

The Evolution of Republican Criminal Justice Policies

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Abstract

This paper provides an overview of the evolution of the Republican Party's stance on criminal justice policies. It follows the history of the conservative party from the era of tough-on-crime to becoming a modern-day driving force behind criminal justice reform. The paper examines the historical context, ideological shifts, and bipartisan developments that have shaped this evolution. It also highlights the financial strain of mass incarceration and influential conservative figures such as Newt Gingrich and Bernard Kerik, who played a crucial role in advocating for policy reforms. Despite partisan divides, there is a growing bipartisan consensus on the necessity of criminal justice reform. The paper emphasizes the Republican Party's current role as an advocate for a more balanced, fair, and effective criminal justice system that aligns with conservative values.

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Introduction

The Republican Party has a long-standing association with strict crime policies, which have defined an era of law and order in American politics. However, as the dust of decades settles, conservative advocates of tough-on-crime find themselves leading a movement for criminal justice reform. Beginning with President Richard Nixon's declaration of the War on Drugs and the Reagan administration's anti-drug crusade, the United States has been led from the land of the free to the land of the incarcerated. Now, the same conservatives who once promoted punitive crime policies are now the architects of reform, challenging traditional beliefs and reshaping the Republican Party's principles. This paper explores this change by examining the policies, ideologies, and bipartisan evolution that have influenced the Republican Party's journey from being devoted to tough-on-crime to advocates of transformative criminal justice reform.

Background

President Richard Nixon

On the historic day of June 17th, 1971, President Richard Nixon delivered a powerful message from the West Wing of the White House. Alongside the newly appointed drug authority, President Richard Nixon declared drug abuse "public enemy number one." He stated, "To fight and defeat this enemy, it's necessary to wage a new, all-out offensive" (Barber, 2016). Any grandiose ceremony or fanfare might not have accompanied the speech, but its impact on the world was enormous. Richard Nixon had just made a declaration of war, one which would be considered the most expensive in American history- the War on Drugs.

President Nixon's claim for the necessity of the War on Drugs was the alarming rise of drug abuse in America. In his 1970s "State of the State" address, Governor Ronald Reagan

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warned of the "increasing problem of drug abuse." That same year, Congress passed the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (Farber, 2021). Nixon strategically aligned the anti-drug campaign with his broader "law and order" agenda, tapping into the public's fears of surging crime rates.

This alignment became a part of a broader shift in the Republican Party's approach to criminal justice policies caused by the escalating crime wave of the 1960s. Previously, "criminal justice" was not a significant issue in public debates until Republicans began to see an opportunity amid social and racial tensions. The turning point came with Barry Goldwater's 1964 presidential campaign, where he used crime as a wedge issue to gain traction in the South. Although Goldwater's campaign was unsuccessful nationally, his strategy helped him carry five Deep South states, signaling to the Republican Party that crime could be a powerful tool in challenging the Democratic Party's grip on the South.

Four years later, Richard Nixon capitalized on this strategy, emphasizing a tough approach to crime in his successful "law-and-order" campaign. In his acceptance speech at the Republican National Convention, Nixon used the words "law" and "order" 21 times, saying that "the nation with the greatest tradition of the rule of law is plagued by unprecedented lawlessness" (Trautman & Rizer 2018, p. 3).

President Ronald Reagan

Following Richard Nixon's declaration of the War on Drugs, President Ronald Reagan expanded the anti-drug crusade. The 1980s saw a rise in the anti-drug rhetoric and policies, while Reagan's War on Drugs aimed not only at addressing the public health concern of drug abuse but also at reinforcing the broader narrative of lawfulness and societal order. Building on Nixon's groundwork, Reagan's administration portrayed drug-related offenses as a threat to the nation's

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stability and security by echoing the "law and order" sentiments that had proven successful in previous campaigns.

During his Address to the Nation on September 14, 1986, Reagan said, "Drugs are menacing our society. They're threatening our values and undercutting our institutions. They're killing our children" (Reagan, 1986). Reagan's strategy capitalized on the perception of drugs as a pervasive force contributing to societal unrest, and by aligning with Nixon's earlier declaration, Reagan continued to tap into public fears, positioning the War on Drugs as essential for restoring order in the face of escalating drug-related issues.

Reagan's administration pursued an assertive approach, characterized by the Comprehensive Crime Control Act of 1984, which expanded federal authority to tackle drug trafficking and implemented stricter penalties for offenses (Pascual, 2021). The Anti-Drug Abuse Act of 1986 was a component of Reagan's strategy as it introduced mandatory minimum sentences for drug offenses while creating disparities between crack and powder cocaine offenses (United States Department of Justice, 1986).

One hallmark of Reagan's anti-drug efforts was the establishment of the Office of National Drug Control Policy (ONDCP) in 1988, which was tasked with coordinating national drug control strategy across federal agencies (Wray, 1993). Internationally, Reagan promoted collaboration to combat the global dimensions of the drug trade by fostering alliances with other nations. The "Just Say No" campaign, led by First Lady Nancy Reagan, became a prominent component of the administration's approach by focusing on preventive education and discouraging drug use among young people.

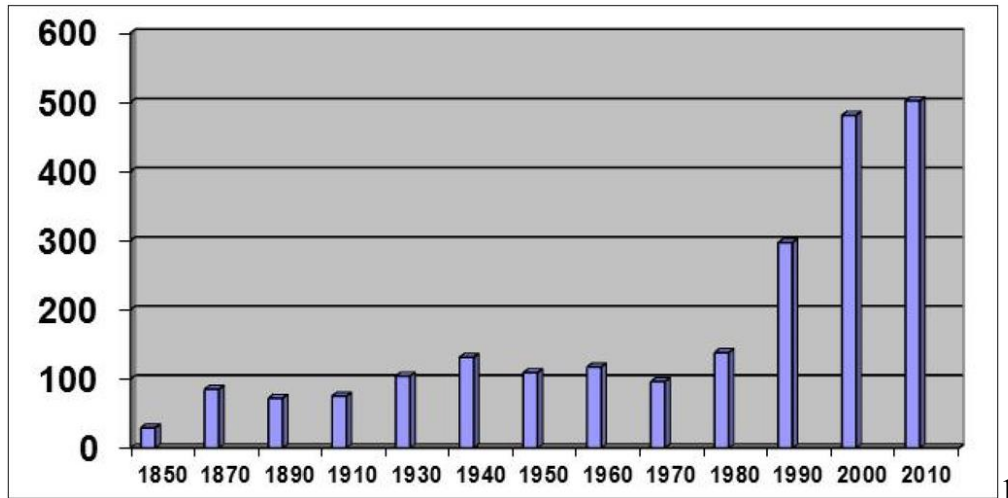
Mass Incarceration

American conservatism spread throughout the country along with the growth of mass incarceration. For decades, Republicans weaved the tough-on-crime rhetoric into their political narrative and criticized liberals for being disconnected elites who indulged criminals (Teles & Dagan, 2016, pp. 32-37). However, by the mid-2000s, states across the nation found themselves grappling with the harsh realities of overcrowded prisons, massive prison costs, and racial disparities within the criminal justice system. The consequences of the tough-on-crime era had become impossible to ignore, and policymakers began to shift their focus toward criminal justice reforms (Percival, 2015).

Consequently, leading the initiatives for slowing the growth of the prison system are conservatives at both the state and the federal levels. In March 2019, at the annual Conservative Political Action Conference, Liberal commentator Van Jones said, "The conservative movement in this country, unfortunately, from my point of view, is now the leader on this issue of reform" (Cummings, 2019) This is a massive turn-around from the 2012 Republican Party Platform which stated, "Liberals do not understand this simple axiom: criminals behind bars cannot harm

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the general public" ("Republican Views on Crime," 2015).



Policy Support and Action

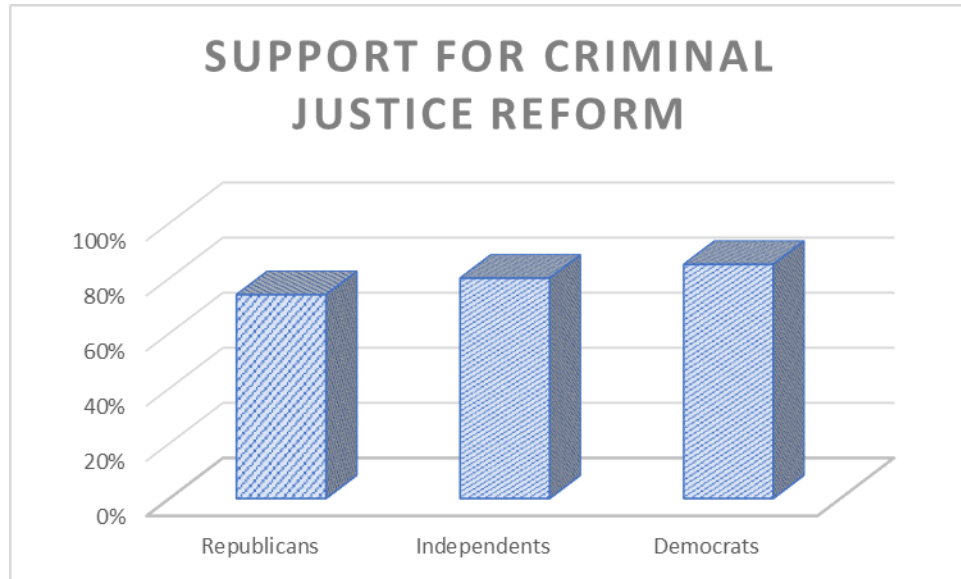
Democrats and Republicans have different views on criminal justice reforms and how to handle mass incarceration within their states. Democratic leaders have attempted to enact policies that address disadvantaged communities since they see crime as a failing of the institution. Republicans, however, tend to view crime as a moral failing and push for more punitive crime laws. Research on public opinion indicates that women are generally less inclined to endorse punitive measures and more supportive of policies addressing societal disparities (Malone, 2018). In contrast, men tend to have a higher likelihood of supporting punitive crime policies, framing crime and punishment as a moral failing of individuals (Appelgate et al., 2002; Hansen & Navarro, 2021).

Criminal Justice Reform

However, there is one thing Republicans, Democrats, and independent voters can agree on: criminal justice reform. According to New National Polling on Support for Criminal Justice Reform (Benenson Strategy Group, 2022), 8 out of 10 voters support reform, including 74% of

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Republicans, 80% of Independents, and 85% of Democrats. Between 2009 and 2019, 37 states took legislative and executive actions to lower their incarceration and crime rates with positive results (FWD.us, 2022).



Polarization

The 1960s to the 1990s held clear divides between the policy parties. However, as politics has moved into the 21st century, a growing divide has become glaringly obvious in the American electorate (Mason, 2018). Rather than only having differing views on policy issues, Democrats and Republicans now have a competitive streak that creates a hostile environment played out on a national scale. As polarization has increased, there is a desire to see the opposition fail, leading to bipartisan reform becoming largely stalled. The adversarial nature of contemporary politics has resulted in a gridlock where the priority often seems to obstruct the opposing party's initiatives rather than collaboratively addressing shared concerns (Lee, 2015). People across the aisle agree that changes must occur, but finding common ground has been an ongoing challenge.

Principles Endorsed

The political success of an authoritarian approach to crime has created a pathway that has proved challenging to break. Democrats were not immune to the allure of tough-on-crime politics, so both Democratic-controlled legislatures and Republican-controlled executive branches contributed to the toughening of laws (Trautman & Rizer, 2018). There became a significant evolution for conservatives from the tough-on-crime era to champions of criminal justice reform prompted by the massive financial burden of mass incarceration.

The conservative commitment to limited government underwent a subtle reevaluation as part of this evolution. While traditional tough-on-crime policies reflected a belief in the state's role in maintaining law and order, the excessive reach of punitive measures came to be seen as infringing on individual liberties. An adjustment of the conservative stance on limited government intervention favored more targeted and outcome-oriented policies. Renewed emphasis on individual liberty, personal responsibility, family values, and restorative justice principles contributed to the conservative pivot on criminal justice.

Conservative thinkers such as Charles Colson, Grover Norquist, Newt Gingrich, and Bernard Kerik began promoting crime policy reforms such as reducing or eliminating mandatory minimum sentences. They supported "ban the box" initiatives, which prohibited employers from asking about prior arrests on job applications. In a 2011 op-ed piece for the New York Times, Gingrich and Nolan wrote, "We can no longer afford business as usual with prisons. The criminal justice system is broken, and conservatives must lead the way in fixing it" (Pollock et al., 2015, p. 110).

Positions in the Main Party

From 2012 to the most recent election cycle in 2020, the national party platforms of both major parties underscored criminal justice reforms as a top national priority (DNCC, 2012; 2020; RNC, 2012; 2020). Today, Republicans in political circles tend to side with restrictive sentencing policies, claiming they increase public safety and still stress the need for mandatory minimum sentencing policies (Malone, 2018). Democratic platforms have begun to focus more on preventative drug programs than in the past (DNC, 2008). Democratic leaders have also made their intentions to lessen the harshness of drug sentencing and implement a top-down approach that focuses on education and programming for those in active addiction (DCN, 2020, p. 36).

Within these platforms, a notable distinction emerges. Democrats advocate for a change in federal law, particularly concerning the legalization of marijuana, reflecting a commitment to a broader perspective on drug-related issues. At the same time, Republicans emphasize the role of federal courts as exemplars for state courts, suggesting a preference for an approach in shaping sentencing reforms. This implies a Republican inclination toward utilizing federal court rulings as benchmarks for how states should address the punishment of drug crimes rather than relying on local judgments or public preferences.

Taking the example of mandatory minimums, Democrats advocate for their reform, asserting that these measures are detrimental to non-violent offenders (DNCC, 2020). In contrast, Republicans advocate for mandatory minimums as an alternative to judicial discretion. Their argument centers on concerns about potential racial biases and stereotypes influencing judges, potentially leading to increased racial disparities or leniency towards dangerous criminals (RNC, 2020).

Conclusion

The Republican Party's views on criminal justice policies have profoundly evolved. What once was a commitment to tough-on-crime measures has taken a drastic turn, and it is now a leading force advocating for criminal justice reform. The financial burden of mass incarceration prompted a reconsideration of sentencing policies by conservative thinkers such as Newt Gingrich and Bernard Kerik. Despite differences between Democrats and Republicans, there is a notable bipartisan agreement on the need for criminal justice reform. The conservatism who were once champions of strict crime policies is now actively engaged in promoting a more balanced approach that addresses past failures while upholding conservative values in the pursuit of a fair and effective criminal justice system.

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