

Inquiring Minds topic – 2 October 2015

Albert E. Myers, Moderator

Possible items for discussion:

Should the criminal justice system focus more on rehabilitation than retribution?

Are efforts at rehabilitation, skill building and helping rethink person values sufficient?

Is the claim of mental illness as a plea for mercy overused in our courts?

Do Police use deadly force too often?

Can the use of jails be reformed to reduce the number of inmates without increasing society's risks?

Do Stand Your Ground laws provide too much criminal immunity when innocent people are shot by someone who feels threatened?

When, if ever, is the death penalty appropriate?

Is it appropriate to contract for-profit prisons for incarceration?

Does the time between indictment and trial influence criminal behavior?

To what extent should juveniles be granted leniency? – under what circumstances?

And what about the issues raised in the following articles?

Harsh sentences aren't the only American injustice

By Clive Crook, Bloomberg News – 13 August 2015

The new consensus that something is wrong with American criminal justice is welcome. The amazing number of people in prison — a measure on which, adjusting for population, no other nation comes close — indeed is a sign the U.S. system is broken. It's good that the will to fix it seems to be growing.

Yet dwelling too much on that one statistic is unwise. There's a danger of missing the point.

Consider, for instance, the idea that the leading cause of mass incarceration is long prison sentences handed down to nonviolent drug offenders. President Barack Obama has called this the "real reason" so many people are in prison. Not so.

The Urban Institute just released a Web tool that allows you see the effect on incarceration figures of state-by-state changes in prosecution and sentencing practices. As Erik Eckholm notes in the New York Times, fewer and/or shorter prison terms for nonviolent drug offenders help a lot less than you've been told. Bloomberg View's editors recently criticized this and other aspects of the president's comments about incarceration.

Ending the war on drugs would make a big difference to the number of federal prisoners, but most of the incarcerated are in state prisons, not federal. (In 2013, state prisons held 1,270,800

people; federal prisons only 215,000; another 731,200 were in local jails.) Drug offenders make up a much smaller share of the state prison population. Keeping fewer of them locked up would hardly dent the states' headcount.

Handing down long terms in prison for nonviolent drug offenders is grossly unjust and ought to stop — but not because it's the main cause of overcrowded prisons. Those sentences would be grossly unjust even if the prisons were half-empty.

For the same reason, you ought to recoil when a politician argues justice reform is necessary because keeping people in prison is expensive. If justice is served by keeping people in prison for decades, the cost is money well spent. When it's unjust, the cost is irrelevant — a secondary issue at best.

I previously have argued that the U.S. criminal justice system is a national disgrace. Sentences are indeed often savage and at any rate far longer than needed to punish and effectively deter — but, bad as they may be, they aren't the system's most evil aspect.

What would that be?

The U.S. has all but abolished the jury trial. It has enshrined the repugnant practice of plea-bargaining, which equips prosecutors with terrible and largely unchecked powers of coercion. Charge-stacking, mandatory minimum sentences and the eagerness of legislators to criminalize as much behavior as possible — all cause for dismay in their own right — compound the offense. If you set out to design a system that would empower the state and its law enforcement officials to destroy whomever they set out to destroy, guilty or innocent, you hardly could improve on this.

Where was the Constitution while legislators and the law enforcement complex were annulling the most basic and essential liberties? Good question. In all this, courts meekly have acquiesced.

Mass incarceration indeed should be a cause of national shame — but it sure isn't the only thing wrong with American criminal justice.

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Van Jones commented at the Bipartisan Summit for Criminal Justice

reform in Washington, March 26, 2015: “Both political parties were stuck on stupid for three decades. Democrats and Republicans were in a footrace with each other off this cliff to see who could propose dumber, longer sentences for increasingly petty offenses, and both parties got completely away from any kind of evidence-based, rational policymaking in this area...

It took decades to get a system this big and unjust in place. You now have a lot of economic interests that are baked into the cake here. And it's not just private prisons. You have public employee unions that are made up of prison guards who have a stake in the status quo. You have whole towns that have now been built up around prisons out in rural parts of America. They're gonna fight to keep those prisons open because they're looking at being a prison town or a ghost town.

This is going to be a long process of unwinding mass incarceration. What really has to happen is a much deeper paradigm shift.”