

# Conversation with Open Society Foundations on July 26, 2013

## Participants

- Ken Zimmerman – Director of US programs, Open Society Foundations
- Leonard Noisette – Director of the Justice Fund for US Programs, Open Society Foundations
- Cari Tuna – President and Co-Founder, Good Ventures
- Alexander Berger – Senior Research Analyst, GiveWell
- Eliza Scheffler – Research Analyst, GiveWell

*Note: This set of notes was compiled by GiveWell and gives an overview of the major points made by Ken Zimmerman and Leonard Noisette.*

## Summary

GiveWell spoke to Ken Zimmerman and Leonard Noisette of the Open Society Foundations (OSF) to learn more about the field of criminal justice reform. The conversation provided an overview of the work of OSF's US Programs, particularly pertaining to criminal justice, and the advocacy landscape more broadly. The conversation also addressed opportunities for philanthropists in criminal justice reform.

## OSF's US Programs

### Budget

The budget for US Programs includes \$125 million for 501(c)3 grant-making.

### *OSF's US Program Funds*

- *Justice Fund*: supports efforts to reform the criminal justice system
- *Equality Fund*: supports efforts to address issues that pertain to minority communities and vulnerable populations, such as immigration and access to quality education
- *Democracy Fund*: supports efforts to promote a full, fair, and vibrant democracy, such as challenging money in politics, supporting independent journalism, and protecting voting rights

The Justice Fund's budget is slightly under \$15 million, which includes grant-making to organizations and also to individuals through its fellowship program. This excludes OSF's Campaign for a New Drug Policy, which receives an additional annual budget of \$7.8 million.

### Grant-making strategy

### ***Long-term and short-term***

OSF aims to make long-term investments in fields where it can have an impact over time, but also to take advantage of opportunities as they arise. For this reason, 80% of the budget for US Programs is tentatively allocated to grantees in advance each year, while 20% is reserved to allow OSF to be responsive to opportunities that arise.

### ***501(c)3 and 501(c)4***

US Programs directs OSF's 501(c)3 grant-making in the United States. There is an affiliated Open Society Foundations entity, The Open Society Policy Center, that manages its 501(c)4 grant-making, including activities in the United States.

Other than OSF, Atlantic Philanthropies is the largest national foundation that does 501(c)4 grant-making, and it is winding down, so there will be a significant gap that other funders could fill.

## **OSF's work on criminal justice reform**

### **OSF's primary goals**

- *Reduce incarceration in the United States.* OSF's primary focus within criminal justice reform is reducing the number of people incarcerated, and to a lesser extent, reducing the number of people who are under custody control (probation or parole).
- *End the use of extreme punishments.* In the United States, this involves efforts to end the use of the death penalty and end the prosecution of children in adult systems.
- *Make justice systems more accountable.* OSF has long invested in efforts to improve the public defense system; the strategies to support this work are currently under review. OSF is also currently working on police accountability.

### **Activities funded by OSF to reduce incarceration**

OSF funds a variety of activities to reduce incarceration, including:

- Advocacy for more rational sentencing policies, including community education and mobilization in support of reform.
- Research and recommendations for how governments can reduce the number of people incarcerated.
- Work to remove barriers that prevent individuals with prior justice system contact from full participation in society, and to ensure that appropriate services are provided for people who were formerly

incarcerated, by advocating for the allocation of government resources and in some cases providing services directly.

- Communications to engage the public in conversation about how to improve the criminal justice system.
- Supporting black male achievement in order to reduce negative public perceptions of black men and boys and combat racist biases in the criminal justice system, education, and other areas.

## **Advocacy landscape**

### **State level**

Most criminal justice policy is made on the state level. OSF funds many organizations on the state level, as well as some organizations that work nationally but support advocates on the state and local level, such as The Sentencing Project. OSF's work to reduce incarceration has targeted California, Texas, and New York, and it is considering expanding to other states.

### **Potential for bipartisanship**

Criminal justice reform is one of the few areas right now where there is potential for bipartisan collaboration. With recidivism rates so high, it is clear that the current system is not effective at helping those imprisoned to become productive members of society. At the same time, crime rates across the US are the lowest they've been in 50 years, so there is not as much fear about public safety.

Historically, conservatives have been less supportive of criminal justice reform, but today this is not uniformly the case. Some conservatives support reform because of fiscal considerations: keeping people incarcerated is very expensive, and it removes potential taxpayers from society. Other conservatives see criminal justice reform as aligned with their values and interests. The "Right on Crime" effort out of the Texas Public Policy Foundation is playing a big role in this.

There are people on both sides of the political spectrum who are asking whether people should be incarcerated for low-level offenses, such as non-violent misconduct or drug offenses, and whether incarceration is the best way to promote public safety.

### **Goals of policy reform efforts<sup>1</sup>**

- Reduce the number of crimes for which there is mandatory incarceration
- Challenge the use of mandatory minimum sentences

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<sup>1</sup> The following goals relate to OSF's priority of reducing incarceration. OSF has other goals associated with its priorities of Challenging Extreme Punishment and Justice System Accountability.

- Reduce the number of people who are detained pre-trial, as studies have suggested that defendants detained pre-trial are more likely to be sentenced to prison time
- Increase the availability of alternatives to incarceration for certain offenses, such as drug offenses
- Decriminalize drug offenses or reduce penalties for drug offenses from felonies to misdemeanors
- Increase the use of earlier release mechanisms and alternatives to incarceration, such as parole and merit time
- Increase access to educational resources for those in prison and upon their release, including higher education
- Remove the barriers that people face after release from prison, such as lack of access to housing, student loans, and certain occupational licenses

## **Role of philanthropy**

### **Promising areas for additional philanthropic investment**

For the past few years there has been a decline in the overall prison population, the abolition of the death penalty in multiple states, and promising changes coming out of the judiciary. This makes it an opportune moment for additional philanthropic investment to create further change.

#### *Picking up where Atlantic Philanthropies left off*

Atlantic Philanthropies is winding down its grant-making, which means that some of the organizations it has funded may soon have significant funding needs. This includes work on abolishing the death penalty and addressing many fundamental issues with mass incarceration.

#### *Drug policy reform*

Other than OSF, there is very little philanthropic support for drug policy reform. OSF approaches drug policy from a variety of angles:

- Criminal justice: reducing penalties for drug crimes.
- Public health: helping drug users get their health needs met.
- International relations: US drug policy plays into the larger “War on Drugs,” which particularly harms communities in Latin America.

Drug policy is an area where there is a massive divide between what the evidence says and how policy is designed, because it has been driven by fear and emotion.

Reform of these laws is not politically popular, but it could have very significant benefits, especially for people of color.

### *California*

California has poor criminal justice policies. There is a special opportunity at present for reforming the criminal justice system in the state. In response to the fiscal crisis, Governor Brown wants to reduce the costs of incarceration in the state. In addition, a 2011 U.S. Supreme Court decision required California to reduce its prison population by 30,000 people, and the state is still undertaking efforts to meet that court order.

OSF helped create a new organization called Californians for Safety and Justice, funded in part by the Ford Foundation and local funders. Californians for Safety and Justice is engaged in a campaign over the next 3-5 years to advocate for sentencing reforms and other practices. It has organized a group of victims of criminal activity who are supportive of rehabilitation for criminals and reform of the existing system. This new entity will counter the voice of existing victims' advocacy groups that have largely been supportive of current policies.

### **The HOPE program**

*Good Ventures/GiveWell asked for OSF's opinion on the HOPE program.*

A potential issue with the HOPE model is that by focusing on imposing the authority of the court, it risks including people within the court's supervisory structure who may not necessarily need that kind of supervision, and could actually be harmed by it. There are studies that show that keeping people under supervision for too long can have negative effects on compliance. Figuring out who would benefit from increased supervision could have value, but there are risks if it is applied too broadly.

### **Other funders in the field**

- Atlantic Philanthropies (currently winding down)
- Ford Foundation
- Public Welfare Foundation in DC (works on criminal and juvenile justice)
- John D. and Catherine T. MacArthur Foundation (works on juvenile justice, may move into adult criminal justice as well)
- John and Laura Arnold Foundation (works on criminal justice, exclusively front-end of the system as of now)
- Annie E. Casey Foundation (works on juvenile justice)
- Multiple funders working at the state level

- Multiple funders in the Juvenile Justice Work Group of the Youth Transition Funders Group

*All GiveWell conversations are available at <http://www.givewell.org/conversations>*