The Trouble We Have Talking About Queers, Violence & the U.S. Criminal Justice System

Are human and civil rights inviolate, or do we consider the rights of certain 'others,' whom we fear and hate, to be expendable? Are we willing to trade off the rights of some people in order to secure our own?

Two significant conversations about queers and the criminal justice system are taking place in the LGBT movement.

The first is about penalty enhancement (harder sentencing) hate crimes laws and zero-tolerance measures as prefered policy choices, for many LGBT organizations, for addressing hate violence and harassment directed against lesbian, gay, bisexual, transgender, and queer people and communities.

The second conversation is about police violence directed against LGBT people, and human rights abuses of incarcerated people who are, or are thought to be, queer.

These conversations ought to intersect. Each addresses a kind of violence historically directed against queer communities: hate violence perpetrated by individuals and the systemic violence directed against queers and other vulnerable groups within the criminal justice system. Each illuminates and complicates the other—especially when race, economics, gender, age, and disability are added to the mix.

Yet we seldom bring these conversations together within the LGBT movement.

Many of us tend to treat them as parallel, but somewhat disconnected, issues. Our movement often frames LGBT criminal justice discussions as if various queer communities all define and experience justice and injustice in the same way. But the fault lines of race, gender, culture, class, and age help shape our history and experiences as surely as the fault lines of sexual and gender identity. Candid discussion about the interrelationships of these factors in the creation and administration of crime policy is often discouraged, if not outright suppressed, or characterized by the dynamics of accusation and defensiveness.

Somehow, the LGBT movement seems to sense that the integration of these conversations would shatter the seductive storyline about victims and victimizers, the storyline that we are all one or the other—the worthy us or the unworthy them—but never both. We might be challenged to admit the painful truth that all of us can be victims in one situation, victimizers in another.

We might be challenged to admit that the merging of these conversations would force uncomfortable questions to the surface, questions that...
Policing Queers: Homophobia & Gender Panic Behind Bars

The U.S. Supreme Court decision striking down state sodomy laws (Lawrence and Garner v. Texas) did not erase the historic criminalization of LGBT sexuality in the United States. Anti-LGBT religious and political leaders often characterize all LGBT people as sexual predators and pedophiles, a politicization of homophobia and gender non-conformance that is both reprehensible and dangerous. Anti-queer discrimination and violence not only follow LGBT people into the criminal justice system, but also help to put us there.

- Incarcerated LGBT people — both youth and adults — are often subjected to verbal harassment, physical abuse other forms of mistreatment from other prisoners, guards, and other criminal justice staff.1
- Sexual assault and rape — by inmates and staff — are endemic in many correctional institutions. LGBT youth and adults are frequent targets.
- Trans youth and adults are often subjected to additional forms of harassment and abuse while incarcerated. This may include functional classification as sex offenders, denial of appropriate health care services, and prescription drugs, placement in gender-inappropriate facilities, and the like.2
- LGBT people — especially youth — in correctional facilities are often segregated from the general population and placed in isolation — allegedly for their own “safety. In reality, isolation magnifies the harshness of incarceration.
- Poverty, homophobia, and transphobia funnel many young queer into the system. Research suggests that a disproportionate number of homeless youth are queer. Many, who have been abused, neglected, or kicked out of their homes, often engage in prostitution, petty theft, and drug dealing in order to survive on the streets.3
- Queer teens who are not separated by significant age differences and who engage in consensual sex can in some jurisdictions receive significantly harsher sentences than young heterosexual partners who engage in the same sexual activity.4
- Prosecutors in capital cases often use homophobic arguments to encourage juries to give death sentences to LGBT defendants5 or use a “gay panic” defense in cases involving violent assault against persons who are, or are thought to be, gay or transgender.6

Fact 1: From 1970–1994, violent crime rates remained fairly stable. Since 1994, violent crime rates, overall, have declined.1

Fact 2: Despite falling crime rates, between 1972 and 2003, the number of prisoners in local, state, and federal institutions increased by more than 550 percent, from 326,000 to more than 2.1 million. Today, about 1 in every 140 U.S. residents is in jail or prison.2

Over the past 30 years, “get tough on crime” approaches have come to dominate the public conversation about justice in the United States. These policies and regulatory measures send many more people into jails and prisons and greatly increase the length of time that many offenders remain in prison.

Consider the context in which this has occurred:

Authentic justice, we believe, is predicated upon the belief that human rights are universal and inherent. It never permits us to trade off the rights of some dehumanized “other” in order to secure our own.

If we knew, what would we do?

Drawing on more than 80 years of AFSC engagement with peoples experiencing the violence of war, hatred, and injustice, 50 years of AFSC engagement with the U.S. criminal justice system and more than 30 years of AFSC advocacy for LGBT rights and recognition, Corrupting Justice offers this introductory look at the human, spiritual and economic shadow of crime policy in the United States, and its disastrous effects on our society.

In doing so, the American Friends Service Committee seeks to help bring these difficult discussions together, within a framework of nonviolence, human rights, and justice that heals and transforms.

Flirting With Disaster: “Getting Tough on Crime”

Authentic justice, we believe, is predicated upon the belief that human rights are universal and inherent. It never permits us to trade off the rights of some dehumanized “other” in order to secure our own. Nor does it sanction trafficking in or profiting from human misery. It seeks to hold not only individuals, but institutions accountable for the harm they do, tend to the long-term needs of those who suffer the harms of violence, and to prevent further harm, without compounding the cycle of violence.

challenge us to examine in new ways the very meaning of justice, safety, human rights, and non-violence.

And in the present political moment, as the right-wing assault on LGBT families gains momentum, conversations about the history of prisons and policing in the United States, or about the political and economic climate in which “get tough on crime” measures proliferate, don’t seem very important.

Our movement does not talk easily about the countless ways in which the politics of fear, rage, and resentment may influence and shape our own criminal justice policy choices.

We who are lesbian, gay, bisexual, transgender, two-spirit, and queer know the many ways in which hate violence and systemic discrimination devastate individuals, families, and whole communities. Do we also know the ways in which “get tough” crime policy and prison profiteering affect queers, communities of color, women, poor people, youth, people with mental illness or disability — and, indeed, entire communities?

What can possibly explain the shocking disconnect between these two realities?

The answer lies in the increasing, almost relentless, equation of justice with policing and prisons in the era following the rise of many progressive movements for human and civil rights, economic justice, and opposition to the U.S. war in Vietnam.3

The initial factor triggering the explosive growth in incarceration in the United States is the so-called “War on Drugs” that began to emerge in the early 1970s. The major engine driving this war was the overhaul of drug laws, strengthening a law enforcement focus, including the New York “Rockefeller Drug Laws” which created mandatory minimum sentencing for drug offenses.

Other changes in sentencing policy followed over time: mandatory sentencing for certain crimes, “truth in sentencing” laws designed to ensure those with long sentences serve a significant percentage of their sentence without any hope of

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See, for example, Kansas v. Matthew Limon: Case Background, American Civil Liberties Union Lesbian & Gay Rights Project, December 1, 2003, Updated January 27, 2005, http://www.aclu.org/LesbianGayRights/?i0=14476&c=100

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“Gay panic” is a term characterizing a legal defense against crimes alleged to have committed a violent assault or murder against a person of the same sex because, it is alleged, the victim “came” on sexually to the defendant. While “gay panic” defenses usually don’t win acquittal, they often do influence judge and jury perception of defendant culpability and may help mitigate sentences upon conviction.
release prior to that time, and “three strikes” laws. In the 1980s, the penalty enhancement template became the norm for hate crimes bills.

In the past decade, many states have passed laws making it much easier to try and sentence youth as adults. The increased militarization of the border between the United States and Mexico and repressive federal security initiatives that began long before 9/11 have produced a new “immigrant incarceration industry.” Other “get tough” measures include zero tolerance policies (which fuel a “school to prison pipeline” for many young people), so-called “anti-gang” laws that cast a very wide net among youth, and more. The ability of judges to use discretion in sentencing has been restricted, and the justice goal of rehabilitation for incarcerated offenders—most will be released back into the community, and many are now in their teens and twenties—has been all but abandoned.

How much of this incarceration increase is due to dramatic increases in crime rates? According to the Sentencing Project, for the period 1980–1996, when the inmate population tripled, 88 percent of the increase was a result of “get tough” sentencing policies, and only 12 percent was due to changes in crime rates.

Supporters promise that these policies will “send a message” that certain offenses and crimes of violence, injustice, and abuses of human rights are endemic to the prison industrial complex. While the number of women in prison is far less than the number of men, since 1980, the rate of increase in women prisoners has been far greater—nearly double the rate of increase in male prisoners.

38% of women prisoners are African American; 17% are Latina. When Asian/Pacific Islander and Native American and other indigenous women are added to the total, about 2/3 of incarcerated women are of color.

The average age of women in prison is 29; more than half have not finished high school.

Rape and sexual assault of women by guards is common in U.S. prisons and jails, with frequent retaliation by officials for those who protest and complain. Additionally, many women in prison trade sexual favors for various benefits, ranging from cigarettes to better prison jobs to affection.

A disproportionate number of incarcerated women—estimates range from more than 40% to more than 80%—have been sexually and/or physically abused prior to incarceration.

About 60% of incarcerated women are mothers. Many women’s prisons are in rural communities that are inaccessible to children and other family members, and very few programs exist that permit incarcerated mothers to live with their children.

Shackling of pregnant prisoners is policy in federal prisons and common in state prisons. Shackling during labor may cause serious complications for both mother and baby.

What is the Prison Industrial Complex?

“Over the years I have found it important to remind myself that the Department of Corrections is more than just a set of institutions, it is also a state of mind.”

—Bonnie Kerness, Coordinator of AFSC Prison Watch Project.

Prison Watch monitors human rights concerns, violations and abuses in U.S. federal and state prisons.

The creation, administration, and servicing of new jails and prisons has become a growth industry.

Combined with increased rise of corporate influence over public policy and a ceaseless rightward political push toward privatization of public services, the “get tough” measures have produced an intricate system of public and private interests—public officials, corporate executives and lobbyists, other interested parties, and the institutions in which they work—that promote harsher sentencing, incarceration, and prisons as the preferred means of managing not only murder, physical assault, rape, and similar acts of violence, but also an increasing number of complex social and economic problems (such as drug use, mental illness, behavioral infractions in schools, and poverty).

This system is referred to as the prison industrial complex.

Here, AFSC speaks of the systemic characteristics and overall patterns of the prison industrial complex. While there are many women and men of conscience working within or for the criminal justice system, often laboring with integrity and courage in difficult circumstances, AFSC experience confirms that violence, injustice, and abuses of human rights are endemic to the system as a whole.
The Criminalization of Youth

Over the past two decades, juvenile justice emphasis on prevention, education, and rehabilitation has ceased. Despite falling juvenile crime rates, incarceration is now the preferred approach for youthful offenders—particularly youth of color. We have become a nation that prepares to jail youth rather than educate and care for them.

At the same time juvenile crime rates have fallen, fear-driven rhetoric about youthful offenders (“super-predators”) has been used by politicians to create a public perception of “out of control” youth crime waves.

Over the past 20 years, most states have adopted measures that make it easier to try juveniles as adults, and to sentence youth to adult prisons. Today, at least 1 in 10 incarcerated youth resides in adult prisons.

Youth of color are far more likely than white youth to be tried in adult criminal courts. One important study of 18 jurisdictions throughout the United States confirmed that, in the first six months of 1998, 82% of the juvenile cases filed in criminal court involved youth of color. Almost 60% of those cases involved African American youth, 23% involved Latino/a youth, and 19% involved white youth.

Youth incarcerated adult prisons are five times more likely to be sexually assaulted and eight times more likely to commit suicide than are youth in juvenile facilities.

Even in juvenile facilities, youth often are confined under conditions that violate international human rights standards. These include: serious overcrowding, inadequate provision of medical, mental health, and other essential services, use of brutal physical force and restraint procedures, and prolonged use of solitary confinement.

So-called “zero-tolerance” policies in schools have become a new way to funnel youth, particularly youth of color and youth with mental or emotional disabilities, into the criminal justice system.}

Racial and class biases have long been embedded in the workings of the U.S. criminal justice system. Race and class are the most powerful determinants for who is most likely to be arrested, charged, tried, and convicted of particular crimes—and the most likely to receive harsher sentences. Most prisoners are people of color and poor people. Violence is commonplace within U.S. prisons and jails. Prisons and jails have long contracted with outside vendors for particular services, such as food and medical treatment, and have exploited prisoners as a free or cheap source of labor, contracted out to other public or private enterprises.

That’s not new. What is different today is the creation of a vast, new marketplace in which the profits are dependent upon the imprisonment, control, and containment of human bodies. The momentum toward production of greater corporate involvement in the prison industry began in earnest in the 1980s, with the creation of new, privatized prison construction and management firms.

A dependable and increasing supply of prisoners is essential to the economic security and expansion of the public agencies and private businesses that supply, manage, staff, and service the prisons.

Besides profit, the policies and practices that support the prison industrial complex in the United States have produced:

- The highest rate of incarceration in the world
- The mass incarceration of people of color
- The rapidly increasing incarceration of women
- The criminalization of immigrants
- The criminalization of youth
- Systemic and violent racism, misogyny, and homophobia
- Endemic abuses of human, constitutional, and civil rights
- Permanent or temporary disenfranchisement of millions of voters, most of whom are people of color
- Increased use of jails and prisons to warehouse people with mental illnesses
- Increased use of jails and prisons to address the effects of persistent, widening poverty
- Increased use of the death penalty

These “results” of “get tough” crime policy in the United States are worth considering when progressive movements are tempted to turn to the criminal justice system for effective responses to violence directed against LGBT communities, people of color, women, immigrants, Jews, Muslims, people with disabilities, and other targeted communities.

A Culture of Fear Produces a Nation of Enemies, Wars & Prisons

The emotional “hook” that convinces people to accept the “get tough” policy approach is fear. By appealing to people’s fears and anxieties of being victimized in some way—physically, economically, emotionally, spiritually—“get tough” policies have gained extraordinary momentum, fueled political campaigns and seized the public imagination.

“Get tough” campaigns gather strength each time we witness a particularly brutal act of violence directed against individuals or whole communities. Often feeling outraged by such violence, and helpless to have prevented it in the first place, we want to do something—anything—that communicates not only outrage, but our determination that this must never happen again.

“Get tough” policies serve as a powerful way to “strike back” at whatever threatens us.

After all, we’re much more likely to accept without question a “get tough” vision of justice when we’re fearful and angry. At such moments, concepts of harsh punishment and retribution seem not only appropriate, but desirable. Whatever happens to perpetrators behind bars, we tell ourselves, is richly deserved.

In a society perpetually divided into endless varieties of us and them, concern for what happens to prisoners is often viewed as abandoning concern for those who have been hurt or victimized.

We learn to view the world in stark “which side are you on?” terms. Human rights become conditional.
The Corrupting Power of Demonizing

Why should we concern ourselves with the fates of those we consider to be “monstrous,” violent, and unworthy of human rights? Because the minute we turn away from the violence, abuse, or degradation of any person or group—whoever they are—we become part of that violence.

In accepting the violence of the state, we find ourselves on a slippery ethical slope. Once on it, we may well find that the human rights of certain “others” whom we dislike, fear, or despise are not nearly as important as our own. Masters of political spin help us along the way with the use of demonizing messages and images of “criminals,” most of them coded in terms of race, ethnicity, class, and sexuality.

For example, the demonized stereotype of “the criminal” that serves as a backdrop to all “get tough” discussions is that of a violent and menacing thug who has no conscience — and, as with the infamous “Willie Horton” ad used by the Republican party in the 1988 presidential race, the fear-soaked stereotype is often that of a person of color.

For many of us in the LGBT movement, the image is that of Matthew Shepherd’s working-class killers, and others who have brutally murdered queers.

Our fear and rage may become all-consuming: those people deserve anything that happens to them — rape, verbal and physical abuse, humiliation, isolation and sensory deprivation, electric shock, and even death.

In this way, even people who care passionately about justice are persuaded to accept measures that, once implemented, embody the corrupt ethical principle that there is one standard of justice and human dignity for the worthy us, but quite another for a dehumanized, and unworthy them. The violence that happens to the people who disappear into prison and jail cells throughout the country ceases to matter much, if at all, because they are no longer human in our imagination.

This should concern us all, because “get tough” policies are symptomatic of a much larger culture of fear and resentment that has taken deep root in the body politic.

For decades, our country has seen an escalation of the politics of polarization and demonizing in an ever-increasing variety of civic and spiritual arenas.

Pundits and politicians — and sometimes even our own organizations — often expand their bases of support by marketing fear, sensationalism, and the sense that we are not safe or secure any more because of them, the designated and menacing others who threaten our well-being.

The best way to create safe, just, and moral communities, we are told, is to subjugate and exclude them.

The dynamics of fear and resentment are powerful, and they spread like wildfire, even among good people. After all, no matter what point on the political spectrum we occupy, many of us have good reason to be anxious and fearful about the future.

Complex economic, social, political, and spiritual inequities, stresses, and tensions in this country are touching hundreds of millions of lives in varied ways.

The Call to Perpetual (Cultural and Political) War

Rather than deal with this complexity, too many civic and religious leaders direct our attention toward easy and convenient scapegoats.

Whether the issue is LGBT rights and recognition, immigrant rights, the future of public education, school curricula, affirmative action, health care, economic justice, or reproductive choice, people are met with fear-based campaigns — always couched in values-based, sometimes religious, language — that appeal to the most anxious, self-righteous, and vengeful, parts of ourselves.

Through political campaigns, fundraising appeals, the strategic use of wedge politics, and the incessant drumbeat of inventive on radio and television and in the print media, we are summoned to cultural or political war against enemies, at home and abroad.

And in a time of war, when our primary work is said to be the defeat of designated enemies, our society does not do the hard work of engaging neighbors across chasms of difference, in constructive ways.

Legitimizing State-Sponsored Violence

In such a climate, “get tough” ideology justifies the steady expansion of state-sponsored violence. This, in turn, legitimizes, even normalizes abuse of power and the brutal mistreatment of...
Hundreds of businesses and corporations have a substantive financial stake in the incarceration industry, both in the United States and globally. We can only provide a sampling of the kinds of businesses that are part of the prison industrial complex.

Visit corporate websites and explore research about their operations done by other organizations. Enter corporate names into your internet search engine, and check out our resources page.

Private Prison Construction & Management

Corrections Corporation of America (CCA): CCA, a founder of the private prison industry bills itself as “the nations largest owner and operator of privatized correctional and detention facilities and one of the largest prison operators in the United States, behind only the federal government and three states.” It operates 64 facilities, including 39 facilities CCA owns, in 19 states and the District of Columbia, with a capacity of about 70,000 beds. CXX on the New York Stock Exchange. Be sure to have your computer’s sound on when you visit this site. (www.correctionalcorp.com)

GEO Group, Inc.: Formerly called Wackenhut, GEO services include design, construction, financing, and operations. GEO represents government clients in the United States, Australia, South Africa, New Zealand, and Canada managing 42 facilities with a total design capacity of approximately 37,000 beds. GGI on New York Stock Exchange. (www.thegeogroupinc.com)

Cornell Companies, Inc.: Cornell describes itself as “a leading provider of privatized adult and juvenile correctional, treatment and educational services.” Cornell has 67 facilities in 16 states and the District of Columbia, and new facilities under development or construction. In January, 2005, Cornell signed an agreement to acquire Correctional Systems, Inc., a provider of privatized jail, community corrections, and alternative sentencing services. CRN on New York Stock Exchange. (www.cornellcompanies.com)

Data Mining & Information Sales

A number of corporations collect and sell information about individuals in the United States and other countries to U.S. government agencies (including the FBI, the Department of Justice, Citizenship and Immigration Services, and others) and to private employers inquiring about the backgrounds of current or prospective employees.

Among them:

Kroll, Inc.: Founded in 1972, Kroll is a “full-service global risk consulting company,” providing background screening, security investigations, and other services to a “global clientele of law firms, financial corporations, government agencies, non-profit organizations, and individuals.” In 2004, Kroll merged with Marsh & McLennan Companies. MCC on New York Stock Exchange (www.krollworldwide.com)

ChoicePoint: With about 5,500 employees in nearly 60 locations, ChoicePoint describes itself as the nation’s leading provider of identification and credentialing information, acquiring data in the United States and elsewhere (including Mexico and several countries in Latin America) and selling it to public and private agencies. The FBI is a major ChoicePoint customer. CP0 on the New York Stock Exchange. (www.choicepoint.com)

Web-Based Businesses

Among many offering services and resources for those in the incarceration industry:

JailBedspace.com: Sponsored by FSG Software, a provider of law enforcement software, JailBedspace.com (JBS) serves as a web-based marketplace for jail bed space, “bringing buyers and sellers of inmate bed space together in a very user friendly and graphical environment.” (www.jailbedspace.com/jbs/Demo/index.asp)


Policy Production

American Legislative Exchange Council (ALEC): Launched in 1973, the right-leaning ALEC provides a conduit for powerful corporations to influence state legislators and other state officials through networking and the drafting of business-friendly model legislation on a variety of issues, ranging from deregulation of public utilities to privatizing public pensions to criminal justice. ALEC is a strong supporter of privatizing government services, including prisons and schools. For example, ALEC’s draft “truth in sentencing” bill that restricts parole eligibility for prisoners, thus keeping them incarcerated for longer periods, was drafted by a task force whose membership included an executive from Corrections Corporation of America. Within several years, similar sentencing measures had passed in 40 states. (www.alec.org)

For instance, the federal government launches a pre-emptive war on Iraq, "outsources" certain high profile prisoners in the 'war on terrorism' to countries, such as Egypt, that routinely use torture (this process is called "rendition") and operates military and civilian prisons in which the degradation, humiliation, and mistreatment of prisoners is well-documented. Local police forces become increasingly militarized. Conditions of confinement are inhumane in many jails and prisons throughout the United States, violating international human rights standards.

In such an atmosphere, it’s hardly surprising that our society now invests so much in prisons and policing—at home and abroad—and so little in human needs, human rights, and civic infrastructure.

And it’s hardly surprising that the prisons we build are made not only of concrete, bricks, and steel, but also of social, economic, and geopolitical policies that declare some people to be unworthy, and, therefore, expendable.
How Justice Transmutes: South Carolina Anti-Lynching Law Now Used Primarily against Black Men

A South Carolina anti-lynching law, adopted in 1951 and intended to address one violent form of racism, has now transmuted into a new form of racism. This is a powerful example of how a law, intended by its framers to bring justice to oppressed communities, morphs into a new version of an old story about injustice.

Good Intentions of Supporters:
The intent of the law was to respond to white mob violence directed against black people with a message that this form of hate violence would not be tolerated.

Climate in Which the Law Was Enacted:
The law was a response to the 1947 murder by a white mob of a black man who was accused of stabbing a white cab driver. At the time:

- Racial segregation was legal. Simultaneously, the movement to end racial segregation and backlash against this movement were both gaining strength.
- White mob violence against black people was seldom prosecuted. If there were prosecutions, convictions were seldom obtained.
- Lynching was not unusual and was a terror tactic used primarily against black people to ensure their subjugation to whites. The National Association for the Advancement of Colored People (NAACP) estimates that more than 4,000 persons were lynched (hanged, shot, burned to death, or otherwise killed or critically injured or mutilated) between 1910 and 1960. The vast majority of lynching victims were African American.

Implementation of the Law:
The “colorblind,” neutral wording of law was intended to place an emphasis on behavior and ensure that justice is applied equally to all. Over time, as authorities implemented the law, this is what happened:

- Black people, 30% of the state’s population, now constitute 63% of those against whom lynching charges are filed by the state, a percentage much higher in some counties.
- Blacks account for 67% of those convicted of lynching.
- In 2002, the only year for which a breakdown for juvenile charged is available, young blacks were charged with lynching more than 10 times more frequently than white youth.
- While some lynching cases involve brutal assaults, many charged with lynching, especially black youth in altercations with white youth, have committed offenses that do not result in serious physical injury.
- Anecdotal evidence suggests that whites convicted of lynching receive more lenient sentences than blacks who are convicted, even for assaults that involve serious physical injury.

For more information:
Rotten Fruit—South Carolina’s Enduring Lynching Laws, By Earl Ofari Hutchinson, Pacific News Service http://www.alternet.org/columnists/story/15967

Jails & Prisons Are Now The Primary Institutions Housing People With Mental Illness

As public funding for mental health services decreased and momentum toward deinstitutionalization of people with mental illness increased over the past few decades, many mental health hospitals were closed— with the false promise that good outpatient community services could fill the gap and effectively reintegrate people with mental illness back into society. But funding for this was inadequate at best, non-existent at worst.

Today, funding for mental health services remains low and vulnerable to further budget cuts. Human Rights Watch notes that there is a “direct link between inadequate community mental health services and the growing number of mentally ill [people] who are incarcerated.” Here’s how it works:

- Among people with mental illness are many who are poor and homeless, and have substance abuse problems.
- Left untreated and without social supports, many deteriorate mentally, emotionally, and physically—and engage in street crime or other activities that sweep them into the criminal justice system.
- Fewer than 55,000 Americans currently receive treatment in psychiatric hospitals. Meanwhile, almost 10 times that number—nearby 500,000—mentally ill men and women are serving time in U.S. jails and prisons. That’s almost 25% of people who are incarcerated.

Isolation, Degradation and Torture

Prisons and jails in the United States are perfect microcosms of the violent society in which human rights have little meaning, authoritarian control is absolute, and punishment is intended to degrade human beings, not rehabilitate them. Rather than helping prisoners establish positive connections to family and community, the system more often works to shatter the potential for same.

Brutality and abuse are endemic throughout the criminal justice system. The violence comes into focus most clearly, however, when we look at the growing use of control units, security housing units, departmental disciplinary units and the like, and the conditions within control unit prisons.

- Control units within prisons and “supermax” prisons (entire prisons designed for the universal and permanent isolation of their inhabitants) rely on sensory deprivation. Prisoners are confined in tiny cells the size of a parking space for 22–24 hours a day, often in what they describe as an “erie silence.”
- Many of the cells have no windows and are often soundproof.
- Educational or therapeutic programming is virtually nonexistent; visits, telephone calls, and mail from family and friends are severely restricted and reading material is censored.
- Prisoners subjected to prolonged isolation may experience depression, despair, anxiety, rage, claustrophobia, hallucinations, problems with impulse control, and an impaired ability to think, concentrate, or remember.
- Letters from isolation units around the country have told of guards using fire hoses, mechanical restraints and electrical devices, forced “cell extractions,” beatings of prisoners in restraints, shackling in painful positions, sleep deprivation, and other forms of cruelty.
- Denial of medical care to injured and/or sick prisoners (including diabetics and epileptics), refrigerated cells during winter months, arbitrary beatings, psychological abuse of mentally unstable prisoners, illegal censorship of mail, extended isolation and indoor confinement, and administrative (rather than judicial) decisions about punishment for “misbehaved” prisoners.

Footnotes:

See also Control Unit Prisons: Shut Them Down, Prison Activist Resource Center, http://www.prisonactivist.org/control-unit/
Medical neglect and mistreatment abound in U.S. prisons and jails. The concentration of prisoners who are poor and people of color in U.S. prisons and jails means that most of the prisoner population has lacked access to adequate health care for much of their lives. Many poor people enter prisons and jails with health that is already compromized.

Moreover, “get tough” sentencing is producing an aging prison population. One of every 23 inmates in prison today is age 55 or older, an 85% increase since 1995. U.S. prisons are not equipped to address the health needs of incarcerated elders, including hospice care for those who are dying. Inadequate treatment, isolation, and the inability to make health care decisions by proxy are commonplace. One proposal to address this is the creation of new private, profit-producing prisons for aging and infirm inmates.

Additionally:

- Many prisoners face many functional obstacles in attempts to access even minimal treatment and care, often for chronic, debilitating, and potentially life-threatening conditions such as diabetes, liver cirrhosis, HIV/AIDS, Hepatitis C, tuberculosis, and the like.iii
- The prevalence of rape and sexual assault in jails and prisons contributes to the spread of sexually transmissible diseases.iii
- Prisoners in many facilities are routinely denied access to such preventive, harm reducing tools as condoms, dental dams, bleach, drug treatment, and methadone maintenance.
- It is not unusual to segregate prisoners with HIV/AIDS, Hepatitis C, and other serious conditions, while also denying them access to appropriate medications, combination therapies, and advanced diagnostic testing.
- Prisoners with HIV/AIDS may be targeted for harassment, discrimination, and degrading treatment. Amnesty International, noting increasing use of electro-shock technology in the U.S. criminal justice system, reported evidence of the use of stun belts on low security HIV-positive prisoners and prisoners diagnosed with AIDS in a Louisiana parish jail.iv

A useful way to start to bring the different LGBT discussions about criminal justice together is to face several complicated truths, without prioritizing them or casting any of them aside because they are inconvenient or challenge deeply-held beliefs.

- Harassment and violence directed against LGBT people is common and often not taken seriously by society. We are understandably angry about that, and we are obligated to organize to reduce and stop that violence. The individuals and institutions who perpetrate violence must be held accountable, and those who are targeted for violence must be supported and protected.
- The violence against LGBT people perpetrated by individuals is mirrored by and compounded within the criminal justice system and detention industry. The problem is systemic, and not simply the result of the actions of “a few bad apples.” Moreover, racism, misogyny, and class bias are endemic to this system. To ignore the complex interrelationships of race, ethnicity, culture, economics, gender, gender identity, sexuality, and age is to ignore reality.
- Harassment and hate violence, like other forms of violence, do not arise in a social, economic, and spiritual vacuum. They are not simply the product of irrational prejudice, but rather of hatred that finds a focus as a result of complex social, economic, spiritual, and political tensions, stresses, and anxieties. In order to effectively address them, we must look at the many ways in which communities declare particular groups to be expendable, and we must deal pragmatically with those dynamics at the community base.

The “get tough” crime policy template is attractive because it offers a simple (though problematic) response to violence and other socio-economic tensions. It does so by erasing any consideration of serious societal stresses and, tensions, or their histories — and relieving communities of the obligation to address the policies and practices in public and private institutions that declare certain groups to be “less worthy” or expendable.

Discussion about criminal justice issues and policies within the LGBT movement has generally not taken into account the broader context in which “get tough” policies have come about, helped shape this country’s political and economic priorities, or impacted communities of color, women, youth, and poor people. Without centralizing race, class, gender, and age in this discussion, it is impossible to comprehend the violent impact of these policies on particular constituencies, whole communities, and the larger society.

- Those individuals who commit violent acts against LGBT people can be charged, tried, convicted, and given serious sentences, or otherwise held accountable, without the addition of “get tough” penalty enhancement hate crimes laws or draconian “zero-tolerance” policies that fuel the “school-to-prison” pipeline.

It is also important for us to enter discussion about these issues with an understanding that addressing them is a long-term commitment.

The Challenges We All Face
If we choose to accept the “get tough on crime” approach, how do we propose to deal with the violence, widespread violations of human rights, and assaults on human dignity that characterize the prison-industrial complex? How do we propose to deal with institutional perpetrators of violence?

Will we simply refuse to face the magnitude and meaning of that violence? If so, what separates us from those who deny or refuse to care about the magnitude of violence directed against queer communities and other groups targeted for systemic discrimination and hate violence?

How do we propose to deal with the long-term effects of that institutional violence? Most people convicted of a crime and incarcerated will be released from prison. Many were in their teens or twenties when convicted, few have educational or rehabilitation opportunities while incarcerated. But most have endured varying degrees of institutional brutality and degradation and been repeatedly exposed to racist, misogynist, and anti-queer violence. What lessons will their longer terms of imprisonment in these efficient factories of violence have taught them? What happens to them when they attempt to re-enter communities and build new lives? Do we care?

And if we honestly face the violence of the criminal justice system and the disastrous
effects of an ever-expanding prison/detention industry, what alternatives are available to us? What do we really propose in place of reliance (or “over-reliance”) upon the criminal justice system as it exists?

Are we content to criticize and denounce without contributing in tangible ways to the creation of humane, just, and culturally relevant alternatives? If so, who do we think will create those alternatives?

Some suggest that the way to integrate these concerns is to address police violence as it arises, on a case-by-case basis and work to reform the system with a few policy changes, a few new rules and regulations, and some lobbying for better rehabilitation programs.

However, AFSC and Quaker experience suggests that piecemeal attempts to reform the justice system, without fundamentally re-imagining and restructuring justice practices around principles of human rights, healing, and right relationship, simply transmute into new measures that promote the same institutional violence.

A challenge AFSC and many others face is how to engage with the system in a constructive way while also remaining clear that piecemeal reform will not end systemic violence, and often is co-opted in ways reformers did not intend. How do we address immediate concerns while maintaining a long-term vision of justice practices that promote universal human rights, right relationship, and healing from violence and the harms of other forms of mistreatment?

It’s not easy to break out of 30 years of national immersion in the “get tough” approach to criminal justice and law enforcement. Yet, we must try. In doing so, many of us will discover just how deeply the “get tough” movement has shaped our own vision of justice.

**Imprisoning a People’s Vision of Justice**

To examine the jails and prisons of the United States is to see a society that is losing its way — politically, economically, and spiritually.

The telltale symptoms of a society in crisis: increasing investment in prisons, policing and war; decreasing investment in human needs and civic infrastructure; incarceration and —harsher sentencing as the preferred means for dealing with violence and a whole host of social and economic problems; policies that have produced the mass incarceration of people of color; and more.

“Toughness” and a determination to forcibly subjugate enemies substitute for an unequivocal, universal respect for human rights.

The cultivation of an atmosphere of fear and suspicion, and the manipulation of fear and anxiety by too many political and religious leaders substitute for commitment to building communities that are just, safe, and inclusive.

Justice, we are told by so many politicians and pundits, is a function of building enough prisons to hold all of society’s enemies.

But a continual hunt for enemies produces neither safety nor justice. It only produces a need for more enemies — and for more legal, spiritual, economic, and physical walls, fences, gates, policies, and prisons to keep us separate from them.

To create lasting safety and authentic justice, our society must address not only the harm done by individuals, but the ways in which public and private, secular and religious, institutions reinforce the lethal dualism of us and them.

That is why AFSC is working with friends and partners in the United States and around the world, to create conceptual and practical tools for thinking, talking, and organizing in our communities, and making policy decisions about justice in fresh ways.

**Immediate Next Steps**

While re-imagining justice is a long-term undertaking, there are some small, but significant, steps we can take right now.

- **Educate Ourselves About Institutional Violence.**

One powerful way to truly understand a society’s commitment to human rights and human dignity is to look deeply inside its justice system and see what is happening within its jails and prisons to people who are out of public sight, and largely out of the public mind (except, perhaps, as demonized stereotypes).
A Society’s Priorities: Education or Prison?

Research clearly shows that having a good education is one of the best methods of crime prevention. Most prisoners in state correctional facilities do not possess a high school degree, much less any realistic hope of attending college. Yet over the past twenty years, funding for prison and jail spending has grown much more than funding for public education. The consequences are devastating.1

1. Between 1985 and 2000, state corrections spending grew at six times the rate of higher education.
2. During that period, corrections spending doubled or tripled in most states. By contrast, only one state doubled its overall higher education spending.

NO VOTE, NO VOICE:
The Impact of Felony Disenfranchisement

Most states have some form of disenfranchisement law, removing the right to vote temporarily or permanently from incarcerated people and ex-prisoners convicted of felonies. Many prohibit persons from voting who are convicted of felonies and are on probation or parole.

- An estimated 4.7 million persons have temporarily or permanently lost their voting rights because of a felony conviction.1 1.7 million of these persons are ex-offenders who have completed their sentences.
- 1.4 million of these people are African American men. That means that 13% of all African American men are disenfranchised. African American men are at significantly higher risk for disenfranchisement than others.
- Significant numbers of Latinos are prohibited from voting by felony disenfranchisement laws, and they have disproportionately higher rates of disenfranchisement than the general population.2
- About 676,000 women are disenfranchised. Of these, 245,925 are African American. That means that 1 out of every 50 black women cannot vote.3
- Processes for restoring the right to vote vary widely from state to state, and are generally complicated. Many who could reclaim their right to vote are discouraged from doing so.

The explosive growth in prison populations over the past thirty years affects African American communities more than any other. In 2000, there were more than 791,000 African American males in jails and state and federal prisons. That same year, there were about 603,000 African American men enrolled in higher education. This “education v. incarceration” gap for African American men increased significantly from the gap documented in 1993/4.

The harsher sentencing policies and conditions of confinement that accompany the “get tough” movement have also produced a marked decline of educational and training programs within prisons. The concepts of constructive rehabilitation and educational opportunity have ceased to exist in any meaningful way in federal and most state prison systems.


Examine the Intended and Unintended Consequences of “Get Tough” Measures

Find and talk with local community activists who are working on criminal justice/prison-industrial complex issues.

Examine Our Own Assumptions & Stereotypes About “Criminals”

Do we think about the people in our society’s jails and prisons as human beings, or in demonized and stereotypic ways as “monsters” or people who can easily be discarded? Do we justify violence done to them while they are locked up? How are stereotypes about “criminals” coded in terms of race, class, and age?

How do we respond to LGBT people who are arrested or incarcerated if they become the target of police violence? Do stereotypes shift at all? Do queer prisoners shift in our imagination from them to us?

Develop a Deeper Understanding of Human Rights

Human rights—including the right to the integrity of one’s own person and culture and the right to a decent standard of living—are inherent. No one has to earn them, and no one can give them away. Some of these human rights are articulated in United Nations documents and some—such as the human rights of LGBT people—exist but are not yet recognized by the United Nations or other national and international institutions. Human rights come in many forms: physical, cultural, economic, religious/spiritual, and more. They apply to individuals and entire peoples.

I tend to believe the system itself has replaced the physical act of lynching.

Dominique Robinson, Co-Area Director, AFSC Baltimore Program

The problem comes in how particular individuals and groups are treated by others—especially by those who wield the power of the state.

A human rights framework helps to connect all anti-violence work and all struggles for justice, and places the human rights struggle of any one group into a broader social, legal, and economic context.

Think About LGBT Policy Choices in Relation to the “Get Tough” Movement

What policy choices best help us respond to, reduce, and ultimately prevent violence directed against queers and other targeted communities?

Many hate crimes laws have provisions for mandatory data collection and reporting and civil remedies. Some address the issue of training for law enforcement personnel. These provisions are useful in breaking through societal denial of hate violence. Enhanced penalties, by contrast, are part of the “get tough” toolkit, with its consistent emphasis on longer periods of incarceration for more individuals and harsher conditions of confinement and release.

At the same time, the “unintended harmful consequences” of school-based zero-tolerance policies have been well-documented. This is important information for all LGBT activists and organizations struggling to end harassment and mistreatment of queer youth in school systems. Are uncritical demands for LGBT inclusion in policies that are quick to suspend students or funnel them into the criminal justice system, but fail to address the deeper causes of conflict, bullying, or behavior that places self and other students at risk of harm, really the best way to go?

Consider convening private and public discussions in which these issues are addressed in their full complexity. Be sure to offer information about how “get tough” policies impact communities of color, queers, and youth.

Consider stepping back from “get tough” measures in LGBT policy advocacy.

Start Thinking About Alternatives to Harsher Penalties and Retribution

It’s impossible to think of moving in a new direction if we have no idea what kinds of new directions might be possible.
A great deal of work is going on in many different communities and arenas to re-imagine how our communities can respond to and prevent violence and restructure criminal justice policies and practices. However imperfect, flawed, or unfinished these efforts are, there is some benefit in simply exposing ourselves to thinking that challenges and departs from ‘get tough’ orthodoxy—then examining this thinking more closely through the lens of race, class, sexuality, and gender, and asking whether it tackles institutional wrongdoing as well as the wrongdoing of individuals.

It’s also useful to learn from the successes, failures, and tensions inherent in various ‘truth and reconciliation’ processes undertaken in various locales to help societies or communities come to terms with massive violence directed against a subjugated and despised “other”—including the violence of apartheid, genocide, and racial and ethnic “cleansing”— and search for ways for former perpetrators and victims of violence to live together in just, safe, and peaceful community.

10 Two centuries ago, members of the Religious Society of Friends (Quakers) advocated for the creation of penitentiaries, where prisoners could reflect on their wrongful actions in a spirit of solitude, humility, and repentance in a healing environment as an alternative to execution and the cruelties of corporeal punishment. In reality, the unrelenting isolation and other indignities prisoners experienced drove many insane. In the 1970s, AFSC and others advocated for fixed sentences that would solve the problem of great inequities and well-documented bias in indeterminate sentencing. This call for reform was misappropriated to support the drive for “get tough” policies, which resulted in the mass incarceration of people of color and poor people.
Educational and Organizing Resources

**LEARN MORE! GET CONNECTED! GET INVOLVED!**

Listed here are selected organizations, websites, and specific resources offering more in-depth information, commentary, and resources on prisons, prisoners, the U.S. criminal justice system, and/or the prison industrial complex. Through these websites, links to additional organizations and resources are available. All of the organizations listed here do not necessarily share the same analysis of the prison industrial complex. Because website content changes frequently, AFSC does not endorse or vouch for specific websites.

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This issue brief is available in downloadable (PDF) format at: http://www.afsc.org/lgbt/criminaljustice/generalresources.htm

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**AFSC Resources**

**LGBT & Other AFSC Criminal Justice Resources**

- http://www.afsc.org/lgbt/criminaljustice/general-resources.htm
- http://www.afsc.org/justice-visions.htm

**LGBT Programs**

- National: http://www.afsc.org/lgbt
- Regional: http://www.afsc.org/lgbt/programs.htm

**Criminal Justice Programs**

- National: http://www.afsc.org/community/criminaljustice.htm
- Regional: http://www.afsc.org/issues/program.php?id=322

**Immigrants Rights Programs**

- National: http://www.afsc.org/immigrants-rights/default.htm
- Regional: http://www.afsc.org/immigrants-rights/programs.htm

**Prison Industrial Complex/ Impacts of Mass Incarceration**

- Center on Juvenile & Criminal Justice
  - http://www.cjcj.org
- CJCJ provides direct service, technical assistance, and policy research in the field of criminal justice. Its policy center includes excellent material on juvenile justice policy and a series on the prison industrial complex.

- Critical Resistance
  - 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 us safe. Critical Resistance believes that basic necessities such as food, shelter, and freedom are what really make our communities secure. The success of the movement requires that it reflect communities most affected by the PIC.

- Grassroots Leadership
  - http://www.grassrootsleadership.org
- Grassroots Leadership is a multiracial team of organizers who help Southern community and labor organizations think critically, work strategically, and take direct action to end oppression, gain powers, and achieve justice and human rights. Excellent materials reflect a recent emphasis on addressing the impacts of the private prison industry in the South. See also Corrections Corporation of America: A Critical Look at its First Twenty Years; by Philip Mattrura and Mafuza Khan, 2003.

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- Incite! Women of Color Against Violence
- Incite! is a national activist organization of radical feminists of color advancing a movement to end violence against women of color and their communities through direct action, critical dialogue and grassroots organizing. See Critical Resistance/ Incite! Statement on Gender Violence and the Prison Industrial Complex.

**Justice Now**

- http://www.jnow.org
- Justice Now works to end violence against women and stop their imprisonment. JN believes that prisons and policing are not making our communities safe and whole but that, in fact, the current system severely damages the people it imprisons and the people most affected by it. Justice Now promotes alternative policies to policing and challenges the prison industrial complex in all its forms.

- Not With Our Money!
  - http://www.nwoomoney.org
  - Not With Our Money! is a network of student and community activists working to end the use of prisons for profit. Their mission is to provide the training, tools and information that communities need to hold prison profiteers (particularly corporations that finance the private prison industry) accountable for their actions.

- Prison Moratorium Project
  - http://www.nomoreprisons.org
- PMP is a group of young activists, community members, and formerly incarcerated people calling for an end to prison expansion and mass incarceration, and a reformation of the communities devastated by the criminal (injustice) system. PMP is also committed to bringing the voices of directly affected people into the center of the criminal justice debate through grassroots organizing, training, and technical assistance.

- Prison Activist Resource Center
  - http://www.prisonactivist.org
- PARC is committed to exposing and challenging the institutionalized racism of the criminal injustice system and to further developing anti-racism as individuals and throughout our organization. We provide support for educators, activists, prisoners, and prisoners’ families. This work includes building networks for action and producing materials that expose human rights violations while fundamentally challenging the rapid expansion of the prison industrial complex.

- Real Cost of Prisons
  - http://www.realcostofprisons.org
- The Real Cost of Prisons Project, an activity of The Sentencing Project, seeks to strengthen and deepen the organizing capacity of grassroots prisons/justice activists so that they can broaden the public’s understanding of the economic and social consequences of mass incarceration. Excellent materials, including comic books, research papers, a prison industrial complex timeline, and more.

- The Sentencing Project
  - http://www.sentencingproject.org
- The Sentencing Project promotes reduced reliance on incarceration and increased use of more effective and humane alternatives to deal with crime. It is a nationally recognized source of criminal justice policy analysis, data, and program information. Its reports, publications, and staff are relied upon by the public, policymakers and the media.

- Unitarian Universalist Association
  - http://www.pcus.org/generalassembly
- Rationale for the Resolution Calling for the Abolition of For Profit Private Prisons
  - http://www.pcus.org/generalassembly

- Fellowship of Friends of African Descent
  - Fall 2004 Newsletter from Fellowship of Friends of African Descent including resolution calling for Friends divestment in for-profit prisons and prison programming.

- Unitarian Universalist Association
  - http://www.pcus.org/generalassembly

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**Queers, Incarceration & Police/Prison Violence**

**Audre Lorde Project**

- Working Group on Police Violence
  - http://www.alp.org

- Fierce!
  - Transgender Youth & the Prison Industrial Complex

- National Center for Lesbian Rights
  - Fact Sheet: Rights of Transgender Prisoners

- Sylvia Rivera Law Project
  - Rights of Trans Prisoners/Abuse of Trans Prisoners, Criminal Justice Issue page

- TGJ Justice Project
  - Challenging human rights abuses committed against transgender, gender variant/genderqueer and intersex (TGI) people in California prisons and beyond
  - http://www.tgj.org

- Trans/Gender Variant in Prison Committee
  - (A California Prison Focus Committee)
  - http://www.prisons.org/TIPhtml

- Queers for Economic Justice
  - (Criminal Justice Resource Library)
  - http://www.queersforeconomicjustice.org

- Queer to the Left
  - (Anti-Death Penalty Organizing)
  - http://www.queertotheleft.org/deathpenalty.html

- Faith-Based Resources

- Buddhist Peace Fellowship
  - Information and resources from the BPFI

- Grassroots Leadership
  - Keeping Faith: A Religious Response to Private Prisons

- Jews for Racial and Economic Justice
  - Selected Bibliography on the Prison Industrial Complex
  - http://www.jrej.org/prisonindustrialcomplexreadinglist.html

- Mennonite Central Committee

- Presbyterian Church USA
  - Rationale for the Resolution Calling for the Abolition of For Profit Private Prisons
  - http://www.pcus.org/generalassembly

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