



# The Conservative War on Prisons

RIGHT-WING OPERATIVES HAVE DECIDED THAT PRISONS ARE A LOT LIKE SCHOOLS: HUGEY EXPENSIVE, INEFFICIENT, AND IN NEED OF ROOT-AND-BRANCH REFORM. IS THIS HOW PROGRESS WILL HAPPEN IN A HYPER-POLARIZED WORLD?

By David Dagan and Steven M. Teles

American streets are much safer today than they were thirty years ago, and until recently most conservatives had a simple explanation: more prison beds equal less crime. This argument was a fulcrum of Republican politics for decades, boosting candidates from Richard Nixon to George H. W. Bush and scores more in the states. Once elected, these Republicans (and their Democratic imitators) built prisons on a scale that now exceeds such formidable police states as Russia and Iran, with 3 percent of the American population behind bars or on parole and probation.

Now that crime and the fear of victimization are down, we might expect Republicans to take a victory lap, casting safer streets as a vindication of their hard line. Instead, more and

more conservatives are clambering down from the prison ramps. Take Newt Gingrich, who made a promise of more incarceration an item of his 1994 Contract with America. Seventeen years later, he had changed his tune. "There is an urgent need to address the astronomical growth in the prison population, with its huge costs in dollars and lost human potential," Gingrich wrote in 2011. "The criminal-justice system is broken, and conservatives must lead the way in fixing it."

None of Gingrich's rivals in the vicious Republican presidential primary exploited these statements. If anything, his position is approaching party orthodoxy. The 2012 Republican platform declares, "Prisons should do more than punish; they should attempt to rehabilitate and institute proven prisoner re-

entry systems to reduce recidivism and future victimization.” What’s more, a rogue’s gallery of conservative crime warriors have joined Gingrich’s call for Americans to rethink their incarceration reflex. They include Ed Meese, Asa Hutchinson, William Bennett—even the now-infamous American Legislative Exchange Council. Most importantly, more than a dozen states have launched serious criminal justice reform efforts in recent years, with conservatives often in the lead.

Skeptics might conclude that conservatives are only rethinking criminal justice because lockups have become too expensive. But whether prison costs too much depends on what you think of incarceration’s benefits. Change is coming to criminal justice because an alliance of evangelicals and libertarians have put those benefits on trial. Discovering that the nation’s prison growth is morally objectionable by their

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own, conservative standards, they are beginning to attack it—and may succeed where liberals, working the issue on their own, have, so far, failed.

This will do more than simply put the nation on a path to a more rational and humane correctional system. It will also provide an example of how bipartisan policy breakthroughs are still possible in our polarized age. The expert-driven, center-out model of policy change that think-tank moderates and foundation check-writers hold dear is on the brink of extinction. If it is to be replaced by anything, it will be through efforts to persuade strong partisans to rethink the meaning of their ideological commitments, and thus to become open to information they would otherwise ignore. Bipartisan agreement will result from the intersection of separate ideological tracks—not an appeal to cross them. This approach will not work for all issues. But in an environment in which the center has almost completely evaporated, and in which voters seem unwilling to grant either party a decisive political majority, it may be the only way in which our policy gridlock can be broken.

Republicans’ rhetorical campaign against lawlessness took off in earnest during the 1960s, when Richard Nixon artfully conflated black rioting, student protest, and common crime to warn that the “criminal forces” were gaining the upper hand in America. As an electoral strategy, it was a brilliant success. But as an ideological claim, the argument that America needed more police and prisons was in deep tension with the conservative cause of rolling back state power. The paradox flared up occasionally, as during the National Rifle Association’s long-running feud with the Bureau of Alcohol, Tobacco and Firearms during the 1990s. But for the most part, conservatives lived with the contradiction for forty years. Why?

For one, it worked political magic by tapping into a key liberal weakness. Urban violent crime was rising sharply during the 1960s and liberals had no persuasive response beyond vague promises that economic uplift and social programs would curb delinquency. The conservatives’ strategy also provided an outlet for racial anxieties that could not be voiced explicitly in the wake of the civil rights movement. Sometimes, the racial appeals were impossible to miss, as when Ronald Reagan warned that “city streets are jungle paths after dark” in his 1966 California gubernatorial campaign. More often, anti-criminal chest-thumping played into the division of society between the earners and the moochers, with subtle racial cues making clear who belonged on which side.

Meanwhile, the more threatened ordinary Americans came to feel, the angrier they became at elites who appeared to side with the criminals, and the more they revered the people designated as society’s protectors. As a result, conservatives came to view law enforcement the same way they had long seen the military: as a distinctive institution whose mission somehow exempted it from the bureaucratic failures and overreach that beset school districts, environmental agencies, and the welfare office. Yet the two surging wings of the conservative movement—libertarians and religious conservatives—have since each found their own reasons to challenge long-standing orthodoxy about crime.

Antitax activist Grover Norquist appeared last year at a Washington confab on criminal justice billed as the “Last Sacred Crow” briefing. For years, Norquist said, conservatives were too busy rolling back government extravagances to worry about the workings of essential operations like crime control. But conservatives can no longer afford to direct their critique of government only at their traditional targets, he told his audience. “Spending more on education doesn’t necessarily get you more education. We know that—that’s obvious. Well, that’s also true about national defense. That’s also true about criminal justice and fighting crime.”

Once you believe that prisons are like any other agency, then it is natural to suspect that wardens and prison guards, like other suppliers of government services, might submit to the temptations of monopoly, inflating costs and providing shoddy service. And, of course, conservatives have long made such arguments to justify their pet project of bidding out incarceration to for-profit businesses. But the prisons-as-government critique has acquired a new force that makes the privatization debate al-

most irrelevant. Far from shilling for corporate jailers, conservatives now want to shrink the market. “We certainly don’t need to be building new prisons, whether they’re public or private,” said Marc Levin, an analyst at the conservative Texas Public Policy Foundation. The American Legislative Exchange Council, long a proponent of privatizing prisons, no longer has an official position on that issue (nor does it have any prison corporations left as members). Instead, it is pushing bills that would reduce prison populations. For fiscal hawks, the point now is not to incarcerate more efficiently or profitably, but to incarcerate less. They are making that leap with a boost from two other camps: evangelicals and experts.

Over the last two decades, religious conservatives have increasingly come to see prisoners as people worthy of compassion and capable of redemption. “These people have committed crimes, but they’re still human beings, created in the image of God. Can we help them restore what’s left of their lives?” asks Tony Perkins, president of the Washington, D.C.-based Family Research Council. Perkins has doubted the efficacy of incarceration since serving as a guard in a Louisiana lockup as a young man. Though that experience also made him skeptical of jailhouse conversions, Perkins said, religious outreach behind bars has the benefit of making prisoners seem like real people—much as the pro-life movement has done with unborn children. “As more and more churches are involved in prison ministries, they begin the process of rehumanizing the criminal.”

Meanwhile, the tide of professional opinion is turning away from what had been a depressing consensus that warehousing prisoners was the best society could do. For many years, the hope that “rehabilitation” could change people’s behavior was dismissed as a liberal fantasy. The role of prisons was much simpler: to incapacitate reprobates and deter opportunists. The dean of this school of thought, former Harvard and University of California, Los Angeles, professor James Q. Wilson (who died this year), put it like this: “Many people, neither wicked nor innocent, but watchful, dissembling, and calculating of their chances, ponder our reaction to wickedness as a clue to what they might profitably do.” Social service approaches to criminal “wickedness” not only did not work, but they symbolized a society unwilling to stand up against violations of the law. Increase incarceration, conservatives argued, and potential criminals will get the message.

But in recent years, experts in criminal justice have become more optimistic about alternatives to prison. A promising example is Hawaii’s Opportunity Probation with Enforcement (the HOPE program, now hoppedscotching to other states; see Mark A. R. Kleiman, “Jail Break,” *Washington Monthly*, July/August 2009). HOPE has been shown to significantly cut drug offending by hitting users who are on parole or probation with swift, certain, and moderated sanctions, such as a few days of jail time, rather than arbitrary and draconian parole revocations. New technologies from rapid-result drug tests to GPS monitoring have also bred optimism, and professionals are even beginning to feel better about their ability to predict an offender’s risk of recidivism. Because these approaches emphasize control more than therapy, they don’t

seem squishy or soft on crime, even as they make it easier to let criminals out of prison.

The world has also changed in ways that favor fresh thinking. In the 1990s, Democrats diluted the Republican electoral advantage on crime by pushing their own set of tough measures. Then Arkansas Governor Bill Clinton oversaw the execution of a brain-damaged convict during his 1992 presidential campaign, and once elected president he pushed through a cast-iron crime bill that combined longer sentences, restrictions on gun purchases, and more cops on the street. While the subsequent drop in crime gave the GOP fodder to argue that punitive policies work, it has also drawn the venom out of the issue. And since the 1990s, terrorism has displaced crime as the nation’s top security preoccupation and honeypot for law-and-order zealots. If you consider all these issues together, it makes sense that conservatives have more space to rethink their positions on crime. And so, with jailers newly suspect, inmates ripe for redemption, and alternative discipline ascendant, conservatives have decided prisons are a lot like schools: hugely expensive, inefficient, and in need of root-and-branch reform.

Such second thoughts are creating the first significant opening in years for a criminal justice overhaul. Neither Republicans nor Democrats can reform the system alone given the continuing fear of being tarred with the “soft on crime” label, said Gene Guerrero, a policy analyst at the Washington office of George Soros’s Open Society Foundations. It can only happen, he said, “if there is real leadership from both sides and if the reforms are developed and move forward on a bipartisan basis.”

Still, it’s conservatives who bring the most muscle to the job. A handful of liberal organizations have valiantly kept alive the argument for reform even through the dark days of the 1980s and ’90s—places like the American Civil Liberties Union, Open Society Foundations, and the Public Welfare Foundation. By and large, however, it is conservative institutions who now pay the most attention to criminal justice, Guerrero said. In rare cases, Democratic politicians have proved willing to take up the cause, as when Michigan Governor Jennifer Granholm directed an overhaul of that state’s parole system during her first term—though her second-term push for broader reform legislation fizzled (see Luke Mogelson, “Prison Break,” *Washington Monthly*, November/December 2010). But most Democrats are still terrified of appearing timid before voters and are therefore loath to lead the way. At best, they can be persuaded to go along if the right gives them cover.

The right’s belated awakening to America’s incarceration crisis may seem little more than an obvious extension of libertarian and socially conservative philosophies. But logic rarely determines how movements put together their various ideological commitments. Making and changing positions is tough, entrepreneurial political work, especially when long-held, electorally successful ideas are being called into question.

**F**ew people have done as much to subvert the conservative orthodoxy on crime as Pat Nolan, a former California state legislator who now works at the jailhouse ministry

Prison Fellowship. Called “the most important person to make any of this happen” by Julie Stewart of Families Against Mandatory Minimums, Nolan has been so effective as a revisionist precisely because he was weaned on the traditional politics of law and order.

Nolan grew up in LA’s Crenshaw Boulevard neighborhood during the 1950s. “Everyone in my family and all of our neighbors had been victims of crime,” says Nolan. “I came from a family that was pretty pro-police, feeling as [though] they were kind of beleaguered.” When his family moved to nearby Burbank, Nolan signed up for the Police Explorers, a group for kids interested in law enforcement careers. He also joined Young Americans for Freedom, the conservative activist group that rallied behind Barry Goldwater in 1964. As a Republican California state assemblyman in the 1970s, ’80s, and ’90s, Nolan helped push through some of the nation’s most draconian sentencing laws. While he

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did visit prisons to investigate conditions there, he recalls, “I was very much the ‘We need more prisons’ type.”

That changed after Nolan got to see prison from the other side of the bars. In 1993, Nolan was indicted on seven counts of corruption—including accusations that he took campaign money to help a phony shrimp-processing business the FBI dreamed up as part of a sting. He ultimately accepted a plea deal and was sentenced to thirty-three months in prison for racketeering. Nolan maintained his innocence, but said he would take the plea to avoid the risk of longer separation from his family. Before he left, Nolan recalls, a friend told him, “View this time as your monastic experience”—a chance to follow generations of Christians who have retreated from daily life to work on their faith. Nolan, who is Catholic, resolved to follow that advice.

While Nolan was locked up, a mutual acquaintance put him in touch with Chuck Colson, the biggest name in prison ministry. Colson, a former Nixon aide, had gone to the clink for

Watergate-related crimes and experienced what he described as a religious transformation behind bars. After his release in 1975, Colson founded Prison Fellowship, which provides religious services and counseling to inmates and their families. By the time Colson died this past April, he had become a star in the evangelical community, rubbing shoulders with the likes of Billy Graham, Rick Warren, and James Dobson.

Nolan enrolled his kids in a Prison Fellowship program for children of inmates and began corresponding with Colson. Even before Nolan got out, he had an offer to run the group’s policy arm, which had been languishing.

“I’d really been praying about, ‘Okay, Lord, what’s the next chapter in my life?’” Nolan recalls. “I’d seen so much injustice while I was inside that I felt I really wanted to address that. My eyes had been opened.” Nolan is devoting the rest of his life to opening the eyes of his fellow conservatives, getting them to see the tragic cost of putting so many Americans under lock and key.

When Nolan first arrived in Washington, the only real foothold reformers had in the conservative movement was with a small band of libertarians at places like the Cato Institute and *Reason* magazine, who objected to the prohibitionist overreach of the drug war but were treated as wildly eccentric by mainstream conservatives. To find allies with unquestioned right-wing credentials, Nolan prospected among two groups with whom he had credibility: evangelicals who admired Prison Fellowship, and his old friends from Young Americans for Freedom, some of them longtime crime warriors themselves.

Colson had already persuaded evangelicals that prisoners were appropriate objects of personal compassion, but had yet to find an angle that would convince the faithful that the criminal justice system was fundamentally flawed. Nolan hit upon two perfect issues in short order.

The Supreme Court opened the first window in 1997 by striking down most of a federal law intended to expand the religious freedoms of prisoners. The specter of wardens putting bars between inmates and God energized social conservatives. Prison Fellowship threw itself into the fight, and a revised law was passed in 2000.

Around the same time, Reagan administration veteran Michael Horowitz was casting about for a cause to show that conservatives have a heart. Previously known for his advocacy on issues like human trafficking and peace in Sudan, Horowitz decided to make protecting the victims of prison rape the next step in what he called his “Wilberforce agenda,” after the famous British evangelical abolitionist.

Prison rape was a natural issue to express conservatives’ humanitarian impulses. Evangelicals who think homosexuality is immoral can easily be persuaded that homosexual rape under the eyes of the state is an official abomination. More importantly, Horowitz had put his finger on a nightmare of massive proportions. Human Rights Watch had gathered evidence suggesting an epidemic of torture to which many wardens were turning a blind eye. Last May, the U.S. Justice Department estimated that more than 209,000 prisoners suffered sexual abuse in 2008 alone.



Horowitz proposed a bill designed to have cross-partisan appeal, with provisions for penalizing lagging states and shaming recalcitrant wardens. Evangelicals were sold right away. “Everyone has basic human rights, even if they are being dealt with and sanctioned for inappropriate social behavior, and prison should not take those away,” the Southern Baptist Ethics and Religious Liberty Commission’s Shannon Royce would explain to the *Washington Post*.

Horowitz focused on negotiations with a skeptical Justice Department and state corrections officials, while Nolan worked the corridors of the Capitol. The Prison Rape Elimination Act passed both houses of Congress unanimously in 2003.

Nolan then used this big win as a springboard to an issue where the moral lines were more blurred: helping released prisoners adjust to life back home and stay out of trouble by pumping money into “reentry” programs. Republican Congressman (and now Senator) Rob Portman agreed to champion legislation that would become known as the Second Chance Act. President George W. Bush endorsed the idea in his 2004 State of the Union Address, after lobbying by Prison Fellowship and Portman’s office, according to Nolan. Hammering out the bill took several more years, but the Second Chance Act was finally passed with solid conservative backing in 2007.

These measures all had bipartisan support, but they were not the product of centrists: the top Senate backers of the Prison Rape Elimination Act were Ted Kennedy and Alabama’s Jeff Sessions, who spent a dozen years as a tough-as-nails U.S. attorney and is ranked the Senate’s twelfth most conservative member by the *National Journal*. Liberal reformers did bargain with conservatives behind the scenes—the biggest example was an agreement that the Second Chance Act remain silent on funding faith-based reentry programs. But Nolan’s conservative allies were confident that bipartisan reform efforts brokered by Prison Fellowship would remain consistent with conservative principles, thanks to groundwork laid by the previous religious freedom and prison rape efforts.

Even as the Second Chance Act edged forward, Nolan was tapping old friendships to pull together more conservative dissenters. David Keene—then head of the American Conservative Union, now president of the National Rifle Association—was tracking post-9/11 encroachments on civil liberties and turning a wary eye to criminal justice. Richard Viguerie, a direct mail pioneer in the conservative movement, was a longtime death penalty opponent. Nolan began calling them for advice. Soon, anti-tax activist Norquist was being looped into the conversations, as was Brian Walsh, a Heritage Foundation analyst who studied the rapid expansion of federal criminal law. The group started holding regular meetings to brainstorm ideas. They toyed with proposing a federal criminal law retrenchment commission similar to the base-closure commission of the 1990s, or pushing congressional judiciary committees to demand jurisdiction over any bills that created new crimes.

Despite all of Nolan’s progress, it soon became obvious that the juice on criminal justice reform would not come from Washington. The real potential lay in the states, where a combination

of fiscal conservatism and budget pressure was beginning to crack the status quo. The opportunity to turn those tremors into a full-blown earthquake would come from a very unlikely place.

“Don’t Mess with Texas” bumper stickers have long found their most extreme confirmation in the state’s criminal justice system. Over the last two decades, Texas has been one of the most avid jailers in the nation. It was home to the largest prison-conditions lawsuit in American history, a thirty-year ordeal that infuriated conservatives and led them to plaster the state with posters calling for the impeachment of Judge William Wayne Justice. And of course, no prison cooks have taken as many last-meal orders as those in the Lone Star State—until officials recently did away with that perk for the condemned. But even as Texas continues to buff its toughest-on-crime reputation, it is also becoming, unexpectedly, a poster child for criminal justice reform.

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It started in 2005, when Tom Craddick, the first Republican speaker of the state legislature in more than a century, appointed Jerry Madden, a conservative from Plano, to run the House Committee on Corrections. As Madden recalls, the speaker’s charge to him was clear: “Don’t build new prisons. They cost too much.”

Madden was a corrections novice with a disarming, aw-shucks manner; his Senate counterpart, Democrat John Whitmire, was an old hand whose resume included being robbed at gunpoint in his garage. The greenhorn and the veteran soon agreed on what ailed the Texas criminal justice system: it was feeding on itself. Too many people flunked probation and went into prison. And too many prisoners committed new offenses shortly after being released, landing them back behind bars. To tackle the first problem, Madden and Whitmire suggested cutting loose veteran probationers who had proved reliable, thus

allowing officers to focus their time on people at higher risk of screwing up. The legislature signed off, but Governor Rick Perry vetoed the bill.

At the start of the 2007 legislative session, legislative analysts predicted that Texas was on track to be short 17,700 prison beds by 2012 because of its growing inmate population. The Texas Department of Criminal Justice's response was to ask legislators to build three new prisons, but Madden and Whitmire had other ideas. Not only did they bring back a revamped version of their probation proposal—they also took aim at the revolving-door problem by cranking up funding for programs such as in-prison addiction treatment and halfway houses. This time, Perry relented (persuaded at least in part, the duo contends, by a high-stakes meeting they held with him shortly before the opening of the legislative session). Since then, the prison population has not increased, and last year, the TDCJ closed a prison for the first time in decades.

Budget shortfalls do not explain this shift. In 2007 Texas was basking in a huge projected surplus, and the Great Recession was still a year away. Instead, Madden and Whitmire had different winds at their backs. For one thing, the policy context favored reform. One legacy of the state's prison litigation trauma is that Texas has strict restrictions on overcrowding (unlike, say, California). Under Texas law, when the system approaches capacity, corrections staff must seek certification from the attorney general and the governor to incarcerate more prisoners. The approval process forces state leaders to confront the choice between more prisons and more diversion programming. The political environment had also changed since the GOP completed its takeover of state politics in 2003. As a longtime observer of the state's criminal justice notes, "Now ... all the tough guys are Republicans. They don't want to be outdoing each other on this stuff."

Texas was not the first state to experiment with common sense. Several others had begun tinkering with their criminal justice systems in the wake of the 2001 recession. When the fiscal belt tightened on a swelling inmate population in New York, for example, corrections officials prevailed upon then Governor George Pataki to take steps leading to earlier releases. But none of these initiatives reverberated like the Texas reforms.

**T**he Texas turnaround created a golden opportunity to rebrand prison reform nationally. "People think if Texas does something, by definition it's not going to be soft," said Adam Gelb, director of a criminal justice initiative at the Pew Charitable Trusts. "There's just this instant, deep credibility on the crime issue for Texas." In 2005, the Texas Public Policy Foundation (TPPF)—the state's premier conservative think tank—hired Marc Levin to become its first-ever crime wonk. The position was financed by Tim Dunn—a deeply conservative oilman, Republican donor, and Colson-inspired critic of the criminal justice system. Levin promptly threw himself into the Texas debates of 2005 and 2007, but his biggest contribution came later in building momentum for prison reform among conservatives across the country.

The TPPF is one of the most prominent members of the State Policy Network, which connects free-market think tanks in every state. Founded in 1992, the Arlington-based SPN zaps ideas—like Wisconsin-style restrictions on public employee pensions—from one member organization to another. Levin was and remains the only full-time crime analyst at any SPN member organization. As a result, he quickly became the go-to guy on the issue among state-level conservatives, fielding calls from curious colleagues, cowriting editorials and policy briefs, and making presentations at conservative conferences. Eventually, he decided to convert the effort into a formal campaign he called Right on Crime.

When Nolan heard about Right on Crime, he contacted Levin to offer his support—and his Rolodex. Nolan rounded up the members of his informal working group and other conservative luminaries to endorse a revised approach to crime control. Among the signatories: Keene, Viguerie, Gingrich, former Attorney General Ed Meese, and former drug czars Asa Hutchinson and Bill Bennett. Political scientist and long-time prison proponent John DiIulio is there, too, as is Grover Norquist. The Family Research Council's Tony Perkins and other social conservatives also signed on. Right on Crime backers say explicitly that their goal was to lend their reputations to the effort and give conservatives political cover to launch reforms. "We wanted to create an atmosphere in which, amongst conservatives, there would be total legitimacy," Nolan said.

Perhaps the surest sign that conservatives were embracing the new model came from the American Legislative Exchange Council—the conservative network of state legislators. In the 1990s, ALEC had peddled mandatory minimums, prison privatization, and the like to its members in statehouses across the country. But in 2007, ALEC hired Nolan's friend Michael Hough to run its criminal justice task force, and Nolan soon persuaded ALEC to endorse the Second Chance Act. Within a few years, the trio of Hough, Nolan, and Madden had brought ALEC to the point of pushing out model bills based on proposals borrowed from Gelb's criminal justice project at Pew, which has been dispatching teams of sentencing wonks to state capitals around the country to help reformers develop specific plans. All this work was done through the same ALEC committee whose advocacy for "stand-your-ground" laws prompted a backlash in the wake of the Trayvon Martin killing. ALEC announced in April that it would disband the committee, but, in fact, it ended up giving the panel a new mandate. The committee now focuses exclusively on sentencing reform and has dropped all of its unrelated model bills, from mandatory minimums to prison privatization, Hough said.

With conservatives less willing to defend the lock-'em-up status quo, prison reform now seems to have the momentum of an issue whose time has come. States from Kentucky to Pennsylvania to North Carolina have passed bipartisan criminal justice overhauls, preventing thousands of prison commitments. And the wave continues. In May, Georgia Governor Nathan Deal was on the verge of tears at a signing ceremony for legislation designed to keep nonviolent offenders out of pris-

on. When his Ohio counterpart, John Kasich, signed a similar bill in June, he said it would “result in the saving of many, many lives.”

To be sure, the new conservative critique has so far largely overlooked the most glaring problem in American criminal justice—its profound racial skew. African Americans account for some 40 percent of the U.S. prison population, three times their proportion of the general population. The liberal legal scholar Michelle Alexander, whose 2010 book compares mass incarceration with Jim Crow, argues that the system will only be dismantled with a return to 1960s-style movement politics.

But it is also important not to underestimate how much the emerging conservative reform movement can do. For starters, conservatives did step into the terrain of racial justice when they took the lead in 2010 to reduce the disparity in federal sentences for crack and cocaine offenses. And reframing criminal justice in terms of efficacy and cost has already prevented many thousands of unnecessary prison terms.

Moreover, this line of argument can also open the door to more radical critiques. Just listen to Tim Dunn. The conservative Texas oilman declaims that the “purpose of the criminal justice system should be to secure liberty and promote justice between people rather than to enforce the power of the state over the lives of its citizens.” Or take Mark Meckler, co-founder of the Tea Party Patriots. “We’re destroying a significant portion of our own population, especially in the inner cities,” Meckler has written. Meckler and Dunn have appeared on MSNBC to endorse the work of David Kennedy, a liberal criminologist who has criticized the failure of the drug war in inner-city communities. And Meckler vows on his blog, “I’m all in on the fight for criminal justice reform here in the U.S.”

**T**he story of how conservatives began to change their positions on incarceration holds lessons far from the world of prisons. Advocates of policy change, their funders, and well-meaning pundits regularly bemoan the ideological stiffening that bedevils efforts at bipartisan cooperation. The usual answer to hyper-polarization is to somehow rebuild the center. But the power of party activists (especially on the right) to control primary elections and discipline politicians who step out of line is not going to go away anytime soon. The center, it seems, will not hold—in fact, it barely even exists anymore.

The lesson of the slowly changing politics of crime on the right is that policy breakthroughs in our current environment will happen not through “middle-path” coalitions of moderates, but as a result of changes in what strong, ideologically defined partisan activists and politicians come to believe is their own, authentically conservative or liberal position. Conservatives over the last few years haven’t gone “soft.” They’ve changed their minds about what prisons mean. Prisons increasingly stand for big-government waste, and prison guards look more and more like public school teachers.

This shift in meaning on the right happened mainly because of creative, persuasive, long-term work by conserva-

tives themselves. Only advocates with unquestioned ideological bona fides, embedded in organizations known to be core parts of conservative infrastructure, could perform this kind of ideological alchemy. As Yale law professor Dan Kahan has argued, studies and randomized trials are useless in persuading the ideologically committed until such people are convinced that new information is not a threat to their identity. Until then, it goes in one ear and out the other. Only rock-ribbed partisans, not squishy moderates, can successfully engage in this sort of “identity vouching” for previously disregarded facts. Of course, there are limits to how far ideological reinvention can go. As political scientist David Karol has argued, it is unlikely to work when it requires crossing a major, organized member of a party coalition. That’s something environmentalists learned when they tried to encourage evangelicals to break ranks on global warming through the idea of “creation care.” They got their heads handed to them by the main conservative evangelical leaders, who saw the split this

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would create with energy-producing businesses upon whom Republicans depend for support.

But that still leaves plenty of issues on which bipartisanship will be possible—as long as it doesn’t feel like compromise for its own sake. Defense spending, for example, is already being slowly transformed by the newly energized libertarian spirit in the Republican Party. On these matters, liberals are in a bind—while they may dearly long for partners on the right, they can’t call them into being, and getting too close to conservative mavericks may tarnish their vital ideological credentials. In this confusing world where those on the extremes can make change that those in the center cannot, liberals will have to learn that they sometimes gain more when they say less. <sup>WM</sup>

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