

EQUAL MERCY: INCREASING LEGAL SYSTEM EQUITY WITH COLLABORATIVE DEFENSE

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Abstract

In the American legal system, both the “intake valve” of policing and the “control valve” of courts and prosecution have served to compound racial bias, resulting in a system where race, wealth, and privilege remain determinative of legal outcomes. Understanding this fundamental inequity reveals an avenue to create change: Equity in the legal system can be promoted by seizing the tools of privilege and leveraging them on behalf of those to whom they have historically been denied. In bearing witness to the mercy, the system has shown people of privilege that those who wish to increase equity must not seek equal punishment for all, but rather equal mercy. This Article proposes a mechanism for change through expanding and empowering public defense, creating a new model: collaborative defense. Collaborative defense prioritizes the client experience over all other factors in defining a method of practice. It is a framework through which defenders can expand their role to better achieve client goals while tailoring the means of achievement to their local context. By extending the tools of privilege to historically excluded people, collaborative defense serves as a path to ensure that race and wealth no longer determine legal outcomes.

I. INTRODUCTION

America is reckoning with a national history of control and confinement: it remains the world’s largest jailer, with a legal system that conditions outcomes on wealth, race, and privilege, perpetuating generations of inequity. Mass incarceration touches millions of American lives and families every year, destroying health, economic mobility, educational attainment, housing stability, and the hopes and dreams of entire communities.

As the system is broken across thousands of localities, and without a universal system of governance or oversight, addressing the harm and inequity of this system is a staggeringly difficult proposition. Further, the law is a highly subjective field, reliant on interpretation, and therefore cannot simply be transformed on paper. Instead, we must alter the manner in which the law is *practiced* to create meaningful change in the American legal system.

The system’s “intake valve,” policing, is ripe for overhaul, but at present remains an engine of bias within the larger legal sector, often with lethal results. The “control valve” of courts and prosecution suffers from their own confirmation bias, lack of representation, and lack of accountability for misconduct. In a system that relies on dehumanization to perpetuate punishment—even when punishment fails to advance the public good—having the means to be humanized is transformative. Therefore, Whiteness,