

A Conversation with Seema Gajwani on August 28, 2013

Participants:

- Seema Gajwani – Program Officer for Criminal Justice, Public Welfare Foundation
- Alexander Berger – Senior Research Analyst, GiveWell
- Howie Lempel – Research Analyst, GiveWell

Summary

GiveWell spoke to Seema Gajwani as part of an investigation of criminal justice reform. The conversation covered the work of the Public Welfare Foundation, including the Foundation's work on pretrial detention reform. The current state of the field broadly was also discussed.

Note: This set of notes was compiled by GiveWell and gives an overview of the major points made by Seema Gajwani.

The Public Welfare Foundation

The Public Welfare Foundation distributes roughly \$21 million each year primarily to its 3 programs, Criminal Justice, Juvenile Justice, and Workers' Rights, as well as a Special Initiative on Civil Legal Aid for the Poor. The Criminal Justice Program distributes approximately \$6 million annually in grants. The Foundation is one of the largest criminal justice funders in the country, in part because criminal justice reform receives less funding from the larger philanthropic community than many other issue areas. Other national funders include the Open Society Foundations, the Ford Foundation, and the MacArthur Foundation. Pew Charitable Trusts and the Laura and John Arnold Foundation also contribute to criminal justice reform as operating foundations.

The Public Welfare Foundation's approach to criminal justice is focused on reducing rates of incarceration in America. Incarceration rates are determined by two factors: the number of people being incarcerated and the length of time they stay in prison. The Foundation's work is focused on reducing both factors. Its work involves three types of reform:

- Pretrial detention reform: 10 million people cycle through American jails each year. Most of them have not been convicted of a crime, but sit in jail awaiting a trial for days, weeks, and months. And, most people jailed pretrial have committed low-level offenses, are low-risk, and simply can't afford to make bail. The longer an individual is detained in jail pretrial, the higher the probability that the individual is offered a worse plea bargain, gets convicted, receives a longer sentence, and reoffends after being released. By addressing the critical early point of admission into jail pretrial, it is possible to reduce the number of people incarcerated while still protecting public safety.
- Sentencing reform: The lengths of prison sentences in American have increased dramatically over the last few decades, resulting in huge, and graying, prison

populations. To reduce the length of time individuals spend in prisons, the Foundation funds state-based advocacy groups that seek reform of state policies such as harsh mandatory minimum sentences, three strikes and you're out policies, and draconian drug laws. This work is similar to some of the work of the Open Society Foundations and the Ford Foundation on mass incarceration. Sentencing reform includes both reducing the original length of sentences and increasing the ability of inmates to be released early by completing educational, work, and treatment programming in prison. Foundation grantees also work to mitigate harsh penalties that may lead to incarceration for probationers and parolees who technically violate the terms of their probation but who have not committed a new crime, and increase opportunities for diversion in lieu of a prison sentence for some low-risk offenders.

- Racial disparities. The Foundation also supports work to develop and promote innovative strategies to reduce the overrepresentation of racial and ethnic minorities in the criminal justice process.

The current situation in criminal justice

There are few low-hanging fruit opportunities in criminal justice reform, but there are still significant opportunities for impact. As of 2009, the incarceration rate in America was 743 per 100,000 of the national population. In comparison, Russia had the second highest, at 577 per 100,000, Canada was 123rd in the world at 117 per 100,000, and China had 120 per 100,000. Incarcerating large numbers of people – disproportionately poor people of color – has significant negative impacts on the ability of an individual to successfully reenter society upon release, and devastates families and communities.

Forty years ago, America's rate was closer to 150 per 100,000, which is about the rate many other western democracies maintain today. There has been very little sentencing reform – such as addressing mandatory minimums or "truth in sentencing" legislation – and those opportunities are now on the table in a way they haven't been in a long time. Some effective advocates working to reduce incarceration rates nationally are Families Against Mandatory Minimums, the Sentencing Project, and state-based groups such as the Colorado Criminal Justice Reform Coalition, the Texas Criminal Justice Coalition, Partnership for Safety and Justice in Oregon, and others. Also critically important are longtime Foundation grantees who work to advance sensible criminal justice reform among conservative audiences, such as the Texas Public Policy Foundation, Right on Crime, and Prison Fellowship Ministries.

There is currently a unique window of opportunity for criminal justice reform that may close at some point in the future, for two reasons. First, the fiscal crisis has put a focus on budgets, and brought Republican political support to the idea of reducing prison populations. When the economy recovers and budgets are not as tight, progress on criminal justice reform may be more difficult. Second, the United States is currently experiencing historically low crime rates. An uptick in crime could eliminate the opportunity for reform.

Recently, more foundations have shown interest in the issue of mass incarceration – a term referring to the concern that the United States incarcerates too many people for too long with little societal benefit. There are great opportunities for foundations in this issue area.

Pretrial detention reform

The Foundation began funding pretrial reform as an issue area in 2011, when few if any other national philanthropies were supporting reform on the issue. In terms of approach, the Foundation generally funds national and state advocacy, communications research, limited local implementation, and stakeholder engagement. One anchor grantee, The Pretrial Justice Institute, coordinates state and local policy work, engages other stakeholder groups, and guides the advocacy field. The addition of the Laura and John Arnold Foundation to the field has been an incredible asset. Among other things, the Arnold Foundation has developed cutting edge research on risk assessment and conditions of release, and has created a highly predictive national risk assessment tool.

Broadly, pretrial reform involves encouraging systemic reform using validated risk assessment tools in order to make critical decisions about who should be locked up and who shouldn't be. Doing so would modernize an archaic, costly and ineffectual system by providing judges, prosecutors, and sheriffs with important information about the risk level of individual arrestees. The current decision-making system relies solely on the crime charged and the defendant's ability to pay bail to get out. Such a system increases the chances that a high-risk individual could leave jail, and dramatically increases the number of low-risk defendants who unnecessarily sit in jail because they are too poor to make bail, disrupting their ability to maintain employment and family caretaking obligations.

The Foundation's approach involves the following:

- Elevating the issue by funding communications work and public opinion research, and by providing support to key stakeholders. The Foundation funds organizations that represent police chiefs, state legislators, prosecutors, chief judges, county executives, etc. to educate these groups about the issue of pretrial reform and to help them share the knowledge with their constituencies. Support of practitioners is crucial, particularly given current practices that are very entrenched and difficult to change.
- State-based advocacy to seek policy reform, such as mandating the use of risk assessments or publishing county-level data on bail.
- Local implementation and technical assistance. Pretrial detention is done at a local level. The Foundation funds groups to work with counties to change their systems.

Underfunded areas

One tough but critically important space is the nexus between immigration policy and criminal justice. The federal prison system is the fastest growing prison system in the country. Behind recent growth is a sharp rise in criminal prosecutions of immigrant border-crossers over the past decade. Federal policies to target illegal immigration for

criminal prosecution have made illegal entry and illegal re-entry the two most prosecuted crimes in the federal judicial system. Border crossing had traditionally been dealt with through the civil justice system, resulting in deportation. Now, people are being federally prosecuted for migration, and it's costing the U.S. prison system a lot of money to lock them up for years. For decades, drug crimes far outpaced any other federal charge brought by prosecutors, and fueled the growth of the federal prison population. Now, immigration offenders represent one of the fastest growing segments of the federal prison population.

Another opportunity to improve the criminal justice system and address the underlying behavioral health issues that fuel criminal behavior is the Affordable Care Act, or Obamacare. The best way to reduce incarceration rates is to divert people who do not need to be in the system. Never before have significant resources been available to courts, prosecutors and defenders seeking to help people with substance abuse and mental health issues who find themselves in the justice system. Currently, the three largest inpatient psychiatric facilities in the country are the LA County jail, Cook County jail in Chicago, and Riker's Island jail in New York City. We are exploring how to link people who have substance abuse and mental health needs and who get arrested with the public health system. Such an approach would keep them from penetrating deep into the criminal justice system, without access to quality treatment and services. Doing so at scale could be a game changer for the criminal justice system.

All GiveWell conversations are available at <http://www.givewell.org/conversations>