

Shifting the Culprit: The Growing Assault on Mass Incarceration:

Draft as of October 27, 2013

Prepared for the Association for Public Policy Analysis and Management Annual Meeting

Washington, D.C.

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ABSTRACT:

Policy feedbacks—whether negative or positive—are typically treated as if they were objective phenomena. By contrast, we argue that “feedback” only exists when a signal about a policy consequence is assigned valence and intensity by a policy maker. We study contemporary efforts by U.S. states to reduce the size of their prison populations as a case of negative policy feedback. We show that that policy feedback is often far from “automatic” but occurs instead through a political process in which entrepreneurs attempt to change the way cultural commitments filter signals to prevent their recognition or color their interpretation. Drawing on the “cultural cognition” thesis of Kahan and Braman, we explain the sentencing-policy reform trend in the states as the result of meaning-making entrepreneurial politics within the conservative movement. The empirical evidence suggests that efforts to construct negative feedback from policy signals require a network capable of converting policy makers seen to “own” a particular policy legacy. In particular, it draws attention to processes of policy position change within movements, resulting from a combination of unintended consequences and organization.

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The United States confines one percent of its residents, grants another two percent the conditional freedom of probation and parole, and distinguishes itself worldwide by the severity of its criminal penalties.¹ Some scholars have argued that this punitive bent is deeply rooted, drawing connections to the American pattern of state-building or to cultural factors such as status hierarchies or the rise of “late modernity.”² Others have traced the so-called carceral state to a new conservative politics in the 1960s that tapped fears of crime and racial tensions and culminated in partisan “bidding wars” to demonstrate toughness on matters of law and order for electoral purposes.³ Such arguments provide textbook illustrations of positive policy feedback at work, from elected officials doubling down on “tough” penalties to anti-domestic violence advocates focusing their energies on punishment for offenders rather than welfare for victims.⁴ The claim that the carceral state is characterized by powerful positive feedback dynamics leads directly to predictions that it would take nothing short of a massive protest

¹ *1 in 31: The Long Reach of American Corrections* (Pew Charitable Trusts, 2009), <http://www.pewstates.org/research/reports/one-in-31-85899371887> (accessed May 28, 2012); James Q. Whitman, *Harsh Justice: Criminal Punishment and the Widening Divide between America and Europe* (Oxford: Oxford University Press, USA, 2005).

² Marie Gottschalk, *The Prison and the Gallows: the Politics of Mass Incarceration in America* (New York: Cambridge University Press, 2006); James Q. Whitman, *Harsh Justice: Criminal Punishment and the Widening Divide between America and Europe* (New York: Oxford University Press, 2005); David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Chicago: University Of Chicago Press, 2002).

³ Vesla Weaver, “Frontlash: Race and the Development of Punitive Crime Policy,” *Studies in American Political Development* 21 (Fall 2007): 230-65; Naomi Murakawa, “Electing to Punish: Congress, Race, and the Rise of the American Criminal Justice State” (Ph.D. diss., Yale University, 2005). Lisa Miller stresses the importance of increasing state and federal intervention in this policy domain. Miller, *The Perils of Federalism: Race, Poverty, and the Politics of Crime Control*, Reprint ed. (New York: Oxford University Press, USA, 2010).

⁴ Beckett, Katherine, and Theodore Sasson, “The War on Crime as Hegemonic Strategy. A Neo-Marxian Theory of the New Punitiveness in U.S. Criminal Justice Policy,” pgs. 61-84 in Sally S. Simpson (ed.), *Of Crime and Criminality. The Use of Theory in Everyday Life* (Thousand Oaks: Pine Forge Press, 2000); Gottschalk, *Prison and the Gallows*, Chapter Six.

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movement or a far-reaching reduction in racial or economic inequality—an exogenous shock—to shift policy in a fundamentally new direction.⁵

Reforms launched over the past decade confound such expectations of continuous positive feedback both because of what has been achieved and who made it happen. In most cases, conservatives – generally seen as the authors of the carceral state - have taken the lead in the new politics of rethinking mass incarceration. In so doing, they have seized on evidence that prison policy has become pathological – some of it new, but most of it available to policymakers for well over a decade. The case of sentencing reform thus suggests that scholars need to rethink their assumptions about how “policy feedback” operates. They also need to take a second look at the unnecessarily pessimistic implications of the carceral state literature, which show the risks of attending to positive-feedback mechanisms without simultaneously considering negative feedback.

Our argument, in brief, is that policy feedback does not apply itself automatically. Focusing on *negative* feedback, we will show that it requires resourceful entrepreneurs and favorable conditions for such feedback to be identified, framed so as to be politically acceptable, and diffused through policy-making channels. With apologies to Alexander Wendt, then, negative feedback is what states make of it.⁶

This paper develops that policy-constructivist insight by making two basic theoretical moves. First, we argue that while the literature on policy feedback has assumed that feedback effects are fairly automatic, feedback in fact occurs on a

⁵ Michelle Alexander, *The New Jim Crow*, rev. ed. (New York: New Press, The, 2012), 236 – 240; Bruce Western, *Punishment and Inequality in America* (New York: Russell Sage Foundation Publications, 2007), 195 – 98. A similar criticism is made in Robert Weisberg and Joan Petersilia, “The Dangers of Pyrrhic Victories Against Mass Incarceration,” in “The Challenges of Mass Incarceration,” special issue, *Daedalus* 139, no. 3 (Summer 2010). For additional references on this point, see Mary Bosworth, “Penal Moderation in the United States? Yes We Can,” *Criminology and Public Policy* 10, no. 2 (May 2011): 1.

⁶ Alexander Wendt, “Anarchy Is What States Make of It: The Social Construction of Power Politics,” *International Organization* 46 (Spring 1992): 391-425.

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continuum of construction: it is easier for policy makers to recognize some feedback effects than others. Policymakers have severe cognitive constraints, and they cope with them in part by the use of norms of cultural appropriateness, in which the central question is not “what is true” but “what do people like us believe?” Second, we suggest that empirical information can be freed of its cultural baggage to make it more amenable to consideration through “identity vouching,” a process that involves leveraging movement leaders’ relationships and reputations. When aggregated up from the individual level, this process of identity vouching becomes central to a broader theory of party- and movement-position change.⁷

We then apply this framework to our case. We demonstrate that “tough on crime” positions became culturally embedded in the conservative movement and the Republican Party, discouraging attention to negative feedback. We critique the argument that the reforms now under way were an automatic response to changing economic conditions. Instead, we argue these policy changes are the result of more specifically political phenomena, including (1) the declining electoral salience of crime (2) the increasingly anti-government and anti-union spirit of the Republican party, and (3) the concerted efforts by movement contrarians to “debias” the issue by persuading co-partisans that prison reform is *more* conservative than the party’s previous positions.

How a political system processes evidence of policy failure is one of the most important measures of its quality of governance. It is impossible for any policy process to anticipate all possible negative consequences of public policies, but an ability to recognize and respond to problems when they emerge is a reasonable measure against

⁷ This argument is based on the work of Kahan et. al., from whom we borrow the term “identity vouching.” Donald Braman, Dan M. Kahan, and James Grimmelmann, “Modeling Facts, Culture, and Cognition in the Gun Debate,” *Social Justice Research* 18, no. 3 (September 2005).

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which to judge political regimes. And if we wish to improve our own political system, a good place to start is by understanding the pathways through which uncomfortable information manages to break through the daunting obstacles of party politics and biased information processing.

(I) The Continuum of Negative Feedback

Political scientists know far more today than they did a couple of decades ago about the specific ways in which “policy creates its own politics.”⁸ Feedback effects are now understood to include a policy’s impact on market expectations, the interest-group environment, and individuals’ political attitudes and behaviors as well as the direct fiscal, economic, and social effects of policy.⁹ In this paper, we conceptualize feedback in Kent Weaver’s terms as “consequences of policy that tend to (influence) the political, fiscal or social sustainability of a particular set of policies.”¹⁰ “Political, fiscal or social sustainability” is the perception that a policy is achieving fiscal, economic, and social goals without imposing unacceptable political costs. Our question is when, how and why policymakers perceive and internalize such information, and whether they allow this information to alter their policy positions and priorities.

⁸ Elmer Eric Schattschneider, *Politics, Pressures, and the Tariff* (n.p.: Arno Press Inc., 1974), 288

⁹ Pierson, *Dismantling the Welfare State?*; R. Kent Weaver, “Paths and Forks or Chutes and Ladders? Negative Feedbacks and Policy Regime Change,” *Journal of Public Policy* 30, no. 2 (2010): 137-62; Joe Soss, “Lessons of Welfare: Policy Design, Political Learning, and Political Action,” *American Political Science Review* 93, no. 2 (June 1999): 363-80; Suzanne Mettler, “Bringing the State Back in to Civic Engagement: Policy Feedback Effects of the G.I. Bill For World War II Veterans,” *American Political Science Review* 96, no. 2 (June 2002): 351-65; Andrea Campbell, “Self-Interest, Social Security, and the Distinctive Participation Patterns of Senior Citizens,” *American Political Science Review* 96, no. 3 (September 2002): 565-74.

¹⁰ Weaver, “Negative Feedbacks,” 137.

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Weaver distinguishes between positive feedback, which reinforces a particular set of policies, and negative feedback, which undermines them.¹¹ We focus our argument on the case of negative feedback for two reasons. First, the literature has tended to focus almost exclusively on positive feedback, perhaps reflecting a belief that it overwhelmingly predominates over the negative variant or even that negative feedback in politics, with its similarity to market selection mechanisms in economics, is hardly a puzzle to be explained.¹² We argue, on the contrary, that negative policy feedback is an important feature of American politics (and, just like positive feedback, one we would expect to see growing in importance as the state expands).¹³ Second, if it is true that “the political world is unusually prone to positive feedback,” then we should expect warnings that a policy is failing - and the implication that significant corrective action is required - to struggle for a hearing.¹⁴ Thus we would expect that recognizing policy failure would require an even more explicit process of social construction than would be required of policy success.

Negative feedback is simply a signal that some aspect of a policy *should* be fixed. Policy makers may find no solution. If they do find a solution, it may take the form of first, second, or third-order change - incremental, far-reaching, or transformative in the

¹¹ It is important to note that scholars in policy studies use the terms “positive” and “negative” feedback in very different ways. Baumgartner and Jones, for example, describe negative feedback as a “homeostatis or a self-correcting mechanism.” *Policy Dynamics* (Chicago: University of Chicago, 2002). Somewhat confusingly, then, negative feedback in their terms describes an equilibrating force, whereas in our approach and in Weaver it is disequilibrating and disruptive. Put another way, we describe negative feedback as that which produces vicious cycles, whereas positive feedback generates virtuous cycles.

¹² Paul Pierson, *Politics in Time: History, Institutions, and Social Analysis* (Princeton, N.J.: Princeton University Press, 2004), 40, 44.

¹³ *Ibid.*, 8, 39-40.

¹⁴ *Ibid.*, 44; Weaver, “Negative Feedbacks,” 137 – 139.

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sense that it shifts the underlying purpose of the original policy.¹⁵ But before any of that can occur, negative policy effects must be *noticed*. Our purpose in this paper is thus to identify when negative feedback is likely to be recognized at the systemic level. In Kingdonian terms, how does negative feedback become defined as a “problem” for the governmental agenda?¹⁶

Most of the scholars studying policy feedback assume that it is recognized by the political system and focus their inquiry on what happens next what happens next. However, this assumption is in tension with insights from the agenda-setting literature, which emphasizes that policymaking institutions have difficulty sifting signals from the environment, and that the interpretation of information about problems and policy is highly sensitive to framing and construction.¹⁷ As we understand it, feedback only occurs when cues are interpreted – that is, assigned valence and intensity - by the relevant policy makers.¹⁸ Negative consequences of previous interventions can, therefore, fester below the radar of the policy system for prolonged periods. We would alter Weaver’s construction by defining negative feedback as “*broadly recognized* consequences of policy that tend to undermine rather than reinforce the political, fiscal or social sustainability of a particular set of policies.”

¹⁵ Peter Hall, “Policy Paradigms, Social Learning, and the State: The Case of Economic Policymaking in Britain,” *Comparative Politics* 25, no. 3 (April 1993): 275-96, at 278-79.

¹⁶ John W. Kingdon, *Agendas, Alternatives and Public Policies*, 2 ed. (Longman Higher Education, 1984), 3-4, 17-18.

¹⁷ Bryan D. Jones and Frank R. Baumgartner, *The Politics of Attention: How Government Prioritizes Problems* (Chicago: University Of Chicago Press, 2005); Deborah A. Stone, “Causal Stories and the Formation of Policy Agendas,” *Political Science Quarterly* 104, no. 2 (Summer 1989): 281-300; William H. Riker, *The Art of Political Manipulation* (New Haven: Yale University Press, 1986); Martha Derthick and Paul J. Quirk, *The Politics of Deregulation* (Washington, D.C.: Brookings Institution Press, 1985).

¹⁸ See also Roberta Wohlstetter, *Cuba and Pearl Harbor: Hindsight and Foresight*, Memorandum (Rand Corporation: 1965).

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Weaver is correct that signals about the performance of pension regimes – his object of study - are likely to draw political attention, but this is because that information has been *pre-constructed* with clear and identifiable meanings. *Pre-constructed feedback* is an indicator of policy consequences whose valence and significance are widely agreed upon in some deeply embedded fashion. At the far end of pre-construction, these agreements can be institutionalized with the creation of monitoring agencies or automatic triggers to “fix” a policy when an indicator goes awry. Put differently, pre-construction is the process of wiring what McCubbins and Schwartz famously called political “fire alarms.”¹⁹

Formal institutionalization is not required for a signal to be widely recognized as authoritative. Because of the legitimacy and deference the judicial branch enjoys, court orders instructing bureaucrats or legislatures to take some type of action are generally understood as signaling a problem (even if policy makers do not agree with the court’s framing of the underlying policy issue). Stock markets are widely understood to send critical signals about the economy and the confidence of business in government policy. The recognition afforded to certain experts can make their opinions a widely recognized signal. One example from the 1970s is economists’ argument that a whole slew of regulations were inefficient; a modern-day example is the consistent warning by engineers that American infrastructure is crumbling.²⁰ But in other policy areas, it is not even clear what the leading signs of success or failure are or what available information means. Are low crime rates and high incarceration rates a sign that sentencing policy is

¹⁹ Mathew D. McCubbins and Thomas Schwartz, “Congressional Oversight Overlooked: Police Patrols Versus Fire Alarms,” *American Journal of Political Science* 28, no. 1 (Feb. 1984): 165-79.

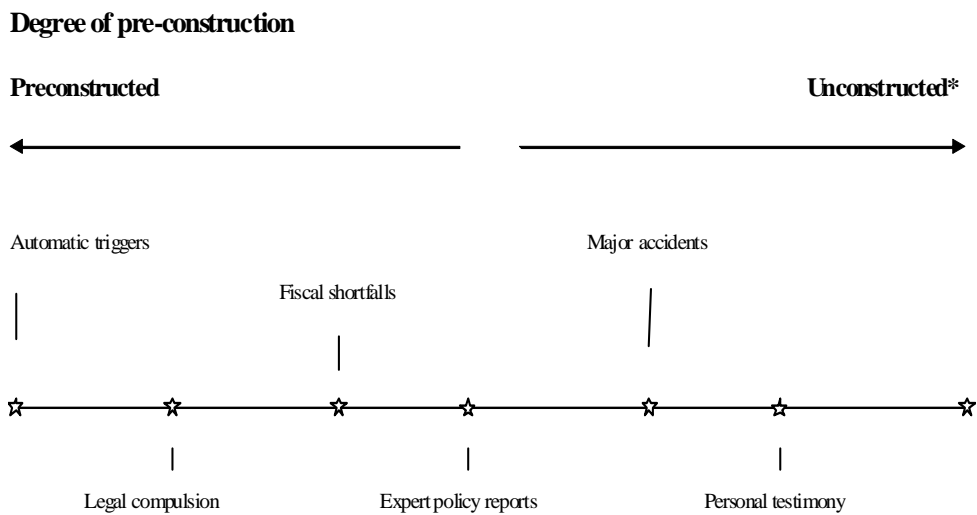
²⁰ Derthick and Quirk, *Deregulation*; American Society of Civil Engineers, “Report Card for America’s Infrastructure,” <http://www.infrastructurereportcard.org> (accessed May 30, 2012).

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effective? Or a sign that sentencing policy is on a perverse course? Drawing attention to indicators that are not pre-constructed is so challenging because it requires that meaning must be fabricated on the fly, rather than assumed.

In short, negative feedback occurs on a *continuum* of pre-construction. Figure 1 represents this variation, with a significant simplification: it assumes that feedback occurs in a single dimension. Recall that policy feedback occurs in at least three dimensions – political, fiscal and social sustainability.²¹ The pre-construction of feedback can vary on all three of these dimensions. A policy may, for example, have pre-constructed negative feedback fiscally and socially but ambiguous feedback politically. Judging which type of feedback predominates overall requires an assessment of the forces operating in all three streams.

Figure 1



²¹ Weaver, "Negative Feedbacks," 137.

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Analysts have long recognized that the framing of a public policy “problem” can significantly affect the choice of “solution” (Kingdon famously argued that the latter often precedes the former).²² But framings do not always lead to the expected solution. This was a lesson that reformers who championed prison-overcrowding litigation in the 1970s and 1980s learned from bitter experience: in many cases the response was not a reduction in incarceration but a ramp-up of prison construction.²³ This point leads us to a typology that differentiates policy issues on the basis of agreement that there is a “problem” requiring attention and consensus about how to respond. As the plotting of criminal justice on Figure 2 suggests, issues can move across this space over time.

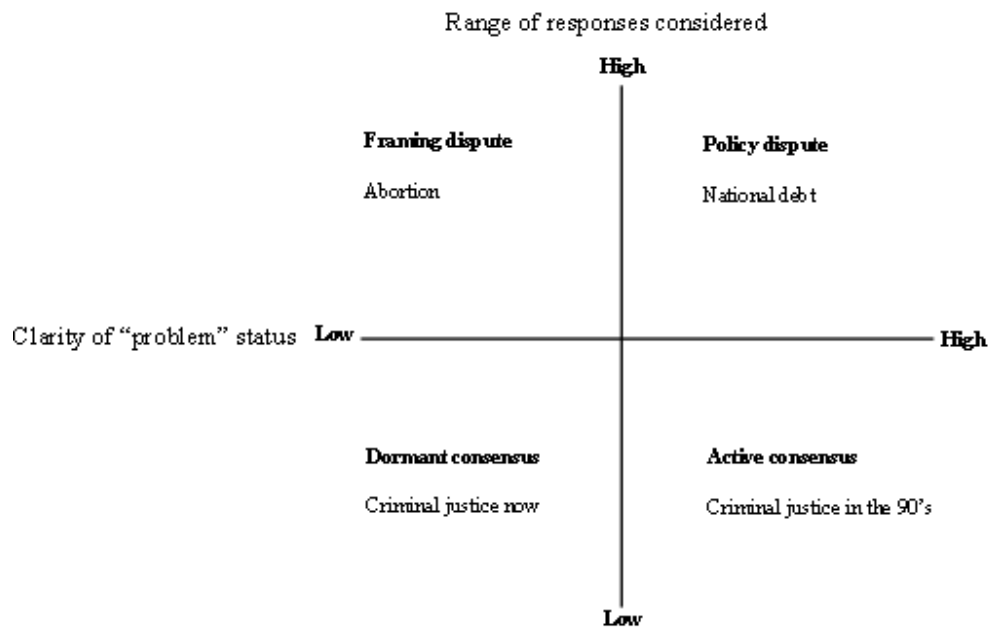
Figure 2²⁴

²² Kingdon, *Agendas, Alternatives*; Stone, “Causal Stories.”

²³ Heather Schoenfeld, “Mass Incarceration and the Paradox of Prison Conditions Litigation,” *Law and Society Review* 44, no. 3-4 (September / December 2010): 731-68.

²⁴ “Range of responses” refers to the range of alternatives considered credible by veto players in the system. In Kingdon’s terms, these are the alternatives that, given events in the “political stream,” are all candidates to be “coupled” with a problem to reach the “decision agenda.” Kingdon, *Agendas, Alternatives*, 4, 187.

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In sum, negative feedback occurs when a critical mass of policy makers come to recognize a particular signal about policy consequences as indicating a “problem” with the policy’s fiscal, social, or political sustainability that requires first, second, or third-order change. Signal recognition is easier where particular policy indicators have pre-constructed and institutionalized meanings than in cases where their meanings are ambiguous or disputed.

(II) Cultural Cognition and Negative Feedback

Policy makers’ definitions of what constitutes a “problem” susceptible to government intervention can be highly malleable.²⁵ But explaining precisely what makes a particular idea “take” in agenda-setting, as in other aspects of politics, remains a major challenge. In the agenda-setting literature, at least, making progress in this debate will

²⁵ Kingdon, *Agendas, Alternatives*, 202-203; Stone, “Causal Stories.”

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require us to find a way to bridge accounts that emphasize the resources and institutional positions of policy entrepreneurs and those that stress the cognitive problems confronting individual policy makers.²⁶ The question is precisely how policy entrepreneurs use their institutional positions and resources to address the individual information-processing barriers policy-makers face and achieve recognition for unconstructed feedback or, more difficult, undermine a pre-construction of feedback.

The major challenge facing all policy makers is filtering the barrage of information clamoring for their attention. Emotion is a key part of the process by which policy makers choose which signals to attend to and how to interpret them.²⁷ Marcus, Neuman, and MacKuen argue that individuals use pre-conscious emotions to decide whether a political signal is familiar or unfamiliar and anxiety arousing; in the latter case, they will devote more energy to exploring it.²⁸ Baumgartner and Jones and other authors also identify bias of various forms as a critical factor in information processing. Once information is considered, it encounters a status quo bias among policy makers who have a “sense of ownership” in the prevailing policy and find it difficult to let it go. Moreover, emotional attachment to particular types of solutions may lead to mischaracterization of the problem based on incorrect analogies to other problems that were addressed with the favored solution.²⁹ Studies of such confirmation bias abound in psychology and are

²⁶ Kingdon, *Agendas, Alternatives*, 189 – 90; Stone, “Causal Stories,” 293-94; Jones and Baumgartner, *Politics of Attention*.

²⁷ Jones and Baumgartner, *Politics of Attention*, 16, 20.

²⁸ George E. Marcus, W. Russell Neuman, and Michael MacKuen, *Affective Intelligence and Political Judgment* (Chicago: University Of Chicago Press, 2000). The authors stress enthusiasm as the key monitor of familiarity, but acknowledge that aversion can also be associated with familiar signals (158, 164-65).

²⁹ Jones and Baumgartner, *Politics of Attention*, 49-50, 53. Thomas Ricks in *Fiasco* (New York: Penguin, 2006) identifies improper analogical reasoning (especially comparisons to WWII and the first Iraq War) as a key cause of the initial errors in the second Iraq War. David Butler, Andrew Adonis and Tony Travers in *Failure in British Government: The Politics of the Poll Tax* (New York: Oxford, 1996) demonstrate that

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frequently invoked in the international relations literature.³⁰ However, it remains to be explained why such bias would afflict a policy maker who played no role, or only a minimal one, in authoring the original decision.

We need a richer account of emotion and bias to understand how these factors steer information processing. Such an account can be found in Kahan and Braman's theory of "cultural cognition."³¹ The authors propose that cultural orientations explain much of the variation in how individuals assess *empirical* information about policy problems. Individuals who have culturally rooted or moral objections to an action will also tend to evaluate that action as dangerous. The judgment is reinforced by mechanisms of social psychology, including cognitive-dissonance avoidance and affect, which induce individuals to filter empirical information in such a way as to reinforce the original danger assessment. Crucially, the authors also introduce group dynamics. They note that in a world of conflicting and complex information, individuals will turn for guidance to authority figures they trust, based on a shared identity and cultural orientation. Likewise, individuals will tend to discount information perceived coming from an opposing camp while considering one's own sources to be "objective."

In a world of conflicting and overwhelming signals, therefore, individuals filter information using emotional responses that reflect deep-seated cultural or ideological commitments.³² Identity acts as a filter for information, including information on policy effects. The key to penetrating the cognitive filters thrown up by cultural commitments is

key figures in the Thatcher government thought of the complaints about the poll tax as akin to those against privatization, and thus dismissed them as red herrings.

³⁰ Raymond S. Nickerson, "Confirmation Bias: A Ubiquitous Phenomenon in Many Guises," *Review of General Psychology* 2, no. 2 (June 1998): 175-220; Robert Jervis, *Perception and Misperception in International Politics* (Princeton, N.J.: Princeton University Press, 1976).

³¹ Marcus, Neuman, MacKuen, *Affective Intelligence*, 135 – 36.

³² *Ibid.*

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not to produce more empirical “evidence” of one position or another, Kahan and Braman argue. Rather, when delivering information perceived to be downplaying the risk of a previously emotionally loaded action, it is necessary to satisfy an individual’s culturally rooted “visceral reactions.” Before individuals can process information, therefore, they need to believe it does not represent a threat to identity. The authors refer to this process as “debiasing.”³³

Kahan and Braman’s insights about cultural cognition among the general public should apply *a fortiori* to policy makers, if only because they face a greater barrage of information than the average citizen, have incentives not to confess error and, at least in this era of American politics, have stronger, more deeply reinforced ideological attachments than the average citizen.³⁴ Legislators in particular may rely more on the trust heuristic than average citizens. They must decide on so many issues that they operate by taking “cues” from peers perceived to be in their camp, especially on issues of low salience.³⁵

Debiasing is a process that occurs primarily *within* a single ideological movement seen to “own” a particular policy legacy.³⁶ This implies two major obstacles to debiasing. First, policies viewed as creating a positive identity may become deeply embedded in culture. The linkage between policy commitment and cultural commitment can be forged

³³ Donald Braman, Dan M. Kahan, and James Grimmelman, “Modeling Facts, Culture, and Cognition in the Gun Debate,” *Social Justice Research* 18, no. 3 (September 2005).

³⁴ It is widely accepted in the literature that elite polarization in the US preceded and to some degree drove mass polarization. See in particular Alan Abramowitz and Kyle Saunders, “Is Polarization a Myth?,” *Journal of Politics* 70 (2008): 542-555 and Marc Hetherington, “Resurgent Mass Partisanship: The Role of Elite Polarization,” *American Political Science Review* 95 (2001): 619-631.

³⁵ John W. Kingdon, *Congressmen's Voting Decisions*, 3rd ed. (Ann Arbor: University of Michigan Press, 1989), 95-101.

³⁶ Braman et. al., “Gun Debate.” Kahan and Braman share the idea of breaking deadlocks through, cultural overdetermination with Steven Teles, *Whose Welfare: AFDC and Elite Politics* (Lawrence: University Press of Kansas, 1998). We are not arguing that this mechanism is irrelevant, only that it is not exclusive and may be declining in significance with the increase in party polarization and discipline.

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or tightened significantly by the contingencies - often electoral – of prior political battles. When a policy is widely perceived to be successful (both in policy and electoral terms) in its early years, the movement may find it difficult to attend to pathologies arising from the policy’s generation of unintended consequences or failure to adjust to a changed context. As such, we will argue the conditions facilitating such success must abate before debiasing can proceed.

Second, one of the chief barriers to debiasing is reputational. Movements, like individuals, do not like to admit that they were wrong, a phenomenon that can cause them to ignore even powerful signals of policy error.³⁷ Thus, debiasing negative feedback about movement-“owned” policies requires a rhetorical framework in which members see a credible “out” from admitting fault.

These claims have implications for the broader theoretical problem of “party position change.” On issues that are important to core members of a party coalition – such as abortion for the GOP – it is easy to see why party members have a strong incentive not to attend to negative feedback regarding the preferred policy. It is less obvious why such dynamics might be in place when it comes to what David Karol calls a “groupless issue” – one on which a party adopts a position in order to capture votes from the electorate at large, rather than to please an organized member of its coalition.³⁸ In theory, parties should be able to shift rather easily on groupless issues – to “follow the feedback,” as it were. But our argument implies that confirmation bias can also prevent the processing of negative feedback in groupless issues if party positions on such issues are viewed as consequential in electoral and reputational terms. Adjusting a party

³⁷ Butler, Adonis, and Travers, *Failure in British Government*.

³⁸ David Karol, *Party Position Change in American Politics: Coalition Management* (Cambridge: Cambridge University Press, 2009).

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position on groupless issues may thus be no less challenging than crossing a coalition member directly.

Kahan and Braman argue that debiasing is most likely to be successful when public figures associated clearly with the relevant cultural camps support a challenge to movement orthodoxy. This “identity vouching” works because individuals will be more open to hearing new views from someone of “high esteem within their cultural or ideological group.”³⁹ As a result of their status, people of high esteem can address the contradictions that inevitably crop up in any movement of distinctive factions held together by an attachment to broad principles. These “identity vouchers” can argue that they are simply applying those foundational principles in novel combinations, or to issues that had previously been overlooked. “People of high esteem” can also include people so honored because they hold a professional position that, in the view of a particular culture, makes their opinions on a particular subject seem highly credible. The most obvious example is a general advising on a military strategy. Such people are rendered all the more credible when they appear to be making an argument that violates their self-interest.⁴⁰

We argue that debiasing is a quintessentially entrepreneurial process. The process itself is highly rational, opportunistic, resource-intensive and strategic. The process is rational because movement contrarians must target policy makers they view as most amenable to position change on grounds of both ideology and self-interest and identify

³⁹ Braman et. al., “Gun Control.”

⁴⁰ Glenn Loury has argued that a similar process structures the conditions under which criticisms of existing policy are considered acceptable (for example, a black person criticizing affirmative action is viewed as likely to possess real information, as opposed to a white person who will immediately be suspected as being motivated by racism). “Self-Censorship in Public Discourse: A Theory of ‘Political Correctness’ and Related Phenomena,” *Rationality and Society* 6, no. 4 (October 1994): 428-461.

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institutional venues favorable to their cause. It is opportunistic because persuading fellow movement adherents to switch positions may depend on linking the position to a shift in conditions or events, allowing the entrepreneur to obscure that a shift in position has actually occurred. In the absence of strategic opportunism, such brief moments for rethinking legacy positions may be lost, or their full potential not exploited. The process is resource-intensive because identifying such policy makers, packaging information in ways that appeal to them, and reframing political interest requires activists, time, credibility, and access. Finally, it is strategic because attempts at debiasing information for people of a given cultural orientation will meet with resistance from other actors attached to the same orientation. In other words, people who generally perceive themselves to be allies will find themselves fighting over the meaning of their shared values when a process of debiasing is initiated. The last two points are mutually reinforcing. Debiasing can unleash dormant frictions within a movement. Such conflicts can create highly uncertain conditions in which creativity can determine winners. In such an environment, relevant resources are not only material, but also intangible: motivation, salient knowledge, and learning skills.⁴¹

Just as a policy's reputation or policy image can generate positive feedback through the mechanism of motivated cognition, it can do so in the opposite direction as well. On the way "up," a positive policy image will cause actors to ignore information that they would have otherwise ignored, and pay excessive attention to positive information. That then generates an even stronger policy image, thereby leading to even

⁴¹ Marshall Ganz, *Why David Sometimes Wins: Leadership, Organization, and Strategy in the California Farm Worker Movement*, Reprint ed. (New York: Oxford University Press, USA, 2010), 11. Ganz cites a foundational work on this point as Teresa M Amabile, *Creativity in Context* (Boulder, Colo.: Westview Press, 1996).

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more biased cognition. Reputation can thus be a cognitively virtuous cycle. But the same thing operates in the other direction—once reputation has been damaged, it can kick off a vicious cycle, in which evidence of positive functioning is ignored and even ambivalent signals are paid greater attention to. The art of policy entrepreneurship in this area, therefore, is to “tip” the cognitive process from virtuous to vicious, from reinforcement to stigma. Again, this process occurs largely prior to the rational assessment of evidence—it determines what evidence actors attend to, what evidence they seek to collect, and how they process it.

Identity vouching operates, in a sequential process, with two distinct audiences. The process begins with a very small core group of movement leaders that has decided that their group’s position needs to change, often for deeply held moral reasons. They then seek to change the positions of the larger group of highly visible, ideologically unassailable movement leaders. This process typically occurs in a very low profile, often behind the scenes manner, in which the key currency of change is *relationships*. The core group of movement leaders have typically been through numerous battles together, and have developed strong ties between each other. The segment of that elite cadre that seeks to change their group’s positions leverages these relationships to convert the remaining trustees of the movement’s “brand.” Once the elite cadre has been substantially converted, they can then communicate the change of position to the larger group of movement adherents—including legislators and the general public—relying on their *reputation* for ideological purity. They will typically communicate to the broader movement public reasons for a switch in position that are rooted in their deeper cultural commitments. At the end of this sequence, movement activists and affiliated politicians

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will be open to information about negative feedback they had previously feared as a threat to identity.

(III)

Mass Incarceration and Conservative Identity

Law and order became a staple of Republican politics during the 1960s. Both Barry Goldwater and Richard Nixon stressed the threat of street crime in their presidential campaigns. Both men accused liberals of coddling criminals and vowed to crack down. The emphasis on law and order resonated in part because it responded to an actual increase in crime that coincided with a relatively lenient approach to sentencing.⁴² It was also in line with an emerging academic consensus that the nation's experiments with prison rehabilitation had failed and that crime control should follow the logic of deterrence.⁴³ But Republicans also crafted their crime-control message to tap hostility toward civil rights and toward the perceived excesses of the welfare state.⁴⁴ The rhetoric of Goldwater and Nixon, for example, conflated political protest and civil disobedience with street crime, and cast accommodation of protesters' demands as surrender to predators. Anti-crime rhetoric also tapped crude racial stereotypes, as with the infamous "Willie Horton" commercial that invoked the specter of a black rapist to tar Democratic

⁴² Stuntz, *Collapse*, 244-251.

⁴³ James Q. Wilson, *Thinking About Crime* (New York: Vintage, 1985).

⁴⁴ Katherine Beckett, *Making Crime Pay: Law and Order in Contemporary American Politics* (Oxford University Press, USA, 1999); Katherine Beckett and Bruce Western, "Crime Control, American Style: From Social Welfare to Social Control," in *Criminal Policy in Transition* (Oxford and Portland, Oregon: Hart Publishing, 2000), 15–32; Tali Mendelberg, *The Race Card: Campaign Strategy, Implicit Messages, and the Norm of Equality* (Princeton University Press, 2001); Naomi Murakawa, "Electing to Punish: Congress, Race, and the American Criminal Justice State" (Yale University, 2005); Vesla M. Weaver, "Frontlash: Race and the Development of Punitive Crime Policy," *Studies in American Political Development* 21, no. 02 (2007): 230–265, doi:10.1017/S0898588X07000211; William J. Stuntz, *The Collapse of American Criminal Justice* (Belknap Press of Harvard University Press, 2011), 236–43.

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presidential nominee Michael Dukakis as weak in 1988. More broadly, the crime discourse fed into a mythology that saw American society as divided between “moochers” – people who relied on government assistance and refused the responsibilities of citizenship – and “earners,” whose hard work was consistently undermined by the other side.⁴⁵ Street criminals and “welfare queens” epitomized the moocher category, along with the politicians, judges and “effete” liberal intellectuals who defended them. Meanwhile, police and prison guards (as well as conservative Republicans) were valorized as defending the nation’s upstanding earners.⁴⁶

Democrats quickly adopted some of the conservative rhetorical tactics and sought to prove their crime-fighting resolve in policy, as when President Lyndon Johnson signed the Safe Streets Act of 1968 and New York Governor Nelson Rockefeller championed stiff drug laws in 1973. But Republicans continually seized back the lead. In the 1980s, Ronald Reagan and George H.W. Bush redoubled the effort by declaring war on drugs. Bush was widely believed to have won the White House on the crime issue in 1988. There was by the 1980s, then, a widespread perception that Republicans had developed an extraordinary electoral advantage on the crime issue, at least on the national level. The power of this perception is underscored by Democrats’ unrelenting efforts during the Clinton era to prove equally “tough on crime” and make up the difference.⁴⁷

⁴⁵ Daniel T. Rodgers, “‘Moocher Class’ Warfare,” *Democracy*, Spring 2012

<http://www.democracyjournal.org/24/moocher-class-warfare.php?page=all> (accessed May 30, 2012).

⁴⁶ Joshua Page, *The Toughest Beat: Politics, Punishment and the Prison Officers Union in California* (New York: Oxford, 2011) is excellent on the critical role that the prison guard union in California played in developing this cultural trope.

⁴⁷ David B. Holian, “He’s Stealing My Issues! Clinton’s Crime Rhetoric and the Dynamics of Issue Ownership,” *Political Behavior* 26, no. 2 (June 1, 2004): 95–124, doi:10.1023/B:POBE.0000035959.35567.16; Naomi Murakawa, *The First Civil Right: Racial Proceduralism and the Construction of Carceral America* (Oxford University Press, USA, forthcoming).

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In this regime, negative feedback was pre-constructed to make policy makers highly sensitive to signals that might suggest policy was too lenient - they were haunted by the possibility of another Willie Horton. Thus, when federal court orders limited crowding in state prisons, the message received by legislators was not that prisons were too full – as Heather Schoenfeld has shown, it was that there were not enough prisons.⁴⁸ In similar fashion, some states abolished parole and most passed “truth-in-sentencing” laws requiring that offenders serve out a majority of their sentences before being released. This confluence of political incentives and information processing bequeathed to the nation a prison population that now tops 2 million.

To be sure, there were dissident voices within the conservative movement as early as the 1980s and 1990s. The most prominent among them were drug-war critics in libertarian circles. At institutions such as the Cato Institute and outlets such as *Reason* magazine, they decried both the tactics and the prohibitionist logic of the anti-narcotics crusade. However, the broader movement dismissed these voices as the complaints of a handful of eccentrics. Over time, the narrative that tied crime, race, taxation, and other ills together in the vague mythology of the earners and moochers became deeply embedded in movement ideology. Moreover, that narrative - and particularly its emphasis on stern crime control - were perceived to have been extraordinarily lucrative in electoral terms. Law-and-order thus became a central pillar of conservative identity, a mark of what it meant to *be* a conservative. This identity-affirming quality of law-and-order discourse explains the paradox that massive prison expansion - perhaps the most impressive state-building project in post-war America – was sponsored by the movement

⁴⁸ Schoenfeld, “Mass Incarceration.”

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associated with retrenchment of the state in most other areas.⁴⁹ Many conservatives simply did not view police officers and prison guards as part of the “bureaucracy” – they were different than other government employees.⁵⁰ In fact, prison guards, especially in California, were viewed as legitimate members of the conservative coalition.⁵¹ Consequently, the public choice logic that conservatives typically applied to government—that it was inherently expansionary, secretive, and parasitic—was not applied to the apparatus of criminal justice. As Reagan Attorney General William French put it: “The Justice Department is not a domestic agency. It is the internal arm of the national defense.”⁵²

This exceptionalist view led conservatives to overlook numerous signs the “get-tough” approach to crime had grown pathological. As Figure 3 shows, state expenditures on corrections climbed steeply in the late 1980s and the mid-1990s, despite a flood of federal money subsidizing prison construction. In fact, the argument that mass incarceration was unsustainably expensive was being made 25 years ago, though with little success.⁵³

Figure 3

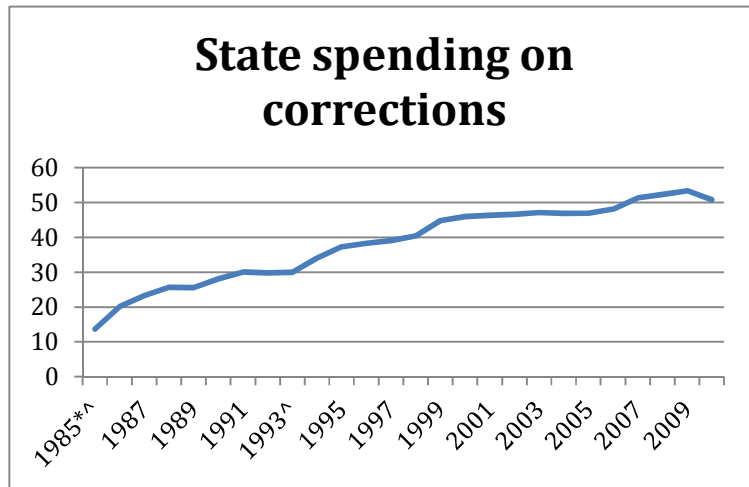
⁴⁹ Stuntz, *Collapse*, 35.

⁵⁰ This point is suggested by several of our interviews; for example, Viguerie, Richard. Interview with David Dagan. Phone interview. Baltimore, March 13, 2012.

⁵¹ Page, *Toughest Beat*.

⁵² Quoted in Radley Balko, *Rise of the Warrior Cop: The Militarization of America's Police Forces* (New York: PublicAffairs, 2013).

⁵³ Stephen Wermiel, “U.S. Sentencing Proposals Spur Worries Over Inmate Rise, Cost of New Prisons,” *Wall Street Journal, Eastern Edition*, June 22, 1987; White, “THE ILLOGICAL LOCKUP: [3 STAR Edition],” *Orlando Sentinel*, April 27, 1987, sec. EDITORIAL PAGE; Dave McNeely, “Key Legislators Question Borrowing for Prison Construction: [FINAL Edition],” *Austin American Statesman*, January 19, 1989, sec. CITY/STATE; David Poulson and Grand Rapids Press Bureau, “Officials, Taxpayers Struggle with Fiscal Drain of Prisons,” *The Grand Rapids Press*, February 16, 1992.



In billions of 2010 dollars. Source: National Association of State Budget

Officers

Concerns about the racially disproportionate impact of the crackdown were also stymied. The racial skew in American incarceration rates has been well-documented and thoroughly debated since at least the turn of the century.⁵⁴ Evidence that the war on drugs was worsening the situation accumulated during the 1980s and 1990s and was underscored by a handful of high-profile reports.⁵⁵ As John DiIulio, a student of James Q. Wilson who long supported a tough-on-crime approach, wrote in 1989, “Nobody denies that as America's corrections population has skyrocketed, the non-white proportion has reached historic highs.”⁵⁶ In fact, Michael Tonry argues that even minimally-aware policy makers would have *foreseen* that massive growth in these disparities would be an

⁵⁴ Khalil Gibran Muhammad, *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America* (Cambridge, Mass.: Harvard University Press, 2010).

⁵⁵ Gerald David Jaynes et al., *A Common Destiny: Blacks and American Society* (Washington, D.C.: National Academy Press, 1989); Sam Meddis, “Whites, Not Blacks, at the Core of Drug Crisis,” *USA TODAY*, December 20, 1989; Marc Mauer, *Young Black Men and the Criminal Justice System: A Growing National Problem* (Sentencing Project, 1990); Marc Mauer and Tracy Huling, *Young Black Americans and the Criminal Justice System: Five Years Later* (Sentencing Project, 1995).

⁵⁶ JOHN J. DI IULIO, “PRISON REFORMS THAT MAKE SENSE: [Final Edition],” *Daily Press*, October 22, 1989, sec. Outlook.

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inevitable result of the crime policies of the 1980s.⁵⁷ Other complaints about the prison system were also being voiced within policy makers' earshot—that it ensnared low-level offenders who did not belong behind bars, that it imposed high collateral costs on families and communities, and that it was ineffective because so many released offenders recidivated.⁵⁸ The case could even be made that problem signals were not only being ignored in this period, but actively suppressed, for example through laws that made it more difficult for prisoners to file lawsuits challenging the conditions under which they were detained.⁵⁹

By 1999, some of these concerns were even being voiced by John DiIulio, the conservative political scientist and student of James Q. Wilson who had famously backed “get tough” policies in a *Wall Street Journal* op-ed only five years earlier.⁶⁰ Now, DiIulio was back in the pages of the *Journal* declaring that “2 Million Prisoners are Enough.” DiIulio argued that incarceration had worked, but “the value of imprisonment is a portrait in the law of rapidly diminishing returns.” He recommended a five-step program of reforms, including the repeal of mandatory minimum sentences for drug offenses and a turn toward rehabilitation and the overhaul and scale-up of probation and parole. “Zero prison growth is possible,” DiIulio concluded.⁶¹ Likewise, former Attorney General

⁵⁷ Michael Tonry, *Malign Neglect: Race, Crime, and Punishment in America* (New York: Oxford University Press, USA, 1996).

⁵⁸ Tonry, *Malign Neglect*, Eric Schlosser, “The Prison-Industrial Complex,” *The Atlantic*, Dec. 1998; Marc Maurer and the Sentencing Project, *Race to Incarcerate* (New York: New Press, The, 1999).

⁵⁹ Prison Litigation Reform Act of 1995, Pub. L. No. 104-134 (codified as amended in scattered titles and sections of the U.S.C.); see also H.R. 3019, 104th Cong. (1996) <http://www.ojdp.gov/pubs/walls/appen-b.html> (accessed May 30, 2012).

⁶⁰ John J. DiIulio, “Let 'em Rot,” *Wall Street Journal*, January 26, 1994.

⁶¹ John J. DiIulio, “2 Million Prisoners Are Enough,” *Wall Street Journal*, March 12, 1999.

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Edwin Meese III, an architect of Ronald Reagan's drug-war policies, called for reviewing mandatory minimum sentences for low-level drug offenders in a 1999 interview.⁶²

Well into the 2000s, then, ever-expanding incarceration was deeply-rooted ideologically and culturally among conservative politicians and thinkers, was a key element of Republican (and Democratic) electoral strategy, and had generated a strong supportive coalition. The deeply embedded character of the regime of mass incarceration led politicians to ignore signals that the policy was becoming pathological, despite abundant evidence. Even when that evidence came from individuals with solid hard-line credentials, it was widely ignored. Turning the tide would require two further ingredients: changes in the political environment that would make more people amenable to the new message, and a concerted effort to convert individual credibility into systematic criticism. We describe environmental changes that have taken place over the last 15 years in the next section before explaining how conservative activists capitalized on these changes.

(II)

Structural changes

The dominant interpretation of the nascent sentencing reform movement is that it was driven by government finances, implying an automatic response to problem signals, more like what we would predict from pre-constructed feedback.⁶³ There is certainly much to support this hypothesis: The aftermath of the 2001 recession coincided with an

⁶² The New York Times, "PRISON POPULATION IS UP IN SPITE OF DROP IN CRIME ; EXPERTS SAY DRUG LAWS FROM '80S ARE TO BLAME: [CITY Edition]," *Winston - Salem Journal*, March 7, 1999, sec. A.

⁶³ See, for example, Michelle Alexander, "In Prison Reform, Money Trumps Civil Rights," *New York Times*, 14 May 2011.

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initial round of reform, and the deeper downturn after 2008 has coincided with a more sweeping round of changes.⁶⁴ In every state that has passed sentencing reforms, saving money has been invoked as a major rhetorical justification. The pressure prisons are putting on state budgets also helps to explain why, in many states, business leaders have become cheerleaders for the cause of reform.⁶⁵

The economic account is seriously incomplete, however. Fiscal crisis is hardly a sufficient condition for the reforms now under way, and it may not even be necessary. The Pew Center on the States argues that state prison growth began to slow already in 2007, before the onset of recession, and primarily as a result of policy changes.⁶⁶ As a symbolic matter, too, practitioners date the turning point for reforms to 2007. That was the year that Texas – one of the nation’s top jailers per capita - passed a sweeping sentencing reform package. While legislators faced an outsized long-term appropriations forecast from the state’s prison system, Texas was having a strong budget year in 2007 that allowed the Legislature to hike spending by 10 percent over the previous year.⁶⁷ It might be argued that policy makers are responding less to recession than to the sharp uptick in corrections costs in recent years. However, similar spikes were registered in the early 1990s with no similar response. Finally, Marie Gottschalk points out that both history and theory suggest economic downturns can be associated with significant growth

⁶⁴ Ryan S. King and Marc Mauer, *The Sentencing Project*, “State Sentencing and Corrections Policy in an Era of Fiscal Restraint,” (Washington, D.C., February 2002) <http://www.sentencingproject.org/doc/publications/inc_statesentencingpolicy.pdf>; King, “Changing Direction? State Sentencing Reforms, 2004 – 2006,” (Washington, D.C., March 2007) <<http://www.sentencingproject.org/doc/publications/sentencingreformforweb.pdf>>; Center on Juvenile and Criminal Justice, “Cutting Correctly: New Prison Policies for Times of Fiscal Crisis,” (San Francisco, 2001) <http://www.cjci.org/files/cut_cor.pdf>.

⁶⁵ The Pew Center on the States, “Right-Sizing Prisons: Business Leaders Make the Case for Corrections Reform,” (Washington, January 2010) <http://www.pewcenteronthestates.org/report_detail.aspx?id=56721>.

⁶⁶ Pew, *Prison Count 2010*.

⁶⁷ Christy Hoppe, “Extra \$1.5 Billion Not Exactly a Surplus: Texas Legislators Earmarked Much of the Increased Funds,” *The Dallas Morning News*, 10 Oct. 2007, pg. 3A.

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of the correctional apparatus, rather than the opposite.⁶⁸ The real question, then, is not how budget pressures overwhelmed the carceral state, but how the carceral state was reframed to be evaluated in terms of cost and efficacy.

The punitive framing had been self-replicating: its initial success led subsequent politicians and policy advocates to adopt similar language.⁶⁹ But a decline in the political salience of crime over the past 15 years has slowed this self-replicating dynamic. That has created room for alternative perspectives to break through. Three structural changes combined to move crime out of the headlines.

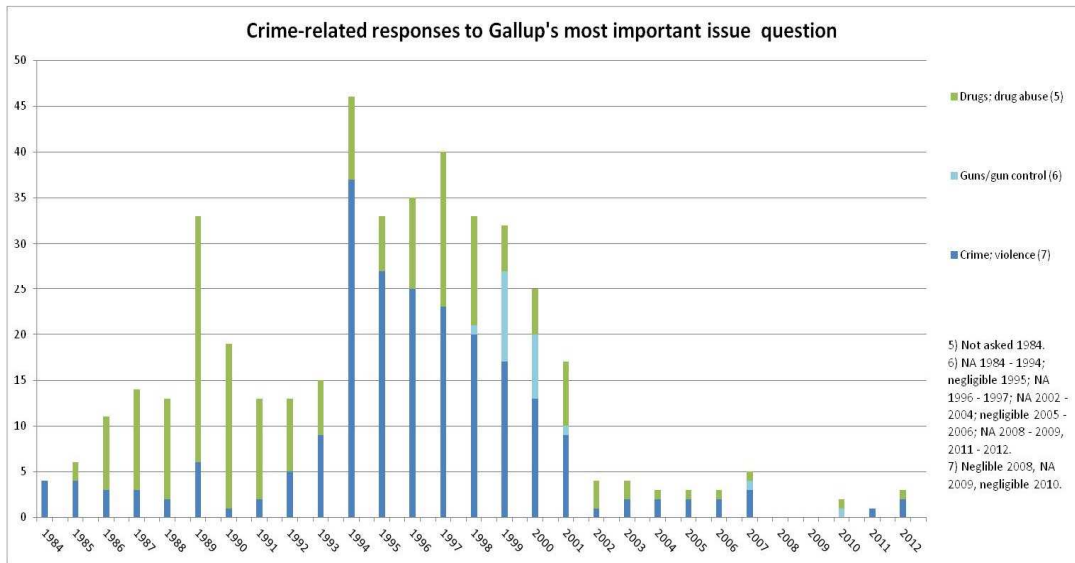
First, rates of violent crime began to decline steeply in the mid-1990s. Many scholars have stressed that fear of crime is at best loosely related to the actual risk of victimization. However, as underlying crime rates drop, we should expect some of the key mechanisms by which crime fears are primed to lose power. Media, particularly local news channels, should see a shrinking pool of potential crime stories; word-of-mouth accounts of actual victimization should become less frequent; and the pool of victims to be recruited into high-wattage victims' movements should shrink. Perhaps most importantly, declines in violent crime provide incumbents with strong defenses against charges they are failing to protect the public, draining the issue of political power. Indeed, the crime fall appears to have begun registering with the mass public by the latter years of the 1990s, as smaller proportions of Americans began identifying crime-related problems as the nation's most pressing issue in Gallup surveys.

Figure 4

⁶⁸ Marie Gottschalk, "Cell Blocks and Red Ink," in "The Challenges of Mass Incarceration," special issue, *Daedalus* 139, no. 3 (Summer 2010).

⁶⁹ Beckett, *Making Crime Pay*; Gottschalk, *The Prison and the Gallows* (Cambridge University Press, 2007); Murakawa, *The First Civil Right: Racial Proceduralism and the Construction of Carceral America*.

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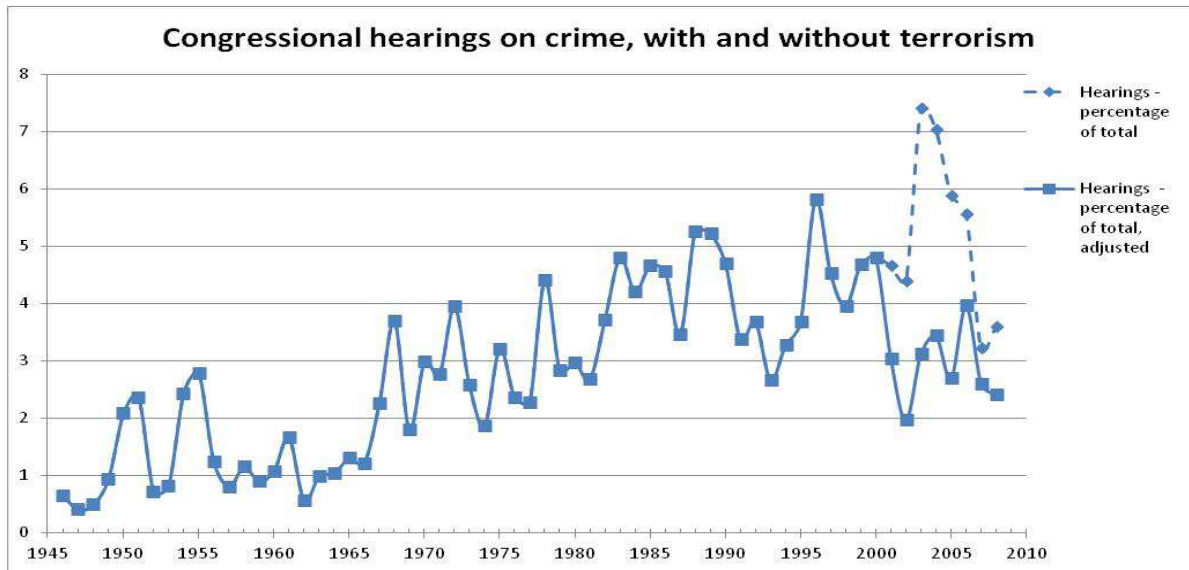


Source: Policy Agendas Project

Second, Democrats campaigned aggressively during the 1990s to build their tough-on-crime credentials. David Holian shows that Clinton adopted “Yes, but” reply to the GOP, accepting key premises of the Republican platform but adding the new angle of prevention through expanded policing and gun control. Clinton talked more about both of these dimensions of crime than most of his Republican predecessors. The effects were impressive: In 1996, more voters said they trusted Clinton to handle crime than Bob Dole, his Republican rival.⁷⁰ The highly visible “tough-on-crime” campaign by the president and many other Democrats may have convinced Republicans that their advantage on the issue had diminished and was no longer worth pursuing. Data from the Policy Agendas Project shows that across the political system, attention to crime dropped sharply after the mid-1990s. Congressional hearings, for example, peaked in 1996 and plummeted by 2002 (Figure 5).

⁷⁰ Holian, “Stealing My Issues.”

Figure 5



Only hearings in sub-category 1201 relating to terrorism were removed.

Third, this decline in attention to crime appears to have been reinforced by the intrusion of a new domestic-security issue: terrorism. After the attacks of Sept. 11, 2001, counter-terrorism dominated public discussion of law enforcement. Politicians who at another time might have been inclined to focus on more pedestrian cops-and-robbers issues were now forced to address the new threat, limiting their capacity to take up the traditional law-and-order cause.

As early as 2001, the combination of these political changes with recessionary budget pressure began to show effects, as numerous states launched modest experiments to slow the growth of their prison systems. However, a fourth structural change provided a crucial impetus for the reframing of crime in terms of efficiency and cost: generational replacement in the conservative movement. The 2000s saw the rise of a new cohort of conservative politicians more devoted than ever to anti-statism and fiscal austerity. This

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change has registered most obviously in the “asymmetric polarization” in which Republicans’ rightward drift has driven a widening of the partisan divide in Washington. As a result, conservatives have redoubled their drive for state retrenchment or extended it to new policy areas, including Social Security, Medicare – and crime. Generational change is important in a second sense as well. Newer politicians did not spend their formative political years in the “tough-on-crime” era. They are unlikely to have experienced as vividly as their older peers the fear of being labeled soft, and thus are open to new policy directions. In fact, most have probably thought very little about crime at all. As one Congressional aide working on the issue put it recently, “The main response from Republicans is ... ‘This is all new to me.’”⁷¹

(IV)

Network-building in Washington

The organization that would do the most to capitalize on these opportunities was ironically founded by a former protégé of Richard Nixon, the crime-warrior par excellence. Charles Colson went to prison in 197X for Watergate-related crimes. Behind bars, he experienced a religious transformation, and upon his release he founded Prison Fellowship, an evangelical ministry dedicated to prison inmates. Over the years, Colson became a superstar in evangelical circles, thanks to his unstinting ministry work and the example it set for personal redemption. He also popularized the cause of prison ministry, with the effect that many rank-and-file evangelicals became directly exposed to inmates

⁷¹ David Dagan and Steven M. Teles, “Congress Is Poised to Bury ‘Tough-on-Crime.’,” *The Washington Monthly - Ten Miles Square*, September 17, 2013, http://www.washingtonmonthly.com/ten-miles-square/2013/09/congress_is_poised_to_bury_tou046918.php.

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and their stories. Tony Perkins, president of the evangelical Family Research Council, put it: “As more and more churches are involved in prison ministries, they begin the process of re-humanizing the criminal. It’s an educational process.”⁷²

Over the last decade, Prison Fellowship has reframed criminal-justice policy as a major evangelical concern by leveraging the sympathy Colson built for prisoners into political action. A resulting series of legislative victories in Washington have created the sense that evangelicals have an “ownership stake” in the issue. In a complementary effort, Prison Fellowship developed a network of prominent conservatives – including many non-evangelicals – who have put their names behind an ongoing, national campaign for prison reform. The reputations of the evangelical movement writ large and of numerous individual right-wing stars have thus been deployed to argue that attention to prison problems is consistent with conservative ideology. Prison Fellowship achieved these advances by choosing issues strategically, by leveraging its own formidable reputation, and most of all, by exploiting its leaders’ long-standing personal relationships with Washington power brokers.

The political campaign was directed by Pat Nolan, a former Republican leader in the California State Assembly and a veteran of Young Americans for Freedom with a strong network in the conservative movement. He joined Prison Fellowship directly after completing a prison sentence growing out of an FBI corruption sting. Nolan’s first breakthrough came after Senator Harry Reid (D-NV) introduced legislation in 1995 that would have curtailed religious-freedom lawsuits prison inmates could bring against wardens under a 1993 law known as the Religious Freedom Restoration Act, or RFRA. Prison Fellowship mobilized against the clause and won the support of Senators John

⁷² Tony Perkins, interview by David Dagan and Steven M. Teles, July 12, 2012.

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Ashcroft (R-MS) and Dan Coats (R-IN). Ashcroft hosted a breakfast meeting attended by about a dozen senators whom Nolan described as “really hardcore conservatives.” The issue was to come up in Congress again several years later when the Supreme Court struck down most of RFRA, prompting a movement to restore the protections of the law. Prison Fellowship was able to rally religious organizations such as the National Association of Evangelicals and Southern Baptist Convention to its cause.⁷³ Many of these organizations also gave their support to Prison Fellowship’s next project, legislation that aimed to reduce incidents of rape in American jails and prisons. The bill that would become known as the Prison Rape Elimination Act was actually the brainchild of the veteran conservative activist and Reagan administration official Michael Horowitz, who saw it as part of his “Wilberforce Agenda” to rally religious conservatives around clear-cut moral causes that undermine perceptions that they are uncaring and focused only on issues of sexual morality.⁷⁴ Prison Fellowship played a prominent role in what became a prolonged fight for the anti-rape legislation, which ultimately passed both houses of Congress unanimously, over the deep reservations of the Bush Justice Department.

Prison Fellowship ventured further away from clear-cut moral causes when between 2004 and 2008 it cooperated with George Soros’ Open Society Institute to tackle the issue of prisoner reentry by promoting legislation known as the Second Chance Act. Despite the new terrain, Prison Fellowship’s religious allies agreed to support the effort. Nolan attributes that support both to Prison Fellowship’s approach with the prior pieces

⁷³ Nolan. Phone interview with David Dagan. Baltimore, Aug. 6, 2012.

⁷⁴ Michael Horowitz. Personal interview with authors. Washington, D.C., June 19, 2012.

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of legislation and to its connections: “(Religious groups) trusted Prison Fellowship. They knew we wouldn’t come to them with some scheme that undercut their values.”⁷⁵

Years prior, Prison Fellowship had made a strong impression on key administration figures who turned out to play instrumental roles in the Second Chance Act. Michael Gerson, George W. Bush’s top speechwriter, had previously worked at Prison Fellowship. It was Gerson who reportedly lobbied Bush to include an endorsement of reentry legislation in his 2004 State of the Union speech – an unexpected reference that rapidly accelerated the effort. It surely helped that as Texas governor, Bush had visited a Prison Fellowship program and come away deeply impressed. A convicted murderer whom Bush met on that visit stood behind the president as he signed the Second Chance Act.

By the mid-2000s, Prison Fellowship was a major player in the Washington policy community dealing with incarceration, having proven its ability to steer the halls of Congress and muster supporting coalitions. In retrospect, it appears as though the organization had chosen issues in a highly strategic fashion, beginning with campaigns designed to appeal to evangelicals before broaching broader systemic questions, and picking causes that had enough momentum to succeed. As Nolan said,

The first two issues really ... had a very strong moral component to them. So you can understand why the Baptists would support that, and Jim Dobson. The reentry does have that moral component, because we truly believe in redemption ... But it’s a lot more of a secular issue. And yet they stuck with us.⁷⁶

Nolan insists there was no grand strategy planned in advance, and that instead the organization was responding to opportunities. But as Marshall Ganz has shown, such

⁷⁵ Nolan. Phone interview with David Dagan. Baltimore, April 19, 2011.

⁷⁶ Nolan, April 19, 2011 interview.

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opportunism itself requires significant organizational capacity, including creativity and relationships.⁷⁷

Even more significant than Prison Fellowship’s lobbying on the Hill was its ability to bring together leaders from various streams of conservatism to engage in an ongoing conversation about criminal justice. Around the time that Nolan was working on the Second Chance Act, Prison Fellowship also convened an informal working group of top conservatives interested in prison issues that held irregular lunch meetings. The members included people Nolan had known for decades, such as American Conservative Union leader David Keene; direct-mail pioneer Richard Viguerie. Also included were author and commentator Tony Blankley, Federalist Society President Eugene Meyer, and Brian Walsh of the Heritage Foundation. Nolan recalls, “We began talking about how (to build) a conservative case for reforms. So they did a lot, in that first stage, of just sort of coaching me how to position what we were doing.”⁷⁸ The group also brainstormed policy ideas – for example, reducing the number of federal crimes by adopting an all-or-nothing approach modeled on the Base Realignment and Closure Commission. Above all, the network allowed the leaders from different streams of conservatism to feel they were working cooperatively on the issue and to develop a joint language for discussing it. As Nolan put it: “Language is important, and there were certain things that religious people were saying that set off alarm bells with fiscal conservatives and vice versa. And so part of it is, we had to help each of them discover their shared goals.” An example is that it was ineffective to tell fiscal conservatives that “investment” was necessary in alternative services. For too many of the libertarians Nolan was reaching out to, that was a “phony”

⁷⁷ Marshall Ganz, *Why David Sometimes Wins: Leadership, Organization, and Strategy in the California Farm Worker Movement* (Oxford; Toronto: Oxford University Press, 2010).

⁷⁸ Nolan, April 19, 2011 interview.

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word for spending. Instead, he now puts it differently: “How do we get the most public safety for the least public dollars?”⁷⁹

The years of building legislative coalitions and informal consultation with leaders across the conservative spectrum positioned Prison Fellowship to play a critical role in spreading new ideas about mass incarceration. But despite all the progress Nolan had made in Washington, the crucial impetus would come from the states.

(V)

The Texas opportunity

Texas is widely regarded as the national champion of hard-line criminal justice. The Lone Star State executes more people than any other; its incarceration rates were until recently second in the nation (after Louisiana); and it was home to the biggest prison-conditions lawsuit in American history – a 30-year ordeal in which a federal court dragged the entire state corrections system through reform.⁸⁰ In short, Texas is hardly known for coddling criminals.⁸¹ But in an odd twist, Texas has become the poster child for criminal justice reform after approving a criminal-justice overhaul in 2007 that vaporized what had been a projected influx of 17,700 additional prisoners over five years. The immediate result was to prevent the construction of three new prisons at a cost of up to \$500 million in a single budget cycle.⁸²

⁷⁹ Nolan, Pat. Telephone interview with David Dagan. Baltimore, May 30, 2012.

⁸⁰ *Ruiz v. Estelle*, 503 F.Supp. 1265 (S.D.Tex.1980), rev'd in part, 679 F.2d 1115 (5th Cir.1982), modified in part, 688 F.2d 266 (5th Cir.1982), cert. denied, 460 U.S. 1042, 103 S.Ct. 1438, 75 L.Ed.2d 795 (1983).

⁸¹ As suggested by a recent history of its prisons titled *Texas Tough*. Robert Perkinson, *Texas Tough: The Rise of America's Prison Empire* (New York: Metropolitan Books, 2010).

⁸² Justice Center. “Justice Reinvestment State Brief: Texas.” Council of State Governments, Oct. 2007. <<http://www.justicereinvestment.org/states/texas/pubmaps-tx>>.

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In keeping with their reputation, Texas policy makers initially appeared highly resistant to signs their prison policy was in trouble. When a state agency charged with monitoring the prisons protested cuts to services in 2003, Gov. Rick Perry eliminated its funding.⁸³ On the other hand, Texas did have a number of mechanisms for negative feedback that were hard to ignore. One was the Texas Sunset Commission, a type of auditor that periodically reviews every state agency, ostensibly to determine whether it should be eliminated. More important were the state's statutorily enshrined limits on prison overcrowding – a legacy of the federal prison-conditions litigation. The law requires Texas to begin releasing inmates when prisons go over capacity. As a result, when forecasts indicate overcrowding, they get noticed, as the chairman of the prison system's governing board argued in 2000: "Anytime you invoke anything, like martial law or the (anti-overcrowding) prison act, it creates the perception of a crisis - and perception is as much of it as anything."⁸⁴ Before the crisis point of releasing prisoners was reached, Texas could resort to a number of escape valves: the Parole Board could discreetly increase its rate of parole grants, state offenders could be backlogged in county jails, and the Texas Department of Criminal Justice could lease private facilities. There were limits to all of these measures, however.

After a 1990s prison-building spree supervised by then-Gov. Ann Richards, a Democrat, the state's lockups began approaching capacity once more in the mid-2000s. Around the same time, the powerful Republican Speaker of the Texas House, Tom Craddick, threw his weight behind the cause of prison reform. Craddick assigned Republican Representative Jerry Madden to the House Corrections Committee with

⁸³ Lucius Lomax, "Who Fired Tony Fabelo?" *Austin Chronicle*, April 30, 2004,

<http://www.austinchronicle.com/news/2004-04-30/208428/> (accessed May 30, 2012).

⁸⁴ Mike Ward, "State's prisons pushing capacity," *Austin American Statesman*, Aug 25, 2000: A1.

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instructions not to build more prisons (“They cost too much,” Madden recalls Craddick telling him) and Madden ran with those orders.⁸⁵

The Plano Republican teamed up with a Senate Democrat, John Whitmire, whose credentials in the crime department include more than a decade of experience, and having suffered a gunpoint robbery in his garage.⁸⁶ Faced with an overcrowding problem in 2005, Madden and Whitmire pushed through a reform package that increased funding to programs that divert offenders from prison and would have reformed the probation system. Large parts of the package were gutted by vetoes from Perry, however.⁸⁷ The prison system limped along on stopgap measures until 2007, when the Legislature reconvened and another crowding forecast clouded the session. To keep up with the growth, the Texas Department of Criminal Justice entered the session asking for three new prisons and – perhaps as a diplomatic gesture – a significant bump in diversion funding.

The problem facing legislators in 2007 was not new, but the context was changed in a way that may have been significant. In 2006 the Sunset Commission had issued a review of TDCJ that harshly criticized the department’s management of rehabilitation programs and especially the parole system.⁸⁸ At the same time, the prison-guard union was protesting against new prisons as a chronic staffing shortage reached new heights. This time around, Perry acceded to a relatively ambitious reform package. According to Madden, he and Whitmire brought the governor around in a high-stakes meeting on the

⁸⁵ Madden, Jerry. Telephone interview with David Dagan. Baltimore, March 5, 2012. Plano, Texas, which Madden represents, is quite conservative, having voted 63-37 for John McCain in 2008, and 71-28 for George W. Bush in 2004.

⁸⁶ Whitmire, John. Phone interview with David Dagan. Baltimore, March 8, 2012.

⁸⁷ House Research Organization, “Vetoes of Legislation: 79th Legislature” (Texas House of Representatives: July 29, 2005) <http://www.hro.house.state.tx.us/vetoes.aspx>, accessed May 30, 2012.

⁸⁸ Sunset Advisory Commission, “Texas Department of Criminal Justice, Board of Pardons and Paroles, Correctional Managed Health Care Committee: Staff Report,” Oct. 2006.

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eve of his annual State of the State speech. The most serious opposition appears to have come from Senate President David Dewhurst, a Republican who was gearing up for a bid for higher office. According to Whitmire, Dewhurst insisted on a logroll in which the diversion funding was only approved if appropriators also awarded TDCJ enough money to build the new prisons if necessary.⁸⁹

This about-face in prison policy took place in a political context radically different from that which prevailed through the 1990s. Craddick's ascension to the Speaker's post in 2003 marked the first time in a century that Republicans had taken control of the Texas House and sealed the party's hegemonic position in state politics. The incentives to pursue "tough-on-crime" politics for electoral purposes may have shrunk correspondingly. With the Republicans securely in the political saddle for years to come, therefore, the electoral value of the crime issue has declined and previously submerged questions of conservative governance have come to the fore.

Even more important for our story than how these reforms happened is the simple—and as it turns out, highly symbolic—fact *that* Texas passed legislation explicitly designed to stem the growth of its prisons. Given the state's reputation for generally emphasizing the "force" in law enforcement, this would prove to be an explosive development. As Adam Gelb of the Pew Public Safety Performance Project put it: People think if Texas does something, by definition it's not going to be soft. There's just this instant, deep credibility on the crime issue for Texas. So when Texas shifts dollars and low-risk offenders from prison to alternatives, other states take keen notice.⁹⁰

⁸⁹ Whitmire, March 8, 2012 interview.

⁹⁰ Adam Gelb, personal communication, June 4, 2012.

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The new wind in Texas signaled that the appropriate position for a hard-core conservative in criminal justice was becoming destabilized. As we will show, the Texas reform battle also created a cadre of conservative reformers with a good yarn - and the motivation and means to tell it.

(VI)

Joining forces

These developments set the stage for the third phase of debiasing. Convinced that Texas had accomplished something significant, policy advocates from the Lone Star State began proselytizing for reform in other states. They focused their pitch particularly on two organizations that wield great clout in the conservative movement: the State Policy Network and the American Legislative Exchange Council. In both cases, their message was amplified by the intercession of Pat Nolan and his network of Washington supporters.

The Texas Public Policy Foundation (TPPF) plays a critical role in the network of conservative state think tanks, with a budget and number of staff that rival many of their brethren in Washington. In 2005, it created a position for a criminal-justice expert at the urging of Tim Dunn, a wealthy Texas evangelical and generous conservative donor. Dunn, who is vice chair of TPPF, offered the initial funding for the position.⁹¹ TPPF is a member of the State Policy Network, an alliance of conservative state-level think tanks with generally libertarian leanings founded in 1992. It is common for member

⁹¹ Tim Dunn, "Criminal Justice Reform," Tim Dunn, <http://www.timdunn.org/criminal-justice-reform-1> (accessed May 30, 2012); Patricia Kilday Hart, "Lawmakers in Lockstep on Juvenile-Justice Bills; Left and Right Embrace the Policy of Rehabilitation Over Incarceration," *Houston Chronicle*, May 22, 2011.

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organizations to specialize in different niches and share their work with one another. This specialization means that if one of the SPN think tanks devotes substantial resources to developing a position on a particular policy, it can quickly become the de facto position of the rest of the network. As the only SPN think tank that had a full-time staffer working on criminal justice, TPPF soon found itself besieged with requests for information about criminal-justice reform, and its positions increasingly were adopted by other SPN members. Eventually, the think tank decided to seize on the momentum by giving its diffusion campaign a mission statement, a website, and a catchy name - Right on Crime. When Nolan became aware of Right on Crime, he called TPPF to offer his support. With a few phone calls to his informal working group and other associates, Nolan had lined up a star-studded cast of supporters willing to lend their names to the campaign, including members of his informal working group as well as Newt Gingrich, Jeb Bush, former Reagan Attorney General Edwin Meese III, former “drug czar” William Bennett, and former Drug Enforcement Administration director Asa Hutchison. The fact that some of these leaders—Meese and Bennett in particular—were central figures in the expansion of the carceral state makes them, perhaps ironically, especially effective in persuading conservatives to take a second look at mass incarceration. As of October 2013, the Right on Crime “Statement of Principles” had over 60 signatories.

Nolan also played a key role in swinging ALEC, which long held an orthodox conservative position on criminal justice, to the reformist side. ALEC distributes model bills that are developed by passing through legislative-style committees, with state legislators and private-sector representatives weighing in. By virtue of his role at Prison Fellowship, Nolan was invited to join the ALEC committee with jurisdiction over crime.

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From that perch, he persuaded the organization to endorse the Second Chance Act. In 2007, ALEC hired Michael Hough, a former Maryland legislative aide who knew Nolan and viewed him as a mentor. After Texas passed its 2007 reforms, Jerry Madden began promoting his ideas within the organization, teaming up with Nolan on presentations to legislators. Eventually, Hough, Madden and Nolan decided to launch a special subcommittee focused on expanding alternatives to incarceration.⁹² A series of model bills followed, lending ALEC's official approval to the reform movement. Notably, Hough said much of the legislation was modeled on proposals from the Pew Public Safety Performance Project, an initiative founded in late 2005 to provide advice and policy analysis to state officials pursuing criminal-justice reform. Hough and Nolan both said there was little pushback to the new ideas from legislators, and virtually none from the private-sector members, even though Corrections Corporation of America has since rescinded its membership in the organization.⁹³ The proposals were a perfect fit for an era of prison crowding and budget deficits, Hough said. Moreover, the legislators who serve on ALEC committees specialize in the relevant policy areas back home, so Nolan and Madden were addressing a group with intimate knowledge of the problems afflicting criminal-justice policy.⁹⁴

The effect of all these developments was to have organizations – not just people – with unimpeachable conservative credentials calling for a reconsideration of criminal-justice policy. Nolan has put this in explicitly political terms: The purpose of Right on Crime, he said, is to show conservatives that sentencing reform is ideologically sound

⁹² Michael Hough. Phone interview with authors. Baltimore, July 11, 2012; Nolan, Aug. 6, 2012 interview.

⁹³ American Legislative Exchange Council, "ALEC response to Krugman's erroneous claims – 3/27/12," <<http://www.alec.org/2012/03/alec-response-krugman%E2%80%99s-erroneous-claims/>>. Accessed Aug. 6, 2012.

⁹⁴ Hough, July 11, 2012, interview.

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and to give them political cover.⁹⁵ Almost overnight, the Right on Crime agenda has become something very close to the official, appropriate conservative position.

(VII)

Reform takes off

The new conservative critique asserts that prisons and police are just as much a part of government as any other agency, and hence their growth should be viewed with the same skepticism that any other kind of state expansion prompts. In Pennsylvania, for example conservative activist Matthew Brouillette co-authored an op-ed arguing that “unprecedented prison population growth was not caused by an increase in crime, but by a bureaucratic breakdown in our criminal justice system.”⁹⁶ At a policy briefing headlined “The Last Sacred Cow,” Norquist told the 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.”⁹⁷ When combined with the moralistic framing of evangelicals, the public choice critique provides a powerful, indigenous foundation for rethinking mass incarceration.

Numerous states passed reforms to limit the growth of their prison systems between 2000 and 2007, but the trend has accelerated rapidly in the last five years. As

⁹⁵ Nolan, June 9, 2011, interview.

⁹⁶ Matthew J. Brouillette and George M. Leader, *Commonsense Can Correct Corrections* (Harrisburg, PA: Real Corrections Reform, Right Now, 2012), <http://www.commonwealthfoundation.org/research/detail/commonsense-can-correct-corrections> (accessed May 30, 2012).

⁹⁷ *Last Sacred Cow Briefing: Grover Norquist, Americans for Tax Reform*, 2011, http://www.youtube.com/watch?v=HWuhGR0TR80&feature=youtube_gdata_player.

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Figure 6 (attached at the end of the paper) shows, reforms have grown more widespread and more ambitious. The evidence suggests that Right on Crime has played a significant role in this acceleration. Right on Crime spokespeople or SPN affiliates have been vocal in many of the state reform campaigns. In a sign of the campaign's growing ideological clout, Texas Senator John Cornyn invited TPPF to write a paper on federal criminal-justice reforms in 2013, and Levin was later asked to testify at a Senate hearing.

At times, the effect of Right on Crime has simply been to provide political cover for politicians who were already interested in reform for ideological or political reasons. For example, Rick Scott invoked Right on Crime when he was attacked for pledging to reform Florida prisons during his campaign for the state's governorship. Scott's actual commitment to Right on Crime's ideas appears to have been limited, however, as he has favored prison privatization – an issue Right on Crime does not address - over measures to reduce Florida's actual level of incarceration. Elsewhere, though, Right on Crime has served as the gateway for conservative politicians to become ideologically wedded to prison reform. For example, John Kasich got in touch with TPPF during his Ohio gubernatorial campaign, claiming to have read the Right on Crime materials and asking for recommendations specific his state. After Kasich's election, TPPF partnered with its SPN affiliate in Ohio to back Kasich's reform campaign by lobbying state legislators; in 2011, Ohio passed legislation diverting low-level, nonviolent offenders from prison to rehabilitation centers; establishing earned credits for early release; reducing sentences for low-level offenses; and expanding judicial discretion in juvenile sentencing.

However, the distinction between political cover and ideological conversion is becoming difficult to draw as the conservative reform network increasingly inserts itself

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into the criminal-justice debate. As the public-choice critique described above becomes a standard discourse, politicians un-self-consciously come to accept it as the conservative position, rather than deliberating policy merits and making calculations about cover. This effect is illustrated by the development of a common language. In our interviews, the same phrases turned up again and again: Conservative leadership on criminal justice reform is “like Nixon going to China.” Police officers and prison wardens are just “bureaucrats with guns.” Prisons are like Kevin Costner’s *Field of Dreams*: “If you build it, they will come.” In Georgia, a news article critically noted that several politicians had used another line we have heard frequently in interviews: “We should be locking up the people we’re afraid of, not the people we’re mad at.” The story alleged that the politicians had swiped this slogan from an ALEC presentation.⁹⁸ But the truth is that it has become so embedded, it’s probably impossible to trace where an individual reformer first heard it. The repetitive quality of these phrases is a strong indication of an increasingly self-conscious and coordinated movement, capable of generating its own standard discourse and clichés (in much the same way that the coordination of education reformers can be seen in the regular way in which they use phrases like “education is the civil rights issue of our time” or “schools should be about the kids and not the grown-ups.”)

As a result, the 40-year trend of prison growth may be turning around. The total number of people held in state prisons declined in 2009 for the first time in 40 years.⁹⁹

⁹⁸ Walter C. Jones, “Ga. Leaders Depend on the Same Well for Ideas,” *Savannah Morning News*, October 8, 2012, sec. GEORGIA, <http://search.proquest.com/newsstand/docview/1111690775/14155DE87EC1BF8EF19/1?accountid=11752>.

⁹⁹ *Prison Count 2010* (Pew Center on the States, 2010), http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/sentencing_and_corrections/Prison_Count_2010.pdf (accessed May 30, 2012).

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Local jails, which incarcerate roughly a third of inmates, have registered population declines since 2009. The causes of these declines are complex, but it is likely that changes in state policy play a significant role at the state and local level.¹⁰⁰

(VIII) Conclusion

Negative feedback does not apply itself. Rather, it occurs on a continuum of pre-construction. Where problem framings and indicators of failure are anchored in formal institutions and shared understandings, policy makers will recognize and adjust to negative feedback without extensive efforts to focus their attention. When feedback is not preconstructed, however, entrepreneurs hoping to argue that there is a “problem” with existing policy face a much stiffer challenge. Drawing attention to negative policy consequences becomes a process of persuasion, in many cases one that requires overcoming powerful cognitive, organizational and political obstacles.

Overcoming the challenges of processing negative feedback is not, under polarized political conditions, a technical process of accumulating more information, or one driven by persuading the “sensible center” of policymakers or the public. Instead, in highly charged political domains it is a process that occurs within the political movement seen to “own” a policy legacy, and is a function of shifts in the electoral environment and intra-movement strategizing. Where policy makers have wired a policy position into their electoral strategies and developed party and ideological identities around it, they will tend to ignore or dismiss evidence of policy dysfunction. Even after the movement’s electoral

¹⁰⁰ Pew, *Prison Count*.

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stakes in a policy decline, it remains difficult for movement identifiers to recognize negative feedback because of lingering cultural attachments to the old regime. Success in this endeavor requires a network that can persuade highly visible movement members to engage in “identity vouching:” proclaiming that the new perspective is consistent with movement values. This persuasion is an incremental process that depends on relationships and learning. It also requires the development of a language that allows leaders to claim they are applying movement principles in a new way—that the new position is dictated by first principles, and not moderation—and without appearing to admit that a previous position was outright wrong.

The process we are describing is different than policy framing, the study of which comes out of behavioral approaches to politics and is oriented to mass opinion. Identity vouching is aimed primarily at movement activists and leaders, rather than the mass public, and the identity of the persuader is as important as the content of the frame being deployed. While one side of the ideological divide may have an interest in the way that those on the other reconstitute policy meaning, they cannot do it for them. Transforming policy meaning works, under conditions of party polarization, only when the change is recognized by core actors as “home grown” rather than an act of moderation or adoption of the other side’s position.

If negative feedback is constructed, the implication is that the same is true of positive feedback. Teasing out the conditions for the construction and institutionalization of positive feedback is indeed an important future line of theorizing. By applying the theory of “cultural cognition” to policy makers, we contribute to the broader project of linking insights from the agendas literature with those of institutional analysis. Our

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findings elaborate on theories of punctuated equilibrium that suggest attention to an issue will spike suddenly before fading again.¹⁰¹ We do not quarrel with this claim in general, but argue that there is much more to the story: often, the problems that policy makers discover during periods of “alarmed discovery”¹⁰² have been carefully and deliberately pre-constructed by entrepreneurs – in many cases, entrepreneurs who consider themselves allies of those same policy makers. The discovery only happens after policymakers have been persuaded that attending to potentially alarming information is not a threat to identity. Once this occurs, it is possible for previously stable policy positions to suddenly shift, as the ideological meaning that once anchored them gives way, followed by a rapid tip to a new equilibrium position. So behaviorally we may still observe something that looks like punctuated equilibrium, but what brings it about may be the result of a very long intra-movement process that long precedes the punctuation.

Our argument has considerable implications for the literature on party position change by stressing the consequences of political success. Having scored a profound coup with its populist “frontlash” on crime, the GOP carved out a multi-decade advantage on the issue, one that Democrats ultimately responded to by converging on the Republican position during the Clinton presidency.¹⁰³ The process that scholars like Naomi Murakawa have shown drove increasingly punitive prison policy thus resembles the process of “strategic pursuit” Kent Weaver analyzed in welfare reform as well (and

¹⁰¹ Jones and Baumgartner, *Politics of Attention*, esp. at 20.

¹⁰² Anthony Downs, “Up and Down With Ecology: The Issue Attention Cycle,” *Public Interest* (Summer 1972): 38-50.

¹⁰³ Weaver, “Frontlash.” It is important to note that the process that led to Democratic shifts on incarceration and welfare is different than what we are describing in this paper. The Democrats shifted grudgingly and largely out of electoral necessity. Few Democrats recognized their new position as dictated by their core principles, but as something required for political survival. Their shift resembles the change in Republican positions around, for example, coverage of prescription drugs in Medicare—a response to electoral weakness—rather than the process of change we describe in this paper, which comes out of electoral strength.

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roughly at the same time). However, at some point this process gets completely played out—positive feedback only goes on so long, something that scholars of the “carceral state” have generally ignored. Once Democrats all moved to the Republican position (and as new issues like terrorism took up the “fear space” in electoral politics), the value of the issue in campaigns disappeared. Once this convergence reduced the political salience of law-and-order politics, contrarian voices within the GOP were able to make themselves heard, drawing on issue dimensions that had been ignored so long as the issue was generating substantial electoral returns for the party.

The final and perhaps most important implication of our argument concerns theories of the policy process. For decades, political scientists, students, activists and funders have been trained to think of the policymaking system in chaotic, uncoordinated, “garbage can” terms, most famously through John Kingdon’s classic book *Agendas, Alternatives and Public Policies*. But Kingdon’s model was based on a political system in the mid- to late 1970s that was very unusual, an era with low party polarization, a weak activist base, and correspondingly low party agenda control in Congress. Coalitions in this era could come from anywhere, and members of Congress and many state legislatures rationally demanded institutional rules that would allow them to enter into whatever coalitions they liked.¹⁰⁴ A radically uncoordinated political system provided the institutional and coalitional conditions that generated garbage can-like outcomes.

To say the least, these conditions no longer exist in the American political system at the national level, and decreasingly at the state level as well. As is well documented, roll-call voting in legislatures has become increasingly polarized over time, and

¹⁰⁴ David Rohde and John Aldrich. “The Logic of Conditional Party Government: Revisiting the Electoral Connection” in Lawrence Dodd and Bruce Oppenheimer, *Congress Reconsidered*, 7th Edition (Washington, DC: CQ Press, 2001).

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institutional control of the political agenda by party leaders has gone up in lockstep.¹⁰⁵

The news media have become increasingly ideological, and likely to reinforce rather than attenuate ideological identities. Organized ideological groups are increasingly effective at using primary elections to police defection from party orthodoxy. The world of expertise has been deeply politicized, to the point where there are few if any sources of knowledge with broad-based authority of the kind that micro-economists and to some degree scientists had in the 1970s. Finally, there is greater penetration of party-ideological networks into the world of interest groups: where in Kingdon's time political scientists were worrying that interest groups presented a challenge to parties, today they are coordinating their action along party lines, with groups encouraged to sign up for one party team or the other.

These changes, taken together, provide a very different set of structural conditions for the policymaking system than in Kingdon's time. The United States is now governed by highly disciplined, quasi-parliamentary parties (especially on the Republican side) whose tentacles reach deep into civil society and cut across all levels of government. That does not mean that the garbage can model is irrelevant, but that whereas for Kingdon it was a generalized metaphor for policy change, today it may be something closer to a special case.

The garbage can, we should recall, is among other things a metaphor for how a system processes information. In this paper we have sought to show how that process occurs in a system in which information processing is increasingly bifurcated along partisan lines—that is, in which it makes more sense to speak of two separate and to

¹⁰⁵ The level of state party polarization varies across states, but as one recent paper has shown, one of the states in which it is the most severe is Texas. <http://www.sppc2011.org/Papers/Birkhead.pdf>.

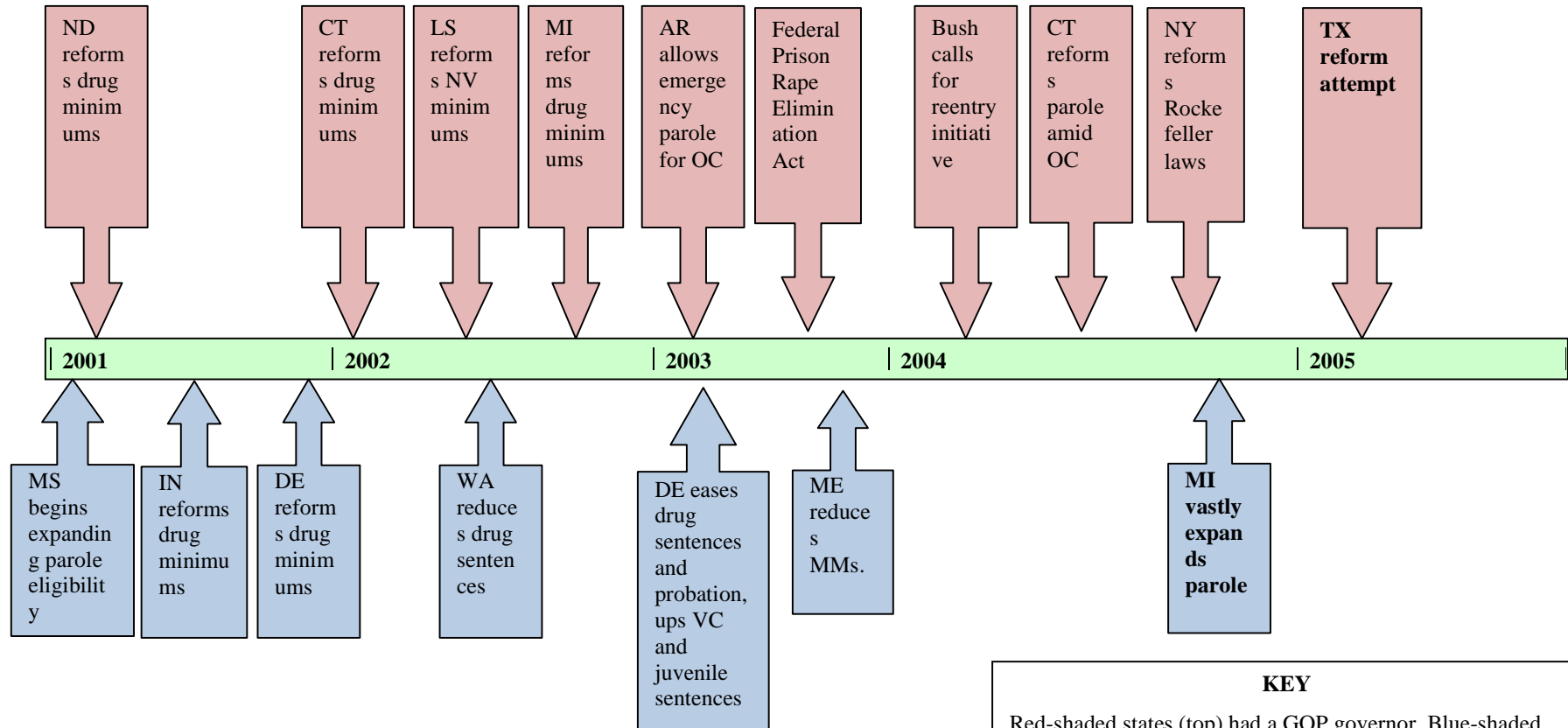
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some degree rival systems for recognizing and classifying information. The emergence of prestigious, consensual bodies of expert knowledge, which was a very important part of the explanations for sudden policy change in areas like deregulation and tax reform, is likely to be much less important in explaining sudden shifts in policy. Instead, processes of “meaning making” within political movements will be more causally important in the future. That is not to say that expertise and the results of policy experiments are irrelevant, but that information generated by these sources can be ignored for a very long time—perhaps indefinitely—if not preceded by a shift in the ideological valence that policies are understood to possess.

So, for example, an enormous pile of expert studies have been generated to show that global warming is real and man-made, but this has not generated policy change because the meaning of controls on greenhouse gases has gone in the opposite direction. It is not the absence of information that explains the lack of policy change, but the failure of efforts to shift the issue’s meaning on the right, for example by linking the issue to terrorism or persuading evangelicals of the need for “creation care.”¹⁰⁶ In a polarized policy environment, therefore, intra-movement meaning precedes information.

¹⁰⁶ A good example of the failure of intra-movement meaning making is the “creation care” initiative’s failure to convince substantial numbers of evangelicals to support anti-global warming measures. Sarah Pulliam, “What Cizik’s Resignation Means for Creation Care,” *Christianity Today*, December 16, 2008, <http://www.christianitytoday.com/ct/2008/decemberweb-only/151-21.0.html>. This shows that, when efforts at movement position change threaten party coalitional integrity—as creation care did—we should expect very strong strategic efforts to push back against it.

Reform timeline: 2000 - 2005



KEY

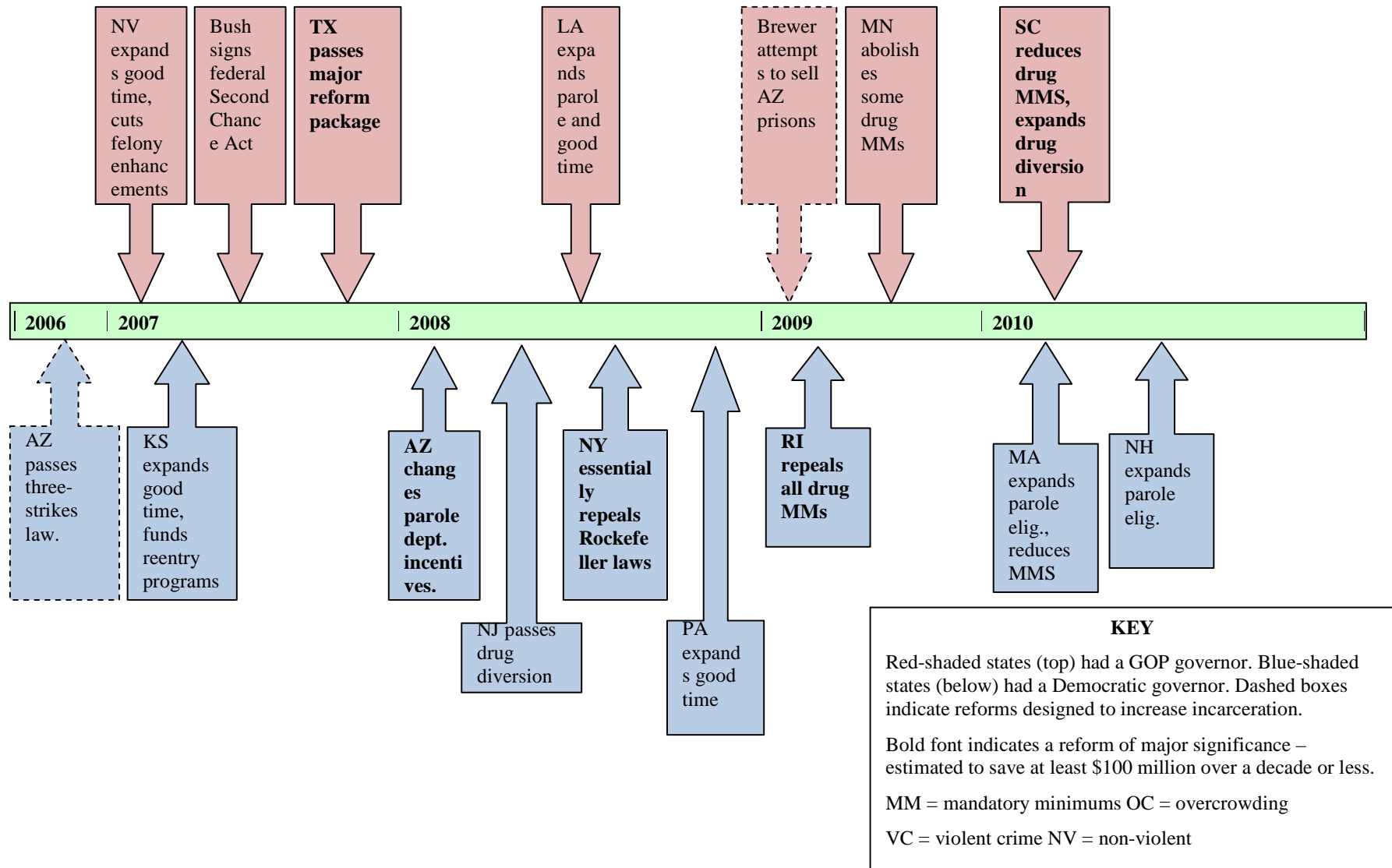
Red-shaded states (top) had a GOP governor. Blue-shaded states (below) had a Democratic governor. Dashed boxes indicate reforms designed to increase incarceration.

Bold font indicates a reform of major significance – estimated to save at least \$100 million over a decade or less.

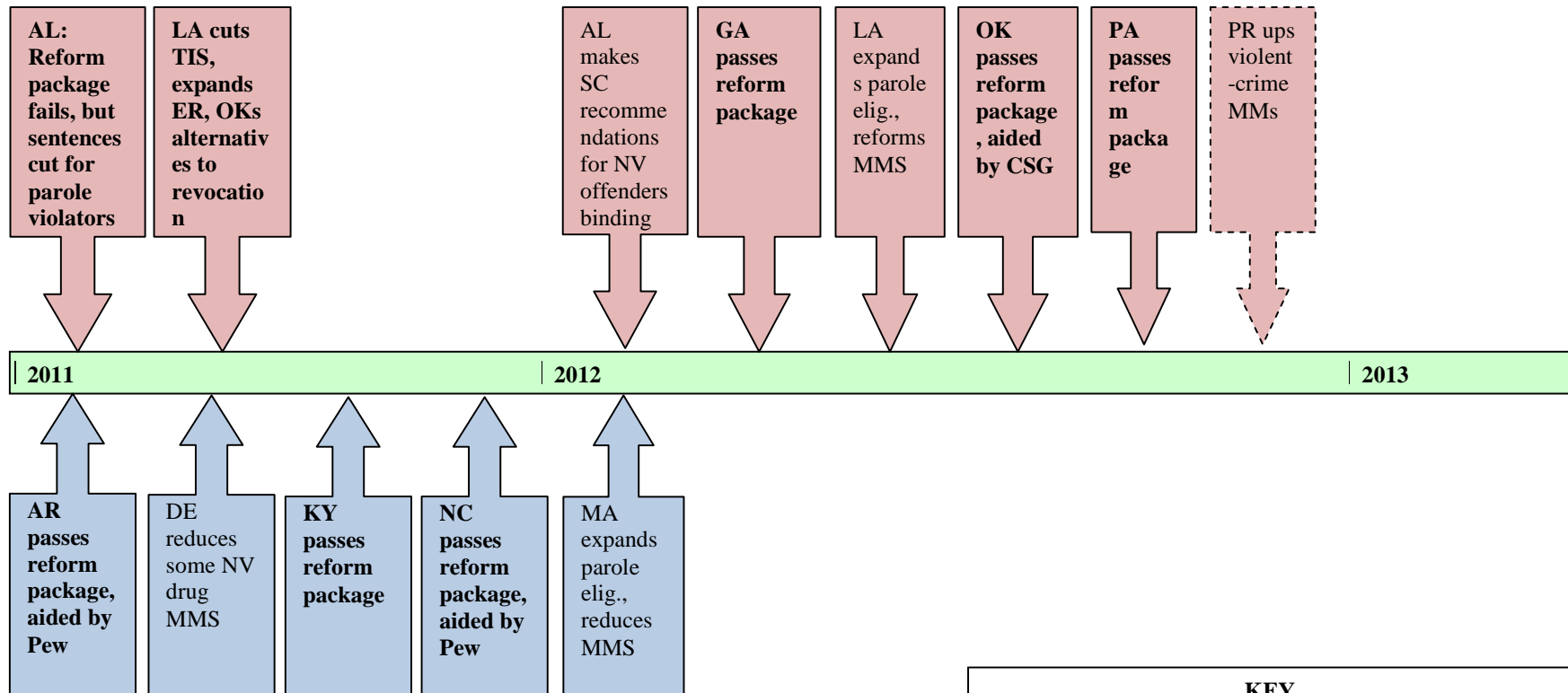
MM = mandatory minimums OC = overcrowding

VC = violent crime NV = non-violent

Reform timeline: 2006 - 2010



Reform timeline: 2011 - 2012



KEY

Red-shaded states (top) had a GOP governor. Blue-shaded states (below) had a Democratic governor. Dashed boxes indicate reforms designed to increase incarceration.

Bold font indicates a reform of major significance – estimated to save at least \$100 million over a decade or less.

MM = mandatory minimums OC = overcrowding
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