Conservatives and Criminal Justice

David Dagan and Steven M. Teles

In the 1992 presidential campaign, George H.W. Bush and Bill Clinton each tried to prove he was toughest on crime. Bush touted a record of escalating the drug war during the Reagan years. Clinton famously flew to Arkansas to stage-manage the execution of a mentally disabled killer. Elections at the state level in that period 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 — and, despite attacking her on everything else, no Republican candidate has gone after her for being soft on crime. An electorally driven consensus in favor of ever-expanding punishment is being replaced by fairly broad elite agreement on the need to reduce our extraordinary levels of incarceration, make prison conditions more humane, and steer offenders back into productive lives.

Liberals and conservatives have arrived at 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 “trans-partisanship” — agreement on policy goals driven by divergent, deeply held ideological beliefs. This is very

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different from bipartisanship, in which established institutions facilitate compromise by bringing two sides together to split the difference with “grand bargains” brokered by party leaders. Trans-partisanship, by contrast, is typically led by ideological true-believers on the back benches, and distinct factions that converge on shared policy positions through separate, independent routes.

Trans-partisan agreement on criminal justice was a long time in the making. It was driven by ideological diehards on both sides, 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 genuinely conservative objectives. On the left, the American Civil Liberties Union, the Open Society Institute, and other organizations ensured that a commitment to lowering incarceration would remain embedded in the liberal identity, even as Democratic politicians tried their best to prove themselves “tough on crime.”

It was the conservatives who required 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, Democratic 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, but it was driven primarily by electoral calculus, as liberals decided they could no longer afford to be attacked on the issue. The tough-on-crime ethos was never embedded as deeply among liberals 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 change 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 new campaign dubbed “Right on Crime.” Run by the Austin-based Texas Public Policy Foundation, it was launched to vouch for the conservative bona fides of criminal-justice reform. Right on Crime itself was the culmination of a long, twisting drive begun many years earlier by a small group of reformers on the right.
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 support from centrist organizations like the Pew Charitable Trusts, which strategically financed the reformers while providing invaluable technical assistance on policy details.

The long road traveled by this alliance of reformers may offer crucial lessons to those who hope to effect change in an otherwise thoroughly gridlocked political process. Trans-partisan strategies can work only on a narrow set of issues, where core party constituencies are not dug in—ruling out issues such as fiscal policy, abortion, or the environment—and where party positions are not essential to their electoral fortunes. Even when there is a structural opening, it has to be handled wisely. In the case of criminal justice, the strategy, commitment to the cause, and humility of both the activists and the foundations that have funded them provide a model of trans-partisanship.

**The Evolution of the Crime Debate**

The opportunity to address the problem of 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 a compelling issue, especially 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. To break that alignment in the minds of voters, Republicans needed to re-orient the American political system around a new class conflict. Their opportunity came in the 1960s and 1970s, as anxiety over civil rights, raucous campus protests, 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 underscored by the urban riots that followed the Civil Rights movement and by a terrifying increase in the homicide rate, which doubled between 1960 to 1980.

Conservative leaders tapped into these anxieties with racially tinged rhetoric that at times conflated political protest with violence and posited a direct link between welfare and crime. 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 framing of the crime question was so effective that by the 1980s even liberal Democrats were scrambling to prove their tough-on-crime credentials and lining up behind punitive anti-drug legislation. In 1994, the Clinton administration and its Democratic allies in Congress 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 whom Republicans had terrorized Michael Dukakis in 1988.

This 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-1990s. By the early 2000s, however, public priorities had shifted radically, and with the September 11th attacks, terrorism eclipsed crime as the top domestic-security concern.

By the 2000s, the Republicans had achieved almost total political control of most southern states, reducing the electoral need for the crime issue and putting them in charge of state budgets. Soon thereafter, the conservative movement saw the rise of 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 restraint. 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 changes in the political environment set the stage for a re-evaluation 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 conservative movement, as did the Willie Horton playbook. These were not ideas that just anyone could challenge.
Amazingly enough, the key figure in challenging these ideas was a top Nixon deputy and Watergate villain.

Charles Colson started his career as a political operative and quickly ascended to the Nixon White House, where he engineered the burglary of the psychiatric records of Pentagon Papers leaker Daniel Ellsberg. For Colson, the exposure of the Watergate scandal was a searing personal episode, leading to a born-again experience that motivated him to dedicate 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 his idea 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 bare-bones prisons, Colson denounced the belief that rehabilitation was impossible and that prisons should just be human warehouses.

He advanced that critique through multiple channels. Most important, 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 initiated TPPF’s work on criminal justice after listening to Colson’s radio broadcasts. In California, billionaire B. Wayne Hughes financed a successful campaign to reform the state’s infamous “three strikes” law years after Colson impressed him during a personal meeting at the Reagan Library.

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 eccentric, however. A Cato alumna, Julie Stewart, founded Families Against Mandatory Minimums in 1992, and did manage 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.”

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 criminal-justice conversion story.

In the Assembly, Nolan 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 Washington to take leadership of Prison Fellowship’s policy
wing, Justice Fellowship. Nolan would henceforth run the day-to-day policy operations, with Colson providing broader guidance and occasionally interceding with personal appeals.

Colson and Nolan came to the cause with formidable reputations as battle-scarred warriors for conservatism and 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 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 even deeper commitments.

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, driven by personal recognition of the price of mass incarceration. Keene had long been interested in crime policy and believed that conservatives had overreacted to what he saw as liberal sympathy for criminals. Viguerie, a Catholic like Nolan, had long been opposed to capital punishment. Norquist required more convincing before he was ready to convert. In 1993, he had urged conservatives to deploy the crime theme as an electoral replacement for the Cold War. But reform ideas kept flowing toward him from people he respected. “When Dave Keene would say, ‘What about this?’ I’m willing to listen,” Norquist said.

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 this bipartisanship was always bundled in a “strange bedfellows” rhetoric that positioned it less as a product of centrisim 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 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.

Avoiding the language of centrisim made it easier for Nolan and Colson to recruit conservatives to the cause. 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 of these groups 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.” The group quickly recognized that the fiscal savings of prison reform were likely to resonate with state officials, even though their own motivations were ideological, moral, and personal. 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.”

By 2010, the reformists’ 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. Gingrich credited Colson and Nolan for bringing him to the cause. “They were absolutely central certainly in my case,” he told the conference. “They educated me and brought me along and helped me much better understand things.”

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 have ever seen a problem with prisons at all. With each new member, the group expanded its recruitment power. Even this expanded team 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.

**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, 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 beds. It was against this backdrop that Texans surprised the criminal-justice world in 2007 by passing reforms that slowed the growth of its prison population and set the stage for more changes.

The roots of these reforms 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 were rounded up on bogus charges, provided an opportunity for the liberals to push through some reforms, with some legislators invoking Biblical prohibitions against bearing false witness. Surveillance issues that arose after the September 11th attacks led one of the activists, Scott Henson, to develop a strong relationship with a Republican state representative, Ray Allen.

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 allies 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.

Allen turned out to be one of those leaders. In 2003, he was appointed chairman of the House Corrections Committee and began consulting with Henson on criminal justice. Partly as a result, Allen sponsored a bill to downgrade basic drug-possession crimes from felonies to misdemeanors. He got a compromise version passed, creating the first real crack in the punitive consensus.

Two years later, Allen was succeeded on the committee by Plano Republican Jerry Madden, who said he was ordered not to build new prisons by the fiscally austere Republican speaker of the House, Tom Craddick. 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.” 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 Governor Rick Perry vetoed the plan, citing objections from the state’s prosecutors, typically the most powerful lobbyists for the punitive status quo.

In 2007, the stakes rose: Texas prisons were spilling over capacity, and analysts projected that the inmate population would grow by another 17,000 inmates over the coming five years. In the interim, Madden had commissioned activists on the 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 $241 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 in jail instead of being sent back 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 whom they were imprisoning. They did so before the Great Recession, while basking in a budget surplus. Texas had the money to build more prisons, as they had done in years past, but Republicans had come to believe that just warehousing more inmates was a dead end. If veterans like Whitmire had grown tired of the old way of doing business, newcomers like Jerry Madden simply saw the issue through a different lens. To Republicans, who now had undivided responsibility for the state government and its budget, building prisons just seemed like a waste of money.

The 2007 reforms made for a compelling story, and the Texans who made it happen 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, one of the leading members of a coalition of state-based think tanks known as the State Policy Network, had created Levin’s position in 2005 with a donation from Tim Dunn, the oilman and Colson acolyte. Levin began sharing the Texas experience at SPN meetings 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 who realized that, to pass technocratic reforms, they needed hard-core ideological allies.

**Justice, Reinvented**

In state after state, conservatives who diagnosed 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: the Council of State Governments, 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. The Council of State Governments, for example, did the analysis that led to the much-vaunted 2007 Texas reforms, led by former Texas bureaucrat Tony Fabelo, whose job Rick Perry had eliminated in 2003 after Fabelo refused to get on board with his criminal-justice policies.

Pew is a decidedly centrist foundation, but JRI’s origins actually lie with the left-leaning Open Society Institute, where the concept was originally 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.”

In practice, however, the concept turned out differently. For help implementing the idea, OSI turned to the Council of State Governments, a bipartisan group that fosters collaboration among state officials. 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. The original advocates of the concept were departing, so OSI ceded control of the program. 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, which gave the project...
a more centrist orientation than it had had under OSI’s leadership. Pew was also more 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 social-justice terms suggested by OSI but in a narrower frame 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 had already invested heavily in conservative messengers such as Nolan, Madden, and Levin.

The foundation funded Nolan and Levin’s advocacy while sending Madden out to speak 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 has been Virginia Sloan, a liberal activist who founded the non-profit 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. 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. 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.

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. 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 2013 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. But while liberals have had their issues with JRI, it nonetheless represents a substantial improvement in the trajectory of criminal-justice policy in the states where it has been undertaken.

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 a collaboration between the Texas reform cadre led by Levin and Madden and the elite Washington group cultivated by Colson and Nolan. While TPPF 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 sell criminal-justice reform as the new conservative orthodoxy.

The state and national reform campaigns have been married in other ways, too. CSG showcased its advisory work in Texas and a similar campaign in Kansas to impress House appropriators into scaling up federal funding for JRI to expand to 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 given policy problem. In the 1990s, the organization promoted aggressive penal measures such as “three 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 being modeled on state initiatives. As Republican co-sponsor James Sensenbrenner put it, “The states have been outperforming Congress on criminal justice reform for years.” 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 worlds.

THE SECRETS TO SUCCESS

Conservatives’ re-evaluation of criminal justice and their collaboration with liberals on reform is the most striking contemporary example 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. But there is not much cause for optimism on that front. Criminal justice is a special case.

What makes criminal justice unusual is that reformers had some unique windows of opportunity and some unexpected structural forces tilted in their favor. They also had 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.

From the 1970s to the 2000s, halting prison growth was not a promising platform 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 followed somewhat. Meanwhile, Democrats had proven they could close the electoral gap on crime. With the voters focused elsewhere, conservative reformers were no longer asking Republican elected officials to give up a winning issue. At the same time, the GOP became increasingly anti-statist, creating political firepower 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 as a wedge to dislodge Democrats from office. In addition, now that they had unified responsibility for governance, along with self-imposed austerity, it was harder to exempt the criminal-justice system from their critique of big government.

Crucially, with the political foundations for the severe corrections stance gone, there was no major Republican Party coalition member standing in the way of a shift in position. Law-enforcement agencies have opposed much of the recent reform push, but they are not Republican Party anchors analogous to extractive industries or the pro-life movement.

Moreover, the case of criminal-justice reform involved some unique policy entrepreneurs. 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. None of the major Republican advocates of criminal-justice reform could be suspected of being a fifth column for liberalism — their credibility on issues like gun control, tax cuts, and abortion was too strong for that.

That ideological credibility was typically paired with a convincing conversion narrative, one often rooted in personal experience that made their position 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 others in the conservative 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 regarding 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. When they had the ability to choose, they selected issues not according to 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 came from the resonance it had with evangelicals and the negative light that it threw on prisons.

The final key 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 change opinions even a little bit in their direction. These investments during challenging times meant that the reformers were ready when the opportunity did arise.

Finally, external support was key. 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 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. This certainly did not mean the outside backing was irrelevant: 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 had modest expectations 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 mattered was their agreement on ultimate ends. 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 in 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. What made that change so deep, however, was the sincere 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.

Red states such as Texas, South Carolina, and Georgia have made impressive strides to flatten or reduce their rates of prison growth, but the work of conservative reformers is not nearly done. Even a modest effort at sentencing reform on the federal level seems unlikely to pass this year. At all levels, battles over the wrenching policy changes that will be required to decisively ratchet back mass incarceration—such as reconsidering extremely long sentences for violent criminals—have yet to be fought. Even the rhetorical shifts associated with Right on Crime are newly vulnerable. Spikes in violent crime of the kind seen in some American cities over the last year could cool politicians on the cause of sentencing reform. Even more threatening, Donald Trump’s authoritarian populism, with its weak commitment to anti-statism and disparaging approach to racial minorities, could easily lead to a punitive backlash. Conservatives have come very far over the last decade, but they have much further to go.