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Point of View

Filling the cells

By Gene Nichol

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The North Carolina Department of Correction reports a prison population of about 40,000. A startling 57 percent of inmates are African-American; though only 22 percent of our population is black. Thirty-five percent of our state prison population is white; though whites constitute over 72 percent of the populace. The size of our prison cohort has risen by more than 35 percent over the last 15 years.

The “most frequent crimes” resulting in incarceration are instances of “drug possession” (18 percent). Another 3 percent of offenders are categorized as having engaged in “drug trafficking.” Assault, larceny, DWI and burglary yield about 10 percent apiece. Traffic violations, robbery, sexual assault and fraud round out the field, at more modest levels.

These North Carolina figures echo patterns seen across the nation in the past three decades.

The U.S. now has the highest rate of incarceration in the world – outpacing even harsh regimes like Iran, China and Russia. The Pew Center reports we have less than 5 percent of the world’s population, but a quarter of the its prison population. Germany, for example, incarcerates 93 of its residents per 100,000; we imprison 750. Nationwide, in 30 years, our prison population has ballooned from about 300,000 to over 2 million. In 1980, there were roughly 40,000 people in American prisons for drug crimes. Today, it’s about 500,000.

National incarceration rates are also dramatically skewed by race. We imprison higher percentages of black men than South Africa did during apartheid. One of each 106 white men is behind bars. For African-Americans males, it's one in 15. This combination of mass incarceration and acute racial impact has led Michelle Alexander to label, and potently document, the American criminal justice system as principal tool in a "New Jim Crow."

The lessons to be drawn from drug convictions are pointedly illustrative. Scholars estimate two-thirds of recent decades' increase in federal prison populations, and over half of state ones, result from narcotics offenses. Between 80 and 90 percent of those convictions are visited upon African-Americans.

Curiously, though, empirical studies suggest that American blacks and whites use and sell illicit drugs at roughly equal rates. Young white males, in fact, trigger three times as many overdose-related emergency room visits as do their black counterparts.

Having lived in privileged college communities most of my adult life, I'm beyond certain that drug enforcement regimes are markedly distinct from those employed in economically distressed and troubled locales. Police supervision and intervention patterns in strained neighborhoods of Lumberton, Fayetteville, Goldsboro, or, for that matter, Charlotte, have little in common with those surrounding the campuses of Chapel Hill, Duke and N.C. State.

Our implementation policies and practices are hardly neutral. Cornel West is right that "if young white people were incarcerated at the same rate as young black people, the issue would be a national emergency."

And, as those who work in North Carolina's impoverished communities regularly attest, the results flowing from expansive incarceration are devastating. Felons are frequently tagged for life – effectively barred from employment, housing, public benefits, access to educational opportunity and even food stamps.

Most leave prison unemployed and stay that way for a year or longer – even in good economic times. Deprivation spreads quickly to families, neighborhoods and towns. One UNC study found that mass incarceration policies have driven up child poverty in all 100 North Carolina counties.

Why are such patterns tolerated in a state (and nation) profoundly committed to "equal justice under law." The reasons are, no doubt, varied and demoralizing. At least one, though, stems directly from the way we enforce constitutional norms.

It is remarkably difficult to mount successful legal challenges to broad, systemic injustices in American courts. You might be able to contest the application of legal standards to your particularized claims, but overarching attacks on the operation of our institutions are notably harder to come by.

This can mean statistical demonstrations of broad-ranging bias, or distorting impact, fall on deaf ears. Even if, as here, the disparities are grotesque. And in individual cases, you're never going to win if you have produce evidence, from the mouth of your adversary, that he was, after all, out to get you.

We've seen this, of late, in the related, but analogous, debates over North Carolina's pathbreaking, but now interred, Racial Justice Act. Pointed demonstrations that both prosecutors and juries manipulate results to accommodate racial predisposition will now, again, be deemed beside the point. But sometimes you have to look at the forest to actually grasp the nature of the trees. Otherwise, it's hard to avoid the conclusion that we know our vaunted criminal justice system is racialized, we just don't care.

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