Emergency Management Agency, the Secret Service, the Transportation Security Administration, the Department of Agriculture's Animal and Plant Inspections division, the Energy Department's Environmental Measurements Laboratory, and many others. These agencies must now subordinate their diverse missions and priorities to the War on Terrorism.¹⁵

Within the INS, the increasingly militarized Enforcement Division has long been favored over the services branch. In its new DHS home, the INS is being split in a way that increases this disparity. Enforcement has been placed in the Bureau of Border and Transportation Security—by far the largest and most heavily funded of the DHS's major divisions. The services branch of the INS has been isolated as the Bureau of Citizenship and Immigration Services, a much smaller division that will probably have little clout within the department.

The Coast Guard has changed in parallel ways. Before September 11, the Coast Guard's top priorities were stopping the depletion of fisheries and protecting the environment. After September 11, the Coast Guard heavily increased funding for its counter-terrorism operations and assembled several "maritime SWAT teams," while funding for non-homeland security programs stagnated. The Coast Guard's move into DHS cements this shift.

Pentagon Operations on the Home Front

Especially characteristic of low-intensity conflict has been the U.S. military's growing role within U.S. borders and in law enforcement. In April 2002, the Pentagon announced creation of the Northern Command (NORCOM) to consolidate all of the military's homeland security duties. NORCOM is responsible for military defense of North America and providing aid to civilian authorities in counter-drug operations and in response to natural disasters or terrorist attacks. While noting that the military is legally barred from acting as a domestic police force, NORCOM head General Ralph Eberhart said that he "won't hesitate to propose changes" to such rules "if we...see something we think will tie our hands."¹⁶

Even without such rule changes, the Pentagon has stepped up its domestic spying efforts. The Defense Department's Total Information Awareness (TIA) project, headed by retired admiral and former Iran-Contra defendant John Poindexter, seeks to track individuals by compiling and analyzing massive amounts of data from diverse sources, including financial, medical, travel, and communication records, as well as intelligence data. In February 2003, a new law placed a partial moratorium on TIA—but allowed its use against the millions of immigrants who are not U.S. citizens or legal permanent residents.¹⁷

Further blurring the line between combat and civilian functions, the War on Terrorism also gives the military a judicial role. In November 2001, President Bush authorized the creation of military commissions to try non-U.S. citizens suspected of terrorism. These commissions lack basic constitutional protections: trials will be conducted in secret, defendants will not be able to choose their own attorneys, normal rules of evidence will not apply, and verdicts will be rendered by judges appointed by the secretary of defense, with no appeal available to an independent court.¹⁸

Non-citizens are the primary (and most vulnerable) targets of such measures—but not the only ones. At least two U.S. citizens designated as "unlawful enemy combatants"—Yaser Esam Hamdi and Jose Padilla (Abdullah Al Mujahir)—have been held incommunicado in military

detention without being charged and without access to their lawyers. Building on these precedents, the Bush Administration has considered setting up military detention camps for U.S. citizens labeled as enemy combatants, and has argued that federal courts have no say in the matter. A district judge has ruled that Padilla can appeal his status as an “enemy combatant” in federal court and has a right to counsel until his status is decided. But in Hamdi’s case, the Fourth Circuit Court of Appeals ruled that courts must defer to the president on these matters during wartime¹⁹—an as yet undetermined and indefinite period given the “endless” nature of the war on terror.

Preventive Repression

The post-September 11 crackdown is a means for the U.S. government to establish control over civilian groups it regards as actually or potentially disloyal. A number of critics have argued that many homeland security measures are misdirected and badly designed because they fail to zero in on the “real” terrorists. But U.S. officials have for years defined terrorism broadly, precisely in order to marginalize and criminalize a broad range of dissident political groups and activities. The Reagan Administration’s official task force on terrorism, for example, defined it as “the unlawful use of or threat of violence against persons or property to further political or social objectives.”²⁰ The USA Patriot Act follows directly in this tradition.

In discussing the implications of low-intensity conflict in the border region, Timothy Dunn notes that its effect “can be interpreted as ‘preventive repression,’ enacted...to impede the development of critical ideologies and social movements among subordinate groups in a crucial region that was vulnerable to instability.”²¹

Dunn’s comments about preventive repression point to a larger strategic shift by security forces in the United States and abroad. A 1998 European Parliament committee report warned about the rise of “pre-emptive policing,” in which law enforcement agencies gather massive quantities of data in order to track “certain social classes and races of people living in redlined areas before crime is committed.” Ken Lawrence has argued that the U.S. government moved toward preventive repression after the upheavals of the 1960s, when older, more reactive models of repression proved inadequate. Where once U.S. rulers regarded insurgency as “an occasional, erratic idiosyncrasy of people who are exploited and oppressed,” Lawrence asserts, elites now view insurgency as a permanent reality that security forces must actively combat at all times. The State’s new strategy of “permanent repression” involves penetrating and disrupting oppositional forces *before* they reach the stage of open insurgency.²²

...U.S. officials have for years defined terrorism broadly, precisely in order to marginalize and criminalize a broad range of dissident political groups and activities.

The United States is waging an open-ended global war against “Islamic extremism” and has led the full-scale invasion of a major Arab state, Iraq. In this context, many Muslim, Middle Eastern, and South Asian immigrants—like undocumented immigrants in the U.S.-Mexico border region—represent subordinate groups with a real potential for “disloyalty” to the U.S. government and political order. This makes them prime targets for preventive repression. Repression against them, furthermore, encourages unity and obedience among other groups by providing a shared scapegoat—and by showing what happens to those whose loyalty is suspect.

Conclusion

The U.S. government's current crackdown against Middle Eastern and South Asian people is not only rooted in a sudden nativist upsurge, or even in a long history of racist bigotry. It is also rooted in a quasi-military system of control developed steadily over decades. This system is being rapidly expanded and deepened, and there is no reason to assume that the current main targets will be the last. The U.S. government's low-intensity conflict operations at home both echo and strengthen its military aggression against Iraq and other countries. We need to highlight this connection, not fall into the trap of treating "war" and "civil liberties" as separate issues. The problem is not only specific leaders or policies. It is a political and social order that preaches freedom while using force and fear to protect elite power.

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ROLE OF THE STATE: USA PATRIOT Act

PATRIOT ACT

Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism – The U.S.A. P.A.T.R.I.O.T Act (PATRIOT Act)

History of the PATRIOT Act: Born Again and Again...

Much of the ideology behind the PATRIOT Act can be traced through U.S. history in a series of laws and programs like the detention and deportation of non-citizens under the Alien and Sedition Acts of 1798, the communist paranoia of the McCarthy era, and the FBI's COINTEL-PRO surveillance of the 1960s and 1970s. Many of the civil liberties that the government curtailed during those periods are once again under assault.

One of the recent prologues to the PATRIOT Act was the 1996 Anti-Terrorism and Death Penalty Act that was passed following the April 19, 1995 Oklahoma City bombing of the Murrah Federal Building. After the Oklahoma City bombing, members of Congress and the Clinton Administration worked together to pass anti-terrorism legislation. One crucial provision included in the bill was the reform of habeas corpus. As David Cole and James Dempsey, in their book *Terrorism and the Constitution*, explain, “Judiciary Committee chairman Orrin

WHAT IS THE USA PATRIOT ACT?²³

Just six weeks after the September 11 attacks, a panicked U.S. Congress passed the “USA/PATRIOT Act,” an overnight revision of the nation’s surveillance laws that vastly expanded the government’s authority to spy on its own citizens, while simultaneously reducing checks and balances on those powers, including judicial oversight, public accountability, and the ability to challenge government searches in court.

WHY CONGRESS PASSED THE PATRIOT ACT

Most of the changes to surveillance law made by the PATRIOT Act were part of a longstanding law enforcement wish list that had previously been rejected by Congress, in some cases repeatedly. Congress reversed course because it was bullied by the Bush Administration in the frightening weeks after the September 11 attack.

The Senate version of the PATRIOT Act, which closely resembled the legislation requested by Attorney General John Ashcroft, was sent straight to the floor with no discussion, debate, or hearings. Many Senators complained that they had little chance to read it, much less analyze it, before having to vote. In the House, hearings were held, and a carefully constructed compromise bill emerged from the Judiciary Committee. But then, with no debate or consultation with rank-and-file members, the House leadership threw out the compromise bill and replaced it with legislation that mirrored the Senate version. Neither discussion nor amendments were permitted, and once again members barely had time to read the enormous bill before they were forced to cast an up-or-down vote on it. The Bush Administration implied that members who voted against it would be blamed for any further attacks—a powerful threat at a time when the nation was expecting a second attack to come any moment and when reports of new anthrax letters were appearing daily.

Congress and the Administration acted without any careful or systematic effort to determine whether weaknesses in our surveillance laws had contributed to the attacks, or whether the changes they were making would help prevent further attacks. Indeed, many of the Act’s provisions have nothing at all to do with terrorism, such as limits on habeas corpus.

From the ACLU’s website at <http://www.aclu.org/safeandfree/safeandfree.cfm?ID=122634C=206>



Hatch was eager to capitalize on [President Clinton's] suggestion that habeas corpus reform be added to the antiterrorism package. For years, Hatch had sought to limit the rights of habeas corpus, only to see his proposals dropped from every successive anti-crime measure. The terrorism bill offered another chance to achieve this long-sought goal. Hatch's provisions gutting habeas corpus ended up in the Act, and are among its worst features, but they have nothing to do with terrorism. For the most part, the habeas reforms govern the standards that federal courts use in reviewing state court criminal convictions, and terrorism cases are almost never tried in state courts. What was really at issue in the habeas debate was whether state prisoners could obtain meaningful federal

review of the constitutionality of the procedures by which they had been convicted and sentenced....Senator Hatch wanted to make it more difficult for federal courts to order retrials of prisoners where state courts had violated the U.S. Constitution.”²⁴

Besides limits on habeas corpus, other significant changes passed under the Anti-terrorism Act. Cole and Dempsey write: “The most troubling provisions in the 1996 Anti-terrorism Act—the resurrection of association as grounds for exclusion and deportation of noncitizens; the ban on supporting lawful activities of groups labeled ‘terrorist’ by the Executive Branch; and the secret evidence provision—were developed long before the bombings that triggered their final enactment. In the case of guilt by association, the Clinton proposal making mere membership in a terrorist group grounds for exclusion and deportation represented a return to the intolerant approaches of the 1950s. The McCarran-Walter Act, passed in 1952, made association with Communist or anarchist groups a ground for exclusion and deportation, and was used over the years against such luminaries as Gabriel Garcia Marquez, Graham Greene, Carlos Fuentes, Czeslaw Milosz, Yves Montand, and Charlie Chaplin. In 1990...Congress removed most of the ideological grounds for exclusion and deportation from the immigration law. But in the Clinton bill, they reappeared in the guise of a bar on anyone believed to be a member of a ‘terrorist organization.’”²⁵

Similarly, the provisions on secret evidence and banning fundraising were revised versions of provisions or measures passed or sought during the Reagan and first Bush Administrations.²⁶

The PATRIOT Act also expands guilt by association from the 1996 Anti-terrorism Act. Cole and Dempsey explain: “The PATRIOT Act makes aliens deportable for wholly innocent associational activity connected with a ‘terrorist organization,’ irrespective of any nexus between the alien’s associational conduct and any act of violence, much less terrorism. The new law defines ‘terrorist activity’ to include virtually any use or threat to use violence, and defines ‘terrorist organization’ as any group of two or more persons that has used or threatened to use violence.... Like the criminal ‘material support’ provisions of the 1996 Anti-terrorism Act, the new law contains no requirement that the alien’s support have any connection whatsoever to a designated organization’s violent activity. Thus, an alien who sent coloring books to a day-care center run by a designated [as terrorist] organization would apparently be deportable as a terrorist.”²⁷

Cole and Dempsey continue: “This is not the first time our nation has responded to fear by targeting immigrants and treating them as suspect because of their group identities rather than their individuals conduct.”²⁸... “But in many respects, the PATRIOT Act reflects an overreaction all too typical in American history. It casts a cloak of secrecy over the exercise of government power by removing limitations and judicial controls on investigative authorities, and short-circuits procedures designed to protect the innocent and punish the guilty. It violates core constitutional principles, rendering immigrants deportable for their political association and excludable for pure speech.... It sacrifices commitments to equality by trading a minority group’s liberty for the majority’s purported security—a trade that will in all likelihood be ineffective.”²⁹

Some of the more controversial provisions of the PATRIOT Act connected to the War on Terrorism:

- Broaden the definition of terrorism to include any act not committed for personal gain in which a weapon or dangerous device is used. Under this definition, those involved in a barroom brawl may be guilty of terrorism.³⁰
- Define the provision of aid to any group deemed terrorist by the U.S. government as terrorist activity. Under this definition, provision of schoolbooks to many South African antiapartheid groups in the 1980s would have constituted “terrorist activity,” as many such groups, including the Party of Nelson Mandela, the African National Congress, were deemed terrorist by U.S. authorities.³¹
- Enable the U.S. Attorney General to detain noncitizens (and in some instances, U.S. citizens who are also citizens of other countries) indefinitely by stating that there are “reasonable grounds to believe that they are engaged in terrorist activity.” These grounds cannot be contested by those detained, and detainees do not have the right to legal counsel or even family visitation. As of October 2002, between 1,500 and 2,000 people have been detained in the search for terrorists. None of the detainees has been charged in connection with the attacks of September 11, 2001, although many have been deported for minor violations of immigration regulations.³²

For more on the PATRIOT Act and how it increases the government’s surveillance powers, go to the National Lawyers Guild and Center for Constitutional Rights websites: <http://www.nlg.org> and <http://www.ccr-ny.org>.

ROLE OF THE RIGHT: Activating Citizens

While the bulk of the War on Terrorism, whether domestically or internationally, has been carried out by the State, there are elements of non-state involvement as well. The involvement of private security firms in the torture carried out at the Abu-Ghraib prison in Iraq is a prime example, as is the racial profiling by private security firms employed by airlines at airports that vet and “randomly” select passengers for additional scrutiny even before they pass through the federal Transportation Security Administration (TSA)-operated security checkpoints. Both of these are enabled, however, by the State, which allows private interests and non-State actors to be involved in the process. The privatization serves multiple purposes, including claiming to cut government expenditures as well as distancing the government from the abuse that occurs—torture and racial profiling. An even more extreme example is Operation TIPS, which was conceived by the Justice Department and would have involved millions of ordinary citizens in spying on fellow citizens.

T.I.P.S.

OPERATION TIPS: Terrorism Information and Prevention System

“Operation TIPS ‘will be a nationwide program giving millions of American truckers, letter carriers, train conductors, ship captains, utility employees, and others a formal way to report suspicious terrorist activity,’ says the citizencorps.gov web site. Involving one million workers in ten cities during the pilot stage, Operation TIPS will be ‘a national reporting system.... Every participant in this new program will be given an Operation TIPS information sticker to be affixed to the cab of their vehicle or placed in some other public location so that the toll-free number is readily available.’

A Justice Department spokeswoman says TIPS was developed by a working group made up of people from the Department of Justice [then headed by John Ashcroft] and several other agencies. When asked about the identity of members of the working group, she says she is unable to disclose their names at this time, adding it is ‘too soon to speak to the people involved.’

TIPS will involve workers who, in the course of their daily activities, are well situated to be ‘extra eyes and ears’ in the struggle against terrorism, she says. The mission is to ‘report suspicious activity and not to report suspicious-looking people.’”³³

Why the Controversy?

TIPS came under attack by a broad array of political and social groups including progressives, libertarians, and even conservatives. Opponents argued that TIPS would essentially allow private citizens to legally spy on each other and, therefore, individuals stood to lose their right to privacy. TIPS also increased the likelihood of vigilantism and racial profiling that targets people of Middle Eastern and South Asian descent, as well as other minorities, in the name of the war on terror.³⁴ Further, the program could easily be used by the government as a means of social control, silencing political dissent because of a broad and vague interpretation of terrorism, terrorist acts, and terrorist organizations.³⁵ Given the United States’ long history of scapegoating, xenophobia, and racism, and in a climate of fear and suspicion that is periodically heightened

by color-coded alerts, innocent citizens can easily fall victim to other citizens' fears, suspicions, ignorance, and racism.

While the original idea was not only vague and rife with potential for abuse, a visitor to the TIPS website found that calls to the toll-free TIPS hotline went to the "America's Most Wanted" TV program, destroying what little credibility, if any, it had.³⁶ Facing fierce opposition to the program from across the political spectrum, the Homeland Security Bill under Section 880 explicitly prohibited TIPS.³⁷ This is a significant victory for those opposed to the Bush War on Terror.

IMMIGRATION AS A CRIMINAL ISSUE

The idea that immigrants are inherently criminals is a recurring theme of the anti-immigrant Right. The mainstream press often presents sensationalist pieces that play on this stereotype. While "illegal" immigrants' criminality seems self-evident to these groups, legal permanent residents and non-White citizens also are suspect because of their alleged potential allegiances to different countries, values or political ideologies. Particularly since September 11, the anti-immigrant Right has taken the "immigrants as terrorists" position.

Immigrants have been targeted and brutalized by the "War on Drugs," which has helped justify the militarization of the U.S.-Mexico border. The portrayal of immigrants as both criminals and a threat to national security also resulted in the passage of two laws in 1996: the Anti-Terrorism and Effective Death Penalty Act and the Illegal Immigration Reform and Immigrant Responsibility Act. Immediately after the Oklahoma City bombing, terrorism "experts" pointed the finger at Islamic "extremists." Even after the bombing proved to be the work of a home-grown terrorist, Clinton signed the Anti-Terrorism law, which has had dramatic repercussions for Arab Americans and other immigrants. With the recent September 11 attacks, Congress and the Administration put through severe "security" measures that further infringed on the civil liberties of all non-citizens.

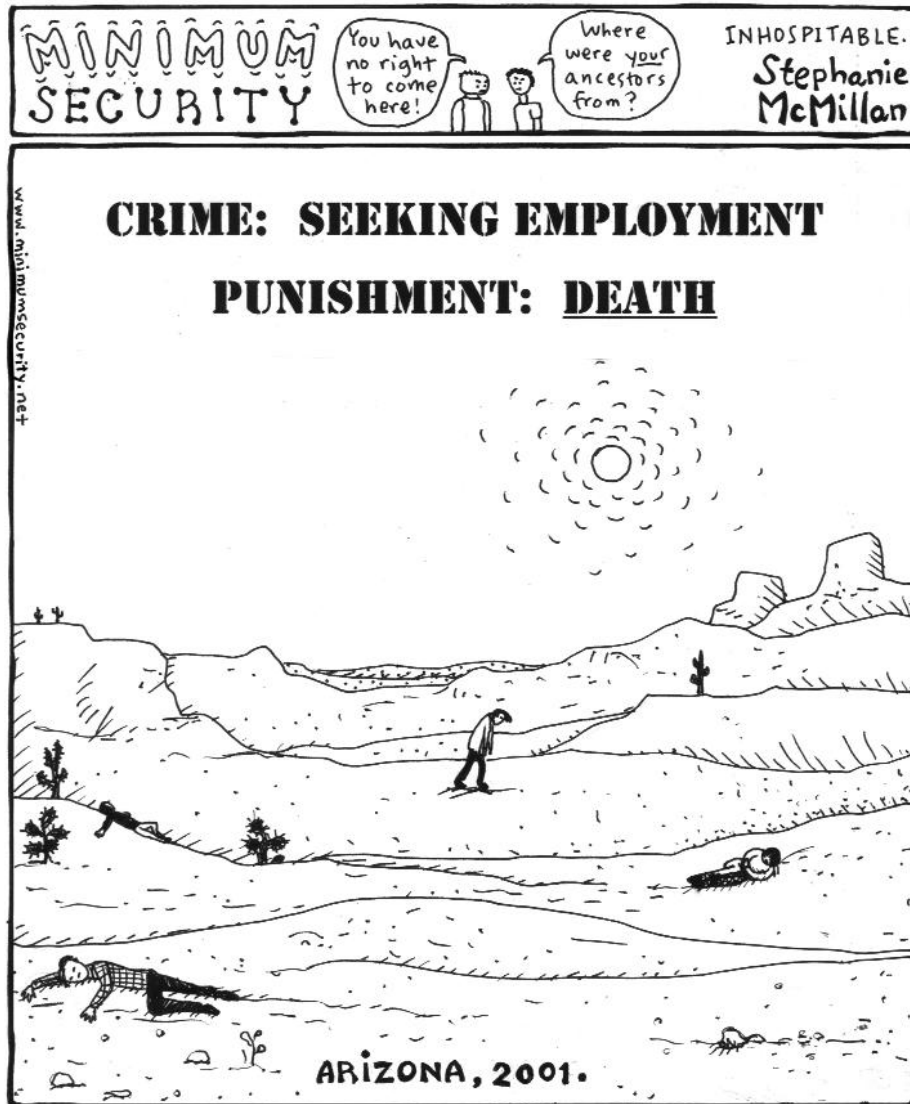
Note: the following section was written for a PRA publication in 2002. Since that time, the Immigration and Naturalization Service (INS) has become part of the Department of Homeland Security.

IMMIGRANTS AND CRIME

What the Anti-Immigrant Right Says

Anti-immigrant organizations argue that immigrants are much more likely to be involved in criminal activity. They say:

- Some immigrants are dangerous career criminals. For example: Mexican and Colombian drug dealers, Chinese "snakeheads" smuggling in human cargo on the Golden Venture freighter, sex traffickers coercing undocumented women into prostitution, ethnic gang members, middle-class immigrants stealing trade secrets, and pregnant women sneaking across the border to have children and "leech" off public benefits.
- September 11 attacks are an example of the extremes that some noncitizens are willing to go to if they are not monitored closely.



- Undocumented workers and visa violators are examples of unprincipled immigrants. Since they would break laws to enter the country, they are more likely to continue criminal activity once here.
- INS detention centers are full of such law-breakers. Immigrants are one of the fastest growing prison populations.
- The INS needs to more effectively locate and deport both “illegal” immigrants and “criminal aliens,” regardless of their legal status.
- The most effective solution is to dramatically limit legal immigration and increase INS and Border Patrol funding.

Response

The Right presents a distorted picture of the situation by using anecdotal evidence and the power of isolated horrific events, such as the September 11 attacks, to argue its case. Criminal

activity and violence are realities of our society, but immigrants are no more prone to criminal activity than citizens. In fact, a study by researchers from Boston College and Harvard University found that among men aged 18 to 40, native-born men were more likely to be incarcerated than immigrants.³⁸ In another study, the researcher found that recent immigrants had no significant effect on crime rates and youth born abroad were less likely than native-born youth to be criminally active.³⁹ In fact, immigrants have disproportionately been the victims of racial profiling, police brutality and crimes, including xenophobic or racist hate crimes.

The recent increase in immigrant incarceration rates is a result of the draconian 1996 laws. These laws increased the number of crimes for which immigrants could be detained and deported, *even after* they had served regular prison sentences. They also mandated that asylum seekers be placed in detention centers until they have established a credible fear of persecution, a process that can take years. By 2001, these laws led to the incarceration of 20,000 immigrants in INS detention, of whom 3000 were being held indefinitely.

Detention centers are known for their inhumane conditions, including overcrowding, poor medical care, and physical and mental abuse.⁴⁰ Because detention is considered an administrative process, detainees have few of the legal rights of other prisoners—no family visitation rights, no right to legal counsel—and INS standards that were created to rectify the inhumane conditions are not legally binding. Immigrants can be tried and deported based on secret evidence they never see.

The 1996 laws that brought about this situation were a direct result of the Right's portrayal of immigrants as dangerous criminals. Rather than increasing the safety of our communities, these laws have dramatically infringed on the civil liberties of all immigrants. In 2001 the Supreme Court curtailed some of the most retrograde aspects of the 1996 laws, including ending most indefinite detentions. However, the policy of deporting longtime lawful permanent residents for a range of crimes, including minor nonviolent offenses, remains. In addition, after the September 11 attacks, The USA PATRIOT Act again created the legal means to detain noncitizens indefinitely and gave the Attorney General extensive powers to infringe on the civil liberties of those suspected of being involved in terrorism without meaningful judicial review.

“ILLEGAL ALIENS” AND THE U.S.-MEXICO BORDER

What the Anti-Immigrant Right Says

The Right describes undocumented immigrants as “illegal,” portraying their mere existence as a crime, and consistently refers to all immigrants with the dehumanizing term “alien.” They say:

- The United States is threatened by an “immigrant invasion” especially across the U.S.-Mexico border, which is a “border battleground.”
- There is a Mexican plot to reconquer “Aztlan,” the bulk of the southwestern United States taken from Mexico in the Mexican-American War of 1846.
- A smuggling industry has formed that is profiting from the exploitation of these “illegals.”
- Since the INS has failed to stop this “immigrant invasion,” local citizens’ groups or police departments must take on the responsibility to protect the nation.

Response

When right-wing groups call undocumented immigrants “illegal,” they suggest that migration is merely a personal choice of whether to break the law. They blame the migrant and the smugglers, ignoring the root causes of undocumented migration. The United States has helped create the conditions that lead people to migrate and it benefits from the existence of undocumented immigrants. Poor migrants and those from certain countries, such as Mexico, have very little opportunity to immigrate to the United States legally.

Right-wing groups define the migrant by the violation of a law, though the “crime” has no victim. A person who has violated a traffic law is not called an “illegal driver.” In fact, crossing the border wasn’t considered a crime until the INS moved into the Justice Department in 1940.

The Right’s use of military metaphors furthers a sense of urgency, implying the country is under attack by Mexican border crossers. This type of rhetoric has helped to justify the use of military personnel and tactics on a civilian population, at times with deadly consequences. It also creates the cultural climate where the violation of immigrants’ human and civil rights is justified in pursuit of “national security.”

Such thinking has manifested itself in the policies of the U.S. government. In the last ten years the government has increased the funding and more than doubled the personnel of the Border Patrol. In addition it has initiated programs designed to stem border crossings. In fact, these programs have merely forced migrants to move through remote, dangerous regions. As a result, many migrants have died from exposure and dehydration.

In addition, the Border Patrol has received military training and technology. Military troops at times have been deployed on the border for drug and immigration enforcement purposes. Military tactics are focused on annihilating a threat rather than protecting civil rights or ensuring due process. They are extremely dangerous and inappropriate when dealing with a civilian population. In the May 1997, for example, a U.S. Marine shot and killed a teenager (a U.S. citizen) who was herding goats in Redford, Texas. Amnesty International has documented other human rights violations by the Border Patrol against citizens, immigrants and indigenous peoples whose tribal lands span the border. These include denial of food, water and medical care during detention, wrongful deportations, physical and sexual abuse, and fatal shootings.⁴¹

Most scholars agree that these efforts have failed to stop undocumented immigration. Employers, largely unscrutinized by INS, have continued to benefit from the labor of this workforce. INS raids (or the threat of raids) have been used by employers to undermine workers’ efforts to gain fair wages and safe working conditions. These raids have also led to the violation of workers’ civil rights. When INS has worked with local police, the community’s trust in law enforcement has been undermined.

Despite the brutality of the government’s policies and actions, many anti-immigrant groups say that the INS is not doing enough. Some ranchers whose lands are crossed by undocumented immigrants have created armed vigilante groups that seek to ensnare border crossers to be delivered to the Border Patrol. There have been increased hate crimes against immigrants and people of color along the U.S.-Mexico border and in communities with growing immigrant populations.

“AMNESTY”

What the Anti-Immigrant Right Says

Anti-immigrant groups oppose any programs that provide “amnesty” or a means of changing the status of undocumented immigrants. They say:

- These programs tell immigrants that if they simply sneak into the United States and wait long enough they will gain legal status.
- The 1986 Immigration Reform and Control Act (IRCA) that provided legal status to 2.7 million undocumented immigrants actually increased unauthorized immigration. As a result, fifteen years later there are another 11 million undocumented immigrants.

Response

Proposed legalization programs come out of an understanding of the real contributions and situations of undocumented immigrants. They also provide a fair, orderly way to deal with the existence of undocumented populations, which are a result of global policies facilitated by the United States. The only way to protect the rights of undocumented immigrants in the workplace, in housing, and in all realms of life is to give them legal status. Fear keeps undocumented immigrants from reporting dangerous working or housing conditions, domestic violence, and environmental violations, among other community concerns. Undocumented immigrants pay taxes and contribute culturally and economically to the society at large. Some have lived in the United States for ten years or more, raising children (some of them citizens) here. Legalization is a way to provide them the means to protect their human and civil rights and to recognize the varied and important contributions of these populations.

When the Right blames legalization programs for the increase in undocumented immigration, they ignore the root causes of this situation, including the role of particular U.S. policies. For example, most Mexicans do not have the option of migrating legally given the current laws. Yet the United States supported NAFTA knowing that it would lead to harsher economic conditions and the need for many Mexicans to seek employment elsewhere. Also, U.S. refugee policies tend to not cover people fleeing oppressive regimes the United States has supported, leading to increased undocumented immigration from those countries. Rather than seeking a just solution, the Right prefers to paint undocumented immigrants as inherently criminal and individually to blame for their situations.

IMMIGRANTS AND THE SEPTEMBER 11 ATTACKS

What the Anti-Immigrant Right Says

Many anti-immigrant groups and commentators were eager to proclaim that this attack could have been avoided if the U.S. immigration policy were not so “lax”:

- Dan Stein of FAIR said, “The nation’s defense against terrorism has been seriously eroded by the efforts of open-borders advocates, and the innocent victims of today’s terrorist attacks have paid the price.”

- The White nationalist group the Council of Conservative Citizens called for segregating “ourselves from the Arabs, Muslims, and/or all others who will do us harm.”
- Mainstream anti-immigrant groups cited polls showing that the public overwhelmingly approved of racial profiling, at least in some instances, of Arab and Muslim Americans.
- The Center for Immigration Studies pointed out that increasing surveillance of immigrants is broadly popular and does not infringe on the civil rights of U.S. citizens.

Anti-immigrant groups and commentators, along with many politicians, presented plans for stemming the threat of future attacks through measures that fell into three broad categories:

- preventing unauthorized entries on the borders and at other ports of entry.
- decreasing and strictly monitoring authorized entries of foreigners.
- increasing the federal government’s powers of surveillance, detention and deportation of all noncitizens.

Within this framework, groups have called for:

- armed military patrol and increased border patrol on the United States’ borders with Mexico and Canada,
- a nine month immigration moratorium,
- more in-depth background checks of visa applicants,
- tracking of foreign students and other visa-holders,
- a ban on foreign students from specific Middle-Eastern countries,
- a computerized identification verification system for all citizens and noncitizens,
- broad powers to detain and deport noncitizens with any connections to terrorist groups,
- interagency cooperation on issues related to immigration, law enforcement and intelligence gathering.

Response

In the face of a great tragedy, the anti-immigrant movement has chosen to opportunistically promote its cause. The failure of the FBI, CIA, federal government, and airport security to prevent this calamity has also provided the opportunity to assign blame. It is more palatable to these authorities to proclaim that they lack the necessary laws to do their job, than to admit any failure on their part. All these factors have contributed to a call for greater restrictions on the civil rights of immigrants and have led to abuses of power by the government. As part of an investigation into the attack, the INS has detained over 1000 people, the largest number of whom are of Saudi Arabian, Egyptian or Pakistani descent, mostly on immigration infractions or crimes

unrelated to terrorism.⁴² There have been complaints of mistreatment of detainees including instances of physical abuse while in INS custody.⁴³

Even before September 11, immigrants could be prosecuted on the basis of evidence they could not see and many were held in detention for years under such circumstances. The USA PATRIOT Act and military tribunals further infringe on noncitizens' civil rights, including rights to due process, judicial review, and a public trial. The constitutionality of these laws will not be tested in the courts for years. In the meantime many innocent immigrants will be unjustly detained, prosecuted, and deported without access to the rights citizens take for granted. Civil rights should not be a privilege of citizenship, but should cover citizens and noncitizens equally.

On the surface this kind of heavy-handed response is intended to make the public feel safer. However these strategies are not only ineffective, but also counterproductive. The vast majority of immigrants are not involved in criminal activity, let alone a plot to attack the U.S. government or its people. Innocent immigrants who rightly fear detention given their lack of rights in the face of broad INS powers will not be willing to come forward if they have any relevant information. The government needs their cooperation, but immigrants cannot trust a system that advocates the sharing of information between government agencies, racial profiling, and does not even have the appearance of treating all people equally. In this context the "S" visa, available to immigrants who provide information to the government in criminal prosecutions, is unlikely to encourage immigrants' cooperation with law enforcement.

Significantly, this kind of activity by government authorities legitimizes and reinforces people's fears that immigrants are disloyal. Also when law enforcement engages in racial profiling, it aggravates racial hostilities in communities. One result has been the dramatic increase in hate crimes against Arabs and Muslims, or those perceived to be, since September 11.⁴⁴ The government's policies need to coincide with its rhetoric on multiculturalism and tolerance because actions speak louder than words.

The government can take many steps that do not limit civil rights to prevent future attacks. The FBI and CIA already had the powers necessary to gather intelligence and track down those planning terrorist actions, even before the passage of the PATRIOT Act. The federal government can put into place an effective airport security system following the models of many other nations. The United States can share information and resources with other nations through a global commission to prevent terrorism. The government should work towards increasing security through these kinds of measures that do not infringe on people's civil liberties. Expanded detention, deportation, and surveillance powers do not increase safety. They do, however, make it easier for the government to scapegoat immigrants and to oppose individuals and groups whose ideologies it finds objectionable. This attitude and misuse of power must be consistently and rigorously challenged.

*For more information on the Right's campaigns against immigrants, See PRA's Activist Resource Kit *Defending Immigrant Rights* available via <http://www.publiceye.org>.*

Endnotes Available Online!

All citations and references are available at www.defendingjustice.org or by contacting PRA.

ORGANIZING ADVICE: Resisting Border Militarization

Q & A WITH BORDER ACTION NETWORK

Border Action Network (BAN) organizes Latino immigrants and border community residents on both sides of the Arizona-Sonora (Mexico) border. The U.S. war on poor immigrants of color has devastating social and environmental impacts on the people living in and migrating through towns along the U.S./Mexico border. BAN supports a transformed approach to immigration policy that addresses the needs and upholds the dignity of the communities most affected by border militarization: a policy that safeguards human and civil rights for everyone, guarantees broad access to citizenship, protects the environment, and abandons the ineffective and violent use of State force to deter immigration. BAN's experiences organizing communities to fight against border militarization, the criminalization of immigration, and prison expansion may be useful for other activists confronting the "War on Terror."

Briefly, BAN was begun in 1999 as the Southwest Alliance to Resist Militarization (SWARM) in order to protect human rights and civil rights and the Sonoran desert along the Arizona-Sonora border. It is a grassroots, membership organization based in Tucson, Douglas and Nogales, Arizona that works with Latino and Mexican communities throughout southern Arizona and northern Sonora. BAN's members are mostly people of color, women and young people under the age of 30.

PRA: Why did BAN initially form, and why does your organization focus on demilitarizing the border?

BAN: BAN originally formed in 1999 when a 19-year-old shepherd was shot and killed by U.S. military forces stationed on the border who mistook the young Latino man for an immigrant. This tragedy was the direct result of escalating militarization in border communities, and it unleashed considerable community outrage.

Border policy has forced undocumented immigrants into the treacherous Sonoran Desert and brought enormous numbers of armed border patrol and military personnel, high tech weaponry, many miles of radioactive fencing, prison-style lighting, environmental destruction, and racist vigilante militias into our small border communities, as well as many new prisons into our state. In the midst of this ongoing "low-intensity warfare," immigrants and Latino

border residents are routinely racially profiled by border patrol agents as well as harassed and intimidated by illegal and often violent vigilantes. Our members have been physically assaulted, had their property destroyed and confiscated, had their lives and the lives of their children and families threatened, watched their rivers and desert environs become polluted and toxic: border towns are littered with racist, anti-immigrant billboards and signs. A number of vigilante militia members also work for the border patrol or as local law enforcement officers.

Day to day life in our communities is filled with fear and intimidation. Many people are afraid to speak out in these small towns where everyone knows everyone, and retribution can come in multiple forms, from the border patrol refusing to answer official complaints and pay or even apologize for destroyed property (such as houses literally knocked over during high speed chases and cars confiscated from mothers not charged with any crime), to physical intimidation and assault coming from armed border vigilantes whom local, state, and federal law enforcement officials refuse to charge or even investigate.

By organizing ourselves to fight against the effects of border militarization, we have begun to reverse the patterns of fear and silence that have encouraged people to stay quiet, isolated, and powerless. BAN focuses on demilitarizing the border because border militarization violates the human and civil rights of Latino immigrants and border community residents, and threatens the environment as well as the public health, economic future, and safety of everyone in our communities. An immigration policy enforced through a strategy of military deterrence does not, and can not, deter undocumented immigration into the United States. This strategy is a failure, and its effects are lethal. So we support demilitarization and immigration policy reform and oppose State policies that promote border militarization. The interests of the vast majority of people would be served by stopping border militarization and creating a humane and effective immigration policy that is not based on deterrence and that promotes human, civil, and labor rights as well as access to citizenship.

PRA: How does border security connect to the War on Terror? And how does it play out locally in your area?

BAN: The so-called “War on Terror” is an escalation of the trend of militarizing every aspect of U.S. society. Especially since 9-11, anti-immigrant rhetoric has escalated to the point that migrants are increasingly associated with “terrorists,” and speculation about the possibility that “terrorists” might enter the United States by crossing the southern border has been used to further justify the escalation of border militarization. Arab and South Asian U.S. citizens and immigrants have joined the ranks of Latino migrants in being criminalized as so-called “internal enemies of the state.” BAN’s work confronts the “War on Terror” because it, like the ongoing militarization of the U.S.-Mexico border, subjects our communities to disproportionate levels of racial profiling, surveillance, physical intimidation, property confiscation, disregard for civil and human rights, environmental racism, and rates of incarceration.

Basically, the “War on Terror” has escalated the problems we already had! We get even more border patrol agents and, now, more “special forces” units coming into our communities every few months. The local media announces the new arrivals with great fanfare, playing up their “high-performance” tactics, depicting the border as a war zone in need of elite troops, as if an official war has been declared here, and as if border militarization protects, rather than harms, citizens and immigrants. More and more the border is portrayed as another “front” in the “War on Terror”—as if it wasn’t already militarized long before 9/11; as if border crossers overwhelmingly intended to harm, rather than provide cheap labor for the United States; and as if the harm that militarization visits on border community residents and migrants is merely an unfortunate, yet necessary, form of “collateral damage.”

An especially troubling aspect of depicting the border as a front in the “War on Terror” is that it means that legislators like Rep. Jim Kolbe (R-AZ) who advocate for immigration reform are able to propose policy changes that will not reduce militarization. Allowing more workers to enter the country legally while still viewing the border as a front in the “War on Terror” will mean that undocumented crossers will be further criminalized—more likely to be viewed as “terrorists” in contrast to the few extra workers who will be granted temporary visas.

PRA: How does your work intersect with the criminal justice system?

BAN: Border militarization is very closely related to the build-up of the state and federal prison systems in Arizona. Arizona has been targeted for prison expansion by the corrections industry because the availability of undocumented immigrants makes prison beds easy to fill. Instead of deterring undocumented immigration, current border policy has intentionally channeled migration into Arizona where prison profiteers are convinced that decreasing crime rates can be compensated for by renting prison beds to the federal government to accommodate Department of Homeland Security detainees.

In 2000, BAN exposed the border/prison connection during our successful campaign against the construction of a 4,500-bed, immigrant-only, federal prison in the state. This campaign linked the agendas of the anti-border militarization, immigrant rights, and prison abolition movements in Arizona, and so furthered working alliances among different constituencies affected by militarization.

PRA: Who supports border militarization, and why?

BAN: The U.S. public supports border militarization because the media as well as Democratic and Republican law-makers have led us to believe that undocumented immigrants are a drain on the U.S. economy, “taking” both jobs and social services away from U.S. citizens and impoverishing the middle class.

However, this widespread belief is, in fact, false. As many people reading this probably know, it is actually the implementation of structural adjustment policies which continue to redistribute surplus wealth upward that have eroded the economic power and stability of the U.S. middle class. Promoters of structural adjustment have done an effective job of making the public believe that poor people of color are to blame for these losses, spinning images of “welfare queens” and “illegal aliens” soaking up the public monies that actually go increasingly toward corporate subsidies and tax relief.

Powerful interests that profit from border militarization—such as the private prison industry, weapons manufacturers, and the state of Arizona (which receives a billion dollars a year in federal subsidies to “alleviate the local costs of immigration enforcement”)—support border militarization because it channels federal money into both public and pri-

vate coffers.

Based on very different kinds of experience, migrants, community organizers and border residents, scholars, and even some vigilantes and border patrol agents will tell you that border policy is, in fact, extremely cynical; that policy makers know that deterrence does not work, and that it is not intended to. Instead, it is a very effective marketing strategy intended to distract public attention from the real causes of a widening societal gap between rich and poor in the United States, as well as a corporate strategy to maintain fixed markets for military-dependent industries.

Locally, most parties recognize the need for change, and do not always completely support or oppose border militarization in a clear-cut way. A number of Arizona legislators (such as Senator John McCain, R-AZ, and Representative Jim Kolbe, R-AZ) and members of the business community want different kinds of guest worker programs that satisfy corporate desires for cheap immigrant labor and a system which tracks and controls labor flows through the bureaucracy rather than low-intensity warfare. But the Far Right, including border vigilantes, want more militarization because they fear becoming a racial minority. Some labor and environmental groups also want more effective militarized deterrence strategies because they believe such measures will protect U.S. labor and environmental interests. Local faith-based humanitarian groups want the DHS to provide more humane treatment of immigrants before they are deported because to them immigrant suffering is immoral and avoidable. Border residents want new policies that will stop the massive flows of migrants, border patrol agents, and vigilantes that walk and drive through our towns every day.

PRA: How do you encounter the Right in your work?

BAN: We encounter the Right in our work primarily in the form of border vigilantes. Border vigilantes in southern Arizona dress as if they are Border Patrol agents, wearing military camouflage and fabricated badges. They track and hunt people they believe are undocumented migrants, and turn them in to border enforcement agencies. They also target immigrant rights activists, pasting our photos on their websites, reporting our speaking engagements in advance, and encouraging their members to harass and intimidate human rights activists using rhetoric and graphics borrowed from the anti-abortion movement. In addition to these intimidation tactics,

there are many incidents of and accusations of physical abuse against immigrants.

Local law enforcement colludes directly with the vigilante militias—upon arriving at the scene after the Morales family of Douglas, Arizona called 911 while a vigilante aimed a cocked AK-47 at their children and threatened to unleash barking dogs, the local sheriff shook hands with the assailant, who was not charged. The Arizona Attorney General refuses to investigate vigilante activities, claiming, as the does the federal Department of Justice, that “they are not in our jurisdiction.”

Vigilantes are also critical of the State—but they demand *more* State protection for themselves from their imagined outside enemy, immigrants. They want more State violence aimed at people other than themselves, and they are willing to take the law into their own hands until they get it.

PRA: Has border vigilantism changed since 9/11?

BAN: Ever since 9/11, border vigilantes have attempted to incorporate “national security” rhetoric into their agenda. For example, vigilantes have recently smuggled a mock weapon of mass destruction (WMD) over the border to demonstrate its porosity, and false rumors circulated in the state in late 2004 that a “known Al-Qaeda operative” had crossed into Arizona. They recognize that framing the border as another front in the “war on terror” will bring more militarization, and so they are working to promote the idea that the border is vulnerable to “terrorists.”

The contemporary border vigilante movement is a side-effect of border militarization and immigration policy. Border vigilantes—like the U.S. citizens arrested in 2004 for starting and filling their own prison in Afghanistan—would not be tolerated in the form of militias without the military build-up that already exists on the border. They are dependent upon it. At the same time, racist, anti-immigrant violence is as old as the border itself; it is not a new idea or tradition. Some vigilante groups are very local and deeply connected to local law enforcement, much like the Ku Klux Klan (with which some groups are directly affiliated) operated in the South. Other groups are actually very contemporary kinds of right-wing activists, intentionally using the border as a national stage to push anti-immigrant agendas all over the country. They are part of a small but well-funded national network of anti-immigrant activists. These latter groups have web-sites and other high-tech media technologies and stage

sophisticated media events. They capitalize on the presence of the older local vigilante groups to promote the idea nationally that there is a large “grass roots” anti-immigrant movement along the border. This is not the case. They are “astroturf activists,” with virtually no local support coming from any border residents, who primarily feel that they are both dangerous and bad for business.

BAN: PRA: How do you challenge your opposition?

BAN: Our primary strategy is to organize to build power in the communities most affected by immigration policy and border militarization, and then develop multiple campaigns to address the self-defined needs of these communities. Community members have experience-based analyses of the issues, including collective and historical memories of border militarization; understandings of the most directly negative impacts of border patrol practices; and clear ideas about what needs to change.

BAN is currently pursuing three civil lawsuits against a vigilante who is known to have physically assaulted one Mexican migrant who has agreed to come forward and sue, threatened to murder an entire family of Latino Douglas residents (including three children ages 9-11), and destroyed the property of a neighboring rancher in the pursuit of alleged undocumented immigrants. This is the result of community organizing efforts that are working to unite migrants and border residents who have previously felt isolated and intimidated to speak out against such abuse—especially since law enforcement rarely supports such efforts. Our work investigating and exposing vigilante activities has also led to an international human rights suit against the U.S. government for refusing to investigate or charge vigilantes for a variety of violent and illegal acts.

PRA: What challenges do you face in your organizing work?

BAN: Our greatest challenge is working within an atmosphere of fear and intimidation. Undocumented immigrants live under the perpetual threat of deportation. Border communities are small, and border patrol agents as well as vigilante groups know individuals and have a history of seeking retribution against people who speak out against the physical abuse of migrants and against other kinds of border patrol practices such as racial profiling. In addition, the border patrol often ignores community complaints, easily justifying this abuse of power by claiming that the “security threats” posed by migration take precedence over community needs.

Another problem for BAN is that the border vigilantes get a great deal of media coverage and are often framed as “the opposing view.” They are rarely identified as racist hate-groups, despite their acknowledgement of this on their own websites and in their literature. It is very difficult to break through corporate media work routines that privilege the activities and authority of White males. We want to promote the visibility and authority of our members without promoting vigilante visibility, which tends to work against us.

PRA: What have been your victories?

BAN: In 2001, in coalition with prisoner family and environmentalist groups, we stopped the construction of up to three federal, private, “criminal alien” prisons. This required organizing in eleven towns throughout Arizona and northern Sonora, and forged alliances among prison abolition, immigrant rights, and environmentalist groups working in Mexico, Arizona, and California.

Our ongoing efforts to pressure local, state, and federal law enforcement officials to investigate and prosecute racist border vigilante militias have led to three civil law suits against vigilantes that officials have refused to charge and also an international human rights suit against the federal government.

We have been successful in terms of empowering community members to openly and publicly challenge abusive Border Patrol practices. Less than 10 days after our last community hearing on racial profiling and Border Patrol brutality, the Border Patrol announced a plan to improve its community relations. The turn-out for the hearing was tremendous and the quick and respectful response from the Border Patrol unprecedented.

Overall, we have had our most significant successes in terms of creating a variety of stages and venues for immigrants and border residents to actively oppose immigration policy and border militarization despite an atmosphere of intimidation and unequal force.

PRA: What advice would you give to other progressive activists?

BAN: The most effective strategy we’ve found involves spending time talking with and listening to the various people who directly experience the effects of border militarization and immigration policy, gathering and documenting their stories and experiences, and creating venues where experiences

can be shared and strategies can be devised based on these experiences. This is how, for example, we decided to develop campaigns around racial profiling, a border patrol practice that affects immigrants and Latino border residents every day. Because border residents of color live under intense suspicion and surveillance, we heard so many stories about people being pulled over and searched twice a day while driving their children to school or going to the grocery store as well as many stories about the border patrol confiscating the property of people who have been profiled, but not charged. We also heard many stories about terrifying run-ins with border vigilantes and border patrol agents speeding through neighborhoods, destroying property, abusing immigrants, and endangering general public safety. These are very concrete things we can organize against, as opposed to the abstract concept of “border militarization.”

All of the content in this publication,
plus additional information, can be downloaded
from the *Defending Justice* companion website:
www.defendingjustice.org.

Additional Resources

American Civil Liberties Union (ACLU)

125 Board Street, 18th Floor
New York, NY 10004
Phone: 212-549-2585
<http://www.aclu.org>

The ACLU works in courts, legislatures and communities to defend and preserve Constitutional rights. The ACLU advocates the position that civil liberties must be respected, even in times of national emergency. ACLU chapters exist in almost every state.

National Network for Immigrant and Refugee Rights (NNIRR)

310-8th St., Ste. 303
Oakland, CA 94607
Phone: 510-465-1984
<http://www.nnirr.org>

NNIRR is a national organization composed of local coalitions and immigrant, refugee, community, religious, civil rights and labor organizations and activists. NNIRR works to promote a just immigration and refugee policy in the United States and to defend and expand the rights of all immigrants and refugees, regardless of immigration status.

Families for Freedom (FFF)

2 Washington Street, 766 North
New York NY 10004
Phone: 212-898-4121
<http://www.familiesforfreedom.org>

FFF is an organizing center for immigrants and communities facing detention and deportation. FFF members are primarily low-income immigrants from the Caribbean, Latin America, and South Asia. FFF provides direct support to detainees and their families and raises public awareness about the deportation system and the erosion of immigrants' civil rights.

Books/Reports

Chang, Nancy. 2002. *Silencing Political Dissent: How Post-September 11 Anti-Terrorism Measures Threaten Our Civil Liberties*. New York: Seven Stories Press.

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Endnotes Available Online!

All citations and references are available at www.defendingjustice.org or by contacting PRA.

CONSERVATIVE AGENDAS AND CAMPAIGNS

YOUTH

During the 1980s and 1990s, the Right repeatedly characterized youth to be more violent and less remorseful than ever.¹ Capitalizing on the fears of older, White Americans, the Right has escalated a campaign against youth, especially urban youth of color, as the cause for social unrest. This fear is translated into increased funding for control mechanisms for youth, both on the street and in schools. One of the most consistent arguments the Right used during the mid-1990s was that even though overall crime had been declining over the past three decades, violent crime among youth had been increasing, and that the crimes which were being committed were much more heinous in comparison.

The Right, bolstered by the media, falsely predicted a wave of killer kids and “stone-cold predators.”² The Right attributes much of this to “moral poverty,” which they characterize as the combination of single-parent households, the prevalence of hard drugs or alcohol in the home, verbal or physical abuse, neglect, lack of positive role models such as parents, teachers, coaches, or clergy, and parents who simply do not teach their children right from wrong. Some on the Right even consider moral poverty a larger influence on juvenile crime than socioeconomic status. Citing high divorce rates and the increasing number of children born out of wedlock, some on the Right proclaimed that “America is a ticking crime bomb.”³

The Right further asserts that the criminal justice system does not target youth of color in a racist fashion. Rather youth of color are more prone to being morally impoverished.⁴

Not only are our streets supposedly more unsafe, but according to many on the Right, our schools have become virtual “war zones.” The highly publicized school shootings of the mid 1990s escalated fear among White middle-class Americans that their children were in grave danger. This was because the mass-shootings that took place occurred in predominantly-White areas: Moses Lake, Washington (1996); Pearl, Mississippi (1997); West Paducah, Kentucky (1997); Jonesboro, Arkansas (1998); Springfield, Oregon (1998); and of course Littleton, Colorado (1999). Even though the actual chance of a student dying in school during the 1998-1999 school year was slightly less than one in two million, 71% of the population thought that a school shooting was “likely” in their community.⁵

The overwhelming response from parents and educators post-Columbine was an across the board crackdown on all deviant behavior in schools. This was not just against firearms, but also against drug and alcohol possession, dress codes, and class disruptions. Though not born in response to Columbine, “zero tolerance” policies became favored by many school boards as parents and educators feared the worst.⁶

Despite the fear-mongering of the Right during the late 1990s, reality has disproved much of their initial theories. Overall juvenile violent crime dropped during the late 1990s, and the predicted wave of “super-predators” and “crack babies” never materialized. Columbine was the last major school shooting, and many school districts have now realized that zero tolerance policies further criminalize students.

SECTION OBJECTIVE

This section will highlight the demonization and scapegoating of youth as a tactic in the Right's campaign for law and order and the implementation of punitive policies in schools. It will also challenge popular anti-youth claims.

IN THIS SECTION

- Role of the Right: The Myth of Crack Babies, Super-Predators and Gang-Bangers
- Role of the State: Zero-Tolerance in Schools
- Debunking Anti-Youth Claims
- Organizing Advice: Q&A with Inner City Struggle
- Additional Resources

The Right has made significant gains, however, as legislation making it easier for youth to be tried and incarcerated as adults passed during the wave of fear in the mid-90s. Fearing a backlash similar to what happened to Michael Dukakis after the infamous yet effective “Willie Horton” advertisement, many Democrats have also adopted “tough on crime” stances. Now in the post-9/11 era, there are new fears, and there is new legislation. The Bush Administration’s “No Child Left Behind” Act presents many new challenges, but it follows the same pattern of using punishment over rehabilitation. The Right continues to use fear to pass increasingly repressive legislation, and some critics have pointed out that schools have come to share several similarities with prisons. According to the Rev. Jesse Jackson, founder of Operation Push and former presidential candidate, “Schools have become a feeder system for the penal system.” Zero tolerance policies in schools have resulted in skyrocketing expulsions—3000% in Chicago in ten years.

The “war on youth” is not just aimed at an identified criminal element of teens. In the past twenty years, U.S. youth as a whole have lost some of their constitutional rights, remain unprotected by the United Nations children’s rights covenants, and have been the subject of campaigns to regulate their behavior in and out of school. This conservative trend to increase control of the activities of young people is the backdrop for legislation and social policy that criminalizes youth behavior that was once legal.

Mike Males, a sociologist at the University of California at Santa Cruz, has suggested that the war on youth in the United States renders American teenagers as “the most stigmatized, cruelly punished, and least free of any youth in the Western world.”⁷ Unlike adults, youth can be arrested for being in public or driving a car during certain hours, punished for purchasing alcohol or cigarettes, denied access to education or required to succumb to drug testing before being allowed to attend a dance or join a sports team. According to Males, youth have become the central location for the displacement of racial and class anxieties.

These forms of social control are widely accepted by both conservatives and liberals as restrictions on youth “for their own good.” Males suggest that several beliefs have contributed to a pattern of increased criminalization of youth behavior.

This fear of violent youth, especially of the rising population of youth of color, persists despite regularly being disproven. According to Males, such fear is actually displaced racism and sexism held by the older White population when challenged by youth.

Conservative Beliefs that Influence the Criminalization of Youth

- America’s problems are caused not by unjust economic or social conditions, but by the deficient morals, cultures, and biologies of disfavored population groups;
- Poor people deserve their poverty and the rich deserve their wealth;
- “Family values” means protecting the besieged family, especially its children, from threats such as gay marriage, single parenthood, and divorce;
- Social policy is not a collective government responsibility, but the privatized marketing territory of interest groups.



Males describes how this conservative ideology is framed in such a way that it resonates for moderates and liberals as well. The central idea is that youth should be feared, and the evidence is that today's adolescents are violent, oversexed, and irrational. This fear of violent youth, especially of the rising population of youth of color, persists despite regularly being disproven. Conservative pundits predicted the terror of youth superpredators in books like the 1996 *Body Count*. But youth homicide rates actually fell 70% from 1994 to 2002, despite a substantial growth in teen population. According to Males, such fear is actually displaced racism and sexism held by the older White population when challenged by youth. "Older, established America is profoundly frightened of the social, racial, and cultural changes that have intensified over the last three decades." The United States is becoming more diverse, especially among its youth: "In 2002, 43% of the 4 million babies born and 85% of the 1 million immigrants settling in the U.S. (that is, the "new") were nonwhite; meanwhile 81% of the 2.5 million Americans who died (the "old") were white.... Demographic fear (fear of entire populations), whether race-, ethnic-, religious-, or age-based, is the Right Wing's best friend."⁸

Males also points out the usefulness of youth as a diversion from the actual sources of crime. "Further aggravating America's generational stresses are extraordinarily severe drug abuse, crime, incarceration, personal instability, and family disarray afflicting middle-aged, mostly white Baby Boomers. Today's worst social crises are caused by society's most privileged populations, ones politicians and interest groups find politically difficult to face."⁹

Special thanks to former PRA Intern Todd Ching for his contribution to this chapter.

ROLE OF THE RIGHT: The Myth of Crack Babies, Super-Predators, and Gang Bangers

During the 1980s and 1990s, the Right successfully popularized misleading stereotypes of youth as “crack babies,” “super-predators,” and “gang-bangers.” Although the stereotypes have been repeatedly disproven, they remain influential. For example, 62% of Americans in 2001 believed youth violence was on the rise, even though youth crime was at its lowest level in decades and youth homicides had decreased by 68% between 1993 and 1998.¹⁰

In order to understand anti-youth sentiment and legislation, it is important to understand the Right’s specific role in constructing and manipulating public fear of young people. This section will discuss the evolution of these three stereotypes and how the Right created and exploited these stereotypes to advocate for a repressive anti-youth and tough on crime public policy agenda.

CRACK BABIES

As drug usage increased during the late 1970s and 1980s, the Right created fear about “crack-babies,” children born to mothers who used crack and other drugs during pregnancy. The so-called “crack babies” were children who were exposed to drugs while in the womb and therefore, according to these critics, suffered from physical handicaps and would grow up to be out-of-control children and adults who lacked any regard for morals. A 1990 *New York Times* article stated:

Parents and researchers say a majority of children exposed to significant amounts of drugs in the womb appear to have suffered brain damage that cuts into their ability to make friends, know right from wrong, understand cause and effect, control their impulses, gain insight, concentrate on tasks, and feel and return love.... Some seem to have suffered profound damage. They are already being removed from their kindergarten or first-grade classrooms. As adults, they may never be able to hold jobs or control anger.¹¹

Crack babies were expected to be enormous problems for the juvenile justice, healthcare, social services, and public education systems. Social service agencies and schools began to prepare for the worst. According to Dr. Corinne Walentik, “We don’t just have a crack baby problem. We’ve got a 70-year problem ahead of us.”¹² In one opinion piece George Will estimated that crack babies would cost New York City \$2 billion during the 1990s.¹³ In another article, the *New York Times* said crack babies would cost the nation more than \$500 million each year.¹⁴

In 2001 the *Journal of the American Medical Association* released two articles studying the effects of crack/cocaine exposure in-utero, and both reached similar conclusions: Exposure to crack/cocaine had no consistent negative effects on physical development, test scores for young children, and has not been proven to cause any detrimental effects independent of other factors.¹⁵

Ana Teresa Ortiz and Laura Briggs, two anthropologists, write:

The entire edifice of the moral panic about crack babies rested on two statistics, both of which ultimately proved to be wrong. The evidence for a growing “epidemic” of cocaine use, rooted in the newly available, cheap form of the drug crack, was a slight increase in a daily and weekly usage statistic provided by the

U.S. General Accounting Office. These statistics were notoriously unreliable because they relied on very small samples, and this one proved wrong: the percentage of the U.S. population using crack remained absolutely stable between 1988 and 1994.¹⁶ A second statistic showed a sharp rise in the mortality rate of African American infants in Washington, D.C., in the first half of 1989; officials later realized that a large number of these deaths had really occurred in 1988, and infant mortality rates had, in fact, stayed relatively stable.¹⁷

It is striking how few people acknowledged that the case for the crack “epidemic” wreaking havoc in inner cities and blighting a generation of babies was extraordinarily shaky, despite the availability of countermanding evidence in the 1980s. Instead, crack babies were poster children for the War on Drugs and an allegory for debates about abortion, exhibit A for the mostly conservative policy makers and prosecutors who wanted to show why small-time drug users were a danger to the society as a whole and deserving of jail time.¹⁸

Crack babies became one of the flagships for the Reagan/Bush War on Drugs. And as crack usage was affiliated (by the media) with inner-cities, the stereotype of crack babies most impacted youth of color, even though the highest group of crack users was White males.¹⁹ But instead of allotting funds to try and improve urban areas and offer programs of drug rehabilitation, Congress and Presidents Reagan and Bush spent money on fighting drug lords and investing in the drug war infrastructure.²⁰

The stereotype of crack babies also painted a racist picture of poor, Black, urban mothers having numerous children with no regard for social responsibility. From 1988 to 1990, 55 percent of women on network TV news stories about crack use were Black. And from 1991 to 1994, that figure rose to 84 percent. Ortiz and Briggs reflect: “The crack babies epidemic marked the apogee of the Reagan-Bush era's criminalization of poverty through the War on Drugs.”²¹

As a result of the fear of crack babies, “crack mothers” also suffered. Hospitals began to test women in labor for drugs—a practice later declared unconstitutional by the Supreme Court. Not only were Black women disproportionately tested compared to White women, but Black women went to jail at a disproportionate rate for cocaine/crack usage. Additionally, tens of thousands of children were put in foster homes as a result of the “random” testing.²²

The stereotype of the “crack mother” helped Reagan, Bush, and the Right to cut back funding for numerous social services, especially welfare, as people began to fear that their tax dollars were going toward feeding drug addictions, and not children. Douglas Besharov of the conservative American Enterprise Institute declared that crack babies would become part of an inner-city “bio-underclass,” and therefore “not stuff that Head Start can fix.”²³

SUPER-PREDATORS

As horror stories about younger and younger kids committing dreadful crimes began to be widely publicized, many people gave in to the notion that there must also be a significant rise in youth crime. It was from this that John DiIulio, then a professor at Princeton University, gave birth to the idea of the “super-predator.”

The explanation DiIulio gave for this epidemic of youth violence was that youth were suffering from “moral poverty,” which is “the poverty of being without loving, capable responsible adults

[parents, relatives, friends, teachers, coaches, and clergy] who teach you right from wrong... who habituate you to feel joy at others' joy, pain at others' pain, happiness when you do right, remorse when you do wrong."²⁴ UCLA Professor James Q. Wilson elaborated:

[At risk youth] tend to have criminal parents; to live in cold or discordant families (or pseudo-families); to have a low verbal intelligence quotient and to do poorly in school; to be emotionally cold and temperamentally impulsive; to abuse alcohol and drugs at the earliest opportunity; and to reside in poor, disorderly communities.²⁵

As divorce rates, the number of single-parent families, and the lack of regular church attendance by youth were publicized, the number of youth suffering from moral poverty became more apparent to adherents of the super-predator theory. And not only were youth becoming more threatening, but their numbers were increasing. Much of the reason that DiIulio and Wilson feared that the rise of the super-predator was imminent was due simply to population trends. DiIulio writes:

Between now and the year 2010, the number of juveniles in the population will increase substantially. Today, for example, America is home to roughly 7.5 million boys ages 14 to 17. UCLA Professor James Q. Wilson has estimated that by the year 2000, "there will be a million more people" in that age bracket than there were in 1995, half of them male. Based on well-replicated longitudinal studies, he predicts that 6 percent of these boys "will become high rate, repeat offenders—thirty thousand more young muggers, killers, and thieves than we have now. Get ready," he warns.²⁶

Even though DiIulio now admits that he made mistakes with his "super-predator" theory, others continue to use the same incorrect methods to create fear. Rev. Eugene Rivers of the Boston Ten Point Coalition, in promoting the continuation of programs associated with the "Boston Miracle," in a 1999 op-ed piece in the *Boston Globe*, stated that "Police and street workers are encountering a more violent group of younger males coming up between ages 8 and 13 in certain elementary and middle schools." Rev. Rivers also further attributes the need for continuation of the "Boston Miracle" because, he writes:

[T]here will be more than 13 million teenagers between the ages of 15 and 17 by the year 2010.... for children between the ages of 10 and 14 there will be a 21 percent increase.... and a 26 percent increase in the number of black juveniles. We have a significant challenge before us.²⁷

The logic used here that expected increases in the juvenile population will inevitably lead to devastating increases in juvenile crime is eerily similar to that used by DiIulio. What this op-ed piece demonstrates is that even as the "super-

WHAT DEFINES A SUPER-PREDATOR?

Conservative authors William Bennett, John DiIulio and John Walters published *Body Count* in 1996, resurrecting the misleading stereotype of the super-predator. Their definition reveals an ideology that describes crime as the rational decision of people who choose to do "wrong."

They write: "Super-predators"—Radically impulsive, brutally remorseless youngsters, including ever more pre-teenage boys, who murder, assault, rape, rob, burglarize, deal deadly drugs, join gun-toting gangs, and create serious communal disorders. They do not fear the stigma of arrest, the pains of imprisonment, or the pangs of conscience. They perceive hardly any relationship between doing right (or wrong) now and being rewarded (or punished) for it later. To these mean-street youngsters, the words 'right' and 'wrong' have no fixed moral meaning."²⁹

predator” theory has been discredited, the effects of it are still very much alive.

Vincent Schiraldi, President of the Justice Policy Institute, harshly criticized DiIulio in 2001 as the single person most “closely identified with unsound crime analysis and punitive imprisonment policies.”²⁸ DiIulio’s 1996 report, “The State of Violent Crime in America,” influenced the passage of The Violent Youth Predator Act of 1997, which, among other policies, allows certain juveniles to be tried as adults.

GANGS: THE ULTIMATE SCAPEGOAT

Even when the “crack babies” and “super-predators” never materialized, politicians and the media still had gangs to turn against. With article names such as “Gang Fights Transform Hollywood Boulevard into a War Zone,” “Mean Streets: Wearing the Colors of the Big City Crips and Bloods,” “Gangs aren’t isolated threat: Staying in Denial Risks Letting them take Root,” and “Boy, 16, is Wounded in Shooting on way to School,” the media has played an important role in keeping people’s fears of gangs high.³⁰ Although overall crime has dropped considerably, “experts” like conservative Northeastern University Professor James Alan Fox continue to tow similar lines to those of John DiIulio. Fox wrote in 2003:

[The] increase in gang violence has been consistent and steady, not something that can be passed off as a one-year blip or aberration. In fact, the latest tally of gang-related killings is nearly as high as it was during the peak years in the early 1990s amidst the epidemic of crack-related violence.... At the same time, many of the powerful gang leaders who were sent away to prison during the last antigang crusade are now returning back to their old neighborhoods and their old pals. They are stronger but no wiser from their incarceration experience.³¹

Fox’s comments demonstrate one of the most common themes the Right stresses with gangs: the best way to stop gang violence is by arresting gang members and incarcerating them for long periods of time. By putting gang members in prisons, the Right can lock up and disenfranchise youth of color that come from poor backgrounds. The Right gets to kill three birds with one stone.

The myth of “Drive-Bys”

Drive-by shootings did not begin in the 1980s; they were born in the era of Prohibition. And much like those of that time, many of the drive-by shootings that actually do occur are as a result of the trading of banned substances (alcohol/drugs) or the need to establish protective territorial boundaries. But comparing today’s gangs with the organized crime of the Prohibition era would be a mistake, as many of today’s gangs suffer from local fragmentation, the lack of established hierarchies, and less extensive influence.³²

The issue of gangs is much more complex, however, than crack babies or super-predators, as gangs are very real, as is gang violence. What is similar among these stereotypes is the way in which a widely-held belief developed in the suburban (largely White) community that youth of color from urban areas would spread into the more “peaceful” suburbs and bring drugs, violence, and overall deviant behavior with them.

Youth are increasingly criminalized, with gangs becoming the ultimate scapegoat. Tom Hayden writes:

Sometimes liberal, progressive social activists and caring citizens understandably

try to distance themselves from the gang problem. They find the gang subculture politically indefensible and morally discomfiting. They harbor a sense that the problem is truly insoluble, and that tough law enforcement and long prison terms, while unfortunate, are necessary to quell the mayhem. Their sense of pragmatism tells them that appearing “soft” on gangs will set back progress on other issues they care deeply about.... The war on gangs serves the political purpose of framing public dialogue around a law-and-order agenda, which leads to expanding police and prison budgets at the expense of everything else.³³

The 1992 L.A. Riots and the “Crips” and “Bloods” Truce

On April 29, 1992, the not guilty verdict delivered to four White Los Angeles Police Department officers accused of using excessive force against Rodney King inspired riots that resulted in the deaths of 42 people, 5,000 arrests, and an estimated \$1 billion in property damage.³⁴

As the trial of the officers was moved to the White suburban community of Simi Valley, many Blacks instinctively knew well before the verdict, that the officers would be acquitted. Some that knew this were the Crips and the Bloods, L.A.’s two most notorious gangs. Before the verdict, a truce was reached between the two rival gangs, although it was not formally announced until after the riots.³⁵ As gang members were able to put aside their historical differences, they came to realize that both had a common enemy in the status quo that was not offering urban youth opportunities to break out of the gang subculture. According to one Crip with the alias of Q. Bone, “Out of the rioting, something good came into the world.” In certain urban parts of Los Angeles, including Q. Bone’s neighborhood, unemployment among youth was more than 45%.³⁶

In response to the L.A. riots of 1992, a commission formed to assess how L.A. should respond to the riots recommended that the private sector spend \$6 billion in order to help rebuild parts of the inner-city. Years later, the investment never came, and instead of creating the 57,000 jobs promised, 50,000 were lost.³⁷ And thus many gang members, who might have been able to escape the gang culture were instead doomed to stay within it. According to Columbia Professor and co-director of the Youth and Globalization Research Network, Sudhir Alladi Venkatesh, “As welfare monies have become insufficient to meet even the basic needs of the urban poor, this alternate economic structure has become integral for the daily sustenance of [many] households.”³⁸

The Effects of the “Gang Banger” Label

Gang members suffer from extreme labeling. The term “gang-banger” is a prime example. Self-referential slang for gang member, the phrase connotes group violence with a strong hint of sex. The FBI has called gangs “domestic terrorists,” and the Los Angeles police chief William Bratton calls them “homeland terrorists.”³⁹

It is extremely difficult for gang members to integrate into the community, as they have difficulty getting jobs or entering into public life in any legitimate way. Poor urban youth of color have few choices to begin with. By labeling gangs as the root of all social evils, in the words of one political analyst, it “reduce[s] the likelihood that respectable people would perceive social disorder as a reminder of the ways in which the social and economic arrangements of their society were failing them.”⁴⁰

National Gang Intelligence Center and Secret Databases

In early 2004, the U.S. House of Representatives nearly unanimously—by a vote of 397 to 18—approved the creation of a National Gang Intelligence Center (NGIC), which would be run by the FBI. The purpose of the NGIC would be to integrate local, state, and federal law enforcement in efforts to advance the War on Gangs. This move, coupled with White House attempts to cut \$100 million in gang prevention programs, demonstrates a resurging trend in “tough on crime” policies against youth in gangs.⁴¹ It appears that the warnings of James Alan Fox are being heard by politicians on Capitol Hill. Creating the NGIC would also dovetail with the Department of Homeland Security, which integrates law enforcement for the purpose of fighting a tougher war against “enemy combatants,” both foreign and domestic.

In California, a gang database existed before September 11, 2001. CAL/GANG, an information database that identifies gang members, tracks movements of gangs, forecasts trends, and helps to coordinate police responses, is a cooperative effort between the California Department of Justice, local law enforcement, and various scientific systems and data centers.⁴² According to the law enforcement officials that administer it, this database is not subject to public records regulations, and its contents are not open to the public. Beyond the issue of secrecy, a major problem is that many of the people in the database are not gang members. They are only associates or affiliates of gang members or former gang members. And as little is known about the criteria it takes to become part of the database—as that information is not disclosed to the public—some skeptics are critical of its constitutionality. As of this writing, information from the CAL/GANG database cannot be used in a court of law.⁴³

Being labeled a gang member can have disastrous consequences, especially for immigrant youth. Many of the youth that are targeted as part of a secret database like CAL/GANG are not U.S. citizens and are eventually deported to countries like Honduras, where they may be imprisoned for their gang associations or eventually even killed.

THE ROLE OF THE MEDIA

Barry Glassner, author of the *Culture of Fear*, has chronicled how the media helps construct a frame that “any kid can be a victimizer.” He suggests that the more the media represents youth as associated with crime, the more the public believes it to be so. He cites a study that shows that between 40 and 50% of print and network newscasts about children concerned crime and violence.⁴⁴

Conclusion

While widespread evidence exists to refute the claims that significant numbers of youth are a threat to our society, the myths of crack babies, superpredators and gang-bangers continue to circulate. They persist because they fit so well with the idea that we must get tough on crime. Scapegoating young people and heightening people’s fears of youth have added to a climate that promises safety through strict social controls.

ROLE OF THE STATE: Zero Tolerance In Schools

Similar to the concept of mandatory minimums, zero tolerance education policies refer to various disciplinary school practices that automatically suspend, expel or severely punish students for breaking laws, violating school rules or for committing offenses that are perceived as a threat to school safety, no matter what the circumstances or how minor the incident may be.

There is no single definition for what constitutes zero tolerance policies for schools. Some policies are limited to automatic expulsions for students who bring firearms to schools. Other, more controversial policies mandate involuntary transfers and suspensions for possession of other weapons, alcohol, drugs, or other related contraband. One of the concerns many have with the zero tolerance policy is that it mandates expulsion of students upon their first violation, regardless of their previous records. For opponents of zero tolerance the punishment does not fit the crime, and is “simply Draconian.”⁴⁵

Even though a few school boards have now condemned zero tolerance policies as failures, many continue to advocate for zero tolerance policies for two reasons: first, school officials claim federal funding regulations do not allow them to enforce zero tolerance flexibly, and second, zero tolerance is needed to “send the message” that disruptive behavior will not be tolerated.⁴⁶ The Right continues to push for policies of harsh standards and unforgiving punishments for youth.

Origins of Zero Tolerance

The first recorded use of the term “zero tolerance” was in the 1980s as a response to the War on Drugs when it was applied to adults. The term first appeared in national newspapers in 1983 when the U.S. Navy reassigned 40 submarine crew members for suspected drug abuse. In 1986, a U.S. attorney in San Diego used Zero Tolerance as the title of a program developed to seize seacraft found with even a minor amount of drugs. The concept quickly received national attention, and then U.S. Attorney General Edwin Meese expanded that program so that customs officials would be authorized to “seize the boats, automobiles, and passports of anyone crossing the border with even trace amounts of drugs and to charge those individuals in federal court.”⁴⁷ From the beginning, many protested the harsh consequences of the zero tolerance drug policies. Individuals whose cars, boats, and even homes were impounded for even small amounts of the drugs criticized the policy. And by 1990, even the U.S. Customs Service quietly abandoned its support for zero tolerance after two of the agency’s own research vessels were seized when small amounts of marijuana were found onboard.

But even as the Drug War’s early zero tolerance programs were being questioned, zero tolerance was gaining steam in the public schools. As a result of stereotypes like Crack Babies, Super-predators, and Gang Bangers, many parents became convinced that youth violence was spreading and was threatening their kids. With the rise in media coverage over school shootings, many parents believed there was an epidemic of school shootings, and wanted to prevent these isolated incidents from occurring in their communities. As a response, parents, administrators, and school boards across the United States began to adopt zero tolerance policies, which provide harsh punishments for carrying guns, possessing drugs or alcohol, and other delinquent behavior in school. Zero tolerance operates on the assumption that deterrence works. By instituting unforgiving policies that offer serious consequences, many advocates of zero tolerance feel that school violence, drug and alcohol use, and overall bad behavior in school will decline.

In late 1989, school districts in Orange County, California, and Louisville, Kentucky drafted zero tolerance policies that would expel students for drug possession or participation in gang-related activity. In New York, zero tolerance was proposed as a way of taking action against students who caused school disruption.

By 1993, zero tolerance was being embraced by school districts around the country, but it wasn't until the 1994 passage of the Gun-Free Schools Act (signed into law by President Clinton) that zero tolerance became a national phenomenon. This legislation mandated schools to expel students found with a weapon for at least one year, and it prompted many schools to refer students who violated the law to the criminal or juvenile justice system. In order to avoid losing federal aid, states were forced to comply with the law although there was much variation in the types of laws passed. Most states require expulsion not only for guns, but any kind of weapon or anything that can be perceived as a weapon, and school districts rarely consider the age of the student or the circumstances under which the incident occurred.⁴⁸

Zero Tolerance Today

Today the same harsh and mandatory approach to discipline that exists in the criminal justice system is reflected in the U.S. educational system. In 2000, a major Harvard University report concluded that zero tolerance is “unfair, is contrary to the developmental needs of children, denies children educational opportunities, and often results in the criminalization of children.”⁴⁹ It highlighted evidence of unfair practices for students of color who were suspended for subjective offenses such as “disturbing school.”⁵⁰ A major predictor for arrest is having been suspended, expelled or held back in school.⁵¹

Today the same harsh and mandatory approach to discipline that exists in the criminal justice system is reflected in the U.S. educational system.

Zero tolerance has increasingly subjected students to criminal or delinquency charges as a result of their behavior in school. Forty-one states require schools to report students to law enforcement agencies for various conduct committed in school.⁵²

What Is the ‘No Child Left Behind’ Policy On School Safety?

The No Child Left Behind Act of 2002 (NCLB) dramatically expanded the federal government's role in education policy, setting in place requirements that reach into every U.S. public school. NCLB is the name of the reauthorization of Elementary and Secondary Education Act (first passed in 1965 and then again in 1994) which is the federal government's main law concerning pre-collegiate education.

NCLB supporters claim that the legislation is aimed at increasing student achievement by creating and holding schools accountable to a set of standards. At its core, NCLB mandates annual reading and mathematics testing for grades 3-8, and it imposes sanctions on schools who fail to meet the federally dictated guidelines.

Although NCLB originated within the Right (it was a central component in President Bush's 2000 election campaign), it did have overwhelming bipartisan support. NCLB passed 381-41 in the House and 87-10 in the Senate. In a 2003 opinion poll, however, almost half of school principals and superintendents revealed that they view NCLB as “either politically motivated

or aimed at undermining public schools.”⁵³

NCLB is a complex act with many disparate provisions. NCLB supports several issues of the conservative agenda, including encouraging school choice for families with children in underperforming schools, re-establishing military recruiter access to students, and codifying traditional values in some aspects of the curriculum.

The legislation also has several important guidelines regarding school safety. Title IV, Part A, entitled “Supporting Drug and Violence Prevention and Education for Students and Communities,” includes the following school-safety related measures. Teachers will be given increased control over their classrooms, and gain the right to “remove violent or persistently disruptive students from the classroom. In order to receive funds from this program, states must adopt a zero-tolerance policy for violent or persistently disruptive students.”⁵⁴ Also, states must allow for students who attend “persistently dangerous schools,” or who become a victim of a violent crime at school, to transfer to a “safe school.”⁵⁵

Analysis of Zero Tolerance, School Safety, and NCLB

Policies like zero tolerance, heightened school security measures and the No Child Left Behind Act lead to what some call the “school-to-prison-pipeline.” Such a pipeline is defined as a strong relationship between school failure and incarceration.

Zero tolerance policies contribute to the pipeline because they lead to increased suspensions, expulsions, and grade repetition. Indirect zero tolerance factors, such as high stakes testing and lack of counseling and support services, also contribute to the pipeline. Since students who are enrolled in school are less likely to be arrested or incarcerated, these policies are leading to higher rates of youth incarceration.⁵⁶ Keeping students in school is one of the best ways to keep youth and adults out of prison, as statistics show that in 1997, 68% of state prisoners had never completed high school.⁵⁷

The school safety movement has criminalized some student behaviors that were previously handled as violations of school rules. Because the school is required to report these behaviors to law enforcement authorities, more students enter the juvenile justice system.

According to the Harvard Civil Rights Project and the Northeastern University Institute on Race and Justice:

- States with higher rates of out-of-school suspension also have higher overall rates of juvenile incarceration;
- Racial disproportionality in out-of-school suspension is associated with similar disproportionality in juvenile incarceration; and
- Higher rates of out-of-school suspension are associated with lower rates of achievement in reading, mathematics, and writing.⁵⁸

By labeling schools as “persistently dangerous,” and students as “persistently disruptive,” critics argue that NCLB seemingly abandons those schools and dooms children to the school-to-prison pipeline. Furthermore, by forcing grade retention of students who do not pass the rigorous exams, those youth become more likely to drop out and end up in the juvenile justice system.⁵⁹

It is also not difficult to see how the rise in reporting of “persistently dangerous schools” could be politicized by the Right (and in particular the Bush Administration) to justify school voucher initiatives.

The Right’s successful arguments, from zero tolerance and other punitive school safety policies to provisions in the No Child Left Behind Act, are the latest in a long-term plan to incorporate conservative social theory into educational policy that began with their blueprint for school reform, “A Nation at Risk,” issued by Reagan’s National Commission on Excellence in Education in 1983. Despite internal disagreements within the Right on the value of zero tolerance (Ed Furler, the President of the conservative Heritage Foundation, published “Zero Tolerance? Try Zero Wisdom” in 2001⁶⁰), the idea that improving schools requires getting tough on students has permeated public policy and public opinion in ways that transcend party lines. George Bush ran in 2000 on a platform supported by his record with Texas schools. But the Gun Free Schools Act passed, not under Bush but during President Clinton’s term, on a wave of harsh response to perceived levels of school violence.

The challenges to improving public schools are enormous, and the issues are complex. But despite substantial criticism of these policies from experts in the field of education, who link such policies with increased incarceration, the Right leads the charge of scapegoating and demonizing students as the source, not the victims, of what is for many a failing system.



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Debunking Anti-Youth Claims

ANTI-YOUTH CLAIM: Youth Today Are More Violent Than Ever, With Some Youth Who Simply Cannot Be Helped and Will Always Be Criminals.⁶¹

Anti-Youth Solution #1: Establishing mandatory sentencing laws and trying youth in adult courts keeps the most dangerous youth off the street and deters other youth from committing crimes.⁶²

The Right has been able to manipulate public fear into creating harsher punishments for a generation of youth using horror stories of random violent crime, school shootings, and other isolated incidents. In response to fears over rising youth crime, 47 states and Washington D.C. increased the punitiveness of their juvenile justice systems between 1992 and 1997—all of this even though 90% of the public supports a focus on youth crime prevention and rehabilitation over incarceration.⁶³

The Right argues that in addition to incarcerating the most violent youth for longer periods of time, creating harsher mandatory sentencing will deter the next generation of potential youth criminals. Mandatory sentencing laws create lengthy periods of incarceration, whether they are in juvenile or adult facilities and reinforce the self image of a youth as a long term criminal.

There are major problems when youth are incarcerated in adult prisons. Youth in adult prisons are twice as likely to be beaten by staff, 7.7 times more likely to commit suicide, 5 times more likely to be sexually assaulted, and 50% more likely to be attacked with a weapon than youth in juvenile institutions.⁶⁴

Furthermore, recidivism rates are actually higher among youth incarcerated in adult prisons (as opposed to juvenile institutions). One study showed that youths tried and convicted in adult courts “are more likely to re-offend, re-offend earlier, and to commit more serious subsequent offenses than those who remain in the juvenile system.”⁶⁵

By incarcerating more and more youth—and for longer periods of time—resources are diverted from other areas, especially the particular education these young people require.

Anti-Youth Solution #2: Tough-love measures such as boot camps or “Scared Straight” programs are one of the best ways to rehabilitate at-risk youth.

Boot camps offer a paramilitary environment instead of a prison for at-risk youth. There is no evidence to suggest that boot camps produce lower recidivism rates. Part of this is due to the fact that the majority of boot camps were founded in the 1990s, and that there have only been limited studies on the matter. One study of boot camps in Florida found that recidivism rates of boot camp attendees was between 64-73%, which is not significantly different than recidivism rates for traditional juvenile prisons (63-71%). As for costs of boot camps, they are on average about \$14,000 cheaper than traditional imprisonment per youth per year, which makes them appealing to many advocates.⁶⁶ What boot camps do, however, is use military-style activities to control and teach youth.

“Scared Straight” programs are modeled on a 1970s crime prevention plan that took seventeen teenagers into a New Jersey prison where they were introduced to the “Lifers,” who told stories

of the de-humanization process that takes place in prison. Twenty years after the program, only one of the participants ended up in prison, demonstrating to many that it, and programs like it, can be effective deterrents. Yet the effectiveness of “Scared Straight” relies on fear of the irreparable effects of prisons.

Boot camps and “Scared Straight” both offer non-incarceration solutions while being tough on crime, but neither addresses causes of youth crime. Furthermore, both assume that youth crime is a severe enough problem that unconventional means are needed to deal with it, and that youth cannot be reached by non-“tough love” measures.

Anti-Youth Solution #3: Curfew and anti-loitering laws keep youth and gangs off the streets, which prevents crimes.

This solution assumes that youth need constant supervision in order to avoid committing crimes. The traditional argument is that if youth are not on the streets, they cannot break the law. And even though such laws take away rights from youth, some argue that it is a necessary way to combat gang violence. According to LAPD Chief William Bratton, “Rights and liberties at times have to be restrained for the good of all the community.”⁶⁷

There is no evidence that suggests curfews reduce youth crime.⁶⁸ Most curfews only apply to certain times of night, such as the Dallas curfew, which begins at 11pm (midnight on weekends) and ends at 6am. The majority of victimization for youth, however, occurs between 3pm and 9pm.⁶⁹ The argument that curfews will prevent gang crime also fails, since curfews only target those under the age of 18. For example, in areas like St. Petersburg, Florida, police say that 76% of gang members are older than 18.⁷⁰ According to the Justice Policy Institute:

In 1998, there were more juvenile arrests for curfew violations and for running away from home than for all violent index offenses combined. The increase in curfew arrests between 1994 and 1998 by itself accounts for the entire increase in juvenile arrests during that period....As serious crime rates have dropped, police have “formalized” more nonserious offenses, widening the net of social control. From 1994 to 1998, felony index offenses dropped by 18 percent but arrest rates rose.⁷¹

For those that still claim that curfews have worked to curb youth crime, the argument remains that youth crime has been in decline across the nation, not just in areas where there are curfews.

Anti-loitering laws, like the one in Chicago, are controversial and contribute to youth criminalization. Over 45,000 arrests were made for loitering under the Gang Congregation Ordinance Law of 1992 until it was struck down as unconstitutional. While the law did remove youth from the streets, those arrested may not have committed any crime except violating the ordinance itself.

ANTI-YOUTH CLAIM: Schools Are War-Zones Where Youth Are In Constant Jeopardy of Falling Victim to a Massive School Shooting.

Anti-Youth Solution #4: Schools are much safer with metal detectors, security cameras, and law enforcement officers on campus.

The assumption here is that schools are “war zones” where youth are in jeopardy of falling victim to violence. The belief that schools were becoming war zones was based on fears derived from media sensationalism over school shootings and an overall tendency in society to distrust

youth. Therefore one quick fix solution to school violence became purchasing expensive metal detectors, security cameras, and having armed law enforcement officers on campus.

There is no evidence that expensive metal detectors, random searches, security cameras, or law enforcement officers will stop school shootings. Columbine High School had both an armed guard and security cameras, yet neither stopped the school shooting. In Georgia, an evaluation of a \$20 million expenditure to improve school safety discovered that after two years of implementation, there was little evidence that the massive expenditure had improved school safety.⁷³

There is also legitimate reason to be concerned that having police officers on campus will increase the amount of racial profiling by law enforcement. Jane Bai of the Committee Against Anti-Asian Violence in New York City states: “School safety officers are being trained in racial profiling and observation techniques. They are being trained to meet the needs of the criminal justice system, not the educational system.”⁷⁴

Anti-Youth Solution #5: There would be less crime if youth were more involved in their local faith communities.⁷⁵

This solution rides on the analysis that the causes of crime involve a disintegration of traditional moral values and family structures, not poverty and its impact on youth. The biggest problem with the hypothesis that there would be less youth crime if youth were more involved in religion is that there have not been any reliable academic studies linking youth crime to a lack of religiousness (or regular church attendance with less delinquency).⁷⁶ Furthermore, for studies that have attempted to address the issue, they measure religious involvement by regularity of church/temple/synagogue/mosque attendance, which is often not an indicator of personal values since many youth are required to attend by their parents.

Being part of a faith community has been shown to be a factor that supports youth resilience or the ability to handle adversity, but it is not the sole factor that can help a young person avoid criminal activity. There may be a hidden preference in this solution for the faith community to be a Christian one.

Anti Youth Solution #6: States should review divorce laws in order to strengthen marriage and promote successful parenting.

There are several problems with this idea. First of all, while it is true that many youth fall into poverty as a result of divorce, it is incorrect to assume that youth would be better off if the father were to stay in an unsuccessful marriage. A 1998 report by the Department of Health and Human Services states that “the great majority of children brought up in single-parent families do well. In particular, differences in well-being between children from divorced and those from intact families tend, on average, to be moderate to small.”⁷⁷

Such a solution supports the Right’s agenda to promote traditional family structures. Strengthening marriage by designing social service incentives to become or remain married places a high expectation on the value of the traditional structure of marriage alone.

Additionally, a major cause of fatherlessness in the United States is incarceration. In 1999, nearly 1.5 million youth under 18 had a parent in prison, representing over 2% of the nation’s youth and a 60% increase since 1991.⁷⁸ And as youth who have a parent in prison are estimated to be nearly six times as likely to end up in prison themselves, the over-incarceration of adults has direct effects on America’s youth (in terms of criminality).⁷⁹

THE SAN FRANCISCO MIRACLE

According to the national media, crime's down because cops cracked down. Once mean streets are now policed with "zero tolerance" vengeance, suspicious characters are cuffed on the slightest pretext, casual dopers are busted en masse, kids are banished from public, bad guys are packed off to prison for 25-to-life. In Boston, New York, Dallas, and San Jose, the press lauded police, conservative politicians, and crime authorities such as James Q. Wilson for "cleaning up the Big Apple," the "Boston Miracle," and "taming gangs" with curfews, sweeps, and injunctions. The evidence? Police said so. Establishment scholars said so.

But when the progressive Center on Juvenile and Criminal Justice (www.cjcj.org/jpi) sent the national media a careful, journal-quality report on what may be the biggest (and least reported) big-city crime miracle of all, the national press couldn't get interested. Not a single Big Media reporter flocked to the Bay Area to report on why San Francisco's violent crime rate, led by an 85% decline in juvenile homicide and gun murder, plummeted faster than anywhere else.

"Since 1992, San Francisco achieved greater declines in violent crime than ten major cities," the CJCJ reported, citing FBI figures. The cities CJCJ chose for comparison (Boston, Charlotte, Chicago, Dallas, Denver, Jacksonville, New Orleans, New York, North Little Rock, Phoenix, and Washington) were a tough lineup, ones singled out by the U.S. Department of Justice for model policies to fight youth crime.

Yet, no matter which sets of years were chosen, San Francisco's crime decreases (down 42% overall, 52% for violent offenses, and 44% for property crime from 1992 to 2000, for example) topped those of *all nine* cities the feds had cited as exemplary. San Francisco also showed the biggest declines in all four major violent crimes (murder, rape, robbery, and felony assault) and two of the three major property crimes (theft and motor vehicle theft) chosen by the FBI as key "index" offenses. Of the 10 cities, San Francisco ranked first in violence decline and second in property crime decline.

Whether San Francisco's crime plummet beats New York's fabled record depends on which years or crimes are chosen to compare. Statistics for the year 2000 posted on police department websites for both cities show San Francisco's and New York City's murder rate declines from the 1990-94 average were identical (down 64%), while San Francisco's

violent crime drop (-52%) exceeded New York's (-49%).

When it came to reductions in youth homicide, no other city even came close to San Francisco. Remember when police in Boston (where 40,000 teenage juveniles dwell) won national acclaim for having only two youth gun murders from July 1995 through July 1997? San Francisco (which has 200,000 more people, including 10,000 more kids) did even better: only two juvenile gun murders from July 1995 through December 1997. From their early 1990s levels to 1997-2000, juvenile gun homicides were down 85% and youth murder arrests dropped from an average of 20 per year to two.

How did San Francisco do it? By doing nothing right, according to 1990s get-tough anti-crime dogma. Resisting the national stampede, San Francisco has no juvenile curfew; police stopped enforcing it in 1992, and efforts to reinstate it were dumped by voters in a 1995 referendum after high school students vigorously campaigned against it. Contrary to James Q. Wilson's "Broken Windows" religion urging immediate crackdown on tiny infractions (especially by kids), San Francisco's policing has been, "don't sweat the small stuff." During the 1990s, arrests for simple marijuana possession and juvenile "status" offenses (such as curfew or truancy) declined sharply in San Francisco even as they skyrocketed in other cities.

Further, the city's liberal prosecutors refer fewer adult felons for lengthy Three Strikes sentencings, and fewer juvenile felons to adult court, than those in any other major city or county, reserving big sentences only for the worst of the worst. As a result, San Francisco's rate of packing youths and adults to prison dropped faster and now is at lower per-capita levels than for any other major urban county in California, saving taxpayers millions of dollars.

San Francisco's story challenges conservative crime dogma at every turn. In a city that let its youths come and go at all hours as they and parents pleased, Lord of the Flies was hardly the result.

Source: Males, Mike. 2000. Kids and Guns: How Politicians, Experts, and the Press Fabricate Fear of Youth. Online book (free) (Monroe, Maine: Common Courage Press).

<http://home.earthlink.net/~mmales/contents.htm>.

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ORGANIZING ADVICE: Resisting the War On Youth

Q & A WITH INNERCITY STRUGGLE

For the past 10 years, InnerCity Struggle has organized students, parents, teachers, and allies in the four high schools of East Los Angeles to win concrete changes in the educational system. United Students (US), the youth organizing component, recently won two campaigns: the elimination of a high school tardy policy and the construction of a new high school to relieve overcrowding at Garfield High School. ICS primarily works in the communities of East Los Angeles which consist predominantly of Latino, immigrant, and working class community members.

PRA: What is the educational situation in East Los Angeles?

ICS: An alarming number—more than 65%—of East LA students disappear and do not graduate. We use the term “disappearance rate” because the official transfer and drop-out rates only account for 12% of the students who do not graduate. What happens to the rest of the students? The system offers no explanation for the disappeared students. The backdrop for our educational justice work is the poor economic situation that exists. The community of East L.A. has a 46% poverty rate, more than double the rate for the city of Los Angeles. There are few jobs that provide a living wage and health benefits, and over 50% of adults in East L.A. over the age of 25 do not have a high school diploma.

PRA: Why do you address the public education system?

ICS: Because it fails to serve as an equalizer for providing sustainable economic opportunities for improving the quality of life of individuals and families. The lack of economic resources and the underfunding of social services exacerbate the impoverished conditions for young people attending depleted and overcrowded schools. For example, two local high schools are so overcrowded that students must attend school year-round, with three tracks of students attending at different times. This results in students losing approximately 17 school days, compared to a traditional school year, in order to accommodate all three tracks.

Current budget cuts in the Los Angeles Unified School District stand at over \$400 million. The majority of young people disappearing from East LA high schools are entering low wage labor, joining

the military, or becoming part of the increasing incarcerated population. These schools are tragic examples of a trend in California public education where young people of color are systematically tracked into the lowest level of society’s socio-economic hierarchy. InnerCity Struggle decided to make educational justice a focus of its youth development and organizing work as a direct response to this kind of institutional neglect.

InnerCity Struggle recognizes that the current educational crisis has its roots in the history of inter-locking systems of oppression (White supremacy, patriarchy, heterosexism, and capitalism) that are reinforced in schools through standardized testing, tracking, inadequate funding, and teacher de-skilling. This has allowed corporations to run schools for profit and has allowed for a corporate model to set priorities and operate our educational system. We believe the dismantling of the public education system is directly perpetuated by the massive global accumulation of wealth by a privileged few that promotes the under-resourced conditions of communities of color in the United States and in the Third World.

PRA: How does your organization view the War on Youth?

ICS: The War on Youth is a problematic social phenomenon that views youth as enemies who must be controlled and punished, particularly in the institutions of education and the criminal injustice system. This view ignores the root causes of problems such as violence and low-academic achievement, and instead blames youth, particularly poor youth of color, for these problems. In schools, the War on Youth perpetuates the notion that the zero-tolerance approach is the only acceptable approach.

PRA: Can you give some examples of how schools are criminalizing students?

ICS: Many school officials and teachers depict our students (who are predominantly Latino) as disinterested in learning or being in school, and those characterizations are used to push students out of school. You can see this pattern clearly around the issues of tardiness and attendance. School administrators rely on the police to punish students for minor infractions, and students have been cited \$250 for being on campus but not in class. Once cited, a student must appear in court. And once

you're going to court, you're caught up in the criminal justice system.

The main problem here is the assumption that students are doing something wrong when, in fact, there are valid reasons to explain why students are not in class. Some students may not have a class because the classes during the period for their particular track are too full. Other students have been scheduled for the same class twice because of scheduling problems, and they would rather not attend a class they already completed. Other students may be ditching or going late to class because they don't get along with the teachers or they find the class boring. We've heard of cases where the police have actually been called to break up fights and pick up students at the school. Rather than taking responsibility, the school punishes its students.

PRA: How does Zero Tolerance play out in East LA schools?

ICS: The tardy room at Roosevelt High School is a school-wide policy that holds students for an entire class period or school day if they are late (even less than one minute) to class. The effect of this policy was that if students knew they were going to be late, they would simply skip school. In a recent survey of over 2,000 East L.A. students, close to 73% of students said they would rather ditch school to avoid being sent to the tardy room. So, instead of encouraging students to get to school on time, it had the opposite effect: deterring students from coming to school.

If, instead of being punished, the students had been asked to explain their reasons for being late, the administration officials would have found that students were not late because they didn't care about school. They were late for reasons such as caring for younger siblings, dropping off younger siblings at school, lack of or late public transportation, and not being motivated to get to their first period (either they've taken the class already or the class is boring). This policy failed to address the root cause of the problem, and instead contributed to pushing students out of RHS. It was a one-size fits all policy that did not understand the students in the context of the community and their lives outside of school.

PRA: United Students fought this policy and won. How did you do it?

ICS: In April 2003, our organizing efforts at Roosevelt High School resulted in the elimination of the tardy room and the implementation of a

policy United Students developed to replace it. The alternative policy allowed for students to come late once or twice. The consequences for repeated tardiness range from requiring the student to attend a time-management workshop and calling the parents to make sure they were aware of the situation. Using action-based research, United Students wrote a report supporting the proposed alternative policy and distributed it to students, school officials, and parents to build support for the alternative policy. Providing a concrete solution led to gaining mass student support, including support from teachers and administrators, specifically the principal and a school board representative. United Students representatives were active participants at school stakeholder policy meetings, the body in charge of developing the alternative policy. Our alternative to the tardy room challenged existing punitive measures used by the school to address discipline. Instead, it aimed to proactively improve attendance and achievement.

PRA: Why was Zero Tolerance, in the form of the tardy rule, the sole response?

ICS: Part of the reason is that extreme overcrowding has existed for more than 15 years at our schools. East LA's Roosevelt High School is the largest public high-school in the country. If all 2,000 of the entering freshmen graduated, there would be no room, even with the track system, for all of the students. Instead only 500 students graduate from Roosevelt High School. There is an incentive, then, to push students out for minor infractions because the school simply cannot accommodate all the students. As a result, any infraction becomes a reason to push students out of school, and the more students that fall through the cracks, the easier it will be to maintain control. So, partly because of the lack of resources, the question from the administration's perspective becomes one of "how do we control this school," and the learning environment becomes less about instruction and more about containment.

PRA: Why do you think people are anti-youth? Why does the War on Youth succeed?

ICS: The War on Youth is dependent on adultism, classism, and racism. Youth, especially Black and Latino youth, are seen as people that cannot be decision makers. Generally speaking, school administrators in particular see poor students of color as empty vessels that have nothing to contribute, reflecting stereotypes about youth of color.

PRA: Who did you consider your opposition?

ICS: Those who attack the role of public education as a vehicle for upward class mobility. We see the opposition as those policy makers, conservative well-funded opposition groups, and members of the media who ideologically uphold the view that youth of color are criminals and unworthy of quality education. For example, the Sierra Club opposed our campaign for a new high school because it would be built next to a park, and they felt a high school would deteriorate the environment. Homeowners were also opposed because they claimed it would increase violence and gang rivalries.

PRA: How do you connect your work to larger ideologies of oppression?

ICS: We aim to develop an understanding of both the historical role that women of color have played in social and economic justice movements and the challenges they faced in previous movements because of sexism and homophobia. This strategy supports the empowerment of women members to view their current challenges within the larger legacy of struggle for equity and respect while encouraging young men to recognize the contributions of women of color. Staff intentionally builds youth capacities and skills to become effective decision-makers and problem-solvers around issues and conflicts resulting from sexism and/or homophobia. For example, within our Ethnic Studies campaign, United Students has pushed for Chicano Studies to be implemented in the curriculum as well as pushed for Women and Queer Studies. In organizing for policy changes, the lens for our work will be to challenge all forms of institutional, interpersonal, and internalized oppression.

PRA: What are you advocating for?

ICS: We recognize that access to an equitable and quality education is a human right. We believe education should be free from primary to post-secondary levels, and that society must ensure that all students have the opportunity to progress into higher education.

ICS aims to shift governmental priorities from prisons and police forces to the public education system. Public schools should be accountable to local communities, students, and teachers. The curriculum should be centered on providing students with the necessary skills and tools to become leaders who are healthy, functional, and critical thinkers. Schools should be community-centered and serve as a resource for the community. Each student must

be provided with a relevant education through a comprehensive curriculum that teaches about the lives of people of color, working people, womyn, lesbians and gays, the physically disabled and all those who are systematically left out of history books. In addition, public schools should promote popular education methods that produce critical thinkers.

Our latest campaigns have demanded the elimination of punitive disciplinary policies, implementation of Ethnic Studies courses, and implementation of policies that ensure that all students are college-eligible by their senior year, including increasing the number of guidance counselors.

PRA: Can equitable access to education systematically reduce poverty?

ICS: Education is a mechanism that can maintain the status quo. What people internalize from the current system is clear—adapt as opposed to challenge society. Our current education system does not promote critical thinking or really build the consciousness of people to ask questions. So as part of our organizing, we are not just working to change policy but to build an understanding of systems of oppression. Nonetheless, it remains clear that in this particular conservative moment, we are only fighting for liberal social change to move us toward the fight for systemic social change, and then after that, radical social change.

PRA: Any words of advice for other activists challenging the War on Youth?

ICS: It is critical that young people are at the forefront of building power for systemic social change. We believe that in order for change the people most afflicted by oppression have to be in the leadership. InnerCity Struggle’s vision for social change is the development of political spaces led by young people within youth movements of resistance that intentionally support the leadership of young women and challenge all forms of oppression, including patriarchy. The role of adult allies should be focused on: training youth in leadership, facilitation, public speaking, critical thinking, oral and written communication, strategic planning, and conflict resolution skills; building youth capacities and skills to become effective decision-makers and problem-solvers; building authentic youth leadership as part of the core staff and governing body.

Additional Resources

Building Blocks for Youth (BBY)

Youth Law Center
1010 Vermont Avenue, N.W., Suite 310
Washington, DC 20005
Phone: 202-637-0377
<http://www.buildingblocksforyouth.org>

The BBY initiative is an alliance of children and youth advocates, researchers, law enforcement professionals and community organizers that seeks to reduce overrepresentation and disparate treatment of youth of color in the justice system and promote fair, rational and effective juvenile justice policies.

Center for Juvenile and Criminal Justice

54 Dore St.
San Francisco, CA 94103
Phone: 415-621-5661
<http://www.cjcj.org>

CJCJ researches and advocates for improved treatment of juveniles in the criminal justice system. It maintains the Juvenile Justice Information Center with facts about California and the nation.

Harvard Civil Rights Project (CRP)

Graduate School of Education
125 Mount Auburn St., 3rd Floor
Cambridge, MA 02138
Phone: 617-496-6367
http://www.civilrightsproject.harvard.edu/research/criminal_justice.php

CRP researches, convenes academics and educators, and publishes reports on renewing the promise of the civil rights movement, especially as it applies to youth and schools. CRP hosts an initiative called the School to Prison Pipeline: Charting Intervention Strategies of Prevention and Support for Minority Children.

NY Prison Moratorium Project

388 Atlantic Avenue, 3rd Floor
Brooklyn, NY 11217
Phone: 718-260-8805
<http://www.nomoreprisons.org>

The Prison Moratorium Project works to dismantle the prison industrial complex through research, education and cultural work.

Websites

<http://endzerotolerance.com/>

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Endnotes Available Online!

All citations and references are available at www.defendingjustice.org or by contacting PRA.

CONSERVATIVE AGENDAS AND CAMPAIGNS

VICTIMS' RIGHTS

The success of social movements very often depends upon their ability to capitalize on opportunities created by shifting political and social structures. The Victims' Rights (VR) movement has achieved enormous levels of success and stability because of its ability to take advantage of the social and political forces in the late 1960s and 1970s that helped create the war on crime. As a result, there has been a symbolic and rhetorical shift in the debate on crime—one that inevitably contributes to and justifies the State's law and order approach.

The VR movement's emphasis on individuals affected by violent crime shifted the State's burden from attacking the social causes of crime to simply responding to individual acts of crime. In the 1980s, the Right backed a VR campaign that allowed their supporters to introduce conservative tough-on-crime policies without appearing to be racist or opposed to individual rights and liberties. Politicians eagerly lauded the VR movement's goals and accomplishments while creating permanent funding for them. In fact, VR is the velvet glove that opens the door to the iron fist of mandatory sentencing, increased use of the death penalty, and "three strikes" laws. By passing victims' legislation or funding neighborhood watches, politicians could avoid dealing with issues such as poverty, education and drug abuse by appearing to be actively concerned about the issue of crime.

The role that the VR movement played in justifying harsher punishment was particularly ironic. Many victims had indeed been mistreated by the criminal justice system, including rape victims, domestic violence victims, and children abused by their parents. There was a genuine need for a VR movement, and one grew from the grassroots in the 1970s. But once adopted by the Reagan Administration's Justice Department, the mantle of VR was never extended to victims of police brutality or to those whose clothes, demeanor, or skin color earned them harassment or arrest from a habitual police practice of racial profiling. The profile of a victim promoted by this campaign became a White woman or man, victimized by a person of color who was associated with drugs—a highly selective slice of the wide range of victims of crime.

It is important to remember that the VR movement is comprised of many types of organizations—some conservative, some progressive and some apolitical. There are many organizations that simply provide a range of services such as counseling, support groups and other forms of assistance, which might be receptive to progressive activists. However, this section is primarily concerned with VR organizations that use VR to pursue and justify a law-and-order agenda.

Former PRA Intern Tom Pryor co-authored this chapter.

SECTION OBJECTIVE

This section discusses how particular sectors of the victims' rights movement strengthen the criminal justice system while furthering a "tough on crime" agenda.

IN THIS SECTION

- Profile, History, Positions and Analysis of the Victims' Rights Movement
- Various Victims' Rights Organizations
- Organizing Advice: Q&A with Murder Victims' Families for Reconciliation
- Organizing Advice: Q&A with Direct Action for Rights and Equality
- Additional Resources

THE VICTIMS' RIGHTS MOVEMENT

The Victims' Rights (VR) movement originated as a challenge to the criminal justice system and its treatment of victims of crime. However, over the past thirty years, it has evolved into an institutionalized movement whose goals often overlap with and are at times exploited by the Right. The diverse VR movement mobilizes around the goal of assisting and serving victims of crime. While some of its members and organizations pose little or no challenge to progressive criminal justice activists, several aspects of the movement are rather troublesome. For example, many sectors of the VR movement advance symbolic and rhetorical justifications for harsh law and order policies, advocate for legislation that threatens the due process rights of defendants, and ignore the social and institutional causes and consequences of crime. As a result, the mainstream VR movement supports more punitive responses to crime. Thus, victims present unique challenges to progressive activists because of the opportunity to maximize emotional leverage and diminish objective debate. By understanding the history and demands of the VR movement, progressive activists will be better able to respond and even collaborate with victims' advocacy organizations.

PROFILE OF THE VICTIMS' RIGHTS MOVEMENT

The Victims' Rights movement is made up of hundreds of grassroots organizations, dozens of national institutions, and numerous activists. At the most basic level, VR activists argue for increased support and rights for victims of crime. They claim that victims of crime are "revictimized" by the very same system that was designed to protect them. VR activists believe the government must do more to respect their emotional and social needs and to provide compensation for the losses they suffered. They also argue for the establishment of certain rights and safeguards specifically for victims of crime within the justice system. Criminals, they argue, receive a plethora of constitutional protections of their rights, but victims of crime are treated as glorified witnesses and disposed of in a bureaucratic fashion. Thus the VR movement, on the whole, is primarily concerned with both providing services to victims and lobbying government at both the state and federal levels to pass legislation that advances VR.

Specifically, victims are upset that the police, prosecutors and judges seldom consult them when criminal charges are filed or during a trial.¹ One study found that many victims, in fact, dropped criminal charges either because the system became such an ordeal or because they felt it did not sincerely care about them or the crime committed against them.² Another study found that 32% of respondents claimed that they would not get involved in the criminal justice system again.³

The VR movement primarily consists of these individuals, people who feel that their rights were further violated by the criminal justice system. These activists, however, are not necessarily representative of the average victim of crime. One survey reports that nearly 88% of victim advocates are White, female, middle-aged (the average age is 39), and over half of them have at least a college education.⁴ These advocates, then, do not represent the typical victims of crime. In addition, most VR activists are more conservative and favor more vindictive responses to crime than the average victim as well.⁵

ORIGINS OF THE VICTIMS' RIGHTS MOVEMENT

The origins of the VR movement are as diverse as the organizations and perspectives that define it. These origins, like the movement itself, can be divided into two categories: those advocating for the needs of victims and those focused on creating rights for victims. Within those two categories fall several pivotal movements during the 1960s and early 1970s that helped form it: the social welfare reforms of the 60s, the conservative “law and order” backlash of the late 60s and early 70s, and the women’s movement.

Addressing the Needs of Victims

In the beginning, the direction the VR movement took was more a product of the social welfare programs of the 1960s than a response to crime. Instead of blaming crime on immutable personal characteristics and choices of individuals, the then Democratically-controlled federal government emphasized the “social origins of crime—poverty, alienation, lack of education, discrimination—and sought to remedy those perceived causes.”⁶ They endorsed policies that “tried to provide opportunities to offenders, through jail based prisoner counseling programs, diversion programs, or community based correctional services.”⁷ Part of their socially liberal agenda regarding crime was the 1965 establishment of the nation’s first victim’s compensation fund in California.⁸ These programs were more focused on addressing the emotional, social and financial needs of victims, rather than enhancing an abstract rights agenda on behalf of victims.

Interestingly, another major force behind the VR movement was the women’s movement. The first rape crisis centers, battered women shelters, and domestic abuse telephone hotlines were founded in the early 1970s by members of the women’s movement who felt that law enforcement and mental health services were too unresponsive to the needs of women. They also argued, like other victims’ advocates, that the criminal justice system revictimized women and that additional counseling was required to overcome the newly defined battered women syndrome and post-traumatic stress disorder from which many victims suffered. The majority of these centers were run by volunteers, many of whom were victims of rape or abuse themselves, and funded by small contributions. In addition to providing services for women, these organizations lobbied for legislative reforms that would change rape laws to increase convictions while protecting the victim’s privacy, such as laws that prohibit the woman’s sexual history from being used as evidence in a rape trial.⁹ By the mid-1970s these centers began to receive increased funding from state and federal organizations, in particular the Law Enforcement Assistance Administration (LEAA), a new independent agency established in 1968 within the Justice Department that was responsible for dispersing funds to local police departments¹⁰ and later the Victims of Crime Act.

Creating Victims’ Rights

As the policies of the Johnson Administration began to be perceived as ineffective at curbing rising crime rates, many citizens were presented with a political paradox; the liberal insistence on racial tolerance preventing them from confronting the socially perceived connection between race and crime.¹¹ In contrast, the Nixon Administration and conservatives adopted a “law-and-order” stance on the problem of crime, stressing that the permissive policies of the previous administrations and the Warren Court’s decision that protected the rights of criminal defendants were to blame for the rising crime rates.¹² They argued that crime was a personal choice—a manifestation of innate wickedness—and, consequently, efforts to deter or rehabilitate criminals was a waste of tax money. The only solution, then, was punishment and incarceration.¹³

The conservative “war on crime” used victims’ rights rhetoric and appeals in two ways. The first was to assert that not only do victims possess the right to have their offenders punished; they also have the right to seek an increase in conviction rates by securing better cooperation from other victims of crime and from the courts.¹⁴ This was accomplished primarily through the LEAA. By 1980, the LEAA funded some 400 witness protection agencies in order to increase witness collaboration. In 1979 the LEAA founded the National Organization for Victims Assistance (NOVA), a national umbrella organization that trains victims’ advocates, social workers, and lobbies for victims’ legislation.

In addition to lobbying for victims’ rights and assistance in order to increase witness cooperation, the Right also used the VR movement to humanize and justify their tough on crime approach. Combined with appeals that the movement could help balance the scales of justice, the VR movement and conservative politicians effectively identified and promoted the crime victim as a sympathetic, innocent individual deserving of empathy. Further, such victims deserved the right to seek retribution and harsher punishments for their assailants. Essentially, not only did the Right manage to elicit support for the victim and anger at the offender, they also successfully implied that the crime committed against a victim was akin to an attack on the community as a whole.¹⁵ Such emotional appeals are still used to justify the curtailment of the defendants’ rights and the establishment of a myriad of victims’ rights with tremendous success.¹⁶

Contemporary Victims’ Rights

While the movement grew and flourished during the 1970s, it was dealt a severe blow from the dissolution of the LEAA, the major source of funds for victim advocacy organizations. VR organizations responded by lobbying at the state level for funding and victims’ legislation. In 1980, Wisconsin became the first state to pass the “Basic Bill of Rights for Victims and Witnesses,” the first of many “victims’ bills of rights” passed that ensured funding and support of the movement.¹⁷ In 1982, the creation of the President’s Task Force on Victims of Crime added legitimacy to legislative efforts by compiling mostly anecdotal evidence on the phenomena of “revictimization” and even went as far as to suggest an amendment to the U.S. Constitution to recognize the rights of victims. In 1984, partly due to the task force’s report, Congress passed the Victims of Crime Act (VOCA) which established the Office for Victims of Crime (OVC), an organization within the Justice Department that channels funds from federal criminal fines into victims’ programs.¹⁸ The passage of VOCA and the subsequent creation of the OVC solidified the movement’s success for the next quarter century, as millions of dollars are now annually

LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

The Law Enforcement Assistance Administration (LEAA) was initiated by the Johnson Administration, first as the Office for Law Enforcement Assistance in 1965, to fund local police departments by providing block grants for different programs, special task forces, and new hardware. In 1974, LEAA began funding a new unit called Citizen’s Initiative which was responsible for getting citizens more involved in the “war on crime” and for fostering greater consideration for victims, witnesses, and jurors. The LEAA, after establishing that the lack of victim and witness cooperation was a major factor in low conviction rates, launched the Crime Victim Initiative in 1974 to fund victims and witness programs in prosecutors’ offices around the nation. In a similar effort, the LEAA funded programs for social workers that trained them to better deal with the emotional and social impacts of victimization and, eventually, founded the National Organization for Victims Assistance (NOVA) to further that cause. The LEAA was eventually disbanded in 1981 because of the inefficiency caused by its substantial bureaucracy and overextended resources. In its short span, however, it helped cement and institutionalize the VR and Community-Based Crime Prevention movements.

available for victims' advocacy organizations. Today many organizations are involved in two simultaneous campaigns: to provide services to victims in an attempt to meet their needs and to lobby on behalf of victims' rights which often takes the approach of lobbying against the rights of defendants.

POSITIONS AND STANCES OF THE VICTIMS' RIGHTS MOVEMENT

Many policies advocated for by VR advocates may seem benign, but they threaten the rights of the accused and contribute to the Right's war on crime. The movement's most prominent legislation is a proposed amendment to the U.S. Constitution that is similar to laws and amendments passed at the state level. The VR movement has been extremely successful in legislative campaigns; today, every single state has some form of VR legislation and 33 states have passed constitutional amendments on behalf of victims.¹⁹

The VR movement advocates the following policies.

The Victims' Rights Amendment: The proposed Victims' Rights Constitutional Amendment and the many state-level VR policies and amendments share many similarities. They all call for some form of the following:

- The right to be protected from the accused;
- The right to be informed of any public proceedings involving the crime or of the defendant's release or escape from prison;
- The right to be included in any such public proceeding;
- The right to be heard during any public proceeding regarding the release, plea, or sentencing of the accused;
- The right to confer with the prosecutor in the case;
- The right to restitution;
- The right to a trial free from unreasonable delay;
- And the right to be treated fairly and with respect for the victim's dignity and privacy.²⁰

While the amendment appears innocuous enough, the opposition to the amendment is both broad and ideologically diverse. In addition to progressives and civil rights advocates, groups as varied as prosecutors, conservative pundits, and even some victims' rights organizations also oppose it.²¹ Some claim it threatens the due process rights of defendants, and others argue it represents a frivolous alteration of the Constitution.²² Of course, conspicuously absent from the list of victims' rights is the right not to be a victim.²³

Preventive Detention: Preventive detention is the practice of incarcerating the defendant before trial under the assumption that he or she may attempt to flee prosecution, or is potentially dangerous and should be removed from society. The language used to propose and defend preventive detention often characterizes the concept as "the right to be protected from the accused." Proponents of the practice justify it both by citing the risk that the defendant poses to the victim or the public if freed and that, without it, there would be a widespread perception of an injustice

being committed by releasing the accused on bail.²⁴ Allowing a defendant to go free on bail, these advocates claim, violates the rights of victims.

The first justification, while intuitively appealing, rests on two unfair assumptions. The first assumption is that the actions of a minority of defendants who have harassed victims or committed crimes while out on bail justify preventive detention for all defendants. It is typically considered a violation of individual rights if sanctions are levied against a person simply because several other people in similar situations committed crimes. Advocates of the policy may counter, however, that the defendant surrenders their rights when they are accused of violating the rights of another. This is, of course, the second assumption that effectively treats all accused, whether eventually found innocent or not, as being both guilty and wicked; it labels them as criminal. By definition the defendants have not been found guilty of any crime. Because the accused has yet to be tried and found guilty, it is hypothetically the equivalent of incarcerating any individual, without provocation or crime, because they are deemed dangerous or a threat to society.

The second justification for the policy, however, appeals to notions of justice as perceived by the victim and the public. The truth of the matter is that defendants who are incarcerated before a trial are more likely to plead guilty and seek a plea bargain because of the enormous pressure and discomfort they experience in prison. Although illegal, such tactics are used by law enforcement officials eager to produce a confession,²⁵ violating the defendant's right to a fair trial. As a result, the public's perception that freeing a defendant before trial is unjust is not only irrelevant but is also incorrect. Incarcerating a defendant before trial actually increases the chance of an actual (not merely a perceived) miscarriage of justice taking place.²⁶

It is clear that the claims made by VR advocates are as follows: the victim of a crime has the right to have the accused imprisoned without determining first whether he or she is guilty. Simply put, VR advocates that a victim should have the right to punish another individual without a process to assess guilt.

The Exclusionary Rule: The Supreme Court case *Mapp v. Ohio* (1961) extended the use of the exclusionary rule, which prohibits the use of illegally obtained evidence in court, to state courts. For many decades, the Right has been calling for the abolishment of this rule. The Right argues that the rule allows murderers and criminals to go free on mere technicalities and that it is an insult to victims of crime and their families. The President's Task Force on Victims of Crime officially called for the abolishment of the rule, saying it denies justice to the victims of crime and violates their rights. It even goes as far as to imply that any reversal of *Mapp* is a violation of the rights of past victims and those who may be victimized in the future by the hypothetical criminal gone free.²⁷

The truth, however, is that both the report and VR advocates overstate the consequences of the rule. In reality, very few cases are actually overturned because of the exclusionary rule. Proponents of the rule maintain that it is an essential safeguard against unchecked police repression. Given that few guilty individuals are actually acquitted because of it, one has to determine whether protection against unchecked police control is more important than the additional incarceration of a minimal number of criminals.

Finally, it must be remembered that the arguments against the exclusionary rule are founded on the assumption that victims of crime have a right to the conviction and incarceration of the accused and that this particular right should be the primary concern of the justice system. Such statements assume that there is consensus on what role the justice system has in adjudicating

cases and that the justice system is effective in assessing guilt. Furthermore, while one purpose of the justice system may be to hold the guilty accountable, a competing goal is the protection of rights. Procedural safeguards for the accused were established to do just that.

Victim Impact Statements: The majority of VR amendments, organizations, and advocates support victim impact statements both during the sentencing of the trial and at parole hearings. VR groups argue that being allowed to publicly describe to the offender the emotional and psychological damage that resulted from the crime can be a therapeutic experience. While there is mounting evidence that suggests such testimony has little to no influence on the proceedings,²⁸ some argue that victim impact statements may unfairly bias the jury against the defendant and thus infringe on his or her due process rights.²⁹

While restorative justice supporters might agree with the concept of impact statements, VR advocates' insistence that the impact statement be made during the sentencing and parole hearings reveals the retributive intent behind the procedure. It seems that many VR activists believe that ensuring harsher punishment for the offender is a way of regaining closure for the victim. Parents of Murdered Children, for instance, has an entire project dedicated to blocking the parole of convicted murderers. This also conceptually reinforces the asserted right of a victim to have an offender punished and consequently ignores the criminal justice system's goal of protecting all rights, including the rights of the accused. Victim impact statements also ideologically strengthen the "zero-sum" idea that VR can only be realized by punishing and incarcerating offenders.



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ANALYSIS OF THE VICTIMS' RIGHTS MOVEMENT

THE ABUSE OF VICTIMS' RIGHTS

The politically active VR movement presents many challenges to progressive activists. The highly emotional nature of the VR movement only reinforces the Right's tough on crime approach. Even many of the groups and advocates who provide services such as counseling may end up, whether intentionally or not, strengthening and supporting conservative approaches to crime. Not surprisingly, State resources continue to be channeled to those VR organizations that support tough on crime policies and implicitly agree that seeking revenge is necessary for "victim healing." Still, it is important for progressive activists to differentiate between the VR groups that provide services and those groups who opportunistically use VR as a cover to justify the growth of the current criminal justice system.

There are many reasons for progressive activists to be critical of the mainstream VR movement, no matter how well-intentioned its goals may seem. The following section will provide an analysis of the limitations and contradictions present in the current VR movement.

- **Focus on Punishment Instead of Prevention:** The primary goals of the VR movement are to provide services and legal rights to victims of crime. The VR movement largely ignores a discussion of the social causes of crime while simultaneously supporting harsher sentences and fewer procedural protections for defendants. By focusing almost exclusively on responses to victimization, the VR movement ignores the most fundamental right in question: the right not to be a victim in the first place.³⁰
- **Narrowing the Definition of Victims:** The VR movement narrows the definition of a crime victim in two important ways. First, despite the fact that White, middle-class individuals are least affected by crime, the movement and the examples of victims it uses to advance its cause consist primarily of people from that group. Secondly, the movement focuses only on victims of violent crimes, ignoring victims of corporate crimes, State violence, human rights abuses, and environmental racism.³¹ By focusing solely on White victims of violent crimes, the VR movement not only loses out on an important opportunity to address real societal harms, but further skews our perception of crime, its impacts, and its causes.
- **Justifying Vengeance:** The VR movement uses its considerable emotional leverage to justify policies that have little to do with the psychological well-being or rights of victims of crime. Since the early '70s, advocates such as Frank Carrington, one of the "founding fathers" of the VR, and politicians like Richard Nixon described the legal system as a "zero-sum" game in which any leniency or rights afforded to the accused come at the expense of victims and their rights. Victim advocacy groups thus coined the phrase "balancing the scales of justice" when discussing the rights of defendants compared to victims of crime.³² The result has been a justification for harsher sentencing and fewer procedural rights for defendants, neither of which is intrinsically attached to the well-being or rights of a victim. Instead, these justifications are more closely related to ideas of vengeance.
- **Past and Future Victims and the War on Crime:** The VR movement expertly uses the concept of past and future victims to advance their goals and simultaneously

provide symbolic and rhetorical support to the Right's War on Crime. Victims' advocates, many of whom were either themselves a victim or a family member of a victim, are able to use personal tragedies and their identity as a victim to gain the sympathy of policy makers and the public. These past victims are held up as examples of innocent people preyed upon by strangers and criminals without a conscience. Their stories are used as warnings for future victims or potential victims.³³ By engaging the public's empathy with past victims and their rage over the acts committed against them and then connecting it to our fear of crime and violence, the Right creates a powerful wedge to split the "us," or average, law abiding civilians, and the "them," or the criminals. This division bears stark resemblance to the longstanding divisions in our society between socioeconomic classes and race.³⁴

The movement's symbolic and rhetorical influences are powerful. As stated above, the "victim" has been a pivotal symbol in the Right's war on crime to justify law and order policies. The Right has successfully transformed empathy for the victim into rage against the offender, not just in an effort to punish the offender but to simply "eliminate him" and all those like him.³⁵ This transference of righteous anger and the desire to prevent future victimization is manipulated by the Right to justify harsher sentences and policies for crimes that are "victimless." For example, even though drug possession offenses are not interpersonal crimes and thus lack a victim, the VR movement can justify a harsh response by both characterizing the offender and the crime as social threats that may lead to future victimizations.³⁶ Thus, the VR movement stigmatizes groups of people, labeling them as potential victimizers, and justifies harsh punishments—all in the name of victims.

IS IT REALLY ABOUT VICTIMS?

The previous sections outlined the VR movement's overlap with the Right's law and order agenda. Whether the overlap is intentional or not, disturbing realities indicate a willful cooperation between individuals and organizations of the two movements. Murder Victims Families for Reconciliation have outlined some of these connections, which are summarized below.³⁷

Victim Activists versus All Victims: The majority of victim activists are White, middle-class, and female, which is far from representing the average victim of crime. These women are more likely to believe that the punishment of the offender is their "right," the death penalty is justified, and that punishments are often too lenient. Typical VR activists are more supportive of police, prosecutors, and judges than the average victim.³⁸ The demographic and ideological differences between typical victims' advocates and typical victims of crime lays the groundwork for a movement that represents the race and class bias that permeates conservative law and order policies rather than the actual needs of victims.

Government Funding: Government funding has played a critical role in the survival and success of the VR movement. Unsurprisingly, that funding is not distributed to organizations that challenge the current system. The LEAA, whose major purpose was to increase cooperation between victims and the police, routinely funded organizations that stressed victims' services and ignored those that criticized police, prosecutors, or judges.³⁹ The Victims Fund, created by the Victims of Crime Act, is similarly biased. Since its main source of revenue comes from fines, not taxes, assessed to those convicted of federal crimes, there is little incentive to fund organizations that call for the decriminalization of drugs (since drug offenses account for the majority of federal prisoners) or for social solutions and prevention of crime.⁴⁰ Predictably, then, the Victims Fund

only funds organizations that provide compensation or services to victims and is prohibited by law from supporting those that attempt offender rehabilitation or crime prevention.⁴¹ Thus, the government, the major source of VR funding, works to ensure that the movement does not challenge the legal system or its law and order policies.

Police Support: Given that a major force behind the movement's origins was to increase cooperation between victims and the police, it should be expected that police unions are major supporters of the VR movement. Many police and correctional officer unions and organizations support VR initiatives and some donate considerable sums of money to victims' organizations.⁴² The California Correctional and Peace Officers Association, for example, provides funds for 78% of the Doris Tate Crime Victims Bureau's budget (which was a major force behind California's adoption of the "three strikes law") and 95% of Crime Victims United budget (a conservative, tough on crime Political Action Committee).⁴³ The ties between criminal justice professionals and victims advocates further demonstrate the movement's ties to the system and its unwillingness to pose a substantive challenge to it.

The Death Penalty and Victims' Rights: Observing various perspectives on the death penalty provides a clear example of how the VR movement favors conservative ideology. Prominent VR organizations either prohibit the discussion of capital punishment, as is the case with Parents of Murdered Children, or only feature the views of those who support the death penalty. In addition to those who critique the justice system, victims' advocates who oppose the death penalty are also among the organizations that the government refuses to fund, regardless of the services and counseling provided to victims. Finally, victims or the families of victims who oppose the death penalty are often denied the right to give impact statements during the trial, not provided information about trial proceedings, and receive less or no advocacy and assistance from the government. This happens because it is prosecutors, who are expected to uphold VR, often ignore those victims opposed to the death penalty.⁴⁴ So, despite its claims, the VR movement does not advocate on behalf of all victims; instead, most VR groups and the government ignore or discriminate against those victims who do not share their law and order ideology.

VR ideology is often covert and intertwined with subtle emotional appeals, making it difficult for progressive activists to confront. While a coherent critique of the movement's symbols and rhetoric exists, progressive activists might choose to challenge the policies the VR movement supports rather than the entire movement itself.

Endnotes Available Online!

All citations and references are available at www.defendingjustice.org or by contacting PRA.

PROFILES OF VARIOUS VICTIMS' RIGHTS GROUPS

Parents of Murdered Children

Parents of Murdered Children (POMC) was designed to help survivors of a homicide victim as well as offer assistance in dealing with the criminal justice system. It is a national organization with 60 local chapters in over 25 states. It facilitates a network of homicide survivors, provides individual counseling and advocacy, and offer training services for professionals interested in learning more about the impacts of murder.

The focus of POMC programs is the emotional wellbeing of the survivors. Some programs have broader goals, like the elimination of murder as a subject of entertainment media. The Parole Block Program aims to provide victims with “a sense of control” and a “positive outlet for the anger, frustration and disillusionment with the criminal justice system.”⁴⁵ Petitions are circulated that request the Parole Board block the parole of the inmate in question, thus ensuring he or she serves out the sentence.

Crime Victims United

Crime Victims United is a victims' advocacy organization active in California and Oregon. About 95% of the California branch's budget is funded by the conservative California Correctional Peace Officers Association (the prison guard union).⁴⁶ Both “chapters” aim to influence state legislation relating to VR and the criminal justice system, and both generally adopt a law and order mentality with their advocacy. The California chapter, for example, consistently advocates for longer sentences, against parole, for the monitoring of offenders upon their release, and generally for harsher treatment of offenders.⁴⁷ The Oregon chapter similarly advocates for the expansion of victims' rights at the expense of the defendant's procedural rights, for harsher sentencing, pretrial incarceration, and three strikes legislation.⁴⁸

National Organization for Victims Assistance

Founded in 1975, NOVA is the oldest national Victims' Rights advocacy organization. NOVA has four major purposes: to engage in national advocacy for victims' rights; to provide direct services to victims; to train and assist victim advocates and allied professionals; and to compile and connect a network of over 4,500 organizations and individuals. It has been a part of the successful adoption of numerous victims' compensation laws, makes some 60,000 contacts with victims each year, and has organized 28 national conferences.⁴⁹

National Center for Victims of Crime

The National Center for Victims of Crime was established in 1985 with the mission of helping victims and families of victims of crime. They provide direct services and resources to victims such as fact sheets or counseling, advocate on behalf of victims' rights, and train organizations or individuals who come into contact with victims of crime.⁵⁰ The NCVV is a major proponent of Parallel Justice, or a system of justice where the offender and victim are addressed via separate channels of the justice system. One holds the offender accountable for his or her crime and the other responds to the victim's needs, safety, and attempts to assist him or her in any way necessary.⁵¹ The NCVV is also affiliated with the National Crime Victim Bar Association, which is an organization that helps crime victims to find attorneys and assists in filing civil suits against offenders.⁵²

ORGANIZING ADVICE: Resisting the Politics of Revenge

Q & A WITH MURDER VICTIMS' FAMILIES FOR RECONCILIATION

Murder Victims' Families for Reconciliation represents an important voice within both the death penalty abolition movement and the victims' rights movement. As an organization of murder victims' family members who oppose the death penalty, the group challenges the common assumption that all murder victims' family members support the death penalty and that the death penalty is the way to achieve justice for victims or vindicate their rights.

Founded in 1976, Murder Victims' Families for Reconciliation is a national organization of family members of both homicide and State killings who oppose the death penalty in all cases. MVFR supports programs and policies that reduce the rate of homicide and promote crime prevention and alternatives to violence. The word "reconciliation" in the name refers to the process of coming to accept that you cannot undo the murder but you can decide how you want to live afterwards. MVFR supports programs that address the needs of victims, helping them to rebuild their lives. MVFR is a non-religious organization that includes people of a wide variety of faiths and belief systems and people who are geographically, racially, and economically diverse.

PRA: What do you share with other victims' organizations and what differentiates you from other victims' organizations?

MVFR: Our members share with other survivors of homicide victims a common experience of pain. We all know the devastation of losing a family member to murder and the feelings of anger and powerlessness that accompany that experience. We share with other victims' organizations a desire to reduce the rate of homicide in this country and to advocate for victims' needs, particularly their right to be informed about the proceedings in their case (When is the next court date? Has the defendant filed an appeal?) and to participate in the process in the specific ways that the law allows (for example, delivering victim impact statements).

We differ from other victims' organizations in our assumptions about and positions on the death penalty. Most other victims' organizations, whether or not they take an official position on the ques-

tion, assume that victims are in favor of the death penalty and that advocating for victims includes advocating for death sentences. As a death penalty abolition organization whose members are survivors of homicide victims, MVFR takes a different view. We recognize that victims are as diverse in their beliefs about the death penalty as they are in race, religion, geography, and socioeconomic class, and we represent the voices of victims who oppose the death penalty. That means that our victims' advocacy takes the form of helping victims prepare statements of opposition to the death penalty (to judges or pardon boards, for example). It means making sure that victims are not discriminated against within the criminal justice system because of their beliefs about the death penalty. It means challenging victims' advocates and victims' service personnel to recognize the needs and rights of all victims, not only those who support the death penalty.

PRA: Why do you oppose the death penalty?

MVFR: Most criticisms of the death penalty focus on how it affects the defendant, the person on death row. MVFR's primary concern is how the death penalty affects the rest of us in society. Our opposition to the death penalty is rooted in our direct experience of loss and our refusal to respond to that loss with a quest for more killing. Some of our members' opposition to the death penalty is embedded in their religious beliefs. Others come to their position from a critique of a flawed system that unfairly targets minorities and the poor. Some of our members had a clearly formed opposition to the death penalty before the issue hit home personally; others had never thought much about the issue *until* it became personal. In either case, they reject the idea that an execution is the way to honor a murdered family member, despite how widespread this assumption is. People ask, "If you really loved your mother, father, son, daughter, wouldn't you want the killer to get the ultimate punishment?" MVFR members say, "We honor them not by replicating the violence that killed them but by working to *reduce* violence in our society, and by celebrating their lives. In some cases, our family member may have explicitly opposed the death penalty; in other cases, we simply know that this is not the way we ourselves want to respond to the loss."

PRA: What do you believe is an appropriate response to murder? What do you advocate for instead of the death penalty?

MVFR: As an organization, MVFR's focus is on abolition of the death penalty, and we do not take an organizational position on other criminal justice issues (such as life without parole). Individually, MVFR members differ in their beliefs about what specific punishment is appropriate or necessary for the crime of murder, but they do generally share the belief that murderers need to be held accountable and that society needs to be safe from people who are at risk for committing further violence. Many of our members focus their efforts on violence prevention in one form or another and believe that this is the most appropriate response to murder. MVFR founder Marie Deans says, "If we truly cared about victims, we would put all our knowledge and resources into saving them. Crime prevention, not retaliation, should be our number one goal."

Victims' family members have many needs in the aftermath of a homicide. There are financial costs ranging from expenses directly associated with the murder to expenses resulting from the loss of work time or loss of the family member's earnings. Victims' family members may want to seek counseling or other forms of help in the aftermath of the trauma. They may want help understanding and navigating the criminal justice system. The millions of dollars now spent on the death penalty could be redirected toward these needs of victims and toward efforts to prevent further violence.

PRA: What kind of response do you get from politicians?

MVFR: Taking a public stand against the death penalty is often politically risky for a politician. MVFR demonstrates that it is possible to be anti-death penalty and pro-victim, which can provide lawmakers and other politicians with the "political cover" that they need to take this stance.

PRA: What about other VR organizations? How do they respond to MVFR?

MVFR: There are a broad range of victims' rights, victims' service, and victims' studies organizations in this country. Some make an effort to understand MVFR and our membership in order to be prepared to meet the needs of all victims. Some of the large national victims' organizations have taken explicitly pro-death penalty positions in the past, thus put-

ting them in direct disagreement with MVFR. We do what we can to engage in a dialogue with such groups and to educate them about the needs and experiences of victims who oppose the death penalty.

PRA: How do prosecutors respond to victims who oppose the death penalty?

MVFR: It varies. Some certainly respect the views of victims who oppose the death penalty; others view such victims as, in effect, "bad victims" because they don't support what the prosecution wants. This can then mean that when family members make their opposition to the death penalty known, victims' rights laws are not enforced on their behalf. Because prosecutors have access to information and make decisions about who will testify on behalf of the State, they can decide to withhold information from victims or prevent them from participating in the trial. As well, because victims' rights offices are usually part of the prosecutor's office, we find that State-appointed victims' advocates will fail to advocate for victims who disagree with the prosecutor's agenda. As an organization, MVFR stands with such victims and argues that a right should not be revoked simply because the victims disagree with the State about the imposition of the death penalty.

PRA: What do you wish the death penalty abolition community would understand about victims who oppose the death penalty?

MVFR: We work closely with local and national death penalty abolition (and reform) groups on all sorts of strategic efforts, and we certainly view these groups as collegial organizations, sharing MVFR's goal of abolishing the death penalty. We also recognize that much anti-death penalty work and discussion focuses on the offender, and we are often in the position of inviting—sometimes, challenging—the abolition community to recognize and incorporate the victim experience as well. Because the assumption that victims are pro-death penalty is so firmly entrenched in our society, the MVFR message can be hard for anyone to understand or to internalize fully, and abolitionists are no exception. We continue to work in myriad ways to spread the message that victims should not automatically be assumed to favor the death penalty, and that victims are not the enemy of those who are working for criminal justice reform.

ORGANIZING ADVICE: Facing Victims' Rights Groups

Q & A WITH DIRECT ACTION FOR RIGHTS AND EQUALITY (DARE)

Organizations that are working to promote an approach towards public safety that moves away from the punitive measures of the criminal justice system will inevitably encounter the Victims' Rights (VR) movement and its messages. The following interview outlines Direct Action for Rights and Equality's (DARE) experiences confronting such messages in Rhode Island as well as their efforts to expand the dialogue around effective responses to violence.

DARE is a grassroots, membership-based organization located in Providence, RI. DARE organizes in low-income, communities of color and has a membership base that is primarily Black and Latina/o. The organization formed in 1986 and has worked on a variety of issues and campaigns throughout the years.

PRA: How does DARE view the criminal justice system?

DARE: It is helpful for us at DARE to look back historically at the roots of the modern day prison system to reinforce our understanding of the criminal justice system as a form of modern day slavery. Similar to the Black Codes of yesteryear and Jim Crow laws, the criminal justice system today is designed in a discriminatory way that funnels more people of color into its cages. We believe the disproportionate rate of incarceration of Black men and poor people are not coincidences. It's clear that prisons are not set up to increase public safety but rather to disenfranchise whole communities and preserve political and economic power in the hands of a select few.

The vast majority of people locked up in prison are serving time for non-violent offenses that are frequently the result of poverty. We do not believe punishment is a just response because it does not get to the root of the problem. We also believe that prisons are not an effective response to violence either. Violence will only decrease when people feel a connection and responsibility towards each other. We absolutely need systems and methods in place to hold each other accountable and everybody deserves to feel safe. However, prisons

do not foster healing and accountability but rather isolation and fear. We need to challenge individuals as well as institutions that are causing harm while building collective responsibility.

We are repeatedly told that the criminal justice system and incarceration in particular, are necessary measures to maintain order and safety. DARE challenges this belief. Ultimately we believe that safety can only be achieved through an equitable distribution of both power and resources.

PRA: How do you turn that analysis into campaigns? What is DARE currently working on?

DARE: As an organization, DARE maintains that although our day-to-day work involves fighting for short-term gains, we also need to struggle against the systems of oppression that are responsible for the day-to-day problems in our communities. The majority of our work is currently focused on making connections between the shortage of money for education, healthcare and jobs and the growth in spending for law enforcement and incarceration. We are working with a coalition to divert money that is currently being used to incarcerate people for specific "crimes" back into communities that are highly impacted by incarceration. Quite a few states have been taking measures to reduce incarceration rates by shortening sentences or diversionary sentencing. In those cases, the money that is saved is usually folded back into the state's general revenue. We are trying to reserve that money and link it to a community process to redistribute that money back into the communities that have been hit the hardest by the impacts of incarceration.

PRA: What is your interaction with the VR movement?

DARE: We have primarily come in to contact with VR groups at the state house during the legislative session. Every year in addition to legislation that DARE is trying to pass, we end up devoting a fair proportion of our time trying to make sure other legislation, often put out by proponents of VR, does not pass. We have debated about whether this is a good use of our resources and whether so much of our time should be spent in a defensive mode, rather than putting our energy into getting our own legislation passed. Often times the proposed legislation is so detrimental to our community that we

simply cannot ignore it. The type of legislation we generally feel compelled to fight against would expand the scope of punishment for perpetrators of crimes. It is important for us to fight this type of legislation because of our fundamental belief that incarceration is not a deterrent to crime or even an effective way of dealing with it.

PRA: What are the VR groups advocating for in Rhode Island?

DARE: Most of the legislation proposed by VR organizations aims to increase sentencing and punishment for various crimes. The 2004 legislative session, which also coincided with an election year, saw a particularly large number of these types of bills introduced. One specific bill proposed to make life in prison without parole a mandatory sentence for a person convicted of first-degree murder. This bill was proposed as a just response to a tragic act of violence. The bill was meant to hold the perpetrator accountable and deter others from committing similar acts of violence.

However, one size fits all solutions don't work. Imposing mandatory sentencing is a dangerous avenue that does not allow for the examination of individual circumstances and situations. A mandatory life sentence denies the ability of a person to grow, change, atone and come to terms with the pain their actions have caused. Murder and other acts of violence need serious responses and a system in place that allows victims to heal and feel safe and the people that committed the crimes to be held accountable for their actions. Simply locking someone up and throwing away the key does not make the problem go away, nor does it revive the life that has been lost. We need to examine the roots of violence more deeply and begin to dismantle the problem in a more complete and holistic way.

PRA: Who are the VR groups in RI and who else is behind the legislation?

DARE: Consistently this legislation has been introduced by the same handful of legislators: conservative Democrats and Republicans, many of whom are retired law enforcement officials. In addition to these legislators, the support for these types of legislation has come from the state's VR group, The Rhode Island Victims' Advocacy and Support Center (RIVASC), The Rhode Island Brotherhood of Correctional Officers, and the victims of a few high profile crimes that have occurred in recent history.

The Rhode Island Coalition Against Domestic Violence (RICADV) is also sometimes involved. In some cases, it is difficult to tell if the legislator sought support of allies or if the allies proposed the legislation. At other times it is very obvious. For example, it was very clear that legislation regarding car-jacking was the crusade of a woman whose daughter was killed during a car-jack.

PRA: How did DARE respond to the legislation?

DARE: During the 2004 legislative session, there were about a dozen pieces of legislation all proposing longer and more severe punishment for certain crimes. The similar tone of these bills made our job somewhat easier because we could use the same testimony for nearly all of the bills, with minor adjustments to address the specifics of the legislation. Our testimony generally consisted of a basic argument that covered a range of reasons why this type of tough on crime legislation is ineffective as a deterrent to future crime and did little to nothing to make Rhode Islanders any safer and proposed an exploration of alternative measures that could begin to deal with the root causes of violence.

For better or for worse, we found that the most compelling arguments for the legislators were usually regarding finances and the cost of longer imprisonment rather than our other arguments regarding the effectiveness of imprisonment as a tool for achieving safer communities.

PRA: How did the proposed VR legislation affect DARE's organizing strategy and tactics?

DARE: Even though we continued to make principled arguments against these policies based on their purely punitive nature, budgetary and cost arguments were our best defense against increased prison terms. This realization created a tension within our organization between choosing "winnable" strategies and strategies that build power. Just because the cost argument is particularly persuasive to legislators, it is not the most important point we want to make. This brings up questions about how we win, not just doing this work to "win" through shortcuts.

PRA: Do people and advocates from your own community support some of the legislation?

DARE: Generally speaking, no. The main exceptions to this though have been politicians and legislators—most other individuals, unless organized, do

not have the same level of power or access to power. For instance, consider the case of a former Black legislator from Providence who represented the Southside, one of the poorest communities in the state. Overall, she had been a fairly progressive legislator and champion for poor people and people of color. However, after her son was murdered, she began a crusade to reintroduce the death penalty to Rhode Island. Just this year, a Latino legislator introduced a bill to greatly expand an existing zone in which drug dealing or possession carries an elevated sentence. When confronted with the fact that this legislation would most likely impact the Latino community the hardest, he agreed, but said he felt like he was left with no other alternatives for defending his community and addressing crime. He admitted that he would rather deal with the safety of his community by building more schools, community centers and the creation of jobs, but resources are not available for those things. A Black councilwoman, again representing the Southside, has said on more than one occasion that she wants to deal with the problem of drug dealers in her community by rounding them all up and pushing them off the end of a pier.

DARE's membership has also struggled with this issue. As an organization we have collectively agreed that law enforcement and incarceration are not effective means to deal with crime in our community. Despite this, there have been individual members that have expected the organization to facilitate intervention in conflicts they were having with neighbors by getting the police to respond to their complaints. It is people in poor communities of color that are suffering from the highest concentration of interpersonal violence. It is no surprise that these attitudes are prevalent in these communities, especially when other options and resources are not available as an alternative means for dealing with this violence.

PRA: What is it like coming up against the VR groups?

DARE: We have generally been met with accusations that we are insensitive to the desires and needs of the victims. RICADV has been very disappointed that we have not supported efforts that they believe will ultimately “save women’s lives” and prevent acts of violence. This happens despite the fact that we intentionally and sincerely acknowledge the pain and loss of the victim and

that central to the presentation of our arguments against incarceration is the idea that we believe there are other actions that can be taken that would truly achieve the safety that they are seeking, prevent future acts of violence and possibly be more healing to the victim and greater community. The reductive summarization of our position as “insensitive” is an intentional manipulation and effort to steer the dialogue away from a rational realm and into an emotional realm, which is the cornerstone of the VR movement and is relied on to trump all other concerns.

PRA: What’s wrong with what they’re saying? Aren’t they speaking their truth?

DARE: The framing of VR has become increasingly narrow over the years. The idea of honoring or “doing service” by the victim has become synonymous with imprisonment, or war in the case of honoring the victims’ of 9/11. We are told that anything short of this response is disrespectful to the victim. The only response that is seen as valid is one that is based in revenge and punishment, rather than healing and reconciliation.

The Right has succeeded in popularizing the idea that the roots of violence in our communities stem from individual actions and choice alone. Thus, the VR movement has had the most support from policy makers when it has advocated meting out punishment. Looking at the root causes of individual violence would lead to a picture in which the State and the failing of its institutions and policies would be in part to blame. It is much more convenient to condemn individuals and make the claim that they are inherently bad people and innately prone to acts of violence. We need to broaden the lens around the causes for violence to include poverty, war, racism and social conditions. Reshaping the dialogue to focus on State violence, rather than individual responsibility, would lead to a greater breadth of solutions that should be explored.

PRA: Have you tried to work with VR groups? Is there a way to build relationships with them?

DARE: DARE has not been proactive to this date with building relationships with VR organizations. This has been a mistake on our part that comes partially out of shortsightedness and partially out of a lack of resources. DARE’s relationship with VR groups has primarily been limited to polarized exchanges at the statehouse. DARE has, however,

done some relationship building with RICADV around the relationship between poverty and domestic violence and they were allies during our living wage campaign.

DARE has recently decided that it is a priority for the organization to devote time and energy into building these relationships. In particular, DARE is focusing on having conversations with SOAR, Sisters Overcoming Abusive Relationships, about ways that we can move closer to a joint vision on acceptable responses to domestic violence. Members of DARE's prison project will be joining members of SOAR's leadership program for a roundtable discussion as a first step in building this relationship and trust.

In another example, DARE has supported legislation to reduce the waiting time before someone could have their record expunged. The bill received considerable opposition from domestic violence organizations and ultimately did not pass. This year meetings have been held between all these parties, in advance of the legislative session, with the hopes that greater understanding around the bill can be achieved.

PRA: Are we fighting a losing battle against VR? What has to change for your ideas to gain support? What is your advice to other activists who come up against them?

DARE: In building these relationships it is essential that abolitionists do not just critique the use of law enforcement to deal with violence but also offer real alternatives and solutions. This would involve major economic and social reforms and transforming the conditions that allow violence and abuse to happen. Additionally we have an obligation to take part in building other means of community-based accountability to deal with interpersonal violence more immediately.

This is a difficult process. Recent incidents have caused DARE to think more seriously about what alternatives we are willing and able to offer as an organization. We have begun to have conversations with our membership about what kind of support would need to be in place for people to feel like they had a real alternative method of resolving conflicts that did not involve the police. As conflicts have arisen between members and their neighbors, we have made it clear that DARE staff and other members are available to come to the person's aid and try to mediate the problem. For example, an

elderly woman told the organization that she was having problems with tenants that lived above her. She suspected that they were dealing drugs. They were extremely loud and when she asked them to move out, they physically threatened her. Her original request was that we help her to get them arrested. We explained to her that we could not do that but talked her through some other ways of dealing with the problem. It was decided that several DARE members would go over to the house and have a conversation with the tenants about the impact that their activities were having on this woman. After both sides had the opportunity to explain things from their perspective it was agreed that it would be best for them to move out. We acknowledge that not all situations are as simple to resolve as this one and that we need to develop a variety of responses to deal with more difficult situations.

The statistical data is available to support the idea that prisons do not make our communities safer. We need to figure out how to have that data heard in a way that doesn't diminish recognition of peoples' suffering and pain. Conversations about responsibility for crime need to happen not when someone has recently been violated and is in the midst of their pain, but on an ongoing basis that builds trust in each other rather than putting all of our faith in a system that does not have our best interests in mind.

Additional Resources

Generation Five

2 Massasoit Street
 San Francisco, CA 94110
 Phone: 415-285-6658
<http://www.generationFIVE.org>

Generation Five brings together diverse community leaders working to end child sexual abuse within five generations. G5 programs provide leadership training to community members, activists and agency professionals and promote national strategy and information exchange on child sexual abuse. G5 is not a direct service organization; rather, it works in collaboration with service providers to ensure that affordable, culturally-relevant support is available to survivors, offenders, and affected families.

Murder Victims' Families for Reconciliation

P.O. Box 2173
 Albuquerque, NM 87103
 Phone: 617-868-0007
<http://www.mvfr.org>

MVFR is a national organization of family members of both homicide and State killings who oppose the death penalty in all cases. MVFR supports programs and policies that reduce the rate of homicide and promote crime prevention and alternatives to violence. MVFR advocates for programs that address the needs of victims, helping them to rebuild their lives.

Progressive Books/Reports

Dubber, Markus Dirk. 2002. *Victims in the War on Crime: The Use and Abuse of Victims Rights*. New York: New York University Press.

Murder Victims Families for Reconciliation. 2002. "Dignity Denied: The Experience of Murder Victims' Family Members Who Oppose the Death Penalty." Cambridge, MA: Murder Victims Families for Reconciliation.

Weed, Frank. 1995. *Certainty of Justice: Reform in the Crime Victim Movement*. New York: Aldine De Gruyter.

Endnotes Available Online!

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 plus additional information, can be downloaded
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CONSERVATIVE AGENDAS AND CAMPAIGNS

PROFITS FROM INCARCERATION

Over the past twenty years an idea has grown that entrepreneurs can—and should—make money from prisons. Several factors have contributed to this expectation. First is the idea that State services could be privatized, which in theory could decrease government size, save money and provide those services more efficiently. While the prison system has traditionally been a State industry, conservative think tanks like the Heritage Foundation have suggested that even prisons could benefit from privatization. Also, changes in federal drug laws and increased convictions with mandatory sentences helped contribute to overcrowded prisons, and a lagging economy decreased revenues available for new prison building. Finally, a handful of specialized corporations, including Corrections Corporation of America (CCA) and GEO Group (formerly Wackenhut), have developed a private prison industry that has cornered a small but visible portion of the prison “market;” about 7% of all prisoners are in private prisons in the United States.

SECTION OBJECTIVE

This section discusses how the State generates and encourages profits from incarceration. It also explores how prison guard unions benefit by securing a “tough on crime” Agenda.

IN THIS SECTION

- Role of the State: Creating the Market
- Role of the Right: California Correctional Peace Officers Association
- Organizing Advice: Q&A with Citizens Education Project
- Additional Resources



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ROLE OF THE STATE: Creating the Market

The government encourages, facilitates and implements ways for both itself and private businesses to profit from incarceration. Supporters of prison privatization hold a range of political views. Some reflect libertarian thinking, wishing to decrease the size and inefficiency of government and support efforts to outsource services and programs which they argue could be delivered more cheaply and efficiently by the private sector. Others with overt business interests see new entrepreneurial opportunities for investment, which they see as appropriate and healthy in a free market economy. Faith-based groups wanting to provide prison services recognize a new funding source that they can use to support their other prison-related agendas.

Critics of prison profiteering represent various ideological perspectives, too. Liberals, who believe that it is the role of government to provide a range of services, balk at what they see as the denial of the public duty inherent in contracting out prison administration. To them privatization in this area is one part of a larger problem of downsizing government and cutting back on services. Human rights advocates contend that prison labor is coercive and demeaning with few workers' rights. Prison guard unions oppose private prisons which they see as a threat to their jobs, and other union analysts identify prison labor as a threat to workers' wages on the outside. Those adhering to a tough on crime approach to criminal justice, like John DiIulio, do not want to see private entities running prisons. To them it is contradictory because the State should be the agent meting out punishments. Further, they see a problem with liability issues around private prison guards using deadly force on prisoners. Abolitionists, who argue for the eventual elimination of prisons, point out that the connections between corporate interest (from prison architects, private prison corporations and factories inside prison walls) and the criminal justice system resembles what has happened with the military. They describe this relationship with the phrase the "prison industrial complex." The following examples represent a few of the ways that the criminal justice system is used to generate profits.

Private Prisons

After about fifteen years of private prison implementation, serious problems like short cuts on services, prisoner abuse, and even inmate deaths began to emerge in private prisons across the country. Critics questioned the ethics of hiring armed guards who were not direct State agents and were in addition often under-trained. Scrutiny of cost-saving measures suggested that they did more to increase shareholder profit than they saved the State money. These kinds of ethical questions, combined with a decrease in prison population at the state level, lowered demand for private prisons. But the private prison industry demonstrated its resiliency.

Advocates for prison privatization built a behind-the-scenes infrastructure to guarantee support for their investments. Corporations built lobbying connections, networked with influential groups such as the American Legislative Exchange Council (which helps craft conservative legislation), and made substantial campaign contributions to sustain political interest in their product. Like any successful business, these companies adapt to current market trends. Once it became clear that the market would continue for federal prison beds, corporations shifted to accommodate this need, despite public criticism and weak financial gains. The INS and federal marshals have contracted for the construction and administration of detention centers. After recognizing that the real value of their prison holdings might lie in the facilities themselves, both CCA and GEO expanded their real estate investments and diversified their service offerings both here and abroad.

Building and running private prisons, however, is not the only money-making opportunity associated with the prison industry. Contracting for programs and services in state-run prisons is much more common. Almost every state arranges with vendors Departments of Corrections to provide one or more services, which range from the delivery of health care and food services to community residential programs and substance abuse treatment. While in some instances these contracts are with other public agencies, often they are with private agencies or for-profit companies. Since 2002, faith-based groups have been allowed to compete with secular agencies for public dollars to provide services. In addition, corporations sell everything from soap to telephone services, where prisoners have no choice but to place exorbitant collect calls, because the company that gets the contract has a monopoly. State corrections agencies pay over \$1 billion each year to prison contractors.

Prisoner Labor

An additional multi-million dollar industry in prison labor exists in most state systems and in federal prisons which generates products and services as far-ranging as airline bookings, tele-marketing, data entry and transfer, textiles, furniture manufacture, warehousing, and eyeglass assembly. In some instances, profitability is guaranteed by requiring certain state agencies to purchase goods from these prison businesses. National conservative think tanks such as the National Center for Policy Analysis or state-level groups like the Pioneer Institute in Massachusetts have encouraged the use of prison labor as a useful income generator. They point to the fact that in the nineteenth century, most prisoners engaged in productive labor and that this practice could be reinstated on a larger scale than current levels, which involve a minority of prisoners.

Many groups oppose the use of prison labor as income generation for the State, citing a range of objections. Despite legislation that requires prisoners working in prison industry enhancement programs to be paid at least minimum wage, a substantial portion of that wage is reclaimed by the prison in fees and recycled back into state or federal coffers. Clothing is often exported to avoid regulations that prevent prison products from unduly competing with private commerce. The historic justification for prison labor was that it rehabilitated prisoners, although today prison industries appear to focus more on the business principles of productivity and profitability.

Renting Prison Space

As corporations completed construction of their prison facilities, the number of available beds began to exceed the number of prisoners in some locations. States like Virginia, Texas and Tennessee began to rent their prison space to other states, charging fees that were higher than costs and generating revenue for the state. Twenty-nine states boarded prisoners in other state prisons or in federal facilities in 1999.

Pay To Stay

Recent discussions in the media have profiled another income-generator associated with prisons: the Pay to Stay programs, which require prisoners who are financially able to pay per day for the costs of being jailed. This income typically goes to pay for services like drug rehabilitation programs that were previously provided with public funds. About one third of county jails used this program in 2004. In this case, the justification is that it helps defray the costs of running local jails. But reports about its success have been mixed, with stories about unrealized income projections and public criticism of it as a form of double punishment.

ROLE OF THE RIGHT: California Correctional Peace Officers Association

For the last twenty years, the California Correctional Peace Officers Association (CCPOA) has been one of the most powerful players in California state politics. Commonly referred to as the prison guard union, CCPOA is a union of prison guards and other employees in the field of corrections. CCPOA contributes heavily, more than any other California organization, to political candidates who support pro-incarceration and tough on crime policies. Extending beyond such traditional union issues as wages, benefits, and working conditions, CCPOA has successfully influenced public policy on crime control, drug laws, and state budgets.

In the 1980's, CCPOA capitalized on the "prevailing conservative climate by adopting an aggressive agenda to further promote prison expansion and ensure a growing inmate population," And therefore employment and power for its members.¹ Today, California is home to one of the largest prison systems in the world. In the last two decades, the California prison population has grown by more than 550%,² from about 24,000 prisoners in 1985 to almost a 160,000 prisoners in 2004.³ California's Department of Corrections budget has also increased from \$923 million in 1985 to \$5.7 billion dollars today.⁴ This explosive growth has been accompanied and partly fueled by CCPOA's firm grip on California's criminal justice policy which, many believe, has "produced mismanagement and abuse that waste tax dollars and compromise the public's interest."⁵

HISTORY

CCPOA was originally founded in 1957 as the California Correctional Officers Association (CCOA). Founder Al Mello and eight other correctional officers started the group to address pay issues and working conditions that had allegedly prompted a correctional officer to commit suicide.⁶ By 1978, CCOA's membership expanded to over 2,500 members, although it still remained weak in comparison to other California unions such as the California Teacher's Union. However, under the aggressive new leadership of Don Novey, a second-generation correctional officer, CCOA would soon become a formidable and unstoppable force in California politics.

The 1980s marked a transformation for the union as political mastermind Novey took over. In 1982, CCOA was officially renamed CCPOA so that parole officers, psychiatric and medical technicians and correctional counselors could also join the union. As CCPOA's membership and financial base

CYCLE OF CCPOA INFLUENCE

- 31,000 members pay \$59.42 per month to the CCPOA.
- Union dues total \$21.9 million per year.
- 65% of that money goes to operations.
- 35% of the budget funds political activities.
- The political budget flows out in 6 main directions.
- CCPOA pays for public relations.
- CCPOA pays for lobbying services.
- CCPOA funds affiliate groups.
- CCPOA contributes "soft money" to political parties, political events, debates.
- CCPOA gives direct contributions to candidates.
- Election winners support the CCPOA political agenda.
- Tough on crime legislation fuels expansion of the prison system.
- Expanded prison system adds membership to the CCPOA.

—Excerpted from Center on Juvenile and Criminal Justice, "California Prison Politics," (copyright 2002). Reprinted with permission.

grew, so did its power. CCPOA began contributing large sums to support pro-incarceration policies and politicians who advocated for the growth of California’s prison industry.

CCPOA’s early campaigns revolved around advocating for wage increases and “improving” working conditions for correctional officers. Throughout the 1980s, CCPOA successfully lobbied for better training, “stab-proof” vests, and the right to force prisoners to submit to an HIV test. When corrections management refused to approve expanded use of a side-handle baton, CCPOA went over their heads and persuaded the legislature to pass a bill that expanded use of the weapon. By the early 1990s, CCPOA had set up a legal defense fund to protect members accused of crimes while on the job.⁷ By 1992, CCPOA was California’s second largest political action committee, donating over one million dollars to political candidates that year alone.⁸ In the mid-1990’s, CCPOA members had the best pension plan in the country, and its members boasted an average salary that was 58% higher than the national average.⁹ CCPOA made history in 1994 when it made the single largest political contribution of \$425,000 to help elect former governor Pete Wilson (R-CA).¹⁰

CURRENT STATUS OF CCPOA

CCPOA’s “lightning fast evolution from an obscure organization into a powerhouse”¹¹ has had an extraordinary impact on California politics and the unprecedented growth of the corrections system. CCPOA contributed millions to get Republican Pete Wilson elected in 1991 and Democrat Gray Davis elected eight years later. As a result, CCPOA was able to negotiate large salary increases.

In 2004, facing a severe budget crisis, newly elected governor Arnold Schwarzenegger (R-CA) was forced to ask CCPOA to delay the hefty three-year 10.9 % salary increases it had secured with the Davis Administration. Instead, CCPOA was offered three consecutive 5% pay raises over the next few years.¹² Although the Schwarzenegger Administration claimed the deal would save California more than \$100 million, in reality, the new agreement “saves almost no money

IN BED WITH THE GOVERNOR?

While the CCPOA achieved unprecedented political influence under [the Pete] Wilson [(R-CA, 1991-1999) administration, it was not until Gray Davis’ [(D-CA, 1999-2003)] election that it achieved dominance. In 1998, the union contributed a total of \$2 million to Davis’ campaign, including \$946,000 on an independent expenditure campaign for last-minute television ads targeting swing voters.

As governor, Davis virtually surrendered control of all corrections matters to the CCPOA and its leadership. No one in the Davis administration dared take a position that would be perceived as contrary to the union’s interests, to the point where the director of the Department of Corrections and his senior staff seemed willing to countenance unconscionable abuse and mismanagement.

The union’s remarkable influence over Davis and his administration became glaringly apparent in 2002 when he signed a new contract guaranteeing a guard pay increase of 37.7% at the same time that California was confronting the most serious fiscal crisis in recent history. Under this contract, a guard with seven years of service who earned \$53,000 per year would now receive a yearly salary of \$73,000. In addition, under the new contract, correctional officers were no longer required to show a doctor’s note when calling in sick. This provision led to a 27% increase in sick hours between 2001 and 2002 and an additional 500,000 hours in staff overtime.

—Excerpted from Center on Juvenile and Criminal Justice, “California Prison Politics,” (copyright 2002). Reprinted with permission.

in the long run,” and in fact only serves to “increase the union’s influence.”¹³

Recent media coverage of several major allegations of prisoner abuse, along with the large California budget deficit, have prompted at least some public scrutiny of CCPOA. A commission appointed by Governor Schwarzenegger to study the state’s prison system bluntly stated the following in 2004: “The agreement between the state and the California Correctional Peace Officers Association ... clearly has resulted in an unfair and unworkable tilt toward union influence.” The report also added that CCPOA’s contract “contains numerous provisions that seriously undermine the ability of management to direct and control the activities of existing correctional departments.”¹⁴

In order to improve their public image, CCPOA has continued its decade old strategy of launching aggressive public relations campaigns, portraying itself as “representing the men and women who walk the toughest beat in the state.” In the past, CCPOA has released several promotional videos with titles such as *Inside Corcoran: Where Hell Begins* (1999) and *Inside Harm’s Way: Life inside the Toughest Beat in California* (1996). (See box on CCPOA’s Slogan).

However, despite its many critics, CCPOA continues to enjoy levels of unprecedented success. Paying almost \$60 in dues each month, CCPOA’s 31,000 members generate \$1.8 million a month and over \$21.9 million a year.¹⁵ In turn, the steady influx of resources allowed CCPOA to gain tremendous political leverage by hiring its own lawyers and lobbyists.¹⁶ By 2002, CCPOA had negotiated several major victories for their members. Average salaries had more than doubled from \$14,400 in 1980 to \$54,000 in 2002,¹⁷ the highest correctional officer salary in the country. CCPOA’s staff had also swelled to 91 staff members, including 20 full-time attorneys, lobbyists, and public relations consultants.¹⁸

POLITICAL AND ECONOMIC INFLUENCES

CCPOA has gained much of its influence by contributing heavily to politicians and legislators. CCPOA gives twice as much as the California Teacher’s Association despite being only one-tenth the size.¹⁹ In 1998, CCPOA contributed around \$2 million to former Governor Gray Davis’s (D-CA) campaign with about \$946,000 for television ads in the final few days leading up to the election. Once in office, Davis promised to build a new prison in Delano and approved a five-year contract raising top salaries by as much as 25%. If fully implemented, these changes would have cost California more than \$1 billion—while California was experiencing a recession.²⁰

Most of CCPOA’s spending is through political action committees (PACs). CCPOA played a major role in the passage of the Three-Strikes legislation in California and was the second biggest donor to the cause, giving \$101,000 to the initiative.²¹ CCPOA spent more than \$9.6 million in the last two election cycles alone. CCPOA is “alleged to have as many as 11 PACs,”²² although the exact number of PACs working with CCPOA interests is unknown. CCPOA’s contributions extend to Democrats, Republicans, and all three branches of government (legislative, executive and judicial).²³

DARE TO OPPOSE CCPOA?

Legislators who oppose CCPOA put themselves at risk. They not only deny themselves contributions from the biggest spenders in the state, they also subject themselves to public relations assaults. For example, the CCPOA initiated a direct-mail campaign sent to every member that listed the “Enemies We Face” and included Senators John Vasconcellos and Richard Polanco. The result is overwhelming support for the CCPOA and legislators scramble for endorsements and contributions.

—Excerpted from Center on Juvenile and Criminal Justice, “California Prison Politics,” (copyright 2002). Reprinted with permission.

CCPOA'S SLOGAN: "TOUGHEST BEAT IN THE STATE"

"Every day they 'walk the line' among some of the toughest, most violent inmates in the world... These are the men and women of the California Correctional Peace Officers Association—dedicated, proud, courageous law enforcement professionals who walk the toughest beat in the state."

CCPOA's promotional materials aim to raise questions about who is more vulnerable in California prisons—the inmates or the officers. Since 1997, the CCPOA has spent at least \$361,000 on public relations campaigns, primarily crafted by McNally Temple Associates. One goal of CCPOA's public relations campaigns is to counter negative press that correctional officers received, including reports of alleged staged fights and subsequent shootings of Corcoran inmates.

To take the spotlight off the alleged brutality of correctional officers, the CCPOA has emphasized the brutality of inmates. CCPOA literature, TV commercials and promotional videos advertise that six officers are assaulted every day. Inmates use handmade weapons. They throw feces. "They can assault you for no reason." They act without rationale, like caged animals.

CCPOA promotional materials never show an inmate by face or by name. Instead, videos depict inmates as anonymous, predatory creatures. Interviewees refer to inmates as "the criminal element" or "the predatory element." According to one video, "The predatory element is always on the hunt." The video shows scenes of staged violence where inmates overtake correctional officers and brutally beat them.

"They're victimizers," a young, blond correctional officer tells the camera, "They victimize people on the street. Right now they're victimizing us inside the institutions anyway they can."

In contrast to the faceless criminals, the correctional officers in the videos are a diverse workforce of men and women, who talk about the real tensions and stresses of their work environment. They describe kissing their kids goodbye everyday, not knowing if they will see them again. These individuals are "the unseen heroes of law enforcement."

When asked what motivates him to go to work every day, one officer responds, "Our main purpose is to keep those people away from our daughters, away from our wives, away from you."

CCPOA promotional materials work to maintain a heightened fear of crime in the public. This is essential to maintain support for the CCPOA political agenda.

—Excerpted from Center on Juvenile and Criminal Justice, "California Prison Politics," (copyright 2002). Reprinted with permission.

While each PAC may have its own uniquely stated agenda, all money generally serves to boost incarceration rates and the length of sentences, which in turn benefits CCPOA members by ensuring their jobs. However, an accurate and a complete picture of their finances is unavailable because CCPOA falls within a legal loophole. As a union of state employees, instead of private or federal employees, CCPOA is exempt from federal policies that mandate public disclosure of its finances.²⁴

CCPOA also creates and funds affiliate organizations in order to give the appearance that many organizations support its agenda. For example, according to the Center on Juvenile and Criminal Justice, the Native American Peace Officers PAC (NAPO) is a "shadow organization run entirely from the offices of CCPOA" that has donated over \$200,000 to political candidates. CCPOA also heavily supports Crime Victims United of California (CVUC) and the Crime Victims Bureau (CVB), two of California's most influential victims' rights organizations that routinely call for longer and more punitive sentences.²⁵ Crime Victims United of California received about 95% of its initial funding from CCPOA. The union also provided office space, telephones, lobbying teams and even a full-time staff consisting of researchers and directors.²⁶

CCPOA'S ALLIANCES, POSITIONS, AND STANCES

Native People

CCPOA maintains a strategic alliance with Native tribes and organizations. The California Teachers' Association (CTA) used to be the most powerful union in California. However, as gambling became legalized on Native reservations, a variety of Native tribes gave over \$20 million in campaign contributions and surpassed the CTA.²⁷ According to the Center on Juvenile and Criminal Justice, in 1998 an alliance began and by 2001 the CCPOA contributed \$60,000 to the Native American Peace Officers PAC. Together the cash and political clout is able to wield considerable influence in California politics.²⁸

Privatization

CCPOA is a strong opponent of prison privatization mainly out of self-preservation and self interest. CCPOA is not necessarily opposed to privatization as a principle, but in this case because it would break down the cycle of wealth and power creation for the union. Since CCPOA is a union of state employees, privatization would inevitably result in the loss of CCPOA members' jobs. As prisons become privatized, CCPOA would lose membership numbers and power.

Those who dare to oppose CCPOA's anti-privatization stance face political suicide. When conservative assemblyman Phil Wyman (R-Tehachapi) advocated for private prisons in his 2002 re-election campaign, CCPOA poured \$200,000 into his opponent's campaign, and Wyman lost the election.²⁹

Services for Prisoners

Despite state commissions that have criticized the lack of rehabilitative services in California prisons, CCPOA has repeatedly fought against services for prisoners. In 2004, "the CCPOA waged vigorous campaigns to prevent the establishment of education programs, which have been shown to lower recidivism rates, at two state prisons."³⁰

Three-Strikes/Mandatory Sentencing

CCPOA benefits immensely from rising incarceration rates. As more people are incarcerated, the hiring of correctional officers will also increase. It follows then that CCPOA is a strong supporter of mandatory sentencing, three-strikes, and other policies that increase incarceration. In California, three-strikes was heavily funded by CCPOA in partnership with the National Rifle Association (NRA) and various victims' rights organizations. CCPOA was the second largest donor to the three-strikes crime initiative, giving about \$101,000. Republican Congressman Michael Huffington gave the largest donation at \$350,000 and the NRA gave \$100,000.³¹

Victims' Rights

CCPOA supports victims' rights organizations and legislation as a political tactic. Since most victims' rights organizations are advocating for tougher laws and longer sentences, there is a natural partnership. "The CCPOA brought money; crime victims brought a pretty face. As Jeff Thompson, lobbyist for both CCPOA and Crime Victims United of California (CVUC), explained, 'Nobody feels empathetic for prison guards, but everyone's got sympathy for crime victims.'³²

CCPOA's funding and staff support was the "link that shifted the crime victims' movement into high gear."³³ CVUC's executive director states: "If CCPOA hadn't helped us, we wouldn't have CVUC. They saw a need for a statewide umbrella entity instead of individuals and local groups of victims doing their own thing and they filled it."³⁴ CCPOA provided CVUC with virtually all of its start-up funding and other needs. As CVUC grew, CCPOA replaced direct funding by paying for the salaries of CVUC's executive and research director positions. CCPOA also supports the Criminal Victims Bureau (CVB) by providing 78% of their funding along with office space, computers, equipment and most importantly political leadership and coaching.³⁵

"This strategic alliance with crime victim groups also allowed the CCPOA to form relationships with other law enforcement groups, such as the District Attorneys' Association and the California Sheriff's Association."³⁶

Endnotes Available Online!

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ORGANIZING ADVICE: Opposing Private Prison Construction

Q & A WITH CITIZENS EDUCATION PROJECT AND WESTERN PRISON PROJECT

As the western state that has seen the most organized grassroots activism in opposition to private prisons, Utah provides a case study for organizers. Steve Erickson, one of the co-founders of the Citizens Education Project, spoke with the Western Prison Project in June 2000 about their organizing efforts in Utah. Following is an excerpt from that interview.

WPP: What was your organizing strategy in fighting the proposed private prison in Utah?

SE: The first thing we wanted to do was to focus attention on the fact that this decision had been made, that the state was proceeding down a path of prison privatization without sufficient public debate on the subject. The public was completely unaware of it. The legislature, in the '98 general session, put about \$2 million towards site evaluation for a private prison, and they appropriated the funding through the Department of Corrections to begin the process. Now that would have been enough money only to have the initial work done, short of construction, but that commitment was made by the legislature. It was made without anybody knowing that it was going on.

WPP: Who was backing this process?

SE: Well, as we were to later find out, the president of the Senate and the speaker of the House, who quickly became the former Speaker of the House for other reasons—those were the two main players in the legislature—and the third main player was the governor, who was very supportive. There is, as in many conservative states, a real philosophical allegiance and bent towards privatization of as many government services as possible. That's still the case in Utah.

WPP: You succeeded in generating an enormous amount of press on these issues. How did you work that?

SE: Well, I've been involved with press work going back to the MX fight in 1980-81 [the fight to keep MX missiles from being sited in Utah], so I have a lot of press contacts and background. We worked together to develop our script, our main points, how we were going to play it out, and what hot

buttons to push with the press and the public. It was critical to get the press on our side and help us create the issue. It didn't produce a groundswell of public outrage about private prisons, but it did give the politicians the jitters, and that was crucial. It also brought out local folks, and so we were able to make connections with the grassroots. These were folks from rural Utah whose towns were being targeted as possible sites for this first 500-bed private prison. We worked quite a bit as advisors and sort of as lobbyists and press agents for local groups who are out in pretty isolated, small communities where they don't have access to power—which we have here in the city.

WPP: How important was the local activism in fighting the prison siting?

SE: It was absolutely essential.

WPP: One of the challenges in prison siting fights in small communities is the issue of NIMBY—Not In My Back Yard. How did you work with that?

SE: We allowed it to play its own course at the local level. If they didn't want it for reasons that could be classified as NIMBY, we could work with that. We would prefer that they would take a philosophical stand against the whole notion [of privatized prisons], and many of the individuals who were involved did. As they became more educated about private prisons elsewhere in the country, they became much more convinced that the whole concept is anathema to good government and to democracy and to responsible criminal justice.

WPP: Do you think you played a major role in that education?

SE: Yeah, we sent lots of materials, primarily by e-mail. We tried to give them as much back-up information as we possibly could, without killing them. I mean, these people have lives too. We tried to empower them with information and then we provided the technical expertise in the area of lobbying and media. There were some remarkable folks who just did a bang-up job. They were creative, they went out and built coalitions within their communities, got hundreds of people to sign on petitions, forced it onto the ballot in Fillmore, and won on the ballot by a substantial margin. They learned their own lessons in political activism as

they were doing it. Many had never done anything like this before, so we give a lot of credit to them. We assisted, but we are not responsible for what they did...they get the credit for what they did at the local level, not us. We were just a helping hand, an important helping hand, but they did it.

WPP: So the working relationship between CEP and the local activists was one of mutual aid?

SE: Mainly us aiding them, but in the end, they aided the whole issue which made it much more possible for us to operate with more flexibility when it came to the political work that needed to be done. For instance, it was a small group of people headed by Tom Chandler and Peggy Overson in Delta, Utah, which is near Fillmore, who convinced their state representative, Mike Styler, that this was a bad idea. I know Mike really well, he's a farmer, and had sort of a pro-privatization mentality to start with, but he didn't like the idea of this prison deal, and he was convinced by his local constituents to become a player on the issue. He's the guy who carried the amendment outlawing the importation of out of state inmates to the private prison to the legislation that passed in the '99 session.

WPP: Who drafted that legislation?

SE: We worked with him on that draft. It passed as part of an amendment to a larger bill that was intended to restrict private prisons. That bill passed the House of Representatives unanimously. So the lobbyists for the private prisons—and there were a bunch of well heeled lobbyists, I'll tell you—they were just caught completely flat-footed and there was nothing they could do because that amendment was overwhelming.

WPP: You even got the Mormon Church to take a stand against private prisons, didn't you?

SE: The Church never really came out, but the Church newspaper did. *The Deseret News*, owned by the Church, doesn't take a stand on a major issue in the state without getting at least the nod from the Church hierarchy. Basically, they opposed private prisons as "commerce in souls." And that's their job.

WPP: As the campaign went on, what were the main organizing handles on this issue?

SE: Well, what we tried to do was to keep hammering the fallacy that this was a money saver, and that it was inappropriate for government to relinquish responsibility to private corporations. So we really

hammered the immorality of the concept and the bogus cost-savings that politically drive these deals. We tried to make the case, though I don't know if we were ever quite as effective as we would liked to have been, that this is not going to be profound economic development in rural communities, that the impacts are going to be such that they will outweigh the benefits. It was difficult to get that word out, so we focused mostly on the media and the legislative politics in the fight, as opposed to trying to get the people of Grantsville to reverse their support for the private prison.

WPP: Were there key turning points in the campaign?

SE: Yeah. One was that in '99, they were struggling with balancing the budget. Utah's had a real boom economy for several years, but tax receipts started to slow down substantially heading into the '99 session. Corrections already had all these other problems that they had to finance, including the big issue that their prison guards get paid substantially less than the guards who work at the county jails, and of course we worked this one with the private prison issue. So Corrections had to go to the legislature and ask for a greater degree of wage parity with the counties. At the same time, the counties were quite concerned, and the sheriffs especially, that they were not getting the numbers of prisoners from the state to house in their county jails that the state had promised.

WPP: In their over-built county jails?

SE: Yeah. What happened is that the county saw the state, and contracting with the state, as a way to build large new jails that the state would indirectly help finance. For instance Beaver County, which is a tiny county with only two significant towns in it—we're talking about maybe 2000 people in each town, maybe less—they built a 190-bed jail, when their average local jail population would cover between ten and twenty, mostly for little things. The counties get a certain per inmate per day reimbursement for housing state inmates at county jails. The counties have gone out and bonded at the local level for the money to construct jails, far larger than they need to accommodate their local prisoners, and they use the state reimbursements to pay off the bonds.

The points we were driving were two-fold. First, why are you building a private prison if you're not filling the jail space that's already out there with the

counties, and you've got the counties upset with you because they're not getting the income they need to pay off their bonded indebtedness? The second issue that we hammered was, look, if you can't keep personnel at your state prisons because they can go to the county jail and get better pay, what's going to happen when a private corporation comes in and tries to find additional personnel to run that jail? They may be able to offer more in salary, but they are going to offer a whole lot less in benefits and working conditions and therefore you are going to have staff turn over. And of course we had all these examples from across the country where they had chronic problems with staffing in these private facilities...so we just hammered that issue.

WPP: How did you finally make this a dead issue in the 2000 General Session of the legislature?

SE: I think in the end, what happened was the allegiance with the counties and the sheriffs pushed it over the top. We kept raising so much fear, uncertainty and doubt about the stability of the industry, about the track record of the industry, about the cost issues that it created uncertainty within the legislature when they had a million other issues on their plate. So they just threw up their hands and said, "well, we don't know what to do with this mess." And this is where it ended. They still could come back. This is a hydra-headed monster—you cut off one head and the next head pops up. We can say with some degree of confidence that this is a dead issue for now. We don't know if two years from now it may come up again, but they would have to go through another whole bidding process and start over.

This interview first appeared in The Prison Payoff: The Role of Politics and Private Prisons in the Incarceration Boom, by Brigette Sarabi and Edwin Bender, Western States Center and Western Prison Project, 2000.

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Additional Resources

California Prison Moratorium Project (CPMP)

PO Box 339
Berkeley, CA 94701
Phone: 510-595-4674
<http://www.prisonactivist.org/pmp/>

CPMP seeks to stop all public and private prison construction in California for five years. They have published an excellent guide titled: "How to Stop a Prison in Your Town: An Information, Research and Action Handbook."

Not With Our Money! (NWOM)

c/o Grassroots Leadership
610 Brazos, Suite 300-E
Austin, TX 78701
Phone: 512-482-8835
<http://www.notwithourmoney.org>

NWOM is a network of student and community activists working to end the use of prisons for profit.

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Endnotes Available Online!

All citations and references are available at www.defendingjustice.org or by contacting PRA.

CONSERVATIVE AGENDAS AND CAMPAIGNS

SECURING A CONSERVATIVE INFRASTRUCTURE

The Right has capitalized on a variety of methods to secure support for its ideas and programs. This process, commonly known as “building infrastructure,” has developed over the past 25 years to create an impressive web of supports that buttress a right-wing agenda. This section addresses the structural elements that support the Right’s criminal justice agenda.

The most common method of codifying political ideas is to secure the successful passage of supportive legislation. A surefire way to do this is to gain strength in state and federal legislative bodies. The passage of laws like Truth in Sentencing statutes and the USA PATRIOT Act illustrates the Right’s political power in creating harsher penalties and compromised civil rights in the name of public safety by mobilizing majorities of legislators.

Another successful approach has been to have conservatively dominated legislatures enact laws that disenfranchise blocs of voters. According to the Sentencing Project’s 1998 report, “Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States,” the racial impact of laws that prevent convicted felons from voting is enormous. 13% of African American men cannot vote because of these laws, and in six states, mostly in the South, over 25% of African American men are disenfranchised. In all, 3.9 million U.S. citizens were denied the right to vote in 1998.¹ Undoubtedly it was even greater in 2004.

Presenting conservative ideas through voter referenda has proved successful for the Right. The eleven marriage referenda that passed in 2004 are excellent examples. In the criminal justice arena, another example is the California anti-youth referendum Proposition 21 which passed in 2000 expanding punitive penalties against minor offenders. In 2004, again in California, a progressive initiative to ease the effects of the “three strikes law” by limiting its reach only to those convicted of violent crimes was defeated.

A more under-the-radar method has been to create an organization that simultaneously provides model legislation to busy legislators and lobbying opportunities for business interests that stand to gain particular legislation. Alan Greenblatt’s article, “What Makes ALEC Smart?” which is included in this section, describes the American Legislative Exchange Council’s history and influence. Conservative think tanks, both at the national and state levels, also influence legislation through their publications, networks and lobbying efforts.

A fourth approach is to influence legal thought on the bench, at law schools, and among influential lawyers. The Institute for Democracy Studies has explained the workings of The Federalist Society, an organization with a mission to “reorder priorities within the legal system to place a premium on individual liberty, traditional values, and the rule of law” by reaching out to lawyers, judges and law professors.

SECTION OBJECTIVE

This section discusses the various judicial, legislative and legal strategies the Right uses to maintain and strengthen a conservative criminal justice and legal system.

IN THIS SECTION

- Right-wing Judicial Strategies
- Right-wing Legislative Strategies
- Right-wing Legal Strategies
- Additional Resources

RIGHT-WING JUDICIAL STRATEGIES

The judicial system itself has been a target for influence on criminal justice issues. The system's structural flaws benefit conservatives, the Right has been particularly adept at crafting a strategy aimed at increasing its judicial influence. The following are some of the Right's key strategies.

CONSERVATIVE JUDGES. Securing the placement of conservative-friendly judges at all levels of the court system is one way to affect the outcome of criminal trials. Judicial appointments are now highly politicized along partisan lines, with conservatives accusing liberals of selectively endorsing “activist judges” who are accused of passing judgment based on their political perspectives, not on an objective reading of the law. The review time for new appointments can be very lengthy as conservatives and liberals battle on the floor of their legislatures. Organizations like the American Center for Law and Justice, headed by Jay Sekulow, actively lobby against “judicial activism” as well as argue cases before the Supreme Court and other federal and state courts with the hope of establishing precedent in case law.

CURBING JUDGES' POWER. Some conservatives seek to curb current judges' powers. Edwin Meese, at the time a Heritage Foundation Fellow, wrote in 1997 that “The doctrine of judicial review gives unelected federal judges awesome power to usurp the democratic process.”² There has even been an unsuccessful attempt to argue for the impeachment of sitting Federal judges who do not conform to a very conservative viewpoint represented by the theocratic National Legal Foundation.³

ABOLISHING PAROLE. Many of these ideas are presented by spokespeople in conservative journals that members of the legislative and judicial communities read. *Policy Review* is one such journal, first published by the Heritage Foundation and now by the Hoover Institution at Stanford. In 1995, ahead of the curve, it published both an attack on the Legal Services Corporation and an argument for the abolition of parole.⁴

LIMITING PLEA BARGAINING. Another avenue at altering the court system is to take advantage of the backload of cases in the criminal system. About 90% of these cases are settled out of court through the process of plea bargaining. Much criticized for its flaws by both the Left and the Right, the plea bargaining system allows prosecutors to negotiate with defendants who exchange the right to a trial for a more lenient sentence. The price is the requirement of pleading guilty, often to a lesser charge. These pleas result in higher conviction rates and more rapid imprisonment of defendants. In 2003 Attorney General Ashcroft changed a Department of Justice policy, requiring federal prosecutors to seek “the most serious readily provable chargeable offense,” limiting prosecutors' ability to offer a lesser charge bargain. Plea bargaining, at least in federal courts, becomes less attractive to defendants and limits their options. The poor, who rely on public defenders, are especially affected by this kind of policy change.⁵

ELIMINATING JUDICIAL DISCRETION. A related tactic associated with the courts has been influencing the legislation of mandatory minimum sentencing and harsher sentencing guidelines. Both of these attempts to influence the length of prison sentences have successfully limited the discretion judges can use in issuing sentences from the bench. Furthermore they increase prison populations by requiring the issuance of longer sentences and prison time for more offenses.

CHALLENGING THE RIGHT TO A LAWYER. There has even been an attack on the ability of people to seek legal representation. Over the past 30 years Legal Services Corporation (LSC), which runs 200 local legal assistance bureaus and receives federal funds, has provided access to justice for low-income Americans to legal aid when they have a civil problem and cannot afford to hire a lawyer. For most of its existence, the LSC has been attacked by several interest groups that do not want federal money spent to provide a service to the most vulnerable members of our society. On the surface, the criticism focuses on the LSC as holding a left-wing agenda and supporting people who do not deserve federally-funded help. But a report from the Brennan Center for Justice at New York University's School of Law, "Hidden Agendas: What is Really Behind Attacks on Legal Aid Lawyers?" uncovers the actual reasons for three different advocacy groups' opposition to the LSC.

The American Farm Bureau Federation, which represents agribusiness interests, criticized LSC workers for "stirring up controversy, particularly among migrant and seasonal farm workers."⁸ The Farm Bureau successfully joined forces with other conservative groups, beginning in the 1980s, to decrease federal funding for LSC, to restrict the types of cases LSC lawyers could take on, and to prevent undocumented workers from receiving LSC aid.⁷

Another group, the National Legal and Policy Center (NLPC), began its watchdog Legal Services Accountability Project in 1995, shortly after its Chair Kenneth Boehm was fired from the LSC itself. According to the Brennan Center, Boehm's anti-LSC tactics include targeting legislators who support LSC and conducting smear campaigns through the publication of the LSC Report's "Horror Stories." Much of Boehm's opposition appears to stem from his dissatisfaction as an employee of the LSC, yet he was able to get funding for his attacks from the well-known conservative funders Scaife and Olin. These days the NLPC seems to have shifted its resources away from its Legal Services Corporation Accountability Project to other NLPC concerns about ethics in public life.

A third source of attacks on the LSC has been the Religious Right. The Christian Coalition, under the leadership of Ralph Reed in the 1990s, James Dobson and Gary Bauer's The Family Research Council, and the American Family Association in 2000 have in turn attacked LSC on

THE FEDERALIST SOCIETY

The Federalist Society for Law and Public Policy Studies is an organization of lawyers, law students, judges and law school faculty which, since its founding in 1982, has developed into a body that holds influence over the entire American legal system. Its leaders include federal judges, law school faculty and Congressional conservatives like Orrin Hatch (R-UT) and Supreme Court nominee Robert Bork. It does not file cases and remains technically non-partisan, but its conservative/libertarian influence is widely recognized.

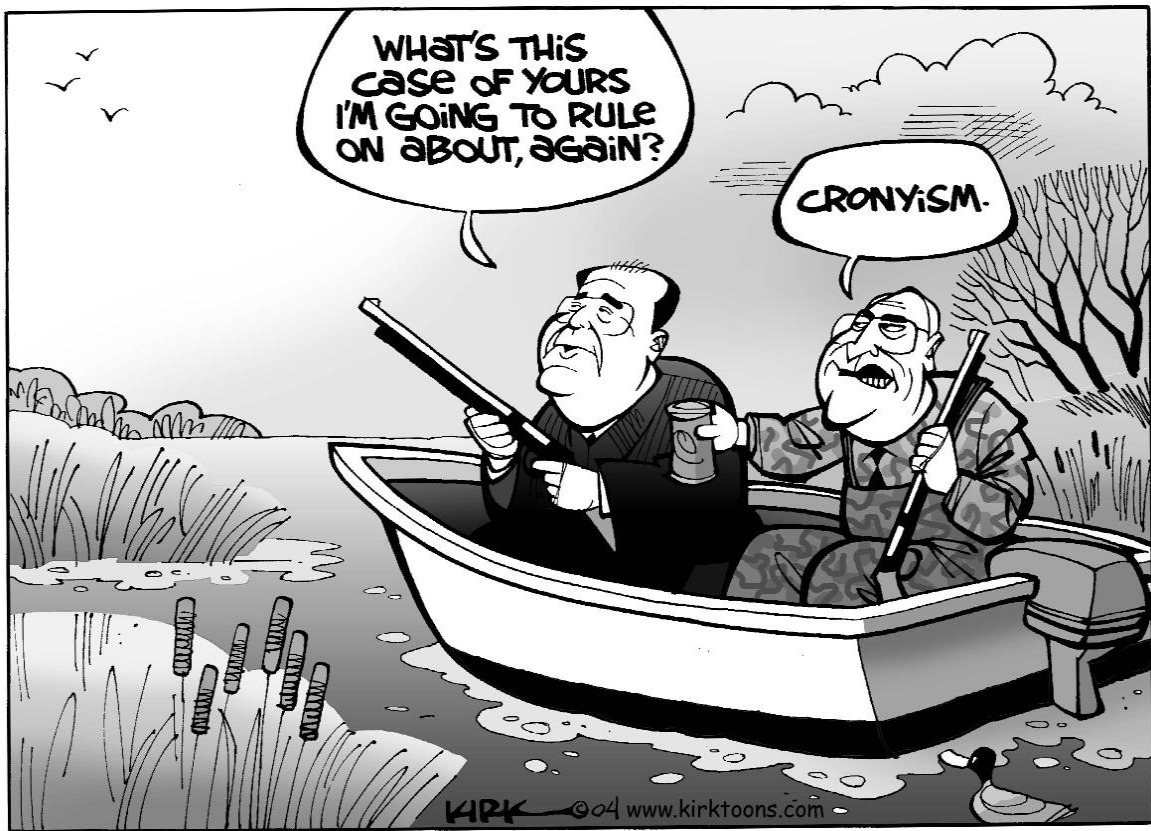
The Federalist Society states that its purpose is to foster debate and discussion about the issues, but the articles and interpretations in its publications are all decidedly conservative and/or libertarian. It affects a wide swath of legal thought, and it weighs in on judicial appointments at all levels of the judiciary as well as clerkships with judges. In fact, it has created the leadership pipeline for conservative law students who find joining one of its 140 law school affiliates a career necessity.

Much of the work of the society is done by its members who may join its fifteen Practice Groups, including one on Criminal Law and Procedure. This groups has sponsored panels at legal conferences on such topics as the Exclusionary Rule, Miranda, and sentencing guidelines, where members analyze the approaches they have taken in arguing for conservative or libertarian interpretations.

moral grounds. They have claimed LSC lawyers annually represent 200,000 low-income women who challenge the institution of marriage by getting divorced. Anti-women rhetoric from these groups backfired, however, when other religious groups pointed out that poor women need legal support when attempting to leave abusive or violent marriages.

These campaigns demonstrate that opposition to LSC is the result of complaints some conservative groups have with the legal system in general and its impact on issues they hold important, such as moral values, limited regulation, and decreased federal support for poor and immigrant groups. Over the years the LSC has watched its budget shrink, illustrating another infrastructure technique, defunding programs that challenge the Right's agenda.

While some of these methods are not immediately obvious to a casual viewer or they affect a small area of the criminal justice system, when combined as a package, they exercise a much larger influence on the system than you may think. Thanks to conservative strategists who successfully identified campaigns with potential high impact, the combined impact of these structural elements is significant.



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RIGHT-WING LEGISLATIVE STRATEGIES

The Right has been extremely successful in proposing and passing conservative legislation at all levels of government—local, state and federal. Much of that success can be attributed to the American Legislative Exchange Council (ALEC), a conservative organization that drafts bills that favor corporate and conservative interests.

What Makes ALEC Smart?

By Alan Greenblatt

For many years, the state of Ohio has put its convicts to work making furniture. This not only gives the prisoners something productive to do with their time but supplies state offices with desks, chairs and other furnishings. Now, in the age of the Internet, the prisoners' work products are up for sale on the Web, available to anyone, not just state agencies. That expansion of the customer pool drew the attention of state Representative Steve Buehrer, who decided he wanted to stop it. "To me, they've crossed the line—they've opened a furniture store," Buehrer says. "I think the government ought not to be running enterprises that compete with the private sector."

So Buehrer introduced legislation to block state agencies from offering any service or information on the Internet that was also provided by two or more private companies. In fact, though, the bill wasn't entirely his idea. It was based on legislation drafted by the American Legislative Exchange Council, better known by its acronym, ALEC.

All over the country, ALEC has been promoting the idea that state governments are overstepping their intended missions by offering Internet services in direct competition with private business. States allow citizens to complete their tax returns on public Web sites, for instance, or offer them free e-mail accounts, as Pennsylvania does.

ALEC is against that. It drafted model legislation addressing the matter, which, in turn, was introduced by Buehrer and legislators in about half a dozen other states. Model legislation is the core of what ALEC does. Founded in the early 1970s as a conservative counterweight to the mainstream National Conference of State Legislatures (NCSL), ALEC now boasts the participation of more than 2,400 legislators—nearly one-third of all legislators nationwide. That includes 125 floor leaders, among them three dozen speakers and speakers pro tempore and 25 state Senate presidents and presidents pro tempore. But the group boasts much more than a fancy masthead. Hundreds of bills initially drafted at ALEC meetings become law in the states every year.

The organization bills itself as bipartisan, but about 80 percent of its members are Republicans, and that makes a big difference, because Republicans have a working majority in many more states now than they did a few years ago (nationally, GOP legislators outnumber Democrats this year for the first time in half a century).

ALEC also counts as members some 270 representatives of trade associations, conservative foundations and many of the largest corporations in America. Interest groups are involved in other legislative organizations, such as NCSL and the Council of State Governments, but there they don't enjoy the kind of influence ALEC gives them. ALEC has standing task forces composed of both legislators and private-sector representatives. The private-sector folks help draft and have a

veto over any proposed legislation that the task forces create. “ALEC is unique in the sense that it puts legislators and companies together and they create policy collectively,” says Oklahoma state Representative Scott Pruitt, an ALEC task force chair.

In Pruitt’s opinion, the regular legislative process doesn’t allow for enough time listening to business. “The actual stakeholders who are affected by policy aren’t at the table as much as they should be,” he says. “Serving with them is very beneficial, in my opinion.”

Attracting Imitators

ALEC’s nine public-private task forces put forward draft legislation that gets introduced in the states at a rate of about 1,500 bills a year. On average, more than 200 of those bills are enacted into law every year. “You’ve had the interest groups having access and sitting on other task forces, but here you’ve really perfected it,” says Rutgers University political scientist Alan Rosenthal, author of a book on lobbying in the states. “You’ve not only got them gaining access and interacting with legislators but you have them shaping policy together. It seems to me that’s a pretty major advance.”

Liberal legislators feel the same way, although they are more likely to describe ALEC’s growing role as a threat rather than an advance. Recently, several progressive groups have been set up as a direct counterweight to ALEC’s agenda of promoting the free market and limited government. “We need to build an ALEC for our side,” *The Nation* editorialized a couple of years ago, and the left has responded.

This summer, a consortium of major labor unions, environmental organizations and public interest groups set up the Partnership for Public Trust to keep an eye on ALEC and the progress of its model legislation. Groups of legislators have formed themselves into coalitions to fight ALEC on a regional basis or in a specific policy area. Several other groups, patterning themselves on the ALEC model, have fashioned themselves as ideological alternatives, crafting and promoting model legislation more to their own liking. “It took progressives a while to realize what the hell was going on,” says Leon G. Billings, a former Maryland legislator. “Conservatives have lots of money to propagate their viewpoint and the left doesn’t.”

One of the new groups, based in Madison, Wisconsin, cheekily calls itself ALICE, short for the American Legislative Issue Campaign Exchange. “We like to think of ALICE as ALEC’s feistier, more aggressive little sister,” says director Andy Gussert. But it’s doubtful whether ALICE, which just got underway a couple of months ago, can be fairly described as feistier or more aggressive—or more anything—than ALEC. Several similar groups are better established than ALICE, but they can’t come close to matching ALEC’s penetration into the legislative ranks or productivity in creating new laws.

The groups on the left are at a disadvantage because of ALEC’s enormous fundraising capacity and 30-year head start in attracting members. ALEC’s annual budget is \$6 million, which is supplemented by expenditures from private sector members who provide campaign contributions and “scholarships” that cover travel expenses for legislators attending ALEC functions. Legislators pay just \$50 for a two-year membership, but businesses pay up to \$50,000 to join. “You have to recognize that because ALEC is funded by profit-making industries, they have tremendous resources at their disposal,” says Julian Zelazny of the State Environmental Resource Center, one of the critics. “You can sum all these groups together and our budgets still won’t come anywhere near to being a fraction of ALEC’s.”

Focus On Regulation

ALEC was founded, somewhat ironically, by conservative activists and legislators who believed the right needed a voice at the state level to counter better-organized liberals. “I always look at what the enemy is doing and, if they’re winning, copy it,” ALEC founder Paul Weyrich said a decade ago. The group attracted only 27 legislators to its first conference, but its early membership included many figures who became prominent later as governors or members of Congress.

Initially, the group concentrated on social issues such as abortion and the Equal Rights Amendment, both of which it opposed. But in recent years, as Congress and the courts have devolved greater authority to the states, ALEC has focused on business and regulatory matters. It produces bills that cover taxes and spending, energy, health, education, insurance, labor, telecommunications and the environment. And it has recorded a long list of successes.

While nearly all states have been strapped for cash this year, ALEC has opposed a federal bailout, arguing that state governments had worked themselves into fiscal crisis through excessive spending. The group has provided background material and talking points to help stiffen the backs of legislators resisting tax increases—including increases proposed by conservative Republican governors who once belonged to the organization. In addition, ALEC is promoting moves in GOP-controlled states to restructure government agencies to cut workforces and privatize more functions. It is encouraging legislators to abolish Medicaid’s entitlement-based benefit structure.

At the same time, ALEC has sponsored a flood of land-use bills, covering both environmental regulation and defense of private property. Its best-known bill in this area is the Environmental Audit Privilege and Immunity Act, which shields private companies from liability for environmental violations that the companies report themselves. Versions of this bill have become law in half the states, although at least three states have seriously amended their bills in response to federal concerns.

Many ALEC members say there is more conflict within the organization among the businesses involved than among legislators, with competing companies constantly maneuvering for advantage. That was especially true in the 1990s in the case of electricity deregulation. Enron took a leading role within ALEC in pushing for deregulation, which eventually led the Edison Electric Institute, a utilities trade association, to withdraw its membership. As it turned out, Enron’s position prevailed in many states as well. An ALEC bill provided the framework for electricity restructuring laws that have been enacted in nearly two dozen states.

ALEC has been a major force behind both privatizing state prison space and keeping prisons filled. It put forward bills providing for mandatory minimum sentences and three-strikes sentencing requirements. About 40 states passed versions of ALEC’s Truth in Sentencing model bill, which requires prisoners convicted of violent crimes to serve most of their sentences without chance of parole. “What makes ALEC different is its effectiveness in not just bringing the people together but selling a piece of legislation that was written by the industry and for the industry and selling it as a piece of mainstream legislation,” says Edwin Bender, executive director of the National Institute on Money in State Politics.

In many ways, Steve Buehrer’s bill limiting state commerce on the Internet was typical ALEC legislation. It was pro-market and reflected a suspicion of government power. Like most bills drafted by the organization, it was introduced by a key ALEC member. Buehrer, an ALEC state

co-chair, was named a “Legislator of the Year” by the group last year.

ALEC’s critics claim that Buehrer moved in typically stealthy ALEC fashion. He inserted his bill, without a hearing, into the House version of the state budget. Still, he drew plenty of opposition from people concerned that if private companies could shut down the government’s ability to put materials on the Web, they would profit unfairly from public information. A group of law librarians, for example, warned that courts could not put their records and decisions on the Web if publishers such as Westlaw and Lexis beat them to it.

Buehrer dismissed these concerns as “paranoia.” Nevertheless, the controversy his proposal generated—the *Cleveland Plain Dealer* called his furniture sales concerns “simply asinine”—sent his bill to the back burner.

Meeting Of Minds

ALEC’s critics are hoping that failures such as Buehrer’s can provide them with a new model. They believe they can fight the ALEC machine through the simple means of exposing the group’s bills to greater scrutiny than they’ve received in the past. Allowing industries affected by legislation to write the legislation, they say, is going too far, and once the voters hear about this, they will agree. “It doesn’t take rocket science to figure out that if you fly legislators to exotic locations and spoon feed them legislation to introduce in their state that you’re going to be effective,” says Wisconsin state Representative Marc Pocan. ALEC’s success is prima facie evidence, he and other critics believe, that the group gives an unfair advantage to its participating corporations and their lobbyists.

Members of ALEC reply that their group is simply one more forum among many in which they can meet with like-minded colleagues and listen to the concerns of businesses and other groups that they would hear from anyway, even if the organization never existed. “ALEC has never been intended to supplant the legislative process,” says Ray Allen, who chairs the Texas House Committee on Corrections and plays an active role on criminal justice task forces for both ALEC and NCSL.

Allen argues that ALEC helps him and other legislators vet ideas that have been tried in other states. He says he’s under no illusion that the private companies that serve with him on ALEC committees are doing anything other than promoting their own interests. But at the end of the day, Allen says, it’s up to legislators to evaluate a variety of opinions and find out who is being truthful and which position would ultimately benefit the state. Within ALEC, the legislators who serve on task forces have to give their approval to any legislation proposed by corporate lobbyists before it is acknowledged as an ALEC model bill. Obviously, it’s also up to legislators to decide whether to introduce or support a live bill back in their states.

ALEC does do a few things that reinforce its secretive image. It keeps its model legislation locked under password protection on its Web site, and gives its bills innocuous-sounding names that mask their actual significance. Rarely is any ALEC bill acknowledged as such; a legislator who proposes one offers it as though it were his own idea, the way Buehrer did in Ohio.

On the other hand, there is nothing furtive about meetings of the organization: Many of the complaints that critics register are drawn from their own experiences attending ALEC sessions, which are generally open to the public and media. “As a Democrat, I could attend and find out what is on the conservative agenda for state government,” says North Carolina state Representative

Paul Luebke. And while corporations pay big bucks for ALEC memberships and seats on the task forces, ALEC usually invites a range of speakers to its meetings.

Kentucky state Representative Paul Marcotte, who chairs a task force, says he once invited a left-leaning public interest group to testify about a transportation issue. The assembled legislators ended up siding with that group's position.

In the end, it's hard to make the claim that ALEC's agenda is much of a secret or that its members are being co-opted to endorse legislation they wouldn't support anyway. In the words of Louisiana state Representative Donald Ray Kennard, ALEC's national chairman, "We are a very, very conservative organization...We're just espousing what we really believe in."

To the extent that liberal opponents make clear the connection between ALEC and its corporate sponsors, they may be able to gain increased public attention and place obstacles in the way of ALEC's model bills. But in order to win significant victories, they will need to convince legislators that those bills are dangerous on their merits, and not simply tar ALEC as "Corporate America's Trojan Horse," the way one report by environmental organizations recently did. In many states, the corporate connection is not particularly threatening to average voters.

"Nebraska is a very conservative state and ALEC is a very conservative organization, so I think there is a natural affinity there," says Pam Brown, who, like 46 out of Nebraska's 49 state senators, is an ALEC member. "I don't think the conspiracy theory about any legislation is particularly valid. I think it says very little about legislators to think that any of the national organizations are going to lead us around by the nose."

Steve Buehrer, sponsor of the Internet bill in the Ohio House, says ALEC has always been highly supportive when he has introduced legislation the group favors, sending staff members out to testify in a couple of instances when he has introduced bills he's drawn off of the ALEC priority list. "They're certainly very active in being helpful on the proponent side," he says. Buehrer maintains he hasn't given up on his effort to block the state from competing with private retailers on the Internet. He's already hatching plans to overcome the negative publicity his bill engendered the first time. "I expect ALEC to be a part of that," Buehrer says, "but we have to get some Ohio stakeholders involved as well."

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RIGHT-WING LEGAL STRATEGIES

The Right’s legal strategy is focused on using litigation to systematically change the legal system in its favor. The Right has deliberately and strategically selected plaintiffs and issues that further its long term goals. By building upon incremental victories, the Right, over the last few decades, has succeeded in laying the legal groundwork to implement a conservative agenda.

The Center For Individual Rights (CIR)

Note: Excerpted from Nikhil Aziz, “Colorblind: White-washing America.” The Public Eye vol. 16, no. 2, Summer 2002, pp. 1-13.

While the Center for Individual Rights (CIR) does not directly address issues of criminal justice, which is the focus of this Activist Resource Kit, its strategy for challenging affirmative action and other issues is a central element of the Right’s larger legal strategy. The Right has been very strategic in pushing its agenda on a number of fronts. Electoral politics—fighting and winning elections—is just one of them. Recognizing the importance of the judicial branch, the Right has paid detailed attention to the composition of judicial benches at the federal, state, and local levels. Central to the composition of a bench is the appointment of judges to it, and here again the Right has focused its attention on multiple levels. At the same time, it has not neglected issues such as affirmative action, gay marriage, and abortion; or individual cases pertaining to these issues. Its emphasis on challenging affirmative action is an illustrative case in point.

The Center for Individual Rights (CIR) describes itself as a “nonprofit public interest law firm dedicated to the defense of individual liberties.”¹⁰ Founded in 1988 by Michael McDonald and Michael Greve, both previously at the rightist Washington Legal Foundation,¹¹ CIR is now an established presence in the nation’s capital, and its influence is felt across the country through various high-profile cases that it has taken up, including more than a few that it has fought and won in the U.S. Supreme Court. Over the last 14 years, CIR has grown from the 2 founders in a small nondescript space to a swanky office with administrators, in-house counsel, interns, high-flying pro bono lawyers, a number of publications, and a sizeable and growing budget.

CIR is one of a number of conservative right-wing legal advocacy organizations founded to bring legal cases in support of rightist campaigns. It has been very successful in replicating liberal public interest law firms such as the American Civil Liberties Union (ACLU).¹² CIR has concentrated on specific areas of concern, and within them zeroed in on cases that it felt would “change the law,” as opposed to simply winning a victory. Changing the law has clearly been its goal in the area of affirmative action, particularly in higher education. According to Terry Carter, CIR “does go where its plan works best”¹³ which allows it to “attack affirmative action at its weakest links . . . [and] rely in large measure on conservative judges who go beyond the facts of individual cases to proclaim things that have broader implications.”¹⁴ CIR’s lawyers contend that it has won before judges who are not conservative, but according to journalist W. John Moore, “they concede that the appointment of conservative judges by Presidents Reagan and Bush have made the courts more receptive to their arguments.”¹⁵

As David Segal of the *Washington Post* reported, “[Michael] Greve searched hard for a test case that would land in the 5th U.S. Circuit Court of Appeals, widely considered to be a conservative

bench. He then sought plaintiffs at the University of Texas Law School, which he had studied for months and thought was vulnerable to attack. And he was meticulous about finding a lawyer to argue the case, recruiting [now Solicitor-General] Theodore Olson, a pricey Washington lawyer known for winning before the Supreme Court.”¹⁶ For CIR, winning the war was more important than winning a battle.

The pick and choose strategy CIR has employed with regard to cases is not new. Ironically, it mirrors the National Association for the Advancement of Colored People (NAACP) Legal and Educational Defense Fund’s struggle—led by [later Justice] Thurgood Marshall—to overturn racial segregation and ‘separate but equal’ laws in the 1940s and 50s, culminating at the U.S. Supreme Court in *Brown v. Board of Education*.¹⁷ CIR’s staff has adopted, and adapted, that basic strategy to argue that the U.S. Constitution should allow only legislative policies and institutional practices that are “colorblind.”

George W. Bush now has the opportunity to continue where Reagan left off, including possibly ensuring a comfortable conservative majority on the Supreme Court.¹⁸ Another factor in the move to the right is the enormous financial resources being granted by right-wing foundations and moneyed individuals to ensure that conservative ideas and policy prescriptions are implemented. Cass Sunstein, writing in the *New York Times*, notes that, “In the last 30 years, one glaring difference between Republicans and Democrats has been that Republicans, unlike Democrats, have been obsessed with the composition of the federal judiciary.”¹⁹ CIR is but one political instrument in the Right’s toolkit to make the most of an increasingly hospitable judiciary.

The Law Arm of the Right

The rightward march is also evident in the legal arena. The emergence and rapid growth of the Federalist Society for Law and Public Policy Studies, which has gained enormous influence in conservative administrations like the current Bush Administration, for whom it has handpicked many judicial candidates, is an important feature;²⁰ especially now in light of reports that the Bush White House is eliminating the traditional consultative role played by the nonpartisan American Bar Association in the selection and nomination of judges for the federal judiciary.²¹ Ronald Reagan’s two terms as president, followed by former President George Bush, saw the large-scale appointment of conservative judges at all levels of the federal judiciary in the United States.²² President Clinton’s two terms were marked by his inability to appoint judges to many vacancies in the federal courts—in part because of his administration’s preoccupations in other areas, and in part because many of his appointments were blocked by the Republican-controlled Senate.²³

The following is a list of some of the prominent, and well-funded right-wing conservative or libertarian legal organizations. The Federalist Society, established in 1982, has lawyer and student chapters across the country, as well as issue-oriented practice groups. Some of the leading conservative and libertarian legal luminaries (including many who are now on the federal courts) are or have been members of the Federalist Society.

While the Federalist Society is a membership organization, the others in this list are law firms that bring cases at the state and federal level arguing the Right’s perspective on property rights, free speech and first amendment issues, equal protection, affirmative action, and religion. The Center for Individual Rights is the focus of this article. The Mountain States Legal Foundation is a Denver-based law firm that brought two lawsuits on behalf of its client Adarand Constructors Inc., on the issue of affirmative action in federal contracting. The Southeastern Legal Foundation

in Atlanta filed an *amicus curiae* brief on behalf of the Boy Scouts of America in their case against James Dale, a gay scoutmaster. The Landmark Legal Foundation (outside of DC) has been active against teachers' unions including the National Education Association. The American Center for Law and Justice, in Virginia Beach, focuses on Church-State issues, and has been involved in cases defending antichoice protestors (what it calls 'sidewalk counselors'), and against the City of Louisville's (KY) ordinance extending protected status in employment to the categories of sexual orientation and gender identity.

Conservative Legal Organizations

American Center for Law and Justice

P.O. Box 64429
Virginia Beach, VA 23467
<http://www.aclj.org>

Atlantic Legal Foundation

150 East 42nd St.
New York, NY 10017
<http://www.atlanticlegal.org>

Center for Individual Rights

1233 20th St., NW, Suite 300
Washington, DC 20036
<http://www.cir-usa.org>

Federalist Society for Law and Public Policy Studies

1015 18th St., NW, Suite 425
Washington, DC 20036
<http://www.fed-soc.org>

Institute for Justice

1717 Pennsylvania Ave.
NW, Suite 200
Washington, DC 20006
<http://www.ij.org>

Landmark Legal Foundation

445-B Carlisle Dr.
Herndon, VA 20170
<http://www.landmarklegal.org>

Mountain States Legal Foundation

707 17th St., Suite 3030
Denver, CO 80202
<http://www.mountainstateslegal.com>

New England Legal Foundation

150 Lincoln St.
Boston, MA 02111
<http://www.nelfonline.org>

Pacific Legal Foundation

10360 Old Placerville Rd., Suite 100
Sacramento, CA 95827
<http://www.pacificlegal.org>

Southeastern Legal Foundation

3340 Peachtree Rd., NE, Suite 2515
Atlanta, GA 30326
<http://www.southeasternlegal.org>

Washington Legal Foundation

2009 Massachusetts Ave., NW
Washington, DC 20036
<http://www.wlf.org>

ADDITIONAL RESOURCES

Alliance for Justice

11 Dupont Circle NW 2nd floor
Washington, DC 20036
Phone: 202-822-6070
<http://www.alliance@afj.org>

A national coalition of organizations promoting fair judicial nominations among several other campaigns.

Center for Constitutional Rights (CCR)

666 Broadway, 7th Floor
New York, NY 10012
Phone: 212-614-6464
<http://www.ccr-ny.org>

CCR is a legal and educational organization that protects and advances the rights guaranteed by the U.S. Constitution and the Universal Declaration of Human Rights. CCR uses litigation proactively to advance the law in a positive direction.

Institute for Democracy Studies

177 East 87th Street, Suite 501
New York, NY 10128
Phone: 212-423-9237
<http://www.institutefordemocracy.org/index.html>

IDS has published reports on the Federalist Society, “The Federalist Society and the Challenge to a Democratic Jurisprudence” and “Slouching Towards Extremism: The Federalist Society and the Transformation of American Jurisprudence.”

Brennan Center for Justice at NYU School of Law

161 Avenue of the Americas, 12th floor
New York, NY 10013
Phone: 212-998-6730
<http://www.brennancenter.org/>

The Brennan Center sponsors a Criminal Justice Institute and publishes a number of articles, pamphlets and books on issues related to criminal justice, poverty and democracy, such as “Hidden Agendas: What is Really Behind Attacks on Legal Aid Lawyers?”, 2001.

People for the American Way (PFAW)

2000 M Street, NW, Suite 400
Washington, DC 20036
Phone: 202-467-4999 or 800-326-7329
<http://www.pfaw.org>

PFAW tracks right-wing legislation, policymakers, judicial appointments, activists and other conservative efforts at the state and federal level. PFAW uses litigation to counter the efforts of right-wing groups and works to advance a progressive legislative agenda on Capitol Hill. PFAW’s website has a useful Right-Wing Watch section.

Websites

<http://www.alecwatch.org/>

Sponsored by two environmental organizations, this watchdog site includes their publication, “Corporate America’s Trojan Horse in the States: The Untold Story Behind the American Legislative Exchange Council.”

Books/Reports

Kozlowski, Mark. 2003. *The Myth of the Imperial Judiciary: Why the Right is Wrong about the Courts*. New York: New York University Press.

Schwartz, Herman. “The New Right’s Court Packing Campaign.” Washington DC: People for the American Way, 1999.

Endnotes Available Online!

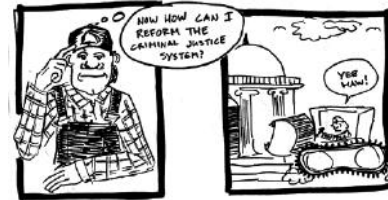
All citations and references are available at www.defendingjustice.org or by contacting PRA.

ORGANIZING ADVICE

Reform and Abolition: Points of Tension and Connection

By Cassandra Shaylor and Cynthia Chandler

Most activists in prison and their allies outside want to reduce the suffering of people in prison and people in communities that are targeted for imprisonment. Many also work to challenge prisons more broadly. Increasingly activists and academics are talking about the points of tension and connection between reform efforts that seek to improve conditions in prison and those that take a more radical abolitionist approach to the problem and call for the eventual elimination of the prison altogether.



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While the goals of the prison reform and prison abolition movements are both grounded in a concern for alleviating the suffering of people in prison and communities targeted by the prison industrial complex, there is a growing awareness that the political Right has manipulated and reappropriated the rhetoric and strategies of reform efforts to expand the prison system. There is a resulting need to challenge the Right by identifying those efforts at reform that contribute to an expansion and entrenchment of the system and those efforts that are necessary steps toward a world that no longer relies on imprisonment.

Since the birth of the penitentiary system almost two hundred years ago, the majority of advocates for people in prison have focused on reform as a strategy for reducing the suffering of people in prison. In fact, reform efforts to eliminate public displays of corporal punishment gave birth to the modern penitentiary.¹ Once prisons were adopted as the norm, reformers almost immediately began to voice concern about the impact of imprisonment, in particular the effects of isolation on the mental health of people in prison. Moreover, the rise of the prison system occurred in reaction to the abolition of slavery and from very early in its inception the institution was deeply rooted in racism. Immediately following Reconstruction, the Black prison population exploded through the implementation of Black Codes and the development of the convict lease system.² The legacy of that racism is present today in racial profiling, the tracking of young people of color into state systems, and the disproportionate number of Black and Brown people who continue to populate the prison system.

Reformers historically focused on conditions in prisons. Proponents of women's rights who were alarmed by sexual violence against women in co-ed prisons argued for separate institutions for women for instance.³ Absent a radical critique of prisons themselves, concerns about conditions for women were used as a justification for the birth and mass expansion of the women's prison system⁴ where rampant abuse of women continues.⁵ In fact, one of the legacies of prison reform (as opposed to radical critique and resistance) is the expansion of the prison industrial complex and the increasing use of the prison as a mechanism of social control and State violence.⁶

The history of prison reform efforts reveals that mere reform fails to address the inequalities, oppression, and state violence upon which the institution of the prison is built, leaving the violent foundation intact and rendering ineffective attempts to relieve the suffering of oppressed

people confined within it.⁷ Moreover, all too often such reform efforts are re-appropriated by the Right and used to strengthen the prison industrial complex and to make it more impervious to critique, resulting in bigger, “better,” and more numerous prisons housing increasing numbers of oppressed people.⁸ In the contemporary era of the prison, the Right has used a number of strategies to build the system on the backs of reform efforts.

Strategies of Prison Reform Used By the Right To Grow the System

1. USE OF COMPLAINTS ABOUT PRISON CONDITIONS TO JUSTIFY MORE PRISONS

Complaints of overcrowding or decrepit conditions are often taken up by the Right to justify building more prisons. Complaints about how far prisons are from urban centers are used to justify maintaining those prisons and also building new facilities. Complaints about private prisons and arguments that they are worse than public prisons because of abuses within them or the blatant profit motive behind them are seized on by the Right to erase both the egregious human rights abuses and profit-motive that also exist in State-run prisons. Complaints about inadequate healthcare are taken up to justify bigger prison budgets and increases in staffing that rarely materialize as better healthcare and instead build the prison system.

Rather than proposing reforms that are readily co-opted to grow the prison system, arguments can be made that critique prison conditions while also challenging the expansion of prisons. Activists can: argue that decarceration should be the answer to prison overcrowding; organize urban/rural coalitions to close prisons in rural locations and stop new prisons from being constructed; work against privatization while simultaneously fighting against imprisonment in any facility; argue for improvements to healthcare that actually decrease prison spending by providing alternative sentencing and/or releasing sick people in prison.

2. COOPTATION OF OUR LANGUAGE AND APPROACHES TO EXPAND THE SYSTEM

In many instances, the Right attempts to co-opt reformist language to its own ends to justify and grow the system. Efforts in California to implement a strategy of decarceration for seriously and terminally ill prisoners through compassionate release have been co-opted by that state, for example. California anti-prison activists have argued that prisons are ill-equipped to deal with the needs of seriously and terminally ill prisoners and therefore they should be released to their families or to hospices in their communities. However, in an effort to keep people in prison and increase the number of beds within the system, the rhetoric deployed by anti-prison activists to persuade politicians and the general public that people in prison who are dying deserve to die with dignity is being used by the California Department of Corrections itself. The CDC is now arguing for the creation of hospices within prisons and corrections—controlled skilled nursing facilities in the community that could house prisoners in locked wings.⁹ This rhetorical reappropriation has had a secondary effect on the prison population by obstructing activist efforts to prevent people, whose seriously compromised health render them particularly vulnerable to the harms of imprisonment from going to prison in the first place—mainly because the State can argue that such people’s health will no longer be compromised during imprisonment, so the argument goes, because there are places within the prison to accommodate them.¹⁰

Because the rhetoric of public safety has become so entrenched, the State can make the claim that the expansion of the system into skilled nursing care is necessary because a person in prison is a threat to society merely by virtue of her status as a prisoner, regardless of her physical or mental capacity. In fact, the strength of those arguments has increased to the point of absurdity:

ostensibly out of security concerns, in 2004 California Governor Arnold Schwarzenegger vetoed a bill that would have saved California millions of dollars by allowing the early release of the 13 people in California's prisons determined to be permanently unable to tend to any of their daily needs or in a vegetative state.

To ensure that rhetoric aimed at reducing the suffering of people in prison is not used to justify prison expansion, we can work to ensure that decarceration strategies are intrinsically linked to the rhetoric we use. For example, "compassion" and "dignity" for people facing terminal or serious illness in prison should always be linked with "release" and policy aimed at expanding corrections should be resisted. Moreover, we must make and reaffirm the argument that "compassion" and "dignity," as well as "treatment" and "rehabilitation," are fundamentally at odds with the goals of punishment and prisons.

3. USING STRATEGIES THAT CREATE CLASSES OF "DESERVING" VS. "UNDESERVING" PEOPLE IN PRISON TO MAINTAIN THE SYSTEM

Because the existing framework for arguments for changes to the system has become so limited, in many instances reformers rely on arguments that have the potential to create short-term solutions for some people in prison at the expense of a longer-term vision to improve life for all people in prison. The Right then seizes on these efforts to consolidate existing notions about safety, justice, and the necessity of prisons.

For instance, when reformers argue that we should decriminalize petty offenses so that the police can go after the "real" criminals, the approach fits perfectly into the Right's strategy of fear-mongering by evoking the need for "public safety" that is used to justify maintaining the system or increasing its punitive response to all others.

In response, we can frame our arguments in ways that avoid pitting one category of prisoner against another. In a campaign to get rid of three-strikes policies for instance, we can argue that imprisoning people is not making communities safer and that instead we should invest the resources that go into incarceration into programs that would allow people to re-enter their communities and be safe and healthy. And we can argue that as a strategic decarceration approach, abolishing three strikes is a step toward eliminating the prison as a central feature of contemporary life.

4. ABOLISHING PART OF THE SYSTEM AT THE EXPENSE OF A LONG-TERM GOAL OF ENDING THE SYSTEM

In many instances, the Right seizes upon political strategies that focus on reforming small parts of the criminal justice system to ensure maintenance of the broader system as a whole. For example, in recent years efforts to abolish the death penalty have gained support in the general public. Unfortunately, the rhetoric of death penalty abolitionists in favor of life imprisonment has limited the terms of the debate around how to address violence and consolidated the idea that imprisonment is the only viable solution. This approach also obscures the fact that people who are targeted for the death penalty, who would then end up in prison for life, are disproportionately poor people of color and mentally ill people of all races. Similarly, the rhetoric of the increasingly popular Innocence Projects, which are geared at aiding only the factually innocent, is taken up to limit the terms of the debate around who in prison deserves legal assistance or public attention to just the innocent. This approach again obscures the abuses that occur against all imprisoned people and the fact that communities of color and poor people of all races are

targeted for imprisonment.

In response to these failings, we can use work directed at a specific population or sub-issue to highlight the broader violence and failings of the prison system as a whole. We can work to abolish the death penalty because it is the ultimate expression of the power of the State to enact violence and because it is a way to eliminate people who are “undesirable” from the perspective of the State – poor people, people of color and people with mental illnesses. We can work to free the innocent as a means of highlighting the inequities that impact all people in prison and call in to question the integrity of prisons more broadly.

Strategies Abolitionists and Reformers Can Use To Move Toward a World Without Prisons

We can simultaneously address the needs of people who are suffering in the system currently and challenge the efforts by the Right to co-opt our attempts to change the system by carefully crafting reform strategies that are about diminishing the power of the system and building alternatives to it.

For instance, a focus on *strategic decarceration* is a significant step toward the ultimate abolition of the prison. Such campaigns focus on: implementing a moratorium on prison construction; closing existing prisons; changing laws and sentencing structures that imprison the greatest numbers of people (such as drug laws, three strikes schemes, property offenses, anti-sex work ordinances, etc); and creating community-based institutions that provide services that people need. When implementing such strategies, however, it is important to build them on rhetorical approaches that do not play into the hands of the Right. An example, which often occurs in relation to death penalty and immigrant rights work, is the pitting of non-violent prisoners (those who “deserve” to be released) against violent prisoners (those who do not) or “innocent” prisoners against “guilty” prisoners.

Though the number of people who are in prison for violent offenses is extremely small, the first question posed to prison abolitionists is the question of how to respond to harms that people inflict. In response, strategies for *creating systems of accountability instead of punishment* when someone is harmed can be developed without relying on policing and prison. While the anti-prison movement has historically challenged racist policing and imprisonment practices, few strategies have been developed for alternative mechanisms of safety and justice. As a result, the anti-violence movement has struggled to respond to interpersonal violence in an era when policing and prisons are often the only available response. Moreover, through a desire to have the State acknowledge the vulnerability of marginalized groups, anti-violence activists often push for increased criminalization, such as hate crimes legislation, as a response to discrimination. Through these practices, activists interested in protecting vulnerable groups can unintentionally bolster the same systems of oppression and State violence that most often target the groups they are seeking to protect. There is a need to break down barriers between and within the anti-prison and anti-violence movements, to expand the definition of violence to include State-sanctioned violence such as imprisonment, and to create tangible alternatives for establishing true safety and justice.

The perceived lack of creative responses to violence has been seized upon by the Right to increase the level of fear about violent crime and present prison as the only response. We know that the numbers of women who are survivors of domestic violence or rape, for instance, have not decreased despite the growing number of people in prison. Therefore, strategies for creating

accountability locally and in communities will go a long way to countering the notion that we have no choice but to lock people up. Many of these strategies are in place on a local level and can serve as models for organizers who are developing alternatives to policing and prisons. For instance, Communities Against Rape and Abuse in Seattle develops innovative responses to sexual assault that do not rely on the police; SistaII Sista in Brooklyn organizes young women to challenge police abuse through direct action, and Generation Five in San Francisco trains community members to implement responses to child sexual abuse that do not rely on child protective services or the prison system.¹¹

We also can implement *changes to language* that both ensure that we are not undermining a longer term goal of abolition and reclaim language that has been appropriated by the Right. For instance, we can avoid using language that pits categories of prisoners against each other (innocent vs. guilty, non-violent vs. violent) and we can also reclaim rhetoric that has been used by the Right to grow the system (prisons don't make communities safe but affordable housing, healthcare, food and education do).

Questions To Ask When Developing a New Campaign/Slogan/Rhetorical Approach:

- Are we responding to conditions by calling for more or “better” prisons?
- Are we calling for new modes of policing that expand surveillance and policing in our communities (for instance electronic monitoring, house arrest, etc.)?
- Are we calling for more money/staff to go into the system?
- Does this pit categories of people against each other?
- Does this approach ultimately undermine the long-term goal of abolition?
How can we shift it without losing our goal of addressing current harms so that it doesn't?
- Can we build into our strategy ways to reframe rhetoric and reclaim language that has been co-opted by the Right, such as “public safety,” “safe communities,” “violence against women,” “compassion,” or “family values?”

Anti-prison activists inside and outside of prison have unmasked the many ways in which prisons are predicated on racism and violence and have clearly argued that there are better ways to deal with social problems and the harms that people inflict than to lock people in cages. Because historically efforts that relied exclusively on reform served to strengthen the system, it is imperative that we take seriously the call to abolish it.

The abolition of the prison is a protracted process, not an overnight transformation. Reforms are necessary on the way to abolition, but as anti-prison activists we need to move away from reform as an endpoint, and we need to consider carefully the impact of short-term goals on the longer-term vision of a world without prisons. Abolition as a goal and strategy allows us to break out of the frame that currently confines our ability to imagine alternatives and pushes us to work strategically toward a world free of the prison industrial complex.

Cassandra Shaylor and Cynthia Chandler are the co-directors of Justice Now, an Oakland-based organization that works with women in prison and local communities to build a safe compassionate world without prisons.

Words Matter—Thoughts On Language and Abolition

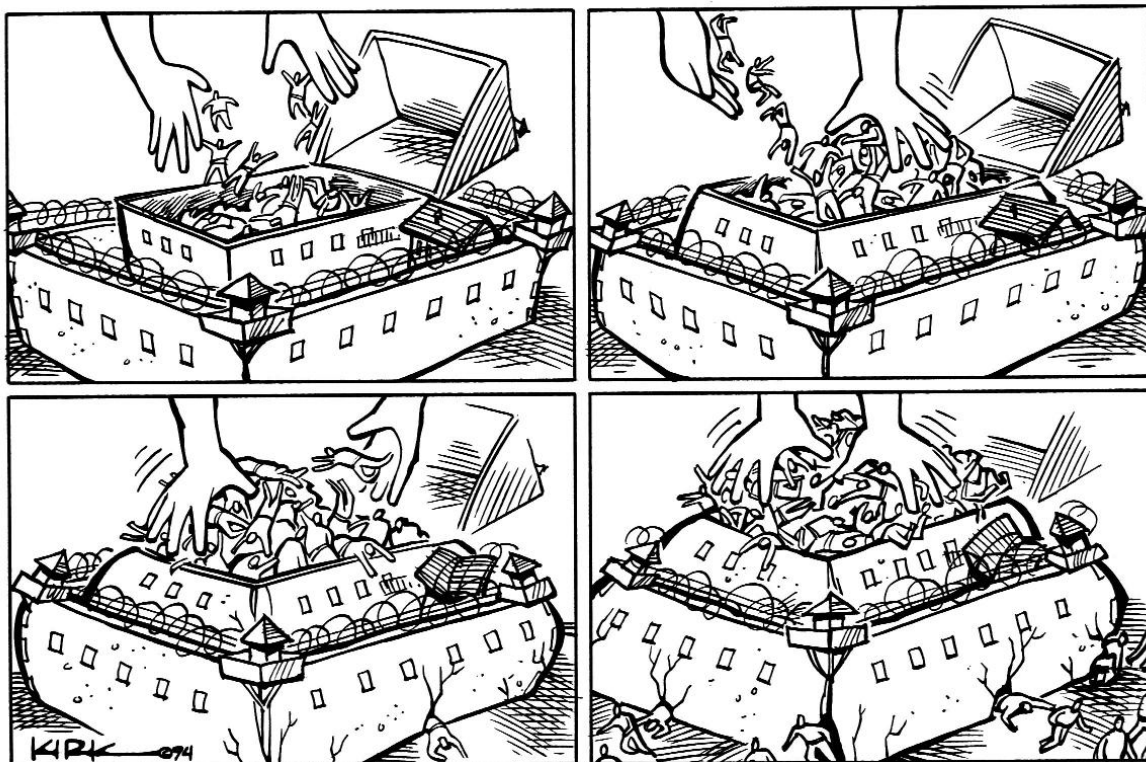
By Critical Resistance

Words alone can't save us. But our language does shape what we can imagine, and by using new words and old words differently, we can imagine new things. A major reason the Prison Industrial Complex (PIC) grows is that we are told there isn't another option. We need to use language creatively to make healthy systems possible as we develop strong, specific challenges to the PIC.

The way people talk about policing, prisons, safety, and "crime" shapes what we think these things are, and forms the ways we imagine change can or should happen. Words are not neutral, and it's important that we break down and reshape their meanings in our own materials and conversations. We can use language to shift debates, make people see things differently, and challenge our own assumptions and fears. Below are discussions and specific examples of how our word choice can not only help us make stronger abolitionist arguments, but figure out what abolition can look like.

| | | | | | |
|-----------------|----------------|-----------------|-----------------|---------------|---------------|
| <u>INNOCENT</u> | <u>VIOLENT</u> | <u>CRIMINAL</u> | <u>PRISONER</u> | <u>VICTIM</u> | <u>SAFETY</u> |
| GUILTY | NON-VIOLENT | CONVICT | INMATE | JUSTICE | PUNISHMENT |

These words get used all the time when people talk about prisons, police, courts, and "public safety." They are used as often by people who support the PIC as people fighting against it. They are filled with assumptions about the people and ideas they describe. Often, these same assumptions make the PIC seem logical and necessary. They redefine people and actions in terms of the category or idea represented by the word. In this way a person becomes a criminal, and the act of the State putting someone in a cage becomes justice. This maintains people's fear for their safety, their understanding of what they need to be safe, and their reliance on and acceptance of



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police and prisons.

Most of these words work in pairs: when we use one, we are really using both. Innocent and guilty are a pair like this—the idea that innocent is opposed to guilty (you are one or the other) is considered a “natural” assumption and it’s what immediately comes to mind for most people. So saying that “innocent people” shouldn’t be in prison (which most of us can agree is true), also says that “guilty people” should be. It implies that most people who are locked up deserve to be there because they “did something.” If we want to say that people are being picked up, harassed, or held without charges; there’s a way to say it without suggesting that people in other circumstances are worse, or are “bad” people, or deserve to be in cages.

It’s important to pay attention to the words we use to describe people in cages. Most commonly, they are called “inmates,” “criminals,” and “prisoners.” What are the differences?

1. **Inmate.** Originally, this term meant someone who shared a house with others. Currently, it mostly refers to people in prisons and mental institutions.
2. **Criminal.** This term doesn’t just mean someone convicted of a crime, or even someone who harms others. It implies that causing harm is essentially a part of this person, maybe even the most meaningful part of their personality.
3. **Prisoner.** This is someone kept in a cage against their will by a powerful institution (like the State), whether or not that institution is just.

These words are raced and gendered. For example, “criminal,” and “Black,” are often code words for each other. There is tremendous pressure from white supremacy in media, or in policing, (or both, as in Cops and the local news) to make an automatic connection between these terms, both by assuming a “criminal” is going to be a Black person, and in assuming that a Black person is going to be a criminal. There are particular ways terms like these get gendered too. “Welfare queen,” is one term that might be thought of as a femininely gendered word for criminal. It works to make Black women and criminals interchangeable. This combination of gendering and racing applies to men as well. “Gang member” and “rapist” are two examples of words that work to make Black men and criminals equivalent.

“Prisoner” stands apart from “inmate” and “criminal” because it describes how people are put in cages. It helps us remember that people aren’t in cages for their own good or simply as a place

**WHAT ARE THE WORDS YOU USE AND HEAR TO DESCRIBE PEOPLE IN CAGES?
WHAT MEANINGS DO THEY HAVE?**

Language works not only to define types of people in relation to the PIC, but types of actions as well. People fighting prison expansion or working to end the drug war often focus on capitalizing on public sentiment about “violent” vs. “non-violent” crimes, or concerns about locking up too many drug users and not enough drug dealers. For instance:

- *The drug laws drive prison expansion, fill prisons with non-violent, minor offenders, and drain resources from other services, such as drug treatment and education.*
- *Non-violent drug offenders are spending more time in prison than murderers and rapists.*

What distinctions are being made between violent and non-violent offenders here? What is implied about the use of prisons generally? How could you re-phrase this information to be consistent with the ideas that no one should be in a cage, and that putting people in cages helps no one?

to stay (which “inmate” implies), or that they are inseparable from the harm they might/might not have caused (which is implied by “criminal”). It helps us to see the State as actively choosing to put people in cages, while “inmate” and (especially) “criminal” imply that imprisonment is the only or even the best way to handle certain people. In this way it also gets away from the harmful gendered and racial dynamics of a word like “criminal,” which helps to disrupt the linked White supremacy and sexism of the PIC.

We can use language and ideas to transform how people think about what makes them safe. We can challenge the ways people are told to imagine what makes their communities safe and create materials that makes clear a vision of community safety that does not rely on controlling, caging, or removing people. We need to be able to determine and create safety for ourselves, without leaving anyone behind. In creating materials, we need to recognize how we can best use language to make our ideas clear and common sense, without falling into the trap of “tough on crime” rhetoric that compromises the long-term goal of abolition. Here are some further exercises that might be helpful for thinking about language in your work.

A. Get out materials and literature that your organization uses (or that the State or other organizations use). Go through these questions to try to understand more critically what the language is doing.

1. Who is this language addressing? Who is it accessible to? Where is this literature used?
2. What categories are used to describe:
 - people
 - institutions
 - political systems and ideals

What political views do those categories back up?

3. What political message is being sent—how is or isn’t that abolitionist? What is the role of cages in the political program being suggested?
4. How could you change the wording to more clearly oppose all aspects of the PIC? Or, if you’re using material you disagree with as an example, how does the language support the PIC?

B. Pick out one (or two, or however many you want to handle) words, and try to see how it is used, and how you might use it in a more radical way. For example, you might choose “punishment.”

1. Brainstorm all the meanings it has—whose agenda(s) do those meanings serve?
2. What other words is it closely connected to? What do those connections do?
3. Where do you hear this word used commonly? By whom?
4. What other words (maybe “reconciliation” or “responsibility”) address some of the same issues and assumptions in different ways?
5. Are there ways to use the word “against itself”—to use it in a way that challenges the way it’s most commonly used right now?

The point here is not just to change the words we use, but to examine how changing our words

changes what we can see. It can also help point out what assumptions we might decide to hold onto. We can agree that there is a difference between stealing a stereo and hurting another person, but saying “non-violent” and “violent” is only one system for showing that difference, one set up by the State through its laws. We validate that State action every time we use this distinction.

Critical Resistance (CR) works to build an international movement to end the Prison Industrial Complex by challenging the belief that caging and controlling people makes us safe. This article first appeared in the Critical Resistance Toolkit and is reprinted with permission. To order a copy of the CR toolkit, call (510) 444-0464 or visit www.criticalresistance.org.

Ground Rules & Tips for Challenging the Right

By Political Research Associates

What Can I Do?

Recognize the Assault

The Right’s many groups organize on a wide variety of specific issues, from education, the environment, civil and human rights, immigration, and criminal justice to developing new constituencies such as fathers and conservative people of color. Often they will link one issue with another under a broad umbrella campaign, such as “traditional family values,” “fiscal responsibility” or “compassionate conservatism.” Look for connections across their issues, and observe patterns and trends in how specific topics are addressed. For instance, projects in one state are often duplicated in others such as attempts to roll back gay rights or bilingual education. Find out as much as you can about the right-wing groups and spokespeople that work nationally and in your area and what influences them. Realize that the Right has influenced the “center” of U.S. politics to be more conservative. Learn to recognize that moderate public statements often mask deep conservatism, especially in areas where race plays a big part, such as criminal justice and education.

Defend the Basics

Defending democracy means reclaiming as progressive ideals the basic values and practices of the democratic process such as fair elections, a vibrant free press, liberty, human rights for all people, social and economic justice and the chance for everyone to lead dignified lives. Counter to these values, the Right seeks to attract the allegiance of some by limiting the rights of others and by sanctioning benefits for its supporters. At the same time it claims to do this in the name of freedom and democracy. Recognize and expose this hypocrisy and contradiction, such as the claim that a tax cut for the rich will benefit everyone. Work to extend basic rights and seek social and economic justice for all people. This work will pose a significant challenge to the conservative vision of the United States.

Get Involved

If activism is new to you, channel your insight and motivation into action. Notice the issues that strike a chord for you and seek out like-minded individuals and groups interested in the same things. Recognize that working for an issue that defends basic democratic values can be as valu-

able as working with a group that specifically organizes against the Right. Consider your circumstances, your comfort level, and your skills, and do what's comfortable for you. There are as many ways to participate as there are issues and perspectives, and activism includes much more than electoral politics.

If you have been involved and focused on a single issue, be open to its possible connections to other topics. Sometimes single issue organizing can miss opportunities for bringing on more supporters. Consider acting on those connections. The Right successfully makes such connections across issues all the time, and they have used this strategy successfully to build their influence. A good place to start is Political Research Associates' website, <http://www.publiceye.org>. Look under "Building Equality" for a list of organizations on a range of issues. If you have experience with political groups, reflect how your understanding of the Right can help inform their goals and planning. Share these insights with others, and keep informed about new developments.

Maintain Momentum

Progress towards reclaiming democracy depends upon sustained effort. Luckily there are many ways of participating in the democratic process. Support those who organize such tactics as voting campaigns, educational projects, demonstrations, boycotts, letter writing, phone chains, lobbying and internet activity. Continue to participate yourself, including with financial assistance if you are able. Finally, recognize that understanding and challenging the Right takes time. Be determined, outraged, committed, but also patient.

Do Your Homework

Recognize that the Right is a complex movement.

No one organization "controls" the Right. No single funder is "behind" the Right. Some large organizations are important, but many others appear to be more influential than they really are. Recognize that there are multiple networks of organizations and funders with differing and sometimes competing agendas. Find out as much as you can about the groups you see. Incorporate this information in your educational work. It is helpful in organizing to know a great deal about your opponents. Be alert to evidence of the Right's "new racism." The Right has replaced simple racist rhetoric with a more complex, "colorblind" political agenda which actually attacks the rights of people of color. See the Resources sections of this kit for some assistance in your research.

Decode the Right's agenda on your issue.

The Right often attempts to pass laws that take rights away from groups or individuals. Under the guise of addressing some compelling societal need, they often frame the issue by appealing to prejudice, myth, irrational belief, inaccurate information, pseudo-science, or sometimes even by using outright lies. Further, right-wing organizers often appropriate the rhetoric of the civil rights and civil liberties movement to portray themselves as victims of discrimination. Actually, they most often are seeking to undermine the existing protection of individual rights, increase their freedom to accumulate profit, and undermine the wall of separation between church and state.

Be careful to respect people's right to hold opinions and religious beliefs that you may find offensive.

Everyone has an absolute right to seek redress of their grievances. This is equally true when those

grievances are based on religious beliefs. In an open and democratic society, it is important to listen to the grievances of all members of society and take them seriously, even when we might be vehemently opposed to them. They do not, however, have a right to impose those beliefs on others.

Distinguish between leaders and followers in right-wing organizations.

Leaders are often “professional” right-wingers. They’ve made a career of promoting a rightist agenda and attacking progressives and progressive issues. Followers, on the other hand, may not be well-informed. They are often mobilized by fears about family and future based on information that, if true, would indeed be frightening. This so-called “education” is often skillful, deceitful, and convincing. These followers may take positions that are more extreme than those of the leaders, but on the other hand, they may not know exactly what they are supporting by attending a certain organization’s rally or conference. To critique and expose the leaders of right-wing organizations is the work of a good progressive organizer, writer or activist. In the case of the followers, however, it is important to reserve judgment and listen to their grievances. Do not assume that they are all sophisticated political agents or have access to a variety of information sources.

Rebut, Rebuke, Reaffirm.

It’s important to remember that while the tactics of the Right may be obvious to you, they are not necessarily obvious to others, even though they might be part of the political process. The ways in which the Right distorts and misleads the public must be carefully explained. Use a 3-step process. Rebut false and inaccurate claims. Rebuke those who use scapegoating or demagoguery. Reaffirm what a progressive goal or agenda would accomplish for the betterment of society.

Stay Cool in Public

Use the opportunity of public forums to present your position.

Approach any public event as a chance to state your case. Come fully prepared to explain why you are right. Although your audience may be unfriendly, remember that you are often an invited guest at such events. Audience members are expecting you to represent your group, even though they may not expect to agree with you. Your task is to convince these listeners, not the representatives of the Right who may be your debating opponents or fellow panelists. Do so using short, clear sentences, not long, abstract paragraphs. Many audience members are your potential supporters, available to join your ranks. Provide them with reasons and ways to do so.

Demand documentation.

Common tactics of the Right include distorting the truth and manipulating facts and figures in order to deceive the public. You can often expose false charges and baseless claims by demanding that their sources be cited. The leadership of an organization can and must be held fully responsible for every spoken or written word that comes from him or her or the organization they represent. If you are thoroughly prepared, you will know the weaknesses of these sources and be able to refute them publicly. At the same time be prepared to document your sources in order to maintain your credibility.

Address the issues, not just the actors.

Try to avoid personalizing the debate or focusing entirely on the presentation by the Right’s representative. Take time to clarify what the real issues are, what tactics are being used, why

these issues are important to the Right and what the implications of the debate might be.

Criticize the outcomes, not the intent, of the Right's agenda.

If you focus only on exposing the purpose of a particular campaign, you may find yourself locked in a circular argument about who knows better what the Right seeks to accomplish. It may be more productive to look at the implications of the issues at hand and to explain that the logical outcome of adopting your opponent's position will be a serious threat to the goals of your group.

Avoid slogans, namecalling, and demonizing members of the Right.

Slogans and sound bites have their place, but they are not sufficient as an organizing strategy. Simple anti-Right slogans do not help people understand why the Right sounds convincing but is wrong. And responding in kind to being called names weakens your position with some of the listeners you are trying to convince. Phrases like “religious political extremists” are labels, not arguments, and often will backfire on the neighborhood and community level.

Expose who benefits from right-wing campaigns.

One of the most common ways the Right advances its policies is to argue that they will benefit the “average” person, though that most often is not the case. It helps in exposing this deception to point out who actually stands to benefit and who stands to lose from the policy being proposed. Exploring whose self-interest is served can help organizers as they seek a clearer picture of the forces behind a particular campaign. Sometimes, the greatest beneficiaries of a right-wing campaign are the organizations conducting it. Campaigns are recruitment tools. So if potential new members can be reached by a certain position, that is sometimes in and of itself the reason the campaign is mounted.

Keep Organizing

Keep your supporters informed.

Signing up supporters is a good start, but your job includes keeping your supporters well informed. Often the Right will switch tactics or redirect its energy. If you are in the middle of an attack, these changes may be puzzling. Keep in mind that the deep agenda of the Right remains unchanged despite these apparent shifts. Persist in explaining this to your colleagues.

Involve clergy and other respected community members in your organizing.

Since so much of the Right's rhetoric has been influenced by the Religious Right, progressive, faith-based organizations and their representatives have great potential for increasing your chances for successful organizing. Sympathetic religious leaders can present an alternative interpretation of scripture and often have access to large congregations who may be interested in your work.

Be patient.

Change takes time. Your organizing today is laying the groundwork for tomorrow's successes. Patience, optimism and a sense of humor are key ingredients in opposing the Right.

Endnotes Available Online!

All citations and references are available at www.defendingjustice.org or by contacting PRA.

RESOURCES

Conservative Criminal Justice Organizations

American Center for Law & Justice

P.O. Box 64429
Virginia Beach, VA 23467
(757) 226-2489
<http://www.aclj.org>

The ACLJ is a public interest law firm and advocacy organization that supports the expression of the Christian faith as it appears in the public sphere, ranging from prayer in school to religious displays in government buildings. ACLJ has filed amicus briefs in support of the detention of suspected terrorists. Headed by lawyer Jay Sekulow who appears regularly on cable and radio.

American Family Association

P.O. Drawer 2440
107 Parkgate
Tupelo, MS 38803
(601) 844-5036
<http://www.afa.net>

The AFA is a non-profit advocacy organization standing for “traditional family values” and focusing on the influence of television and other media on our society. The AFA primarily challenges issues contradictory to “traditional family values” (abortion, gay rights, and pornography), taking a very conservative approach to its work. The organization usually focuses on issues directly affecting the family, but it also addresses issues relating to the criminal justice system such as capital punishment. While the ASA does support capital punishment, it is critical of the current system which employs it. “Under today’s justice system, there is a greater likelihood the death penalty will be imposed on minorities and the poor. When the penalty is the taking of human life by execution, it is imperative our system treats each individual fairly and judges them on merits other than their skin color and financial status. Secondly, vengeance is often the underlying motive for Americans in any given capital case.”

American Legislative Exchange Council

910 17th Street, NW, 5th Floor
Washington, DC 20006
(202) 466-3800
<http://www.alec.org>

ALEC is a conservative network and think tank that favors limited government, free markets, and individual liberty. Has numerous task forces dedicated to issues like criminal justice, tax & fiscal policy, and Federalism. ALEC provides state-level legislators and

Visit www.defendingjustice.org for profiles on the following conservatives:

- | | |
|--------------------|------------------------|
| ✓ John Ashcroft | ✓ John J. Dilulio, Jr. |
| ✓ William Bennett | ✓ Robert Martinson |
| ✓ Robert Bidinotto | ✓ Morgan Reynolds |
| ✓ Alfred Blumstein | ✓ Eugene Rivers |
| ✓ William Bratton | ✓ James Q. Wilson |
| ✓ Chuck Colson | |

lobbyists with language for filing bills promoting conservative issues, including complete model legislation packages.

American Society for the Defense of Tradition, Family, and Property

P.O. Box 341
Hanover, PA 17331
(717) 225-7147
<http://www.tpf.org>

A global network that promotes a return to Catholic patriarchal oligarchy. It values the historical period of the Spanish Inquisition. Even some Catholic conservatives have written about TFP’s embrace of elements of fascism. The American sector of TFP was founded in 1973. They actively support the pro-life movement and oppose the “homosexual agenda.” TFP also supports the right to carry arms including concealed handguns. Their goal is to bring Christian theology into what they see as the chaos of mainstream American society as a “counterevolution” to secular ideas. The presence of colorful red banners and sashes (based on the symbols of the Inquisition) characterize street actions by followers who sometimes travel from city to city to stage demonstrations.

Americans for Victory Over Terrorism

c/o The Claremont Institute
937 West Foothill Blvd, Suite E
Claremont, CA 91711
(909) 621-6825
<http://www.avot.org>

Americans for Victory Over Terrorism is a project of Empower America, (founded by William Bennett), and the Claremont Institute in 2002. AVOT claims to “defend America’s war on terrorism against those who would weaken the nation’s resolve and erode our commitment to end the international menace of terrorism.” It sponsors teach-ins at colleges on the war in Iraq and the U.S. War on Terror; and has cre-

ated a list of statements by faculty and others who dissent from Bush's policies that it feels present an internal "threat."

California Public Policy Foundation

PO Box 931
Camarillo, CA
(805) 445-9138
<http://www.cppf.us>

The California Public Policy Foundation is a non-profit, educational organization in California that acts as a "voice for conservative ideas, policies and principles," including limited government, individual responsibility, and self-reliance. They support the death penalty. Their main publication is the *California Political Review*.

Cato Institute

1000 Massachusetts Ave., NW
Washington, DC 20001
(202) 842-0200
<http://www.cato.org>

Founded in 1977, Cato is an influential libertarian public policy research center. Its Criminal Justice and Law Enforcement Project has criticized big government and overzealous prosecution as obstacles to civil liberties.

Center for Equal Opportunity

14 Pidgeon Hill Drive, Suite 500
Sterling, VA 20165
(703) 421-5443
<http://www.ceousa.org>

Former Reagan appointee (and George W. Bush's initial pick for Secretary of Labor) Linda Chavez is president of the Center and her son David Gersten is Executive Director. Another son, Rudy, is Director of Operations. Abigail Thernstrom and Ron Unz (author of the anti-bilingual Proposition 227 in California) are on the Board of Directors. CEO focuses its opposition to three social policy areas: "racial preferences," immigration and assimilation, and multicultural education.

Center for Immigration Studies

1522 K Street NW, Suite 820
Washington, DC 20005
(202) 466-8185
<http://www.cis.org>

CIS publishes conservative research, analysis, and opinion pieces and testifies before Congress about the dangers of unchecked immigration. Executive Director Mark Krikorian and Researcher Steven Camarota often appear in the mainstream press as spokepeople for immigration reform. CIS opposes the Visa Waiver Program which they see as an opportunity for terrorists to enter the United States.

Center for Security Policy

1920 L Street, NW
Washington, DC 20036
<http://www.security-policy.org>

Founded by former Reagan aide, Frank Gaffney, CSP promotes an aggressive and ultraconservative foreign policy that is supportive of missile defense, unequivocally pro-Israel, and skeptical of arms control treaties. It prominently supports the war in Iraq and the U.S. War on Terror. Dick Cheney and Dan Quayle were on the board of advisors for the Center. William Bennett is a current member of their National Security Advisory Council. The Center has received grants from organizations such as the JM Foundation, the Sarah Scaife Foundation, the John M. Olin Foundation, and the Lynde and Harry Bradley Foundation.

Citizen's Equal Rights Foundation/Citizen's Equal Rights Alliance

P.O. Box 93
Ronan, MT 59864
(605) 374-5836
<http://www.citizensalliance.org>

CERA and CERF are affiliated groups that are part of the U.S. Anti-Sovereignty movement. They use a rhetoric of equal rights to argue that American Indians should be citizens like all other American citizens, and that the sovereign status of tribes recognized by the federal government should be eliminated. CERA's focus is national, and they target specific legislation. Articles available through its website discuss why sovereignty has harmed rather than helped American Indians, and why it is unconstitutional. Ultimately they suggest that a constitutional amendment eliminating native sovereignty may be necessary to ensure the pledge of "one nation under God, indivisible, with liberty and justice for all." The Montana Human Rights Network and others have observed that groups like CERA/CERF are part of the Anti-Indian movement, and that their "systematic effort to deny legally established rights to a group of people [American Indians] who are identified on the basis of their shared culture, history, religion and tradition" makes it "racist by definition."

Citizens for Law and Order, Inc.

PO Box 412
Carlsbad, CA 92018
(760) 631-2028

Formed in 1970 as part of an effort to unseat California's liberal Supreme Court Justice, Rose Bird. All staff works on a volunteer basis. The organization has sought to remove judges who it feels are not strict enough in sentencing convicted defendants. They also endorse the election of conservative district attorneys, sheriffs, district judges, state assembly rep-

representatives, California Supreme Court judges, and appeals court judges. This group supports victims' rights initiatives and advocates for the death penalty. Endorsed John Ashcroft as Attorney General.

Concerned Women for America

1015 15th St., NW, Ste. 1100
Washington, DC 20005
(800) 458-8797
<http://www.cwfa.org>

CWA is the nation's largest conservative Christian women's organization with chapters in fifty states. Founded by Beverly LaHaye, it considers high levels of defense spending and aggressive anticommunism to be integral to defending traditional family values. CWA supports the Unborn Victims of Crime Act.

Conservative Caucus

450 Maple Ave. E., Ste. 309
Vienna, VA 22180
(703) 938-9626
<http://www.conservativeusa.org>

Small but vocal group which opposed "the Clintonista plan to governmentalize U.S. medicine" and sponsors "Hillary Watch" tracking Senator Clinton "and her radical agenda." Also wants to stop DC statehood, block taxpayer subsidies to gays, abolish the IRS and terminate the income tax. Founded and led by Howard Phillips.

Criminal Justice Legal Foundation

2131 L Street
Sacramento, CA 95816
(916) 446-0345
<http://www.cjlf.org>

Organization with a full staff of attorneys who produce friend of the court briefs to encourage rulings which favor the rights of victims and law enforcement officers over the rights of suspects, defendants, and criminals. They support victims' rights legislation. They advocate for court rulings that limit the right to appeal, and have secured court rulings which deny visitation rights to prisoners, limit the ability of federal courts to rule on matters involving state prisons, established the constitutionality of three strikes laws, and preserve mandatory sentencing laws. They support most tough on crime legislation, particularly legislation that creates longer sentences and allows the death penalty.

Claremont Institute

250 W. First St., Ste. 330
Claremont, CA 91711
(909) 621-6825
<http://www.claremont.org>

A California-based think tank committed to restoring the principles of the "American Founding." These

include: limited government, traditional family values, right to private property, and civil liberties protecting individuals from government abuses. Funded by conservative foundations, including the Lynde and Harry Bradley Foundation, Sarah Scaife Foundation and the John M. Olin Foundation. Anti-gun control, arguing that "good citizens use guns wisely, and criminals misuse guns." Anti-hate crime legislation, believing that such laws run contrary to the principles of the American Founding. The Institute worries that the American court system has become too liberal, and that we need national leaders to appoint men and women to the courts who will defend the founding principles. It is pro-death penalty and hard on crime, and it strongly supported California's "Three Strikes" policy.

D.A.R.E.

9800 La Cienega Blvd.
Inglewood, CA 90301
(800) 223-DARE
<http://www.dare.com>

Drug Abuse Resistance Education, or D.A.R.E., was founded in 1983, and has gone through many revisions and transformations. Currently, its main purpose is to bring police officers into elementary, middle, and high school classrooms to teach students a "no-use" message about drugs; while focusing on normative beliefs, consequential thinking, and a message of immediate consequences, (among other things). The parent organization is "D.A.R.E. America," based in California. Not a government program, but does receive some federal funding and administration support. Recent studies illustrate that the D.A.R.E. program is ineffective in keeping kids off drugs. The Drug Policy Alliance reports that D.A.R.E. annually costs \$1 to \$1.3 billion, and cites a Michigan State study saying that even D.A.R.E.'s newest messages do not seem to work. In 2001 the U.S. Surgeon General placed D.A.R.E. under the category of "Ineffective Programs." Critics argue that D.A.R.E.'s messages are confusing to children and provide an exaggerated picture of drug use.

Eagle Forum

P.O. Box 618
Alton, IL 62002
(618) 462-5415
<http://www.eagleforum.org>

Phyllis Schlafly's premier conservative organization has been a soapbox for her voracious and detailed interest in almost any domestic or foreign policy issue for over 30 years. Eagle Forum opposes judicial activism and "unchecked immigration" and supports gun ownership and victims' rights.

Ethics and Public Policy Center

1015 15th St. NW
 Washington, DC 20005
 (202) 682-1200
<http://www.eppc.org>

Publishes books, holds conferences, and runs programs to increase the influence of Judeo-Christian thought on public policy. It supports faith-based prison programs like Prison Fellowship Ministries.

Faith and Reason Institute

1413 K Street NW, Suite 1000
 Washington, DC 20005
 (202) 289-8775
<http://www.frinstitute.org>

Faith and Reason Institute tries to merge faith and reason into modern social thought by examining them and their influence in contemporary society. This think tank holds lectures, seminars, and conferences that merge together theology and secularism on modern themes such as technology, economics, politics, public policy, and the environment. The Institute supports the Catholic Church and has often claimed that secular journalists are biased. The Faith and Reason Institute supports State aid for private schooling and home schooling, especially if they are Catholic institutions.

Family First (of Florida)

609 W. DeLeon Street
 Tampa, FL 33606
 (813) 222-8300
<http://www.familyfirst.net>

Their mission is strengthening and promoting the family as a top priority in people's lives. It articulates principles for building good marriages and raising children, with a focus on fathers. Arguing that fatherhood is the most important part of a child's life, and that marriage is the "one irreducible building block essential for a healthy and productive society," it bases many ideas on a White, middle class, patriarchal, Christian model for life. For instance, it suggests that "Women who were sexually active prior to marriage 'face a considerably higher risk of marital disruption than women who were virgin brides.'" It is anti-gay and was against repealing sodomy laws. Family First does not advocate building more prisons to solve juvenile crime, feeling that it is better to deal with crime's underlying causes. They believe one of the largest factors that causes juvenile crime is "the breakdown of the family, and in particular father absence..." They argue that "crime prevention begins with fathers" and suggest that government should revise divorce laws "so we can limit the number of young people who will grow up fatherless."

Family Research Council

801 G Street, NW
 Washington, DC 20001
 (202) 393-2100
<http://www.frc.org>

The FRC is an influential think tank and lobbying group. Once led by Gary L. Bauer, FRC was a division of James Dobson's Focus on the Family from 1988 until October 1992, when IRS concerns about the group's lobbying led to an amicable administrative separation. Executive Director Tony Perkins is a spokesperson for traditional family values and against "judicial activism."

The Federalist Society

1015 18th St., NW Suite 425
 Washington DC 20036
 (202) 822-8138
<http://www.fed-soc.org>

With a membership of some of the most powerful lawyers and judges in the United States, this influential ultraconservative organization has over 25,000 lawyer members, and student chapters at many law schools. The Society strives to set the agenda for conservative discussion about the law. Its Criminal Justice Practice Group focuses on topics such as criminal procedure, juvenile justice, and sentencing.

Free Congress Foundation

717 Second Street, NE
 Washington, DC 20002
 (202) 546-3000
<http://www.freecongress.org>

Run by New Right strategist Paul Weyrich, the ultra-conservative FCF evolved from the Committee for the Survival of a Free Congress and Free Congress Research and Education Foundation, and was funded by Colorado beer magnate Joe Coors. Other groups affiliated with FCF include Free Congress Political Action Committee. Publishes *Empowerment!* Its Center for Law and Democracy actively opposes so-called judicial activism. Promotes right-wing Christian theories.

Gun Owners of America

8001 Forbes Place #102
 Springfield, VA 22151
 (703) 321-8585
<http://www.gunowners.org>

This grassroots lobbying organization works to support pro-gun candidates and pro-gun legislation. GOA believes the NRA is too soft on some issues, and sees gun ownership as a basic freedom. They believe that gun bans and regulation do not prevent criminals from obtaining guns. They argue law-abiding citizens need guns to protect themselves from criminals.

The Heritage Foundation

214 Massachusetts Ave., NE
Washington, DC 20002
(202) 546-4400
<http://www.heritage.org>

The Heritage Foundation is the largest and probably the most influential conservative think tank in the United States, bringing together the Old and New Right. Founded in 1973 by Paul Weyrich and Edwin Fuelleter with financial help from Joseph Coors and Richard Mellon Scaife. Foundation fellows research, write, and advocate on a wide spectrum of issues from a conservative viewpoint. Heritage published in the 1980s, *Mandate for Leadership*, which became the Reagan Administration's guidebook for policy during Reagan's 8 years in office. Heritage originally published the journal *Policy Review*, but it moved to the Hoover Institution. According to the Heritage website: "State and local officials are the front-line forces making America safer. They are implementing effective policies to get violent criminals off the streets and behind bars. Combined with aggressive and intelligent local police methods, these efforts are helping to reduce crime across America." And that "In terms of public policy, a major factor contributing to falling crime rates was the increased use of incarceration."

The Hoover Institution

Stanford University
Stanford, CA 94305
(650) 723-1754
<http://www.hoover.org>

The conservative Hoover Institution, founded by Herbert Hoover, is located at Stanford University. It counts among its past fellows leading Bush Administration figures such as Condoleezza Rice and Donald Rumsfeld. Hoover works primarily on foreign and defense policy issues but has also been a major player in pushing U.S. domestic social and economic policies rightward. Publishes the journal *Policy Review*.

Hudson Institute

1015 18th Street, N.W.
Washington, DC 20036
(202) 223-7770
<http://www.hudson.org>

The Hudson Institute describes itself as a non-partisan, applied research institute that sees the linkages between various issues including culture, demography, technology, markets, and politics. It claims to have, in the 1970s, "helped turn the world away from the no-growth policies of the Club of Rome" in favor of neoliberal economic policies, while "at home, we helped write the pioneering Wisconsin welfare reform law that became the model for successful national welfare reform in the mid-1990s."

Today, as part of our research agenda, we are developing programs of political and economic reform to transform the Muslim world." Less-known than Heritage, Cato, or the American Enterprise Institute, Hudson counts among its resident scholars conservative luminaries such as Robert Bork.

The Independent Institute

100 Swan Way
Oakland, CA 94621
(510) 632-1366
<http://www.independent.org>

The Independent Institute is a libertarian think tank that promotes government reform. It has been critical of U.S. policies around drugs and crime, particularly regarding imprisonment for non-violent drug-related offenses. It publishes the *Independent Review*.

Independent Women's Forum

1726 M Street NW, Suite 1001
Washington, DC 20036
(800) 224-6000, (202) 419-1821
<http://www.iwf.org>

The Independent Women's Forum was founded in 1991 by anti-feminist neoconservative women and has received funding from leading conservative foundations. While they criticize "radical feminists" as subscribing to "the women-as-victim, pro-big-government ideology," they differ ideologically from the socially conservative women of the Christian Right. They are active around campus issues, promoting IWF members tours on campuses, and also attacking affirmative action and Title IX programs that strive for gender parity in sports program funding. On a number of other issues, such as taxes, national security, and foreign policy (including international women's rights), they are in line with conservatives.

**Institute for Legislative Action
(National Rifle Association)**

11250 Waples Mill Road
Fairfax, VA 22030
(800) 392-8683
<http://www.nraila.org>

The Institute for Legislative Action is the "lobbying" arm of the National Rifle Association. They are "committed to preserving the right of all law-abiding individuals to purchase, possess and use firearms for legitimate purposes" under the Second Amendment. In the past ILA sponsored "CrimeStrike," a program that worked to increase prison sentences and impose mandatory sentencing for repeat criminals. CrimeStrike no longer exists, but the ILA does advocate for the expansion of "Project Exile," a federal program that maximizes penalties for gun crimes by having them prosecuted in federal court, where penalties tend to be more severe than state court.

Project Exile also promotes mandatory sentencing for illegal firearm possession and denial of bond for those arrested on firearm charges. ILA believes that gun control laws punish innocent citizens without deterring criminals or controlling crime. Argues that tough sentencing laws are more likely to have an effect on crime. Claims that citizens who possess firearms for self-defense deter criminals, and that “law-abiding citizens carrying concealed handguns transfer a benefit to others.” ILA supports victims’ rights.

The Institute on Religion & Public Life

156 Fifth Avenue, Suite 400
New York, NY 10010
(212) 627-1985
<http://www.firstthings.com>

The IRPL describes itself as “an interreligious, nonpartisan research and education institute whose purpose is to advance a religiously informed public philosophy for the ordering of society.” It was founded by Richard John Neuhaus, a Catholic priest and leading neoconservative. IRPL publishes the journal *First Things*. It has received funding from the main conservative foundations and counts leading neoconservative scholars, commentators, and activists on its Editorial Advisory Board, including Jean Bethke Elshstain and Glenn Loury. Neoconservative activist and scholar Midge Decter serves on the advisory board of *First Things*, and conservative ideologue John DiIulio has written for the journal.

John Birch Society

P.O. Box 8040
Appleton, WI 54913
(920) 749-3780
<http://www.jbs.org>

The John Birch Society is an ultraconservative and reactionary membership organization that promotes the theory that the New World Order is the function of a centuries-old conspiracy of financial elites networked through the Trilateral Commission, the Council on Foreign Relations, and other similar groups. It publishes *The New American* and was founded and led by Robert Welch until his death. It believes in free market capitalism, less government, and the linkage of individual responsibility to individual rights.

Justice Coalition

6302 San Juan Ave
Jacksonville, FL 32210
(904) 783-6312
<http://www.justicecoalition.org>

Justice Coalition is a non-profit, faith-based organization that works around victims’ rights in the

Jacksonville, Florida area. Founded by a business owner and former victim of armed robbery, the Justice Coalition acts as a resource for victims of crime with campaigns of community education, victim advocacy, and legislative efforts. They also announce rewards for information regarding some unsolved murders in the community. Also produces a monthly newsletter *Victim’s Advocate*.

Justice Fellowship

44180 Riverside Parkway
Lansdowne, VA 20176
(877) 478-0100
http://www.pfm.org/AM/Template.cfm?Section=Justice_Fellowship1

See section on Faith and Religion in Conservative Agendas and Campaigns.

Headed by former California state representative Pat Nolan, the Justice Fellowship is the lobbying and advocacy arm of Prison Fellowship Ministries and was founded in 1983. JF advocates for prisoners’ rights and supports a Biblically-based restorative justice approach to “heal victims, hold offenders accountable, reconcile victims and offenders, and work to restore peace to our communities.” Further, it advocates for “common sense reforms” to the “costly, retributive criminal justice system” that locks “offenders in a box and forgets about them.” JF primarily urges reform legislative action and activism through the electoral process.

Justice for All

PO Box 55159
Houston, TX 77255
(713) 935-9300
<http://www.jfa.net>

Justice for All is an active Texas-based victims’ rights organization. They support the death penalty, a decrease in paroling of prisoners convicted of murder, and a constitutional amendment supporting victims’ rights. JFA encourages letter writing and online petitions in order to fight against parole of certain prisoners, and holds monthly meetings regarding community activism in victim’s rights. Publisher of *Voice of Justice*, and several public service announcements discussing the effect murder has on family members. They also produce the websites www.prodeathpenalty.com and www.murdervictims.com.

Lincoln Legal Foundation

100 W. Monroe St.
Chicago, IL 60603
(312) 606-0951

A nonprofit public interest law office and legal research center in Chicago. They are dedicated to the free enterprise system, limited constitutional government, property rights, and individual liberty. The

group is headed by Joseph Morris, who is active within the Illinois Republican party and served under Reagan as the general counsel of the US Office of Personnel Management. Morris also founded the Chicago Conservative Conference.

Maryland Public Policy Institute

*P.O. Box 195
Germantown, MD 20875
(240) 686-3510
<http://www.mdpolicy.org>*

The Institute proposes policy reforms around the criminal justice system including the juvenile criminal justice system and toughening penalties for offenders to act as deterrents. Senior fellow, Thomas Firey, is also the managing editor of *Regulation Magazine*, published by the Cato Institute.

National Campaign to End School Violence

*1410 Orchard Street
Eugene, OR 97403
(541) 726-0512
<http://www.ribbonofpromise.org>*

A non-profit organization working to end violence in schools. Started in Eugene, Oregon after a shooting in Thurston high school in 1996 that claimed the lives of two students and injured 22 others. The organization now has four chapters nationwide. The organization has a three-part strategy that includes, prevention education, early intervention, and the enforcement of laws that deal with school violence. It supports laws to prevent and punish violations such as illegal possession of weapons, and supports more restrictive laws to provide even greater protection to those attending and working in schools.

National Center for Neighborhood Enterprises

*1424 16th St, NW
Washington, DC 20036
(202) 518-6500
<http://www.ncne.com>*

A non-profit organization that supports grassroots initiatives in low-income neighborhoods, focusing particularly on youth violence, crime, and drug use, among other issues. Evaluates the work of faith-based and community groups and “interprets their experiences for public policy.” While NCNE does not see itself as a religious organization (and says that its grassroots groups represent a number of faiths), they do feel that the “most effective neighborhood organizations are faith-based.” The NCNE holds as a core belief the idea that faith-based initiatives are “uniquely qualified” to address problems related to “behavior and life choices.” Its president, Robert Woodson, has been called the “godfather of the compassionate conservative movement.” Supports the “Violence-Free Zones” initiative ([\[www.violencefree-zones.com\]\(http://www.violencefree-zones.com\)\), in which it provides assistance to grassroots organizations and neighborhood leaders who are committed to intervening and helping youth become “ambassadors of peace” rather than part of the violence in their communities. They see this “restoration of civil order” as a necessary base to revitalize communities. Nearly all of the leaders NCNE works with as part of this initiative are “God-centered people whose service is an expression of their faith.”](http://www.violencefree-</p>
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National Center for Policy Analysis

*12770 Coit Rd., Suite 800
Dallas, TX 75251
(972) 386-6272
<http://www.ncpa.org>*

A non-profit think tank based in Dallas, with an active office in DC, NCPA believes in private sector (market-based) solutions to public problems. They have testified in front of Congress on a wide variety of issues including energy, commerce, health care savings accounts, criminal deterrence, etc. NCPA also has a criminal justice center. NCPA believes that manufacturing factories inside prisons save taxpayers money, benefit the economy, and make prisoners more employable upon release; they believe a private bond system and a streamlined, increased “expected punishment” system will make a more effective probation and parole system. Argues the most effective crime reducer is a good family (which has been deteriorated by government policies like welfare). They have several factsheets discussing a range of topics within criminal justice on the benefits of “Super-Max” prisons, gun possession as a crime deterrent, gun violence declining, the non-existence of racial profiling, etc.

National Coalition for the Protection of Children & Families

*800 Compton Rd., Ste 9224
Cincinnati, OH 45231
(513) 521-6227
<http://www.nationalcoalition.org>*

Seeks to “persuade” based on the the Judeo-Christian biblical view of sexuality, and to promote the traditional role of marriage as between a man and a woman. NCPCF strategy involves: assimilation, education, and activism. NCPCF believes that homosexuality is responsible for helping the spread of AIDS during the ‘80s. NCPCF is also against pornography.

National Victims' Rights Constitutional Amendment Network

789 Sherman Street, Suite 670
Denver, CO 80203
(800) 529-8226
<http://www.nvcn.org>

A non-profit organization working for victims' rights. NVCAN proposed a federal constitutional amendment that would provide victims of crime with rights such as notification of the public proceedings of the offender and the right to attend those proceedings, the right to be heard at public release, sentencing, and pardon proceedings, and just and timely claims to restitution from the offender. NVCAN has lobbied Congress for support on this amendment and testified before congressional committees. They are working on a National Victims' Rights Educational Project, in which they will help push victims' rights in a variety of states with and without victims' rights legislation, including developing fact sheets, brochures, etc.

The National Legal Foundation

P.O. Box 64427
Virginia Beach, VA 23467
(757) 463-6133
<http://www.nlf.net>

Founded in 1985, the National Legal Foundation is a public interest law firm that seeks to protect and support Biblical views of laws by providing free services in court cases. NLF attacks secularism, gay rights, and pornography. Its main office is in Virginia, and it has six branch offices.

National Center for Public Policy Research

777 N. Capitol St. NE #803
Washington, DC 20002
(202) 371-1400, (202) 408-7773
<http://www.nationalcenter.org>

Conservative research think tank that supports a strong national defense and the free market. The NCPPR supports legal reform which would limit frivolous lawsuits and believes that legislators and not judges should make laws.

National Rifle Association of America (NRA)

11250 Waples Mill Road
Fairfax, VA 22030
(703) 267-1000
<http://www.nra.org>

The NRA is the country's largest and most powerful gun-owners' lobby group, and it opposes gun control in any form. While the NRA is officially non-partisan, it supports a legislative and policy agenda aimed at furthering its mission and contributes substantially to candidates that support its goals in national, state, and local legislative races. According to the NRA,

even as gun-ownership has risen, the crime rate has fallen. "Throughout the 1990s, NRA strongly supported successful initiatives in a variety of states to increase prison sentences for violent offenders and reduce parole, and during the last several years encouraged Project Exile-type programs which throw the book at felons who illegally possess firearms."

Ohio Roundtable

11288 Alameda Drive
Strongsville, OH 44149
(800) 522-VOTE
<http://www.ohioroundtable.org>

A conservative, non-profit education and research organization working to restore traditional "Judeo-Christian" principles to public policy. Influential in Ohio politics. Funded by the right-wing Lynde and Harry Bradley Foundation. Has worked to prevent the expansion of casinos in Ohio and the Ohio Lottery. Anti-abortion, anti-homosexuality, pro-school choice. Founded www.thecommondefense.org in the wake of the events of 9/11. This website was created to encourage the responsible stewardship of constitutional liberty and national defense. Supports the U.S. finding sources of oil outside the Middle East to prevent the necessity of conflict in that region. Produces the Public Square Roundtable's daily news and commentary broadcast, hosted by David Zanotti (President and CEO of Ohio Roundtable). The radio commentary addresses such issues as: school choice, gambling, and gay marriage. Against additional federal laws in response to incidents like Columbine, feeling that "what we need is more hearts that are willing to keep the laws." Concerned about the danger posed by "judicial activism." Was especially opposed to the Hate Crimes Bill which they felt infringed "on the ability of Christian churches to obey God and speak against the sin of homosexuality."

Pacific Research Institute for Public Policy

755 Sansome Street, Suite 450
San Francisco, CA 94111
(415) 989-0833
<http://www.pacificresearch.org>

A non-profit, non-partisan, libertarian, public policy think tank that promotes individual freedom and personal responsibility. Research focuses on business and economics, education, environment, health care, and technology; subjects on which they publish books, commentaries, and do community outreach. PRI partners with other right-wing organizations such as the Cato Institute, the American Enterprise Institute, and the Heritage Foundation.

Prison Fellowship

44180 Riverside Parkway
Landsdowne, VA 20176
(877) 478-0100
<http://www.pfm.org>

See section on Faith and Religion in Conservative Agendas and Campaigns.

Chuck Colson's umbrella organization oversees at least eight different faith-based programs for prisoners, ex-prisoners, and their families, including in-prison seminars, a prisoner pen pal program, and assistance for children of prisoners. Its most overtly political arm, Justice Fellowship, is described above in this directory.

Southeastern Legal Foundation

3340 Peachtree Road, NE
Atlanta, GA 30326
(404) 365-8500
<http://www.southeasternlegal.org>

A conservative public interest law firm and a legal think tank. WLF is a supporter of victims' rights, the death penalty, and challenging regulations which impede the free market.

Stronger Families for Oregon

PO Box 948
Salem, OR 97308
(503) 585-9383
<http://www.strongerfamilies.com>

A faith-based, community-oriented, non-profit organization that promotes family values in Oregon. They strongly advocate an increase in abstinence education, the importance of building strong, stable marriages between a man and a woman, and assume that the best family unit for a child's development consists of a mother and father. They believe there is a direct relationship between fatherlessness and juvenile crime, fatherlessness and violent criminals, and that fatherlessness is a bigger factor in the background of criminals than socioeconomic conditions. Stronger Families for Oregon has produced several public service announcements, but provides most of its information via its website www.strongerfamilies.com

The Vanguard (VanguardPAC)

PO Box 25003
Little Rock, AR 72225
(501) 960-2020
<http://www.thevanguard.org>

A conservative political action committee spearheaded by its chairman Rod Martin that believes society works best when people are free. They support a "tough on crime" approach: no parole for felons, enhanced mandatory sentencing for crimes committed with guns, absolute victims' rights, the death penalty, and the rights of gun owners.

Washington Legal Foundation

2009 Massachusetts Avenue, NW
Washington, DC 20036
(202) 588-0302
<http://www.wlf.org>

A conservative public interest law firm, WLF publishes many legal policy papers as well as engages in litigation. Recently WLF has been concerned mostly with civil justice reform, although it has published papers in the past on judicial activism.

Young America's Foundation

110 Elden St.
Herndon, VA 20170
(800) 292-9231
<http://www.yaf.org>

The YAF is an influential right-wing organization mobilizing youth and college students with aggressive campus outreach. It provides conservative youth with training and leadership skills and inculcates conservative values. Established by friends and former leaders of Young Americans for Freedom, it purchased the Reagan Ranch in California which it uses to host programs for young conservatives. YAF also organizes the National Conservative Student Conference. A variety of conservative ideas about criminal justice get discussed at its events.

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