

DAVID DAGAN AND STEVEN TELES

HOW CONSERVATIVES TURNED AGAINST MASS INCARCERATION

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About New America

New America is dedicated to the renewal of American politics, prosperity, and purpose in the Digital Age. We carry out our mission as a nonprofit civic enterprise: an intellectual venture capital fund, think tank, technology laboratory, public forum, and media platform. Our hallmarks are big ideas, impartial analysis, pragmatic policy solutions, technological innovation, next generation politics, and creative engagement with broad audiences.

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About New Models of Policy Change

New Models of Policy Change starts from the observation that the traditional model of foundation-funded, think-tank driven policy change -- ideas emerge from disinterested "experts" and partisan elites compromise for the good of the nation -- is failing. Partisan polarization, technological empowerment of citizens, and heightened suspicions of institutions have all taken their toll.

But amid much stagnation, interesting policy change is still happening. The paths taken on issues from sentencing reform to changes in Pentagon spending to resistance to government surveillance share a common thread: they were all a result of transpartisan cooperation. By transpartisan, we mean an approach to advocacy in which, rather than emerging from political elites at the center, new policy ideas emerge from unlikely corners of the right or left and find allies on the other side, who may come to the same idea from a very different worldview. In transpartisan coalitions, policy entrepreneurs from the ideological corners recruit endorsers and test ideas, eventually bringing them into the policy mainstream at the local, state and national levels. Unlike traditional bipartisan coalitions, which begin in the center, the established, centrist politicians and institutions are often the last to recognize and embrace a transpartisan vision.

The New Models of Policy Change project studies the successes, failures and key figures of this "transpartisan" approach to policy change. It will produce a set of case studies identifying the circumstances under which this approach can flourish, as well as those under which it falls short. Forthcoming case studies include: criminal justice reform, Pentagon spending reduction, climate change and 'climate care,' opposition to Common Core education standards, and policing reform.

The project will also produce a practitioners' handbook, identifying qualities that equip think tankers, advocates and civic entrepreneurs alike for a world in which more and more of our policy advocacy must cross partisan, cultural, professional and other divides.

The Project is housed in New America's Political Reform program; funded by the Hewlett Foundation's Madison Initiative and directed by Heather Hurlburt, with a steering committee of Mark Schmitt and Steve Teles, who bring to it extensive experience in academia, government service, policy advocacy, and non-profit leadership.

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INTRODUCTION

The 1992 presidential campaign was fought largely on the terrain of which candidate could prove himself to be toughest on crime. George H.W. Bush touted his record of escalating the drug war during the Reagan years. Bill Clinton famously flew to Arkansas to stage-manage the execution of a mentally disabled killer. Elections in state after state followed the same pattern, with Republicans pushing for ever more severe criminal penalties and Democrats following them as fast as they could run.

In the 2016 election, the storyline has been almost completely reversed. Hillary Clinton's first major policy speech focused on reducing unnecessary incarceration. GOP candidates from Rick Perry to John Kasich to Jeb Bush are on record as criminal-justice reformers. An electorally-driven consensus in favor of ever-expanding punishment is being replaced by transpartisan agreement on a set of reformist principles and shared understandings:

- **The United States incarcerates far too many people at a tremendous cost to society**
- **Prison conditions are often inhumane, and the criminal justice system does a poor job of steering offenders back to a productive life**
- **Both of these problems are exacerbated by Kafkaesque and perversely incentivized bureaucracies**

Liberals and conservatives have reached these conclusions from different principles. Liberals tend to view “mass incarceration” as a product of structural racism and crony capitalism and emphasize the disadvantaged conditions of most offenders. Conservatives see the expansion of prisons as a case of big government run amok and stress the potential for offenders to be spiritually redeemed. These distinct narratives make prison reform a case of “transpartisanship”—agreement on policy goals driven by divergent, deeply held ideological beliefs. This is very different from “bipartisanship,” which we understand as established institutions facilitating compromise by bringing two sides together to seek pragmatic compromise. By contrast, “transpartisanship” works outside of established institutions; distinct factions instead converge on shared policy positions through separate, independent routes.

Trans-partisan agreement on criminal justice was a long time in the making, and not merely a hasty gambit to attract votes for a specific piece of legislation. This emerging consensus was driven by both parties’ ideological true-believers, who worked for years against near-hopeless odds before their labors bore fruit. On the right, the evangelical leader Charles Colson was arguing even at the height of the crime war that better prison conditions, less incarceration and better re-entry services were a genuinely conservative objective. On the left, the American Civil Liberties Union (ACLU), the Open Society Institute (OSI), and other organizations ensured that lowering incarceration would remain embedded in liberal identity even as Democratic politicians tried their best to prove themselves “tough on crime.”

It was the conservatives who needed to undergo the more thoroughgoing change for trans-partisanship to become possible, moving from the blunt party orthodoxy that “prison works” to the idea that excessive incarceration is just another example of government overreach. Of course, liberal politicians supported many of the policies now being decried as unduly harsh. In some cases, that support grew out of a genuine conviction that government needed to crack down on crime. But it was driven primarily by electoral calculus that liberals could no longer afford to be attacked on the issue, and the tough-on-crime ethos was never embedded as deeply as it was among conservatives. As a result, the change in conservative politics created the political space for liberal politicians to heed the cries of their own base to reconsider mass incarceration.

The shift in course became obvious in 2012, when prominent conservative leaders such as Newt Gingrich and Grover Norquist issued a “Statement of Principles” that declared the American justice system broken. The statement was the centerpiece of a campaign run by the Austin-based Texas Public Policy Foundation dubbed “Right on Crime,” launched to vouch for the conservative bona fides of reducing prison populations and prioritizing re-entry services. It has since been signed by two presidential candidates, Bush and Perry, with other Republicans echoing its spirit on the campaign trail. Right on Crime itself was the culmination of a long, twisting drive launched many years earlier by a small group of right-wing reformers.

The critical role of strong partisans in the reform process does not mean that those nearer the center have been irrelevant. Quite the opposite. The previously long odds of reform began to change around the turn of the millennium, in part because of the support from centrist organizations like the Pew Charitable Trusts and the

Council of State Governments (CSG), who strategically financed the reformers while providing backbreaking quantities of technical assistance on policy details. In this paper, we outline that long road to reform before considering some of the lessons that it holds for other policy domains.

THE PARTISAN CONTEXT OF CRIME

The tough-on-crime politics that led the United States to amass a prison population of 2.3 million arose from shifting partisan politics and social changes, and the ideology conservatives developed to exploit them. The new opportunity to reverse mass incarceration did not arise solely from the genius of activists. It was made possible by the decline of the forces that had once made crime and punishment such an attractive issue for Republicans.

Ever since the New Deal, Republicans faced a daunting electoral problem: as long as the Democrats were seen as the party of the working- and middle-classes, the Republicans would be left in the unenviable position of playing the moon to the Democrats' sun.¹ To break that partisan alignment, Republicans needed to reorient the American political system around a new class conflict. Their opportunity came in the 1960s and 1970s, as anxiety over civil rights, raucous campus protest, and the march of feminism fueled a sense that the nation's elites were no longer willing to enforce social order. The sense of a society spinning out of control was punctuated by the urban riots that followed the Civil Rights movement and by a terrifying increase in the homicide rate, which doubled from 1960 to 1980.²

Conservative leaders tapped these anxieties with a racially tinged rhetoric that conflated political protest with violence and posited a direct link between welfare and crime.³ Conservatives promised that they would push back against disorder in all of its guises by re-imposing social authority. They promised to take the gloves off the parts of government that defended social order, such as cops and prison guards, while lambasting "elite" liberals who they claimed were weakening the capacity of government to crack down.

This conservative framing of politics was so effective that by the 1980s even liberal Democrats were scrambling to prove their tough-on-crime bona fides and lining up

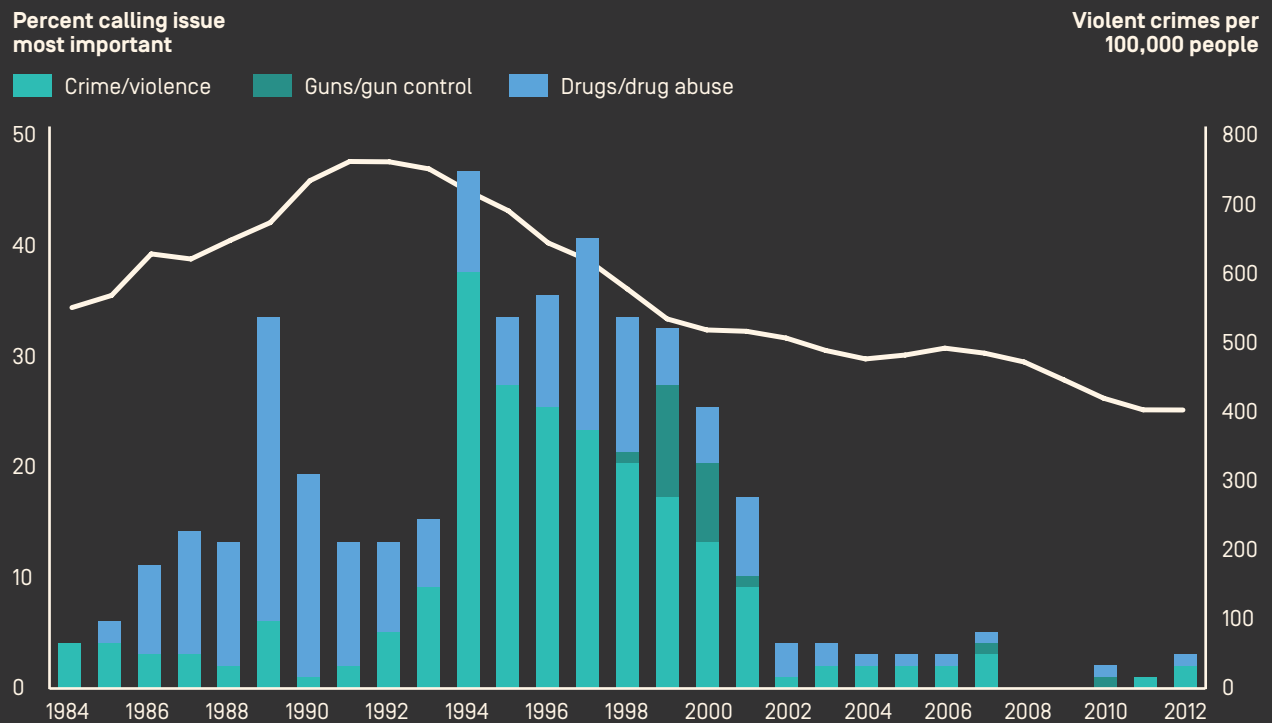
behind punitive anti-drug legislation. In 1994, the Clinton administration and its Congressional Democratic allies enacted a crime bill so sweeping it appeared to neutralize the longstanding conservative (and Republican) advantage on the issue. As then-Senator Joe Biden declared, the Democrats' goal was to "lock Willie Horton up in jail" - a reference to the bogeyman with which Republicans had bludgeoned Michael Dukakis in 1988.⁴

Paradoxically, this Democratic convergence on law-and-order was widely perceived to have squeezed the juice from the issue by the late 1990s. Meanwhile, the facts on the ground were changing rapidly. Starting in the early 1990s, crime began to decline precipitously. Voters didn't immediately notice - amid the political bluster, many still called crime the nation's most important problem through the mid-90s. By the early 2000s, however, public priorities had shifted radically, and with the Sept. 11 attacks, terrorism eclipsed crime as the top domestic-security concern. (See Figure 1).

What's more, the Republicans had achieved almost unquestioned control of most southern states by the 2000s, reducing the electoral need for the crime issue and giving them sole responsibility for state finances. Finally, the conservative movement saw the rise a new generation of politicians who had not come of age politically in the tough-on-crime crucible of the 1980s and who were more devoted than ever to anti-statism and fiscal austerity. These new leaders were far less willing to give criminal justice an exemption from the conservative analysis of government as expansionary and incompetent.

Although these environmental changes set the stage for a reevaluation of the crime issue, they did not make it inevitable. The conventional wisdom that painted police, prosecutors, and prison guards as the heroic face of government remained deeply embedded in the movement, as did the Willie Horton playbook. These were not ideas that just anybody could challenge.

Figure 1
Violent Crime and “Most Important Problem” Responses, 1984-2012³



Source: “Table 2.1.2012 Attitudes toward the Most Important Problem Facing the Country” [Sourcebook of criminal justice statistics Online], <http://www.albany.edu/sourcebook/pdf/t212012.pdf>; “Table 3.106.2012 Estimated Number and Rate [per 100,000 Inhabitants] of Offenses Known to Police” [Sourcebook of criminal justice statistics Online], <http://www.albany.edu/sourcebook/pdf/t31062012.pdf>.

AN UNLIKELY CHAMPION

The key figure in turning the conservative vision of criminal justice towards compassion for inmates and against a knee-jerk tough-on-crime stance was a top Nixon deputy and Watergate villain. Charles Colson started out his career as a political operative and quickly ascended to the Nixon White House, where he later was accused of engineering the burglary of psychiatric records about Pentagon Papers leaker Daniel Ellsberg. For Colson, the exposure of the Watergate scandal was a searing personal experience. By his own accounting, it led him to a born-again experience that motivated him to dedicate the rest of his life to God and ministry. Colson served seven months in federal prison and emerged from his captivity convinced that his destiny was to help other offenders find the redemption he had found in Christ. In 1976, Colson founded Prison Fellowship, an evangelical ministry for people behind the walls.

Colson's belief that evangelicals and conservatives should be committed to criminal justice reform was treated as eccentric for many years. But his unquestioned credibility as a social conservative meant that it could not be dismissed. Over time, his story of personal redemption and dogged ministry in the trenches made Colson an evangelical celebrity, a living example of Christian faith in action to his many admirers. Colson combined that personal history with strict orthodoxy on most issues of concern to conservative evangelicals, including abortion and gay rights. By the 1990s, Colson had become an evangelical superstar, rubbing shoulders with the likes of Billy Graham, James Dobson, Pat Robertson, and Ralph Reed.

From this position of unquestioned credibility, Colson was able to reframe the way evangelicals thought about prisons and the inmates inside them. Where the reigning ideology cast criminals as incorrigible and claimed that "nothing works" to rehabilitate offenders, Colson argued that true Christianity required faith in redemption. Where that ideology called for long sentences and barebones prisons, Colson denounced the dehumanizing impact of these punitive measures. He advanced that critique through multiple channels. Most importantly, by popularizing the cause of prison ministry, Colson exposed thousands of rank-and-file evangelicals to convicted criminals, forcing them to directly confront the reality of prison conditions and creating relationships that defied stereotypes. Colson also cultivated relationships with dozens of leading Republican politicians, from

George W. Bush to Kansas Governor Sam Brownback to former Congressman Frank Wolf. These allies would become crucial in pushing through groundbreaking federal legislation in the 2000s, such as the Prison Rape Elimination Act and the Second Chance Act.

Colson's leadership also motivated a broader base of conservative elites to take on the prison issue. Two of the most important donors to the cause have credited their engagement directly to Colson. In Texas, the wealthy oilman Tim Dunn founded a program at a conservative think tank focused on criminal justice after listening to Colson's radio broadcasts. In California, the billionaire B. Wayne Hughes financed a successful campaign to reform the state's infamous "3 strikes" law after Colson impressed him in a personal meeting at the Reagan Library.⁵ Colson's decades in the trenches and unstinting orthodoxy on other conservative priorities made him a powerful messenger for the cause of prison reform. When Colson spoke, conservatives found they had to listen.

Colson was able to reframe the way evangelicals thought about prisons and the inmates inside them

Colson was not the only dissident pushing the prison issue from the right during the dark years. Criticism also rained down from libertarians, who tended to affiliate with the GOP but ferociously opposed the excesses of the drug war. The warnings from outposts such as the Cato Institute and Reason magazine were viewed by mainstream conservatives as an eccentricity, however, and not a serious SOS. A Cato alumna, Julie Stewart, in 1992 founded Families Against Mandatory Minimums, and managed to persuade Congress to slightly moderate federal sentencing of drug offenders. But it was a thankless, uphill battle. "I didn't think it would be so hard," Stewart observed in 2012. "I didn't know I'd be here 21 years later."⁶

BUILDING A BENCH

Turning the tide would require more than Stewart's determination or Colson's moral authority. Over the years, reformers slowly recruited a cadre of conservative leaders as allies. The key figure in this effort was Pat Nolan, a Prison Fellowship official and former GOP leader in the California Assembly, who had his own conversion story on criminal justice. In the Assembly, he had championed prison construction and other law-and-order causes. But in 1992, he was hit with charges stemming from a surreal FBI sting operation in which agents lobbied legislators on behalf of a fictional shrimp-processing company. Nolan chose to take a plea bargain, and he served 25 months in federal prison. During his incarceration, Nolan was put in touch with Colson by mutual friends and the two quickly became close. Upon his release, Nolan moved to the Washington, D.C. area to take leadership of Prison Fellowship's policy wing, Justice Fellowship. Nolan would henceforth run the day-to-day policy operations, with Colson providing moral authority and occasionally interceding with personal appeals.

organization Young Americans for Freedom and through campaign work for Ronald Reagan. These relationships allowed Colson and Nolan to informally consult with senior conservatives who otherwise might not have paid attention to the cause and to seek favors such as phone calls or written endorsements. Such small steps eventually led to bigger commitments from those friends.

Early supporters included David Keene, the former chairman of the American Conservative Union; Richard Viguerie, a direct-mail pioneer; and Grover Norquist, the anti-tax crusader. Keene and Viguerie were both sympathetic from the outset. Keene had long been interested in crime policy and believed that conservatives had overreacted to what he sees as liberal sympathy for criminals. Viguerie, a Catholic like Nolan, had long been opposed to capital punishment. Norquist's case was more of a conversion. In 1993, the activist had urged conservatives to deploy the crime theme as an electoral replacement for the Cold War.⁷ But reform ideas kept flowing toward him via people he respected. "When Dave Keene would say, 'What about this?' I'm willing to listen," Norquist said.⁸ Another early supporter was Edwin Meese III, the former attorney general under Reagan. Despite the administration's record of drug-war escalation, Meese had long been concerned about the overreach of federal criminal jurisdiction. While Meese's team at the Heritage Foundation, where he is now based, emphasized white-collar concerns, he was also an early critic of mandatory minimum sentences for street crimes.

The substance of Nolan's conversations with this team tended to focus on federal crime policy. In the late 1990s, they campaigned for the religious freedom of prisoners; in the early 2000s, they promoted a bill aiming to end prison rape; and in the middle of the decade, they pushed the Second Chance Act, which ultimately passed in 2008 and provided federal support to integrate released prisoners into their communities.

These bills were all bipartisan productions, and their supporters made no secret of that fact. But the bipartisanship was always bundled in a "strange bedfellows" rhetoric that positioned it less as a product of centrism than of an unusual convergence from different ideological perspectives. Left-wing activists also played a crucial role in these campaigns. For example, the Washington office of the Open Society Institute was involved in the Second Chance Act from its inception. OSI



President Bush signed the Second Chance Act into law in 2008. Photo: White House / Joyce N. Boghosian.

Colson and Nolan came to the cause not only with formidable reputations as battle-scarred warriors for conservatism, but also with long-standing friendships in the movement. These relationships, forged during early rounds of ideological warfare and tested over a period of years, were a critical asset. Nolan, for example, met many of his allies decades earlier through the youth

managed a left-right coalition of supportive organizations that coordinated strategy, lobbied legislators, and developed publicity documents. The coalition also helped to broker a compromise on funding for faith-based organizations, an issue that could have sunk the Second Chance Act. But the coalition never developed a brand of its own, preferring to let individual members sign on to or stay out of its initiatives, as they chose. “We never did anything in the name of the coalition,” said Gene Guerrero, who was then director of OSF’s Crime and Violence Prevention Initiative.

Avoiding the language of centrism made it easier for Nolan and Colson to recruit the support of conservatives. Their agenda resonated particularly with evangelicals, given its themes of promoting religious freedom, ending a moral outrage, and encouraging redemption. Indeed, the duo secured endorsements for these bills from prominent religious groups such as the Southern Baptist Convention and the Family Research Council. Some would remain allies for tougher issues in the future, such as reducing the disparity in sentencing for crack- and powder-cocaine offenses.

In the mid-2000s, Nolan began hosting occasional lunch meetings with his allies. They brainstormed policy proposals and discussed how to legitimate the reform cause. The question, Keene said, “was how we could make (reformist) views known to the broader movement, to make it in essence respectable, and ... inhibit those who had a tendency to ... jump on and exploit law and order.”⁹ The cadre quickly recognized that the fiscal savings of prison reform were likely to resonate with state officials, even though their motivations were ideological, moral and personal, rather than budgetary. As Norquist put it, “For me, who would like to see the whole cost of government down, fixing the entitlements just dwarfs this stuff. This is pennies. But if you’re a (state) legislator and the world you can control is limited, this is a huge lever.”

THE TEXAS TRIUMPH

Few states embody the punitive spirit of the tough-on-crime era as well as Texas. Its frontier reputation evokes at best the image of rough justice dispensed by posse, at worst the specter of lynching. More recently, of course, Texas has become the nation’s top executioner, and it was a leader in expanding incarceration: between 1987 and 2000, the state added more than 100,000 prison cells.¹² It was against this backdrop that Texans surprised the criminal-justice world in 2007 by passing a significant

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By 2010, the cadre’s efforts had won a new convert – Newt Gingrich. Though Gingrich championed tough punishment during his time in Congress, he is now an active reformer, authoring a series of op-eds and co-hosting a high-profile conference on the issue with liberal activist Van Jones in March 2015.¹⁰ Gingrich credited Colson and Nolan for bringing him to the cause. “They were absolutely central certainly in my case,” he said. “They educated me and brought me along and helped me much better understand things.”¹¹ Between the legislative battles and the lunch meetings, Nolan built a sense of momentum and team spirit among friends who otherwise might not have engaged the issue, or never even seen a problem with prisons. With each new member, the cadre expanded its recruitment power. Even this expanded group of conservative elites could not transform the politics of the issue alone, however. To really tip the balance, they would need help and a model from beyond the Beltway.

reform designed to check the growth of its prison population.

The roots of reform can be traced back to the turn of the millennium, when a handful of activists at the ACLU of Texas began working with conservative legislators on issues of criminal justice and civil liberties. A scandal in which dozens of black residents of the tiny town of Tulia had been rounded up on bogus charges provided an

opportunity for the liberals to push through some policing reforms, which they lobbied for partly by invoking biblical prohibitions on bearing false witness. Surveillance issues that arose after the September 11, 2001, attacks led one of the activists, Scott Henson, to develop a strong relationship with a Republican representative, Ray Allen.¹³ These efforts began to pay real dividends in 2003, when Republicans consolidated their control of Texas politics by capturing the majority in the state House of Representatives. Far from a setback, the cadre around Henson shrewdly recognized this as an opportunity, and in a strategy paper written after the election, they observed, “Republican leadership has been able to take progressive positions on criminal justice reform that has sent Democrats – fearful of being labeled soft on crime – running for the door... Further, the Republican hegemony has created some pressure on candidates to distinguish themselves within the party. Criminal justice reform is providing that opportunity for many Republicans.”¹⁴

Allen turned out to be one of those legislators. In 2003, he was appointed chairman of the House Corrections Committee and began consulting with Henson on criminal justice.¹⁵ Partly as a result, Allen sponsored a bill to downgrade basic drug-possession crimes from felonies to misdemeanors. He got a compromise version passed, marking a major crack in the punitive consensus. Two years later, Allen was succeeded by Plano Republican Jerry Madden, who said the fiscally austere Republican Speaker of the House, Tom Craddick, ordered him not to build new prisons. Madden was a reliable conservative – staunchly pro-life, opposed to gay marriage, and sponsor of a bill calling for textbooks to cast the U.S. as having “overcome its mistakes and emerged as the freest, most democratic nation in the history of the world.”¹⁶ On corrections, though, the jovial legislator was a novice, so he teamed up with his Senate counterpart John Whitmire, a Democrat who helped steer the prison construction of the 1990s, to come up with a new approach. They passed a plan to reduce maximum probation terms, reasoning that lower caseloads would help officers better supervise offenders and prevent them from returning to prison. But Perry vetoed the plan, citing objections from the state’s prosecutors.

In 2007, the stakes rose: Texas prisons were spilling over capacity, and analysts projected that the inmate population would grow by another 14,000 inmates over the coming five years, an increase of 9 percent.¹⁷ In the interim, Madden had commissioned activists on left and right to work together on tweaks to his probation plan. Now, Madden and Whitmire persuaded the Legislature to pass the revised probation bill and to inject some \$240 million into recidivism-reduction programs. These programs included addiction treatment and short-term

lockups where probationers could be punished for minor infractions with brief spells instead of being sent to prison. This time, Perry went along. It was a decisive break with the legacy of the 1990s: Instead of doing whatever it took to house more prisoners, Texas leaders took a second look at who they were imprisoning. They did so well before the Great Recession, while basking in a budget surplus. If veterans like Whitmire had grown tired of the old way of doing business, fresh hands like Jerry Madden simply saw the issue through a different lens. To Republicans who now had undivided responsibility for state government, building prisons just seemed like a waste of money.

It made for a good yarn, and crucially, the Texans were more than willing to brag about it. The effort to spread the word was led by Madden himself and by Marc Levin, a criminal-justice analyst at the libertarian-minded Texas Public Policy Foundation (TPPF). The foundation had created Levin’s position in 2005 with a donation from Tim Dunn, the oilman and Colson acolyte. TPPF is one of the leading members of a coalition of state-based think tanks known as the State Policy Network (SPN). Levin began sharing the Texas experience with his colleagues, presenting at an SPN conference and traveling to states such as Colorado, Ohio, and South Carolina to speak to colleagues, legislators, and pundits. Meanwhile, Madden began his own barnstorming tour, speaking to legislators from South Carolina to North Dakota. Nobody could accuse this pair of being liberals, or cast Texas as having gone soft. But the truth was, the Texans did not do it alone. Behind their reforms, and their subsequent efforts to spread the word, was a savvy set of funders and experts.



Gov. Rick Perry signed prison reforms into law in Texas in 2007. He is seen here visiting a prison in Rosharon, Texas. Photo: Texas Governor’s Office.

JUSTICE, REINVENTED

In state after state, conservatives who diagnose a sickness in their criminal-justice system have turned to the same doctor and the same medicine. The doctor is the Pew Charitable Trusts (and two partner organizations), and the medicine is known as “justice reinvestment,” or JRI. In this model, experts crunch the numbers on a state’s criminal justice system and propose ways to shrink prison populations or at least avert growth. The solutions tend to focus on low-level offenders, and the “reinvestment” takes the form of steering money from incarceration into alternative interventions such as drug treatment and intensive probation.

Three major institutions now provide JRI services to the states. They are the Council of State Governments (CSG), a bipartisan group that fosters cooperation among state officials, the Vera Institute of Justice, and the Pew Charitable Trusts, which heads up the triumvirate. Financing comes largely from Pew and federal grants, with beneficiary states paying little or nothing. The emergence of the JRI providers was crucial to advancing the conservative reform campaign. It gave conservative critics of the justice system a concrete policy agenda to remedy the systemic ills they had diagnosed, and it promised that the technically complex, expensive, and labor-intensive task of fleshing out that agenda in their own states could be outsourced, free of charge. For example, the Council of State Governments did the analysis that led to the much-vaunted 2007 Texas reforms.

Pew is a decidedly centrist foundation, but JRI’s origins actually lie with the left-leaning Open Society Institute, where the concept was dreamed up in the early 2000s as a proposal to divert money from prisons into the neighborhoods most affected by high incarceration rates. “The goal of justice reinvestment,” OSI advocates wrote in a 2003 report, “is to redirect some portion of the \$54 billion America now spends on prisons to rebuilding the human resources and physical infrastructure — the schools, healthcare facilities, parks, and public spaces — of neighborhoods devastated by high levels of incarceration.”¹⁸ In practice, however, the concept turned out differently. For help implementing the idea, OSI turned to CSG. A pilot project in Connecticut in 2003 proved that the concept had appeal, but most of the “reinvestment” actually went from prisons into other arms of criminal justice, such as halfway houses and probation. A similar experiment in Kansas several years

later also yielded limited progress on the “reinvestment” side of the equation.

Meanwhile, the JRI project was shifting to a new sponsor. With the original advocates of the concept departing, OSI ceded control of the program. Meanwhile, Pew had decided to make a major commitment to criminal-justice reform, based in part on the spadework CSG had already done. Pew became the lead foundation financing JRI, coming to the project with a more centrist orientation than OSI, and comfortable following the Connecticut model that emphasized reinvestment back into “smart” criminal justice rather than social programs.

Pew did not merely play the role of neutral technocrat, however. The foundation carefully packaged its criminal-justice work to appeal to conservatives. For example, Pew leaders hired a conservative pollster to test different messages before settling on the “reinvestment” framework, which they have cast not in the fundamental terms suggested by OSI but in a narrower sense of performance measurement and accountability. That is precisely the framework conservatives have sought to apply to policy fields such as education for years. What’s more, Pew has invested heavily in conservative messengers such as Nolan, Madden, and Levin. The foundation has funded Nolan and Levin’s advocacy while organizing and funding many of Madden’s speaking engagements in the same states where Pew and its partners were providing technical assistance. The operating assumption has been that liberals can be relied upon to agree so long as conservatives are persuaded. As Adam Gelb, the director of the Pew effort, has put it, “Conservatives hold the cards on this issue.”

Pew was not the only outside organization to come to this insight. In fact, avowedly liberal activists and foundations have played a role in cultivating the conservative reformers. One of them was Virginia Sloan, a liberal activist who founded the nonprofit Constitution Project to promote consensus positions between right and left on matters of civil liberties. Sloan has worked closely with David Keene since the 1990s on issues including crime and anti-terror policy. In 2010, the Constitution Project sent Republican gubernatorial candidates a letter, endorsed by Nolan and Keene, warning them to avoid tough-on-crime rhetoric and offering technical help with justice reform. Sloan said the conservatives

she has worked with “could open doors that liberals couldn’t open; they could make arguments in language that liberals couldn’t do.” OSI itself worked closely with conservatives on the Second Chance Act through its Washington office, forging consensus on delicate matters such as faith-based funding.¹⁹ In yet another example, the avowedly liberal Public Welfare Foundation made grants in the late 2000s both to Justice Fellowship and the Texas Public Policy Foundation. Conservatives made the case for reducing incarceration differently than PWF’s natural constituency, but that was the idea, said Seema Gajwani, who led the foundation’s criminal-justice program at the time.

“I haven’t come across a situation where either TPPF or Prison Fellowship Ministries has said something that doesn’t support their ultimate goal, which I am in agreement with,” she said. “They use different words, which is what we want them to do. We want them to be able to appeal to a conservative audience. That’s why we fund them. They may use different arguments to get there, for instance, fiscal arguments or accountability arguments. In our eyes, if we can bring about the change, and they’re effective at bringing about the change, that’s okay. Sometimes the arguments differ from arguments of other advocates of ours. That’s not been a problem for us in the past.”²⁰

The result of the technocrats’ alliance with conservatives has been to make “justice reinvestment” appear to be a natural part of the conservative criminal-justice movement, the obvious answer to the right’s concerns about prisons. In a marked break from the tough-on-crime era, technocrats and politicians now work in lockstep.

SCALING IT UP

It was these years of spadework by conservative activists and their strategic allies “on the outside” that laid the foundation for the launch of the highly publicized Right on Crime campaign in 2010. Right on Crime was the fruit of collaboration between the Texas reform cadre around Levin and Madden and the elite, Washington group cultivated by Colson and Nolan. While the Texas Public Policy Foundation runs the campaign, it was Nolan who rounded up the high-profile signatories that power it. The effort combines the “tough” branding of Texas with the right-wing bona fides of Nolan’s friends to advertise criminal-justice reform as the new conservative orthodoxy.

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Rather than vilifying experts as ivory-towered criminal sympathizers, conservatives salute them as guarantors of government accountability. This co-evolution has raised serious concerns about the range of solutions that Pew and its partners are willing and able to propose. For instance, a recent report by a group that included leaders of the ACLU and the Sentencing Project, among others, criticized the depth of cuts in incarceration and the use of savings in JRI-led reforms.²¹ While there are certainly limits to the approach Pew and its allies have taken to JRI, it nonetheless represents a substantial improvement in the trajectory of criminal-justice policy in the states where it has been undertaken.

The state and national reform campaigns have been married in other ways, too - with the technocrats often the welders behind the dark mask as the sparks of publicity fly. CSG showcased its advisory work in Texas and a similar push in Kansas to impress House appropriators into scaling up federal funding for JRI in other states. Meanwhile, Madden and Nolan worked together to promote the reform cause within the American Legislative Exchange Council, the group of conservative state legislators that became notorious for its advocacy of “stand your ground” gun laws in the wake of the Trayvon Martin killing in Florida in 2010. ALEC is a major guardian of conservative orthodoxy, a resource that

signals to under-resourced state legislators what is the “right” approach to a policy problem. In the 1990s, the organization promoted aggressive penal measures such as “3 Strikes” sentencing laws. Now, it distributes model legislation based on Pew’s recommendations.

Finally, a sweeping bill proposed in 2015 to reform the federal prison system has been promoted as modeled on state initiatives. As co-sponsor James Sensenbrenner

put it, “the states have been outperforming Congress on criminal justice reform for years.”²² And in fact, Pew advised Sensenbrenner and his Democratic co-sponsor, Bobby Scott, in crafting the legislation. Conservatives are promoting criminal-justice reform in their own language and through their own networks, but with a determined assist from non-conservative partners in the technocratic and foundation world.

LESSONS

Conservatives’ reevaluation of criminal justice and their collaboration with liberals on reform is the most striking example we have of trans-partisan coalition-building in our highly polarized times. It would be natural for activists and funders to hope that the change happening in prison policy could be replicated more widely. Our conclusion is significantly less optimistic, however. What makes this case unusual is that criminal justice reformers had some unique windows of opportunity and some unexpected structural forces tilted in their favor. On top of that friendly terrain, they added a small group of deeply committed, ideologically credible conservative leaders, many of whom had been engaged with the issue well before it became a fashionable cause. Finally, the reformers had the good luck to get assistance from funders and allies outside the conservative movement, who were willing to support rather than alter the rhetoric that allowed them to speak effectively to other conservatives. We will deal with the lessons in each of these areas in turn.

Issue Selection

Not every issue is equally susceptible to the construction of trans-partisan coalitions. From the 1970s to the 2000s, halting prison growth was not a promising candidate for such coalition-building, for the simple reason that politicians benefited from being tough on crime. Voters were afraid and so rewarded aggressive stances - the harsher the better. At the time, some conservatives did recognize the steep costs of widespread incarceration. But their critique found little room to grow in the rocky soil of the era’s law-and-order politics.

A deep change in the electoral salience of crime was a necessary—but not sufficient—condition for conservative politicians to change their positions and priorities on criminal justice. Crime went down, and public fear

eventually followed. Meanwhile, Democrats had proven they could close the gap on crime. With the voters focused elsewhere, conservative reformers were no longer asking Republican elected officials give up a winning issue (and expose themselves to certain attack). At the same time, the GOP became increasingly anti-statist, creating a frame that could be turned against policy domains where Republicans had previously supported bigger government. In a number of Southern states like Texas and Georgia, Republicans took complete control of state politics, giving them less reason to hold onto the crime issue. They now had unified responsibility for governance, along with a self-imposed austerity that made it harder to give corrections a pass on their critique of “big government.” Crucially, with the political foundations for corrections severity gone, there was no major Republican Party coalition member standing in the way of a shift in position.

Few other issues have such favorable structural conditions on their side. Our abbreviated history suggests that activists and funders looking to build similar trans-partisan coalitions would do well to focus on issues that can be framed in libertarian terms, as a critique of state action or a defense of individual liberty, like defense spending, surveillance and police militarization. It is unlikely that the trans-partisan coalition-building described here can be replicated on issues that involve greater regulation or more taxation and spending—such as the Affordable Care Act or measures to address global warming—where single-party coalitions are the only way forward.

Finally, the case of criminal justice, especially when seen in light of other cases in this project, points to the critical significance played by the absence of a powerful party coalition member who could block any attempt to break with the status quo. Law-enforcement agencies

have opposed much of the recent reform push, but they are not Republican Party anchors analogous to extractive industries of the pro-life movement.

Transpartisan Issue Entrepreneurs

Shifts in the structural features of criminal justice politics created an opportunity. But change happened only because a very particular set of people were well-placed to take advantage. Trans-partisan coalition building—especially generating support for a switch in position on one’s own side—is very delicate work. Managing this task requires a combination of ideological credibility, political skill, and intense commitment that is hard to come by.

The first and probably most important attribute for leaders in such an effort is ideological credibility. Trans-partisan advocacy necessarily raises questions of ideological bona fides. An advocate trying to change a movement’s positions runs the risk of being dismissed as a “sell-out” or a traitor. All of the Republican advocates who did the core work in our case were able to demonstrate convincingly that they were real conservatives. For some, that credibility came out of previous service to the movement, strident advocacy for other conservative positions (such as Colson’s strong pro-life advocacy) or association with institutions (like Heritage and TPPF) that defined movement orthodoxy. That ideological credibility was typically paired with a convincing conversion narrative, one often rooted in personal experience that made their position-taking credible and prevented suspicions that their advocacy had been purchased (either literally or figuratively) by the other side. In addition to their ideological reputations, the key leaders in this movement also had valuable relationships with other members of the movement. These relationships translated into an ability to get a sympathetic hearing from those who had not yet been converted, and a willingness from other movement actors to put their knowledge and reputations to work for the core criminal-justice reformers.

It is also significant that none of the major figures in the conservative reform movement were criminal-justice policy “wonks”—real experts in the detailed policy options around sentencing or re-entry—although they all put the time in to understand the issues. Instead, their most important work focused on framing the issue appropriately for conservatives and setting the agenda. Where they had the ability to choose, they selected issues not according to rational standards of policy analysis, but for their emotional and political resonance. While prison rape, for example, is certainly a matter of real substantive importance, its long-term political significance was in the

resonance it had with evangelicals and the negative light that it threw on prisons.

The final relevant attribute of this trans-partisan reform coalition was its very long time horizon. Chuck Colson, Pat Nolan, and Julie Stewart took on the issue of prison reform when it was deeply unpopular. They were content to take small opportunities where they arose, seeking cracks in the consensus that they could exploit to move the needle even a little bit in their direction. These investments during challenging times meant that the reformers were ready when the opportunity did arise.

Outside Allies

Conservative criminal justice reform is a cause with deep, decades-long roots, supported by some of the movement’s leading lights. That said, it would never have progressed so far, so fast, without significant support from outsiders, who provided money and expertise that conservatives simply did not possess. So what did those outsiders do right?

The first lesson is that the outside funders put their resources behind organizations and leaders with an organic connection to the conservative movement. TPPF had already created the Center for Effective Justice, which was seeded by a conservative donor, before Pew and the Public Welfare Foundation began supporting it. Justice Fellowship was a significant initiative of Colson’s Prison Fellowship before it received assistance from Pew and PWF. ALEC had already begun its tilt toward reform before Pew began supporting it. That did not mean the outside backing was redundant. Despite their deep roots on the right, the initiatives Pew and PWF supported were operating in an environment where conservative funding for their cause remained scarce.

The funders were modest in what they expected of their strange bedfellows grantees. They recognized that the framing that conservatives brought to the issue was not what they might have chosen, but that what matters in trans-partisan coalition-building. While the funders did not hide the fact that they were supporting conservative organizations, they did not trumpet it either. Foundations and providers of technical support had neither ego nor fund-raising incentives to insist that they be seen as responsible for major policy changes, making it easier for conservatives themselves to get the credit and thereby brand reform as ideologically authentic. These funders left matters of framing and agenda-setting largely to their conservative grantees, and focused on providing what they generally lacked. Pew and CSG, in particular, provided a well-vetted set of policy alternatives, widely

respected analytical capacity, and enormous expertise putting legislative coalitions in states together. Both sides in this project provided things that the other side could not.

The shift in conservatives' positions on criminal justice was the result of careful calculation and strategic action by a range of actors, to be sure. What made that change as deep as it has been, however, was the deep commitment of a small number of conservatives. A combination of personal experience with the criminal justice system and their interpretation of their Christian faith led these

reformers to put their time and reputations behind changing the views of their fellow partisans, even when the politics of the issue were not encouraging. They could not have known when they began this work that a decline in public anxiety about crime and the increasing salience of the costs of incarceration would make Republicans open to a change in position. What made them effective, both in attracting converts on their own side and in building alliances with strange bedfellows, was that the base of their commitment was something beyond calculation and strategy.

NOTES

- 1 **Samuel Lubell**, *The Future of American Politics* (Doubleday, 1956).
- 2 **FBI**, Uniform Crime Reports, prepared by the National Archive of Criminal Justice Data, <http://www.ucrdatatool.gov/>, accessed July 14, 2015.
- 3 **Katherine Beckett**, *Making Crime Pay: Law and Order in Contemporary American Politics* (New York; Oxford: Oxford University Press, 1999); **Vesla M. Weaver**, “Frontlash: Race and the Development of Punitive Crime Policy,” *Studies in American Political Development* 21, no. 02 (2007): 230–65, doi:10.1017/S0898588X07000211; **Naomi Murakawa**, *The First Civil Right: How Liberals Built Prison America* (Oxford University Press, 2014)
- 4 **Murakawa**, *The First Civil Right*, 113.
- 5 “Table 2.1.2012 Attitudes toward the Most Important Problem Facing the Country” (Sourcebook of criminal justice statistics Online, n.d.), <http://www.albany.edu/sourcebook/pdf/t212012.pdf>; “Table 3.106.2012 Estimated Number and Rate (per 100,000 Inhabitants) of Offenses Known to Police” (Sourcebook of criminal justice statistics Online, n.d.), <http://www.albany.edu/sourcebook/pdf/t31062012.pdf>.
- 6 **Matt Sledge**, “California Prison Reform’s Biggest Backer Is Also Friends with Karl Rove,” *The Huffington Post*, October 2, 2014, http://www.huffingtonpost.com/2014/10/02/b-wayne-hughes-jr-prison-reform_n_5915568.html.
- 7 **Julie Stewart**, In-person, July 10, 2012.
- 8 **Grover G. Norquist**, “Making Crime Pay,” *The American Spectator*, May 1993.
- 9 **Seema Gajwani and Mary McClymont**, Phone, April 23, 2014.
- 10 **David Keene**, Phone, May 9, 2014.
- 11 **Newt Gingrich and Pat Nolan**, “Prison Reform: A Smart Way for States to Save Money and Lives,” *The Washington Post*, January 7, 2011, sec. Opinions, <http://wapo.st/1JFPqBJ>; **Newt Gingrich and B. Wayne Hughes Jr.**, “What California Can Learn from the Red States on Crime and Punishment,” *Los Angeles Times*, accessed August 31, 2015, <http://lat.ms/1VpThLo>; “Bipartisan Summit on Criminal Justice Reform,” accessed August 31, 2015, <http://www.bipartisansummit.org/>.
- 12 **Newt Gingrich**, Phone, February 18, 2014.
- 13 **Laylan Copelin**, “Richards Takes Her Campaign to Prison Series,” *Austin American Statesman*, July 26, 1990; E-mail from **Jeff Baldwin**, Texas Department of Criminal Justice, April 7, 1990.
- 14 **Scott Henson**, phone, June 16, 2015; Ray Allen, phone, July 13, 2015.
- 15 “Internal Solutions for Sentencing and Incarceration: Campaign Plan” (Texas Criminal Justice Coalition, n.d.).
- 16 **Henson**, interview; **Allen**, interview.
- 17 **John Young**, “Texas Textbook Nexus; Political Forces Back Trying to Control Content to Their Liking,” *Waco Tribune-Herald*, April 20, 2003.
- 18 “Adult and Juvenile Correctional Population Projections: Fiscal Years 2007–2012” (Austin, TX: Legislative Budget Board, January 2007).
- 19 **Susan Tucker and Eric Cadora**, “Justice Reinvestment: To Invest in Public Safety by Reallocating Justice Dollars to Refinance Education, Housing, Healthcare, and Jobs,” *Ideas for an Open Society* (New York, NY: Open Society Institute, November 2003), <http://bit.ly/1B9aAdA>.
- 20 **Gene Guerrero** to David Dagan, June 5, 2014.
- 21 **Seema Gajwani and Mary McClymont**, Phone, April 23, 2014.
- 22 **James Austin et al.**, “Ending Mass Incarceration: Charting a New Justice Reinvestment,” April 17, 2013, <https://www.aclu.org/criminal-law-reform/ending-mass-incarceration-charting-new-justice-reinvestment>.
- 23 “Sensenbrenner, Scott Introduce Bipartisan, State-Tested Criminal Justice Reform Legislation,” **Congressman Bobby Scott**, accessed August 31, 2015, <http://1.usa.gov/1MWJlWY>.



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