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The Prison Problem

David Brooks SEPT. 29, 2015

Pretty much everybody from Barack Obama to Carly Fiorina seems to agree that far too many Americans are stuck behind bars. And pretty much everybody seems to have the same explanation for how this destructive era of mass incarceration came about.

First, the war on drugs got out of control, meaning that many nonviolent people wound up in prison. Second, mandatory-minimum sentencing laws led to a throw-away-the-key culture, with long, cruel and pointlessly destructive prison terms.

It's true that mass incarceration is a horrific problem. Back in the 1970s the increase in incarceration did help reduce the crime rate, maybe accounting for a third of the drop. But today's incarceration levels do little to deter crime while they do much to rip up families, increase racial disparities and destroy lives.

The popular explanation for how we got here, however, seems to be largely wrong, and most of the policy responses flowing from it may therefore be inappropriate.

The drug war is not even close to being the primary driver behind the sharp rise in incarceration. About 90 percent of America's prisoners are held in state institutions. Only 17 percent of these inmates are in for a drug-related offense, or less than one in five.

Moreover, the share of people imprisoned for drug offenses is dropping sharply, down by 22 percent between 2006 and 2011. Writing in Slate, Leon Neyfakh emphasized that if you released every drug offender from state prison today, you'd reduce the population only to 1.2 million from 1.5 million.

The war on drugs does not explain the rocketing rates of incarceration, and ending that war, wise or not, will not solve this problem.

The mandatory-minimum theory is also problematic. Experts differ on this, but some of the most sophisticated work with the best data sets has been done by John Pfaff of Fordham Law School. When I spoke with Pfaff on Monday I found him to be wonderfully objective, nonideological and data-driven.

His research suggests that while it's true that lawmakers passed a lot of measures calling for long prison sentences, if you look at how much time inmates actually served, not much has changed over the past few decades. Roughly half of all prisoners have prison terms in the range of two to three years, and only 10 percent serve more than seven years. The laws look punitive, but the time served hasn't increased, and so harsh laws are not the main driver behind mass incarceration, either.

So what does explain it? Pfaff's theory is that it's the prosecutors. District attorneys and their assistants have gotten a lot more aggressive in bringing felony charges. Twenty years ago they brought felony charges against about one in three arrestees. Now it's something like two in three. That produces a lot more plea bargains and a lot more prison terms.

I asked Pfaff why prosecutors are more aggressive. He's heard theories. Maybe

they are more political and they want to show toughness to raise their profile to impress voters if they run for future office. Maybe the police are bringing stronger cases. Additionally, prosecutors are usually paid by the county but prisons by the state, so prosecutors tend not to have to worry about the financial costs of what they do.

Pfaff says there's little evidence so far to prove any of these theories, since the prosecutorial world is largely a black box. He also points out that we have a radically decentralized array of prosecutors, with some elected and some appointed. Changing their behavior cannot be done with one quick fix.

Some politicians and activists suggest that solving this problem will be easy — just release the pot smokers and the low-level dealers. In reality, reducing mass incarceration means releasing a lot of once-violent offenders. That may be the right thing to do in individual cases, but it's a knotty problem.

Two final points. Everybody is railing against the political establishment and experts and experienced politicians. But social problems are invariably more complex than they look. The obvious explanation for most problems is often wrong. It takes experience and craftsmanship to design policies that grapple with the true complexity of reality.

Finally, recategorizing a problem doesn't solve it. In the 1970s, we let a lot of people out of mental institutions. Over the next decades we put a lot of people into prisons. But the share of people kept out of circulation has been strangely continuous. In the real world, crime, lack of education, mental health issues, family breakdown and economic hopelessness are all intertwined.

Changing prosecutor behavior might be a start. Lifting the spirits of inmates, as described in the outstanding Atlantic online video "Angola for Life," can also help. But the fundamental situation won't be altered without a comprehensive surge, unless we flood the zone with economic, familial, psychological and social repair.

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