

— Neuroscience, Law and the Brain – ch. 3

Transcription of the interview with David Eagleman¹

3. The role of prison

What's the role, if any, that prison should play in a neuro-compatible legal system?

A neuro-compatible legal system would not not send people to prison. Why? Because prison is very useful as a societal deterrent, for making somebody think “okay, wow I really wanna rob that old lady over there, but if I do I run the risk of going to jail for three years”. It's a very useful deterrent in that way and that's why our prison system will and should continue to exist. The problem is, prison is not for everybody, it's not useful for everybody.

“And in America we have the highest incarceration rate in the entire world. We stick a larger percentage of our population in prison than any other country”

The reason that doesn't always make sense is because there are many people who don't respond to the deterrent of prison in the way that you or I would. I mean I don't wanna go to prison, so I'm gonna not do that crime. But not everybody responds that way. Why? Because there are a hundred things that could go wrong with the brain. You can have damage to the brain of all sorts or you can have maldeveloped parts of your brain that think about the long-term

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consequences. Obviously, drugs change brain decision making. There's a spectrum of IQ. There's a hundred different things that can make it so that ... that do make it so that people are very different in their decision-making.

So the question is, is prison the right solution for everybody?

And this is where I think a forward looking legal system would have some better distinctions and refinement.

"We're not going to imagine that prison is a one-size-fits-all solution, but instead we're going to see if there are rehabilitative strategies that are meaningful in this situation, that we can help you to rehabilitate to get you back out as quickly as is useful"

So just as an example, for people who are addicted to drugs, if you take somebody who is arrested for drug addiction and you put them in prison, first of all, there is a big drug ring in prison, so you can still get drugs. And the bigger problem is once you send somebody to jail, you break their social circles and you break their economic opportunities, and so we have a major recidivism rate in this country where people end up returning to prison.

Instead, you could take those people and put them into a meaningful rehabilitation program, such that instead of saying if you do drugs, you are a bad person who needs to be off the streets. Instead you say look we're gonna help you in some way. And I think from a cost perspective, it's actually better for governments to do this. So it's better for society, it's better from a cost perspective also.

Obviously, a big one in the American legal system has to do with mental illness. The estimate is that about 30% of our population in prisons has mental illness. We used to have institutions in this country, mental institutions and then several decades ago, those were all shut down, this process called de-institutionalization. The reason that happened is, because those institutions were being run very poorly and people were essentially spending their whole lives in those institutions.

Anyway, the government shut those down and most of that mentally ill population just flowed into the prison system. Now our prison system is our mental healthcare system.

There are also different kinds of crimes that people commit where doing something other than putting them in jail would be helpful. For example, with prostitution. Prostitution is a very different kind of crime than other sorts of crimes. What some counties here in the United States are doing is spinning off specialized prostitution courts where what you're trying to do is help the women to find other kinds of jobs so that they have some outlet they can do besides that.

Some counties are setting up specialized drug courts so that instead of saying, "Look, you did this drug, you're going to prison for this amount of time," instead you say, "Okay, what are the rehabilitative strategies that are available here for you?" The judges and juries have specialization in understanding drugs and the treatments available, or specializations in prostitution, specializations in mental health, these sorts of things.

I would just add that typically, these things get set up only when counties run out of money, which is a real shame. What happens is they run out of money and they think gosh, we don't have any more room in the jail, and we need more room, and so they think gosh, now we have to think of something smart. That's when they start setting up these specialized court systems so that they don't just send everybody to prison.

"Instead of saying "you are a bad person who needs to be off the streets" you say "look we're gonna help you in some way". From a cost perspective, it's actually better for government to do this: it's better for government, it's better for society"

[to be continued]