SEASON 5 EPISODE 10

What's the Public's Role in Upholding a Broken Criminal Justice System?

Currently, over 7 million people are under some form of carceral supervision in the United States–from custody to bail to probation. For our final episode, 70 Million reporter Mark Betancourt moderates a conversation about the role we, the public, play in creating and sustaining the matrix of incarceration as it exists today. He's joined by Cornell professor Peter K. Enns, author of the book Incarceration Nation: How the United States Became the Most Punitive Democracy in the World, and Insha Rahman, Vice President of advocacy and partnerships at the Vera Institute.

Mitzi Miller:
I'm Mitzi Miller, and this is 70 Million. We tend to talk about the criminal legal system as being created by the state, or controlled by forces bigger than us, the people. But it's *our* system, and WE either made it the way it is, or allowed it to become what it is. Knowingly and unknowingly. For 70 Million's final episode, we gathered a panel of criminal justice insiders to help us define, contextualize and examine how WE the people shape the system, and how we can help repair it. Mark Betancourt has that conversation.

Mark Betancourt:
Hi everybody, this is Mark Betancourt. I'm a reporter with 70 Million. It's our fifth and final season of the show. In fact, this is the very final episode. This season, we looked at how the criminal legal system is rigged. We reported on plea bargaining, jailhouse informants, grand juries, carceral debt, and we kept noticing something, that the public was often implicated in one way or another in the rigging of the system. By electing a hard line sheriff, for example, or using the state, including the police, to clear unhoused people from a park. To discuss the role the public plays in shaping the criminal legal system, we welcome two panelists. Joining me is Insha Rahman. Insha is the vice president of advocacy and partnerships at the Vera Institute, where she works on bail and prosecutorial reform and decarceration. She's an expert on bail and has previously worked as a public defender. Hey, Insha.

Insha Rahman:
Hi. Great to be here.

Betancourt:
We are also joined by Peter K. Enns, who is professor of government and professor of public policy at Cornell University. He's the author of Incarceration Nation: How the United States Became the Most Punitive Democracy in the World. Hi, Peter.

Peter K. Enns:
Hey, Mark.

Betancourt:
Peter, I want to come to you first. You write in your book that between the early 1970s and 2000, the US incarceration rate increased 400%, and that today 7 million people in the US are under some form of government supervision. You argue in the book that public opinion drove that change. How did public opinion have such a profound influence on policy?

Enns:
Yeah, that's a great question, Mark. And I think it really starts if we recognize that although [the United States has the highest incarceration rate in the world](), it wasn't always the case. I show in my book that in the 1950s, [the US incarceration rate was actually between Denmark and Finland's](). And as you say, I argue that the public played a major role. As the public became more punitive, the legal system followed. And that there's a variety of reasons. Some, as you mentioned in the intro, the public's involved in electing a lot of folks, prosecutors in many states, judges, sheriffs, but also legislators who have a major impact on the legal system.

Betancourt:
There's plenty of research, especially coming out lately that shows that [more incarceration doesn't necessarily make us safer](). In fact, it might even do the opposite in a lot of cases. Yet clearly a lot of people in the public didn't think that and thought that more incarceration was the right way to go, or that a more hard line approach to crime was the right way to go. What were they responding to? During these decades that you were looking at?

Enns:
Yeah, what I think surprises people often is, and what I show in the book, as the crime rate went up, the public became more punitive. In other words, the public's demand for more punitive actions went up. As the [crime rate has gone down since the mid '90s](), the public has actually become less punitive. And what's in between this is news coverage. So how the news covers crime is a really important part of this story. And there's another element that is important to emphasize. As crime went up and the public became more punitive because news is covering more crime in a very sensationalist way. The public response may have been systematic but not proportionate. And what I mean by that is the public and our criminal legal system massively overreacted to rising crime rates. And so we can point to that as a source of what was driving things, but we need to be very careful to not think that this was a rational response to shifting conditions.

Betancourt:
So essentially they were responding to crime, but they were overreacting to it.

Rahman:
Peter, I love the point that you were making that it's not necessarily about tracking crime rates, but in fact media coverage. What's been so fascinating coming out of a midterm election where we saw [157 million being spent in ads]() weaponizing the issue, we were all expecting the [red wave](), the take down of

justice reform over fears around crime and safety. But that's actually not what we saw. And the election results were, I think, surprising for many of us on many fronts. But on the crime and public safety front my big two takeaways are one, to the point that we are by large a very punitive country, and people are more punitive here in their views than in other parts of the world. But I actually think voters saw through the rhetoric and the fear mongering, and they didn't take the bait. They saw it for what it was, which is racist dog whistles. That's actually, I think, a really important moment for us in this country that what was clearly an effective campaign tactic in election seasons past didn't actually seem to pay off this one. That said, there were pockets of the country that seemed to really take issues of crime and safety seriously at the ballot box, and Democratic candidates who were seen as being, quote-unquote, "soft" on crime or not paying attention to issues of safety, they paid for it. I think as a country, we're actually making some progress towards being less punitive and in fact being better on safety than preventing crime and delivering safety. But we really have to take the question of safety seriously and actually decouple it with how we understand crime because the two are not the same thing.

Betancourt:
I was also thinking about progressive prosecutors that have been elected on this wave of reckoning with our punitive system, our incarceration and our policing in this country, but they have been meeting resistance even within very liberal cities. I'm thinking of Chesa Boudin getting ousted by voters in San Francisco, George Gascon in LA also facing a recall there but surviving it. Peter, what do you attribute that to? Is that people getting scared about rising crime? Is it manipulations from the right? What's happening there?

Enns:
Yeah, well, it's certainly complicated. I think one of the things that's challenging is the issue of... And I completely agree with Insha that crime and safety need to be decoupled and not thought of as one to one. But I think in terms of how people talk about these issues, it's driving up fear, pointing to one instance and then suggesting we need an immediate, a more punitive, a reactionary response. Even if we know if we step back as members of the public that probably doesn't feel right, that doesn't sort of fully make sense, that's an easier message to convey than the other side might be, "Here's the set of reforms we're going to put in place that we're going to address this in a broader perspective." And so everybody wants more public safety. Everybody wants a safe society. So on these goals we all agree on, what are the strategies to give equal momentum to not the reactionary approach?

Betancourt:
To that exact point, I actually want to play a little bit of tape from our first season. This is something that my colleagues, Sonia Paul recorded as part of reporting that she did around bail reform in New Orleans.

Sonia Paul:
I met Reynard Oliver and Anthony Collar near the corner of Tulane and South Broad Avenues in New Orleans. This spot is basically where criminal justice breathes out in the city. Nearby is a public defender's office, courthouse, city jail, and your choice of bail bonds agencies. There's a hospital nearby

too, so the streets have a certain soundtrack. I tell them what I'm up to, that I'm here reporting on the criminal justice system, and immediately they want to get in front of the mic. Reynard has the most to say.

Reynard Oliver:
We have one of the highest murder rates down here. And every time I go to jail, I don't never see no murderers in there.

Paul:
Who's in there? That's Anthony laughing. He chimes in.

Anthony Collar:
Petty crimes, non violent offenses. Foolishness like that.

Paul:
Up until just this year Louisiana incarcerated more people per capita than any other state in the US. New Orleans, its largest city, had the unfortunate reputation of being the most incarcerated city in the most incarcerated state in the most incarcerated country in the world. It's also poor. More than a quarter of its residents live in poverty. And over 80% of the accused who appear before New Orleans court judges are considered indigent. Reynard says this goes back to what people here are able to earn.

Oliver:
Why is minimum wage still $7.25 in the 21st century? We got the answer that.

Collar:
And you're right.

Oliver:
Let me repeat that.

Paul:
And that, he says, has to do with history that goes back even further.

Betancourt:
I feel like we have these huge passionate protests against things like police brutality. When we absolutely can't look away, we hit the streets. But there isn't the same level of outcry about, say, expanding the child tax credit or other things that can really reduce poverty and therefore take a chunk out of what contributes to crime for sure.

Rahman:
I'll start by saying the complete disinvestment in having real public safety is not something that's specific to the criminal legal system or justice issues. It's what we as a country do across the board when it comes to healthcare, when it comes to education, when it comes to housing, to really basic things. And the very first thing we can do, and that I actually feel some hope that we are watching local jurisdictions do, mayors, local city councils have a ton of sway over this, is to say, "Look, one of our best crime fighting tactics is to actually address some of the structural and systemic issues that drive people towards crime in the first place."

Betancourt:
Why the focus on crime when it happens versus what leads to it?

Enns:
I think a lot has to do with dealing with what we might call the social conditions. It's kind of a longer term project. And what I mean by that is more support to schools, particularly schools in economically disadvantaged areas, more job opportunities, more training, more healthcare. And this takes longer to get in place. It takes financial investment. And what is very challenging from a policy perspective, we know putting more police on the street or prosecuting more people or more arrests is not the optimal strategy. It's not the most efficient strategy and certainly cannot be done in isolation. But a politician can point to that, a prosecutor can point to their prosecution rate, and you can point to the number of new police officers. We've seen this recently in the New York City subway and that it's only affected the most minor infractions, not what it was targeted to do, but can point to these additional police and the public sees them. So it's much harder to sustain attention and focus on the broader project of, again, more educational support, more health support, more job support, when that's all in the direction that nearly everyone in society, Democrat, Republican, independent wants the outcomes those will support. But the time horizon and the visibility are very different.

Betancourt:
Is it also how we think of those people, both the people that need extra investment and also that end up doing even these minor infractions that put them behind bars? There's obviously more in the mix in, you sort of alluded to this earlier.

Rahman:
I think public perception of who commits crime has changed over time. I actually would say, Peter, to your point on the New York City subways, what people are responding to is there are definitely more folks who are unhoused on the subway. There feels like there's a sense of disorder. And I would say by and large, the reaction is, "I feel badly for them. I want people to be housed. I want people to have access to mental health or drug treatment. I don't necessarily want them to be arrested and prosecuted and punished." I think people still hold deeply punitive sentiments about people who are accused of violent crime. I think that's where we struggle with, frankly, the empathy that we need to get over the punitive hump. I think as a country we have gotten there more so when it comes to the vast majority of

arrests and why people are in the system, which is for low level nonviolent things. And to the point of it is much easier for a politician to put more police on the streets or put more money to the courts or build a new jail and point to those things, that actually is not reflective of public sentiment. We just did an exit survey examining what voters took to the ballot box around crime and safety. And what was fascinating to us is even after the barrage of ads on tough on crime and blaming Democrats for being soft on crime, we asked a binary question of voters across the political spectrum in our exit survey. It was, "Would you support more getting tough on crime with longer sentences, more arrests, more prosecution, or would you support fully funding the things that prevent crime in the first place, like housing, jobs, schools?" And 53-47 said, "We would support fully funding." That's actually pretty remarkable. And that's not in keeping with what we see in the media or the rhetoric we hear from elected officials and politicians.

Betancourt:
Is it important then for people to get out and actually make what they feel right now and what they think right now better known?

Enns:
Absolutely. I think individuals, members of the public, groups need to make their voice heard. And of course, voting's one way, protest is another way. One thing I often think about or wonder about is what's the optimal strategy and are there places where groups who might not view their perspectives as aligned to come together? So let me give an example. We know that if we look at actual statistics related to jobs, being police officers and corrections officers are objectively some of the most dangerous professions. So if we think about public safety and reducing crime and strategies for reducing the incarceration rate, which lowers overcrowding in prisons and so forth, there seems to be possible paths of alignment in what's in the incentives of police and corrections officials and members of the public who, as Insha said, would rather see spending on areas that would also enhance public safety in this broader view. So I think when we're thinking about ways the public has to vocalize their views and perspectives, I think it's also worthwhile think about are there ways that groups that are often viewed as having separate and distinct interests to find commonality and move forward in that way?

Rahman:
One of the things that was most fascinating to me in looking at public opinion research over this election cycle was who is most concerned about crime? And when we think about crime and safety, it often feels like a pretty whitewashed issue. That's whose safety it feels like we're talking about when politicians talk about safety. White people. And what I think is so fascinating is it's actually Black voters, especially Black women who in our research were the most concerned about crime and safety in their neighborhoods. Not just sort of out there generally as an abstract concept, but literally where they live. And Black men as well. And what's also fascinating though is those are the groups of people who are actually least likely to support more punishment and more of the status quo of how we respond to crime and try and deliver safety. I use that example of fully fund versus tough on crime, which would you pick? And when you pulled out Black voters, it went from 53-47 to closer to 70-30. That just tells you folks concerned about crime actually do know solutions that work. But I think it's notable, especially in the aftermath of an

election cycle, those are folks who have been, again, systemic issues, disenfranchised. So their policy priorities and choices aren't reflected in the political process or in the politicians who represent our communities.

Betancourt:
I want to wrap up by playing another little bit of tape from a man named Will Sens who lived unhoused in LA for several years and was actually moved by the city into transitional housing from a public park where he was living in an illegal encampment. And the officials who talked about it talked about it as sort of a progressive win, that people were moved into housing instead of into jail. But Will's experience of it was that it was actually a lot like jail in the transitional housing. So here it is.

Will Sens:
It's just so easy to just take it and be like, "Okay, it's being handled." And latch onto this perspective that, "Oh, they have it so easy, these homeless people, that I don't know what they're complaining about." It's easier to do that than to believe a truth that you don't know if you can do anything about it.

Betancourt:
It's really hard to confront a problem that you don't know how to do anything about, especially personally.

Sens:
Yes.

Betancourt:
If you feel like, "That's unacceptable, but I don't know how to fix it.", that's a really uncomfortable feeling.

Sens:
Yes, definitely. But it's something that if we're going to evolve as a species and we're going to stay on this planet, we're going to have to figure out how to do that and be okay with it. You have to know what hot dogs are made of. You got to find out what are they made of. You can't just keep gulping down this gross disgusting shit and saying it's okay, because it's not and you know it. Stop turning a blind eye to the issues, even if you can't do anything about it because what it does is it creates an unnatural perspective of the world around you and you act on an unnatural perspective, and you're treating people based on an assumption that's not true.

Betancourt:
So I think what Will's talking about speaks to so much of what we've been saying in this conversation and also just applies to so many aspects of criminal justice and criminal justice reform, specifically the temptation to want to feel like things have been fixed, even if they haven't, that we've made the system more fair, that we have less crime, that we're safer. Just to have that feeling faster, sooner, easier seems

to be something that we gravitate towards. And I want to ask you both, how do we fight that temptation to go towards the perceived fix as opposed to the real fix?

Rahman:
I going to go back to the point I made earlier, which I still stand by, which is that folks have more empathy, or maybe it's sympathy more than empathy, for people who they see as unhoused or facing some kind of instability. But where I think we miss the mark is it's still like, "Well, they should be grateful for whatever they get." Which is not a good public policy approach to actually addressing the issue. We have a handful of examples around the country of where we've gotten housing right. In New York City, there's a, I think, underappreciated program called Justice Involved Supportive Housing. And the basic idea was, here are apartments, they are here for you, here are wraparound services, they are here for you. If you end up getting rearrested or you spend time in the hospital, you just don't want to be here, that's okay, it'll still be here for you. And it was actually a remarkable program where the first folks to get into these apartments were the folks who had most frequently hit the jail, the emergency room, and the homeless shelters in the last couple of years. And after getting 150 folks into housing, they found that the number of admissions to jail dropped dramatically because between these 150 people, we were literally looking at thousands of admissions to the jail system, to the emergency room and into the shelter system. So there are solutions, but it just requires us to think beyond sympathy and think beyond, "Well, you get whatever you deserve because you don't deserve more.", to really think about what works to address the underlying systemic problem here.

Enns:
I think we absolutely have to recognize the successes where they are. Insha just gave some great examples. I think there's another element with the public, and how people treat those closest to them is just different than those who aren't. And this is both in the resources and the support. So people strive to give every opportunity they can for their kids. And then as Insha mentioned, then when it comes to someone else it's, "Oh, why aren't you grateful for this bare minimum?" We need to think about applying that perspective more universally. The same applies to when somebody's done something they shouldn't. Look, a lot of people in the criminal legal system in the US are innocent and they've just been caught up in it. And that of course the criminal legal system is not applied neutrally. We know those of different racial minorities and lower economic status are disproportionately affected. But let's say someone did do something wrong. When it's a family member or a friend, we typically rush to defend them, rush to think about the context that influenced that, maybe they had an addiction, maybe there were those around them, that we talk about the circumstances and we try really, to be honest, typically get them off the hook if possible. And then when it's someone else, it's about their choice, blame and punishment. I think we need to, as a society, think about how we think about those close to us and then generalize that and apply that more universally.

Betancourt:
As a journalist who covers criminal justice, I want to hear what you have to say about this. But I think it goes also beyond the media. It goes beyond journalists and reporting on this. It also goes to social media, it goes to basically the stories that we tell about this, including the stories that we tell each other.

Rahman:
What if the nightly news featured the mom who got to come home because of bail reform and actually take care of her kids and go to work the next day? What if we did that 10,000 times over instead of what we see on the nightly news, which is the one outlier case where if it bleeds it leads, that's been since time immemorial how the media has portrayed this issue of crime and safety. There's a different set of choices that could be made and they're as concrete as the example I just gave. So I think that's a really important place to start. And the same on social media, what we choose to send around and what goes viral. Same thing. I think there's another piece to this too, though. It's not just the stories we tell, but how we tell them. And you watch the news or you read the newspaper and the only sources that are quoted most of the time are law enforcement sources. And to look behind every single source has an incentive and emotive and to expand who is asked to give their perspective on these stories. So to go beyond law enforcement to advocates who work on these issues, to experts who know them deeply from a research and policy perspective. Again, we would be telling different stories even if we're telling the same story. There's a lot of different ways to come at this and a lot of very concrete ways to come at this. We've talked a lot about how people point the finger at personal accountability. It was a personal failing that somebody broke the law. But actually we're as a society failing and we need to step up to our accountability to actually tell accurate stories about crime and safety. Because when we don't, when we blame the wrong cause, we miss the opportunity to find the right solutions, and that makes us less safe overall.

Enns:
I would just add that one important point I want to make is I think Insha and the work of the Vera Institute are doing incredible work in this domain and that's just really, really important to recognize. The other point I want to build on is these choices that Insha mentions with media, they absolutely are choices, who are the sources, what stories are told. And I think it's a misconception about what audiences are most interested in. And what's really interesting, I think, is choosing to portray the mother who comes home for bail reform or the individual who got job support or support with an addiction instead of a punitive punishment. These stories can resonate with media audiences. So it's the choices could be in their actual benefit as a media organization. And I think we need to keep that in mind and recognize that there is a public interest in these stories, the public wants to hear these stories and they need to be told.

Betancourt:
I want to thank you both for being here. Thank you very much.

Rahman:
Thanks for having us, Mark. Great to be here. And Peter, great to be here with you. Grateful for the work you do.

Enns:
Likewise. Thank you. And thanks, Mark for having us. This was great.

Miller:
70 Million reporter Mark Betancourt moderated that conversation. Thanks again to our guests, Insha Rahman and Peter K. Enns for participating. For more information, toolkits, and to download the interactive transcript for this episode, visit 70millionpod.com. 70 Million is an open-source podcast, because we believe we are all part of the solution. We encourage you to use our episodes and supporting materials in your classrooms, organizations, and anywhere they can make an impact. You may rebroadcast parts of, or entire episodes of, our five seasons without permission. Just please drop us a line so we can keep track. 70 Million is made possible by a grant from the Safety and Justice Challenge at the MacArthur Foundation and is produced by LWC Studios. This episode was edited by Jordan Kauwling and Juleyka Lantigua, who is the show's creator and executive producer. Paulina Velasco is our managing producer. Erica Huang mixed this episode. Catherine Nouhan fact checked the story. Michelle Baker is our photo editor. I'm Mitzi Miller. Thank you for listening.

CITATION: Betancourt, Mark. "What's the Public's Role in Upholding a Broken Criminal Justice System?" 70 Million Podcast, LWC Studios, December 26, 2022. 70millionpod.com.

Produced By,