

A conversation with Professor Joan Petersilia, September 16, 2014

Participants

- Professor Joan Petersilia – Adelbert H. Sweet Professor of Law, Stanford Law School
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Note: These notes were compiled by the Open Philanthropy Project and give an overview of the major points made by Professor Joan Petersilia.

Summary

The Open Philanthropy Project spoke with Professor Petersilia of Stanford Law School as part of its investigation into criminal justice reform. Conversation topics included criminal justice reform, sentencing reform, crime prevention, and prosecutorial decision-making, as well as an update on California Realignment.

Investments in Criminal Justice Reform

Criminal justice reform work is often driven by what is fundable and what is politically feasible, not by what is most effective. Philanthropic funding for criminal justice reform work is limited. Much of the funding that is available is directed to work that focuses on youth affected by criminal justice policies.

Criminal justice reform work has been constrained by its lack of funding. California's state legislature did not originally include an evaluation budget in its Public Safety Realignment legislation, one of the most notable changes in criminal justice policy in U.S. history. Researchers interested in studying Realignment had to fund their work with grants from other organizations. Professor Petersilia pooled four grants worth a combined \$600,000 from a consortium of several funders to fund her Realignment work.

Although the majority of criminal justice funding goes to youth, the interventions that most effectively improve crime policy, such as interventions targeting youths (ages 15-23) who are at risk of becoming adult criminals, have not been invested in in a meaningful way because the overall amount of funding is still too low. Right now, youth age out of the system and fall off a cliff when they turn 18 and are no longer in school or youth services systems. Interventions that target youths should focus on finding ways to help at-risk teens re-engage with school before they enter the adult justice system. Developing alternative models of schooling would likely help re-engage some at-risk teens, as the traditional model of schooling in the U.S. does not work for everyone. Professor Petersilia thinks this is a better model than investing in reentry work, which is often too late in the "funnel" of the criminal justice system.

Sentencing reform

A lot of people are focused on sentencing reform because it's easier to do sentencing reform (and, in fact, Professor Petersilia will likely be doing some work on it next)—but it is not a real fix. If people are still committing crime, the real problem is crime. Sentencing reform is already happening and will continue to happen on a national scale. States are rolling back mandatory sentencing minimums and giving more credits for time served and program participation. States are largely doing this because incarceration is expensive.

Fluctuations in the crime rate also contribute to the cyclical politics of sentencing reform. Professor Petersilia would not advise a new foundation to be putting money here; identifying effective ways to reduce the crime rate is preferable to working on sentencing reform.

Crime prevention

Many people assume that researchers have tried to understand how to prevent crime. Many crime-prevention programs have been implemented, but very few have been evaluated, so effectiveness-related data is generally not available for most programs. Even when data does demonstrate that a program is effective, that information is rarely used to implement effective policies.

Professor Petersilia did a report for the National Academy of Sciences about why so little is known about how to target the next generation of offenders and prevent crime. She found that the amount of money that the U.S. has invested in understanding how to prevent crime is very small.

Professor Petersilia believes that there is a fairly strong evidence base around:

- How preschool attendance impacts children
- How nurse visits for high-risk mothers impact children
- Ideal elementary school class sizes
- How to get parents involved in elementary school
- How to do schooling for kids through the sixth grade

There is a good deal of data collected on the 8% of kids who are on probation. Data is collected on people once they are in the criminal justice system.

Little is known about how to help kids who are at risk of becoming adult criminals before they are convicted and put on probation. Interventions need to focus on keeping kids engaged in school in the 6th and 7th grades. By the time they get to high school, it is often too late to get them off the path to becoming adult offenders. Studies show that kids make their most important decisions about whether or not to become involved with crime in the 6th and 7th grades.

To address the lack of data about how to reach kids before they become involved in the system, Professor Petersilia suggests organizing a group of education, childhood development, and criminal justice experts. This group would design and implement pilot and demonstration projects in a small number of school districts to test interventions. Because little data currently exists on how to keep kids from

becoming adult criminals, the group would need some time to figure out what types of interventions may be effective.

A funder should plan to commit millions of dollars over a decade to a group like this. A million dollar grant over three years would be a good pilot grant for this type of project.

Prosecutorial decision-making

Professor Petersilia believes that prosecutorial decision-making is a promising area for funders to investigate. Prosecutors are the most powerful people in the criminal justice system, and they are some of the only people that have a large amount of discretion in their decision-making processes. Police also have a large amount of discretion, though this discretion is more difficult to study because it is less visible.

Prosecutors are the least studied element of the criminal justice system. Because they are elected officials, there is no incentive for them to allow research into their decision-making strategies.

It is difficult for researchers to get data about prosecutorial decision-making. If funding were made available for this research, the funder should require researchers to include letters of agreement from prosecutors in their responses to the request for proposals. A consortium of researchers collecting data across many prosecutors' offices would be ideal, because sentencing and prison systems vary widely between states.

The Chief Justice of the California Supreme Court has requested a study on how the use of enhancements, or additional charges that allow for additional prison time if certain conditions are met, impacts sentencing and incarceration in California. In response, Professor Petersilia's research team is cataloging all of the enhancements that exist in California, how they came into existence, and what they cover.

Professor Petersilia has also discussed with George Gascón, the District Attorney in San Francisco, how to create a system flow management information system. He is working with outside consultants to create a better management information system. This system will track information about prosecutorial decision-making from the point of arrest through sentencing. Professor Petersilia hopes this system will then be used to study how enhancements are used within the charging and sentencing process. Professor David Sklansky at Stanford is interested in studying prosecutorial discretion and will be working with Professor Petersilia and other Stanford Law faculty to move this issue forward.

Professor Petersilia believes that funding campaigns against bad prosecutors would not be very effective, because it is difficult to define what a "bad" prosecutor is. Developing a way to define prosecutorial quality that went beyond a prosecutor's win-loss record would be useful, and it might have an impact in this area.

Others who are doing work on prosecutorial decision-making include:

- Professor Nancy King, Vanderbilt University

- Professor Brian Forst, American University

California Realignment

Because of Realignment, California is at the epicenter of the effort to reduce mass incarceration.

The most important reform in Realignment is that technical probation and parole violators – people who violated their probation or parole by failing a drug test or missing an appointment – now face maximum penalties of six months in jail rather than up to a year in prison. Prior to Realignment, technical probation and parole violators were 40% of the intake population in California prisons.

California has downsized its prison population faster than any other state in the U.S., and it has done so while its resident population has increased.

Realignment has led to a plethora of experiments about how to accommodate the increased use of jails and probation departments at the county level by providing more than a billion dollars each year to California's counties. Counties are investing these funds in the tools and programs they believe best fit their needs.

While many tools and programs have been implemented in California to facilitate Realignment, they have not been evaluated systematically. Initially, Realignment did not include any money for evaluation. Later, the state legislature gave each county \$150,000 annually to evaluate its own program, train staff, and develop risk assessment tools. Some counties have hired local evaluators to evaluate their programs.

While there has been no statewide outcome evaluation, academic researchers have been publishing studies about how Realignment is working in some select counties. For example, the Public Policy Institute of California is evaluating Realignment in four counties.

*All Open Philanthropy Project conversations are available at
<http://www.givewell.org/conversations>*