

A conversation with Professor Mark Kleiman, February 13, 2015

Participants

- Professor Mark Kleiman – Professor of Public Policy, Luskin School of Public Affairs, University of California, Los Angeles (UCLA)
- Alexander Berger – Program Officer, US Policy, Open Philanthropy Project

Note: These notes were compiled by the Open Philanthropy Project and give an overview of the major points made by Professor Mark Kleiman.

Summary

The Open Philanthropy Project spoke with Professor Kleiman as part of its investigation into criminal justice reform. Conversation topics included Professor Kleiman's appointment at New York University (NYU), his work on graduated re-entry programs and behavior change, and the public health effects of cannabis legalization.

Professor Kleiman's appointment at NYU

Professor Kleiman is moving to NYU this summer, where he will be a Professor of Public Policy at the Marron Institute of Urban Management. The position is funded for five years. The Marron Institute is run by the economist Dr. Paul Romer and focuses on understanding the challenges of urban management in the 21st century. Professor Romer is more interested in policy change than academic publications.

Professor Kleiman will be focusing on US cities and mass incarceration. His position does not require teaching, but he plans to teach some. Currently, he spends most of his time at UCLA teaching.

Graduated re-entry programs

Professor Kleiman has been developing the idea of "graduated re-entry programs" which would reduce prison populations and ease re-entry. The idea would be to offer prisoners early release with supported (and required) work and housing, and, initially, sharp restrictions on movement and other activities, with the restrictions gradually relaxed over time as the individuals demonstrate successful behaviors (e.g. complying with a curfew, constraints on movement, job attendance standards, securing and maintaining non-supported employment).

In the current system, people who have been fed, clothed, and housed and told what to do 24 hours a day are released without any preparation for the cognitive demands of everyday life.

The need for graduated re-entry programs

The current prison population is roughly five times greater than it was in 1965. 2.3 million people are currently in prison or jail and 5 million are on probation or

parole. Reducing the prison population to 1965 levels – which would still be 50% greater than other developed countries – will require scalable interventions.

Smaller interventions that reduce populations or recidivism by 10% are helpful, but they won't dramatically reduce prison populations.

Professor Kleiman has written a piece for Vox on graduated re-entry programs. The next step is a detailed project plan. He is also talking to practitioners about experimenting with such programs, and is finding initial interest and support. If graduated re-entry programs catch on, Professor Kleiman could spend the next 10 years working on them. They have the potential to significantly reduce prison populations.

Electronic Position Monitoring

Electronic position monitoring is an integral part of graduated re-entry programs. These programs are exploring how much of the function of a prison can be replicated without the physical building or 24-hour guards.

There is a lot of evidence that electronic monitoring and drug testing by themselves don't reduce recidivism. Professor Kleiman thinks this is because knowing whether rules are being broken is useful only if there's a way to respond to those breaches. Adding information to a conventional slow-random-severe sanctions regime just makes it break down faster. With a swift-certain-fair system, you can enforce any condition you can monitor, which significantly raises the value of monitoring.

A colleague of Professor Kleiman's has been working nearly full-time (on a largely volunteer basis) to explore technological options for community corrections, such as replacing ankle bracelets with Fitbits. He has a background in venture capitalism and thinks that these technologies may become a profitable business niche in the future. He is applying for fellowships and grants to support his work on the issue, and Professor Kleiman would like to help him find such support.

Interest in graduated re-entry programs

Many states are exploring graduated re-entry programs:

- State officials in Illinois are actively considering the feasibility of implementing graduated re-entry programs. They are considering which populations and geographic areas are best suited. Bruce Rauner, the governor of Illinois, announced he plans to cut the Illinois prison population by 25%, which will likely require some type of graduated re-entry program.
- There is also active interest in Massachusetts, New Jersey, and Pennsylvania.
- Judge Steven Alm of Hawaii, the creator of the HOPE program (Hawaii's Opportunity Probation with Enforcement), has been letting some people off probation if they spend 18 months complying with the HOPE program. They can get as many as three years off of a five-year probation term. Judge Alm has not done this systematically, but around 100 people have gotten off

probation over the last 3 years and there have been zero new arrests thus far.

Professor Kleiman has heard a lot of support for these programs, has also heard from some critics who worry that graduated re-entry programs are too punitive and others who like the idea but worry that it is not punitive enough to be politically feasible. Of course, there is also substantial risk that the idea will prove operationally infeasible; confidence in its success rests on predictions about offender behavior that are consistent with current knowledge but which might turn out to be incorrect, and also on the capacity of corrections departments to actually execute a novel and complex program.

Mechanisms of behavior change

Professor Kleiman is also working on a study to understand the mechanisms of behavior change in the criminal justice system.

A certain style of economic reasoning would suggest that harsher punishments would more effectively reduce crime, but that is not what seems to happen. Differing levels of punishment seem to have similar impacts on behavior:

- In South Dakota's 24/7 sobriety program, the sanction for a failed Breathalyzer test is one night in jail. One county reduced the sanction to a single hour in the police holding cell because it didn't have enough jail space, and there was no difference in re-offense rates between counties.
- In Washington, the first sanction for community corrections violations is a stipulated agreement. Offenders sit with a corrections officer and sign a paper acknowledging the misdeed and the consequences of any future violations. Stipulated agreements are just as successful as the maximum sanctions in reducing violation rates.
- Both HOPE and 24/7 have impacts on substance use and reoffending that long outlast program participation, suggesting that something other than mere deterrence is at work.

The study aims to explain these results.

Importance of swift, certain, and fair programs

Professor Kleiman originally thought of punishment in the economic framework associated with Gary Becker, in which potential rule-breakers treat punishment as a cost, evaluating it in terms of its expected value (severity times probability) but with their actual behavior deviating from economic rationality due to present-orientation, improper weighting of risks, impulsivity, and optimistic biases. Professor Kleiman now thinks that most probationers do not understand sanctions this way. Participants in the HOPE program, for example, do not act as if they are weighing the expected cost of punishment against the benefits of rule breaking; otherwise changes in severity would matter more than they appear to matter empirically.

Professor Kleiman now thinks that in a criminal justice system that is perceived as rational and fair, punishment is intrinsically undesirable, above and beyond the cost of the sanction itself. Because the current criminal justice system is perceived as unfair and unpredictable, offenders view punishment as bad luck or an accident, rather than a rational response to a prohibited behavior. And the unfairness of the system generates oppositional thinking; it is disgraceful to submit to illegitimate and arbitrary power. In a swift, certain, and fair system, offenders would understand sanctions as consequences of their mistakes.

The fairness of the system is probably the important aspect in prompting behavior change. If only swiftness and certainty mattered, more severe punishments would be better at reducing violation rates than stipulated agreements, but in the current swift and certain systems, punishment severity doesn't appear to influence behavior. Swiftness and certainty may contribute to the perceived fairness of the system.

Mechanisms of behavior change study

Professor Kleiman is looking for funding to run a study to test these theories. He plans to track participants in a swift, certain, and fair program with a control group of people on normal parole, or to conduct a before-and-after comparison around the time of a program's implementation. In both groups, he will measure:

- Psychological traits, such as delayed discounting, impulsivity, and locus of control
- Attitudes about the criminal justice system
- Participants' opinions about what will happen if they violate the terms of their probation

Professor Kleiman might also:

- Test stress levels by measuring cortisol. Cortisol is fairly easy to measure, but you have to measure a lot to get a reliable reading.
- Include a general health screen, which would measure whether swift, certain, and fair programs reduce blood pressure in participants.

Professor Kleiman will partner with Dr. Angela Hawken, Associate Professor of Public Policy at Pepperdine University, to run the studies. They both have relationships with many swift, certain, and fair programs so it should not be difficult to organize this study.

Funding

The pilot study will cost around \$80,000. Because Professor Kleiman is interested in big effects, he should be able to tell if these programs are successful with a small sample.

Once a pilot is completed, other agencies could fund a larger study. Possible funding sources include:

- The National Institute of Justice
- The John D. and Catherine T. MacArthur Foundation
- The National Institute of Mental Health

Cannabis research

Cannabis usage

Since 1992, there has been a significant increase in heavy daily cannabis use.

- 40 million Americans reported using cannabis last year
- 20 million have used it in the last month
- 8 million people report using it 25 days or more in the last month
- Heavy users tend to use three times as much per day as occasional users
- About 4 million daily or near daily users report symptoms of substance abuse disorder (they tried to cut back, their drug usage is interfering with other responsibilities, and/or causing conflict in their lives)

Almost all cannabis use leads to intoxication, which makes daily cannabis use very different than daily alcohol use. Most people who drink don't get drunk. It is possible that daily cannabis users with a high tolerance are not smoking to intoxication. High tolerance for cannabis can develop quickly.

The age distribution of cannabis users is starting to skew older. There has not been a big increase in cannabis use among juveniles, but people are no longer aging out of cannabis by age 25.

The demographics of daily cannabis users look a lot like the demographics of smokers: they're generally low education and low income.

Clinical research on heavy usage

There is a lack of clinical data on the impacts of heavy cannabis use. The Dunedin study, which followed 1037 individuals in New Zealand from birth to age 38, found an association between more-than-weekly early teenage cannabis use, followed by persistent heavy use for many years and a significant drop (half a standard deviation) in measured IQ. IQ measurements might not have been valid for that population, but it's not implausible that long-term persistent heavy cannabis use could reduce IQ by half a standard deviation either through cannabinoid effects on the brain or because of the experience of being stoned for years on end. (For instance, it's possible that heavy cannabis use reduces time spent reading, and that years of underexposure to reading might lead to reductions in measured IQ.) The biggest losses are likely to accrue from spending many hours not at full capacity, rather than anything organic.

Heavy cannabis use almost certainly causes less organic and behavioral damage than heavy alcohol use and its withdrawal symptoms are less severe. However, cannabis is now the second leading cause of people voluntarily applying for drug treatment.

Public health effects of cannabis legalization

Some scholars worry that for-profit commercialization of cannabis will drive down prices and increase heavy use. Dr. Jonathan Caulkins, professor of Operations Research and Public Policy at Carnegie Mellon University, thinks that the way legal cannabis is delivered is really important. He doubts that taxes and other regulations can counter the negative effects of commercialization. Professor Caulkins would rate the option value of staying with a non-commercial supply very highly. Professor Kleiman mostly agrees with this, but puts somewhat more stress on other options to maintain price and encourage more mindful consumer choice (while acknowledging the risk that a commercial industry will have the lobbying muscle to prevent the adoption of such measures or reverse them once adopted).

Keeping the price up could limit the negative public health effects of legalization. Netherlands has legal retailing of cannabis and has not seen big increases in usage, possibly because cannabis is very expensive there. Cannabis is already the cheapest intoxicant in the United States and it should not be made any cheaper.

There is little political support for non-commercial legalization, though the Vermont legislature may be considering it. No one is currently pushing legalization in a more public health friendly direction. Non-commercial legalization is unlikely to pass in voter initiatives. A form of non-commercial legalization was passed in Washington, D.C., and the results of that experiment are well worth tracking.

*All Open Philanthropy Project conversations are available at
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