States Begin to Fix Our Prison System

By David Swanson

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David Cole of Georgetown University and formerly of the Center for Constitutional Rights has been doing some good writing, not only on our failure to enforce laws against powerful people, but also on our out-of-control epidemic of incarceration which has struck those too unimportant to gain immunity.

Cole argues persuasively that we lock up a dramatically higher percentage of our people than any other nation because it is mostly poor African-American communities that get hit. He points out that when segregation was legal in the 1950s, African-Americans were 30 percent of the prison population, whereas now, with a monstrously increased prison population, African-Americans and Latinos make up 70 percent of it. Sixty percent of African-American high school dropouts have spent time behind bars.

Of course it costs less money to educate people than it does to incarcerate them. It costs less to treat them for drug addiction than to incarcerate them. It costs less to help them get on their feet than it does to repeatedly lock them up. And it is these cost considerations that are driving some badly needed, and encouraging, reform.

When Cole spoke on Friday at the University of Virginia, I asked him where the best successes were to be found. While Virginia Senator Jim Webb has proposed a national commission, Washington D.C. is obviously the last place anything is going to be reformed. The racism and demagoguing are joined by the legal bribery from the privatized prison industry, the corruption of the corporate media, and the control of party leaders. We must look to the states for action. But which states are making the most progress?

Cole pointed me to a new study by the indispensible Sentencing Project which looks at four states where incarceration is being downsized: Kansas, Michigan, New Jersey, and New York.

These states have "reduced their prison populations by 5-20% since 1999 without any increases in crime. This came about at a time when the national prison population increased by 12%; and in six states it increased by more than 40%. The reductions were achieved through a mix of legislative reforms and changes in practice by corrections and parole agencies."

That crime did not increase as these prison populations shrank is not shocking. But it's also probably not because crime shrank and incarceration shrank with it. The many-fold increase in US incarceration over the past 35 years did not follow any crime increase; it was the creation of more punitive laws and policies. And scholars give it very little credit for having reduced crime. In fact, with prisons no longer concerning themselves with rehabilitation, there is always the possibility of incarceration increasing crime.

The reforms the Sentencing Project found include:

"* Kansas – Changed sentencing guidelines to divert lower-level drug cases to treatment rather than incarceration; Expanded supportive services to people on parole supervision.
* Michigan – Eliminated most mandatory minimum sentences for drug offenses; enacted statewide initiative to reduce parole revocations and enhance employment, housing, and treatment services for people leaving prison.
* New Jersey – Increased parole releases by adopting risk assessment instruments and utilizing day reporting centers and electronic monitoring.
* New York – Scaled back harsh drug penalties, established Drug Treatment Alternative to Prison programs, and applied 'merit time' credits to speed up parole consideration."

Another Sentencing Project report, "The State of Sentencing 2009: Developments in Policy and Practice," looks at newly enacted reforms in 19 states:

"* Three states – Minnesota, New York, and Rhode Island – significantly scaled back the scope of mandatory sentencing laws for certain drug offenses.
* Seven states increased the proportion of "good time" credits to be earned in prison to expedite parole eligibility.
* Four states Arkansas, Illinois, Nebraska and New Jersey – established oversight committees to examine sentencing policies, prison overcrowding and reentry services."

These reforms may be driven more by budget cuts than by demands for racial or class fairness. But they will produce that fairness in the end, and more humane and effective approaches to law enforcement will be proven to work by experience long before we develop a communications system that would permit a victory in the policy debate.

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