

## The Right Has a Jailhouse Conversion

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Not too long ago, you could tell whether an election was under way by watching prime-time television and counting the number of ominous recitatives about prisoners and ex-prisoners in the commercials. This fall, however, the seven million Americans who are in the custody of the state — in prison or jail, on probation or parole — did not loom large on nightly TV; in fact, as has been the case for nearly a decade, they barely received any notice at all. Prisoners are no longer the charged political symbols and campaign-season scapegoats they once were.

This decline in the exploitation of crime coincides with an odd and surprising change in the politics of crime. The G.O.P., the party of Richard Nixon's 1968 law-and-order campaign and the Willie Horton commercial, is beginning to embrace the idea that prisoners have not only souls that need saving but also flesh that needs caring for in this world. Increasingly, Republicans are talking about helping ex-prisoners find housing, drug treatment, mental-health counseling, job training and education. They're also reconsidering some of the more punitive sentencing laws for drug possession. The members of this nascent movement include a number of politicians not previously known for their attention to prisoners' rights. Senator Jeff Sessions of Alabama, a former federal prosecutor whom *The New Republic* once accused of being stained "with the taint of racism," wants to reduce the penalty for possession of small amounts of crack. Referring to mandatory-minimum sentences, Representative Bob Inglis of South Carolina, whose district is home to Bob Jones University, declared on the floor of the House: "I voted for them in the past. I will not do it again." Perhaps most remarkably, the outgoing Republican-controlled Congress came tantalizingly close to passing the Second Chance Act, a bill that focuses not on how to "lock them up" but on how to let them out. The bill may become law soon, if Democrats continue to welcome the new conservative interest in rehabilitation.

By some measures, the Second Chance Act is a small bill. It authorizes less than \$100 million over two years to address a significant problem: about 700,000 ex-offenders (the population of a good-size American city) will leave prison in 2007 — and two-thirds of them are likely to be rearrested within three years. The bill would provide states with grants to develop model programs for prisoners returning to society. Those states that accept the grants will be asked to re-examine any laws and regulations that make it unreasonably difficult for ex-offenders to reintegrate themselves into their communities — the classic is the ban on allowing felons to receive a barber's license. (If the felon in question is Sweeney Todd, of course, the ban might make sense. But a blanket prohibition that includes check bouncers and marijuana users seems overly broad.) The bill also provides money to faith-based organizations and other nonprofits for prisoner-mentoring programs. Finally, it requires states to measure how well their programs achieve the bill's main goal: reducing the rate of recidivism among recently released prisoners.

No one expects the Second Chance Act to solve the prisoner-re-entry problem overnight. The bill's authors are probably too confident that drug treatment, education and housing assistance

can reduce recidivism on their own. Such services, many criminologists say, are effective only when paired with the tight supervision of ex-offenders. Some researchers point to the “broken windows” response to crime and suggest trying a similar approach with prisoner re-entry: quickly punish any small violations of the terms of a prisoner’s release with graduated sanctions while returning ex-offenders to prison only for new crimes, not for technical parole violations like missing a meeting with a probation officer. The Second Chance Act does nothing to support this sort of approach.

As policy, then, the bill won’t be an elixir. But as a symbolic political gesture, the Second Chance Act completely reverses recent practice. For the first time in decades, Congress is poised to pass a bill that aims to make the lives of prisoners and ex-prisoners easier, not more difficult.

In the 1990s,

Democratic and Republican Congresses scrapped the Pell Grant program for prisoners, barred drug offenders from receiving federal student loans and cut highway money for states that did not revoke or suspend the driver’s licenses of drug felons. Now leading politicians of both parties are proposing that states remove laws and regulations that wall off the ex-criminal class from the community. Rather than eliminating education and substance-abuse treatment programs, Congress may well finance them. When I met with Mark Earley, a former political star of the Christian right and a present-day prison reformer, I began explaining to him why I was surprised by the Second Chance Act and the so-called “re-entry movement” surrounding it. He knew why I was surprised: “First of all,” he said, by the very fact “that there is common ground” between Republicans and Democrats. “And second of all, it’s this?”

Many liberals and Democrats — from Senator Joe Biden to members of the Congressional Black Caucus like Stephanie Tubbs Jones, a representative from Cleveland, and Danny Davis, a representative from Chicago — are sponsors of the Second Chance Act. Still, the issue is not a top priority for the party. In their recent blueprint for Democratic success, “The Plan,” Rahm Emanuel, the influential Illinois congressman, and Bruce Reed, president of the Democratic Leadership Council, wrote only one paragraph on crime — and that was mostly a hymn to the achievements of the 1994 crime bill. The campaign document for House Democrats, “A New Direction for America,” promises action on national security, the economy, higher education, energy, health care and retirement. The words “crime” and “prisons” never appear.

Prison reform is not a highly advertised position of the Republican Party either, but a growing number of social conservatives are trying to make it a centerpiece of the Christian-conservative agenda. The most striking aspect of the Second Chance Act may be the cross-section of Republicans, from every wing of the party, who support it. Senator Arlen Specter, the top-ranked contender for the award of Least Favorite Republican among movement conservatives, is a lead sponsor, as is Senator Sam Brownback of Kansas, who may be Christian conservatives’ top choice for the 2008 presidential nomination. Among the House sponsors of the bill are Mike Pence, an Indiana congressman who is a leader of the conservative caucus in the House and a darling of Washington’s conservative press corps, and Dan Lungren, a California representative and former California attorney general who helped write California’s three-strikes law (which he still supports). “For liberals in criminal justice, he’s like the devil, almost,” says a key liberal lobbyist for the bill, Gene Guerrero of George Soros’s Open Society Policy Center.

The Second Chance Act would seem an unlikely bill to be advanced during an election year. At every level of government, after all, elections are thought to encourage tough-on-crime legislation. Recalling his time in the Illinois Legislature, Barack Obama, an early sponsor, says: “We used to have a joke. Let’s say the offense was that defacing property was a Class C misdemeanor, or a Class A misdemeanor. Suddenly somebody would jack it up to a Class 2 felony. And it was always before election time. And we’d say, ‘You know, it’s not a good idea to leap all the way to the maximum penalty, because you’ll have nothing to come back with next election.’ You know, you want to take it in stages.”

With the Second Chance Act, however, three of what were the most endangered senators in America — Rick Santorum of Pennsylvania, Jim Talent of Missouri and Mike DeWine of Ohio — put their names on the bill; all lost their re-election bids. Their support for the legislation wasn’t an issue in their losses, but even that fact is remarkable. In today’s political environment, crime policy has so receded from controversy that the Republican-led House Judiciary Committee could approve the Second Chance Act in July under the assumption that the full House might take it up on the eve of an election in which the Republican majority was at stake.

What has changed? It’s true that crime rates have declined in recent years (notwithstanding a slight uptick last year), but for the last quarter of the 20th century, crime policy was impervious to fluctuations in street crime. If crime went up, politicians got tough on crime. If crime went down, politicians still got tough on crime. At the state level, at least, that is no longer the case — and a large shift in public opinion has much to do with it. In 1994, crime and health care were the two top issues that Americans thought the government should tackle. Nine years later, less than 1 percent of Americans named crime as a top political issue. If safer streets had something to do with the change in public attitudes, so did another development: the changing place of crime in the national debate over moral values. Over the past decade, as the political scientists William Galston and Elaine Kamarck have suggested, the culture war of the 1970s and 1980s that revolved around race has been replaced by one that revolves around religion. A side effect has been a radically different crime debate. If the Second Chance Act fails to pass, it will not be because the two parties cannot agree on the importance of rehabilitation programs in prisons. But it may be because they disagree on the role religious organizations should play in rehabilitation.

This September, Mark Earley ascended to a lectern at the Washington Convention Center to recite a political act of contrition. Earley, who is white, seemed among the least likely attendees of the Congressional Black Caucus’s annual legislative conference to rouse the mostly African-American audience of liberal activists, Capitol Hill staff members, lobbyists and members of Congress to sermon-listener cries of “Amen,” “Yes, sir” and “Tell it!” The most successful Christian conservative politician to emerge from the State of Virginia, Earley represented the district of Pat Robertson and Ralph Reed for 10 years in the Old Dominion Legislature. In 1997, he ran for attorney general on a platform that combined socially conservative positions on abortion and other issues with a dollop of tough-on-crime rhetoric — and won.

Now Earley came to confess his sins. In front of an audience filled with former prisoners who were attending a job fair connected to the conference, Earley cast his arms wide and proclaimed: “I was wrong. I repent!”

“I’m 52 years old,” he said at the beginning of his remarks, “and for the first 48 years of my life, I didn’t think much about prisoners. And when I did, it went something like, I’m glad I’m not one, and I’m glad they are where they are.” He continued: “And I really pretty much had the view that prisoners were at the end of the line. That if you were in prison, you had no hope, you’d made a mess of your life, and it was better for me that you were there, because my family could be safe.”

He went on: “I was elected to the Virginia Legislature and served 10 years, from ’87 to ’97, in the Senate of Virginia, and quite frankly, spent most of my time in the Legislature working on how to put more people in jail and keeping them there longer. Virginia, like most states in the ’80s, abolished parole, instituted three strikes and you’re out, lowered the age at which juveniles could be tried as adults from 16 to 14.” Earley told the crowd that these policies helped increase the American prison population “tenfold in the last 30 years.” Unlike most politicians who say such things, Earley wasn’t bragging. He was apologizing.

Like many Republicans and Christian activists, Earley’s prison-house conversion dates from an encounter with Chuck Colson, the Watergate crook turned Christian evangelist. When Earley lost the Virginia governor’s race in 2001 to Mark Warner, Colson asked Earley to take over Prison Fellowship, the ministry that Colson founded in the mid-1970s. Earley declined on the assumption that devoting himself to prisoners was tantamount to throwing his life “down a dark hole.”

Over the next few months, Earley read his Bible and was struck by the number of criminals who play starring roles: Moses, for example, murdered a man and became a fugitive. Paul presided over the stoning of Stephen, the first Christian martyr. Earley came to a realization: “If Moses or Paul had lived in Virginia or any state in the United States today, they would be serving, had they been caught, a multiple-decade prison sentence.” He took the job.

Of course, it’s easy to admit the error of your political ways when you’ve left office and don’t have to worry about voters punishing you for your change of heart. But Earley is far from alone in his apostasy from the usual anti-crime politics. Howard Coble, a congressman from North Carolina and the chairman of the Subcommittee on Crime, Terrorism and Homeland Security in the last Congress, said in 2003 that the internment camps for Japanese-Americans during World War

II were “appropriate at the time.” And yet when Coble first introduced the Second Chance Act to the full judiciary committee this summer, he called the bill “an enlightened departure” from the politics of “lock them up and throw away the key.”

“At one point, I may have embraced that theory,” Coble told me over the phone from his home in Greensboro, N.C., during the August Congressional recess. “I still embrace the theory of locking the cell door if an offender has been convicted of a crime. But I don’t say throw the key away. I say, keep the key handy, so the same key that locked that door can also unlock it.” Coble’s words recalled those of Alexander Maconochie, a Scottish prison warden who reformed Norfolk Island, the Alcatraz of 19th-century Australia, by inventing the concept of indeterminate sentencing — an incentive-based system involving early release for hard work and good behavior: “When a man keeps the key of his own prison, he is soon persuaded to fit it to the lock.”

For most of the 20th century, indeterminate sentencing and rehabilitation were consensus policies in the United States. The decision to call the state agencies that run prisons departments of “corrections” was intended to reflect the rehabilitative nature of their work. But in 1974, a sociologist named Robert Martinson published an article called “What Works?” in the neoconservative journal *The Public Interest*. John DiIulio, President Bush’s first director of faith-based initiatives, once called Martinson’s essay “arguably the single most influential article ever published in that influential journal.” Martinson answered the question he posed by concluding that “with few and isolated exceptions,” there was no evidence that any rehabilitation programs successfully reduced recidivism. His article and the subsequent media attention it received — along with the high crime rates of the 1970s — are credited with shifting the emphasis in crime policy from rehabilitation to punishment and “just desserts.”

Martinson later retracted his argument: in a 1979 article in *The Hofstra Law Review*, he acknowledged that some rehabilitation programs had “an appreciable effect,” while emphasizing that other programs were actually harmful. But the political environment was not as receptive to a more nuanced approach. Following California’s lead in 1977, state after state abandoned rehabilitation and indeterminate sentencing in favor of punishment and fixed sentences.

Today’s revival of rehabilitation began during the final years of Bill Clinton’s presidency. The Clinton administration had been as punishment-oriented as its Republican predecessors. With the exception of a few liberal members of Congress — Democrats in the 1990s abandoned prison reform. The two defining moments of Democratic crime politics in the 1990s were Clinton’s decision as governor of Arkansas to allow the execution of the mentally impaired Ricky Ray Rector in 1992 and the passage of the 1994 crime bill; along with banning assault weapons and putting 100,000 cops on the street, the bill also prominently featured longer sentences for criminals and a federal three-strikes law.

But in the spring of 1999, Janet Reno turned to Jeremy Travis, then the director of the National Institute of Justice, and asked, “What are we doing about all the people coming out of prison?” It began to dawn on Reno, Travis and others that the mandatory sentences Congress and state legislatures created over the preceding decades had an unintended side effect: automatic release. More and

more prisoners were leaving prison without having to earn their release, because the incentives to change their behavior had been removed. That seems obvious: what else would you expect from states that abolished parole and replaced discretionary sentencing with fixed sentences? Yet few lawmakers and corrections professionals seemed to have considered the consequences. In October 1999, Reno and Travis held a news conference promoting the idea of prisoner “re-entry,” a word Travis came up with that rebranded the unpopular notion of prisoner rehabilitation. “Re-entry” shifts the emphasis from the criminal to the community — from how an inmate is treated to how safe you and your neighbors will be when he or she is released. In that sense, re-entry preys on the public fear of a nation of Willie Hortons, but it does so in the service of going “softer” on crime.

Even as Reno and Travis were promoting the idea of prisoner re-entry, Matt Salmon, a Republican congressman from Arizona, was championing the No Second Chances Act, a bill that would take federal money away from states that released a prisoner who then committed a crime

in another state. The political climate seemed unfriendly. Yet Reno and Travis's initiative aroused little opposition — or much notice of any kind. Criminologists of both parties hope that the decreasing importance of crime as a political issue will make it possible to have a more sober discussion of the subject at last. They want to see a less ideologically charged debate and one that rests more closely on sound research. There's only one problem: a shocking paucity of such evidence to inform the policy debate. As Christy Visser, a researcher from the Urban Institute, put it in the May 2006 issue of *Criminology and Public Policy*, "There is no consensus answer to the question Do prisoner-re-entry programs work?"

And yet there is a consensus to not do what we are doing. Criminologists largely agree that increasing the use of incarceration at some point becomes counterproductive and crime actually starts to rise. Many researchers suggest that we're at that point already. In his book on re-entry, "They All Come Back," Travis notes that only about 25 percent of the violent-crime reduction in the 1990s was because of "incapacitation" — the fact that would-be criminals were locked up and unable to commit more crimes. Michael Jacobson, who worked as the New York City corrections commissioner under Rudy Giuliani, points out that the city's nation-leading decline in street crime during the 1990s coincided with a decline in the use of incarceration as a weapon of crime control. San Diego, the No. 2 city in crime reduction from 1993 to 2001, also sent fewer people to prison during that period.

The best way to deter crime, according to most researchers, is to increase the swiftness and the certainty of arrest for people who break the law, not to increase the severity of their sentences. Many experts would like to see some kind of return to indeterminate sentencing, though they disagree on the particulars. Ultimately, they'd like to see sentencing turn from an Industrial Age policy, a one-size-fits-all assembly line, to an Internet Age policy of personalization. Joan Petersilia, a leading researcher on parole, recommends using statistical risk profiles, similar to those employed by auto insurers, to determine which ex-offenders should receive the most support or supervision from re-entry programs. She argues in her book "When Prisoners Come Home" that "from a victim's standpoint, there is no benefit from determinate sentencing or automatic-prisoner-release schemes," because you "replace a rational, controlled system of earned release for selected inmates with automatic release for nearly all inmates."

Outside the criminology community, conservatives have embraced re-entry to save lives, to save souls and also to save money. Putting aside Medicaid, spending on corrections has been the fastest-growing item in state budgets in recent years. Partly for this reason, Louisiana and Mississippi — the two states, Michael Jacobson notes in his book, "Downsizing Prisons," with the highest rates of per capita incarceration in the country — embraced sentencing reform in 2001. Louisiana eliminated some mandatory sentences and required that the first two "strikes" for offenders be violent, rather than nonviolent, felonies. Mississippi, which had abolished discretionary parole in 1995, decided to bring it back for nonviolent first-time offenders. By 2003, 18 states had implemented similar reforms. Under the Republican governor, John Engler, Michigan repealed all of its mandatory-minimum drug laws.

When George W. Bush took office in 2001, he did not dismantle the Clinton-era re-entry programs; rather, he adapted them to fit his faith-based agenda. most pro-prisoner president in American history — at least if you disregard the war on terror (an admittedly enormous caveat). Certainly in terms of rhetoric, Bush has done more to advance the interests of prisoners than either Jimmy Carter or Bill Clinton. The Second Chance Act takes its name from the 2004 State of the Union address in which Bush asked Congress to pass a \$300 million program to help prisoners as they re-enter society: “In the past, we’ve worked together to bring mentors to children of prisoners, and provide treatment for the addicted, and help for the homeless. Tonight I ask you to consider another group of Americans in need of help. This year, some 600,000 inmates will be released from prison back into society. We know from long experience that if they can’t find work, or a home, or help, they are much more likely to commit crime and return to prison. So tonight, I propose a four-year, \$300 million prisoner re-entry initiative to expand job-training and placement services, to provide transitional housing, and to help newly released prisoners get mentoring, including from faith-based groups. America is the land of second chance, and when the gates of the prison open, the path ahead should lead to a better life.” Democrats were flabbergasted. Representative Stephanie Tubbs Jones calls it “the only thing that George W. Bush has ever said at a State of the Union that made me stand up and cheer.” Representative Danny Davis says, “I always tell people that when he said that, I was the first person up to applaud, even though I was on the Democratic side of the aisle.”

According to Mark Earley, Bush’s speech “very subtly sent a signal to conservative Republicans that it’s O.K. to talk about rehabilitation and doing something for prisoners as they’re coming back into society, and prisoners’ kids.”

There are few, if any, senators more closely identified with the Christian conservative movement than Sam Brownback. Like a growing number of conservatives, Brownback is a political proponent of the so-called new-evangelical causes, which range from AIDS in Africa and slavery in Sudan to poverty and the Prison Rape Elimination Act, a bill that helped build the coalition of Democrats and Republicans in the re-entry movement. Even when he disagrees with his fellow religious conservatives, he gives faith-based reasons for doing so. A convert to Catholicism, he has said his religion informs his support for a less punitive approach to immigration reform. In February, he held a hearing intended to foster debate on whether the death penalty can be reconciled with Pope John Paul II’s call to create “a culture of life.”

Brownback also routinely mentions prison reform — especially the faith-based variety — in public speeches. During Alberto Gonzales’s confirmation hearing to become attorney general, he made a special point of asking Gonzales about his plans to reduce prison recidivism. He wrote a letter to The Washington Post in February complaining about an op-ed by the U.C.L.A. psychologist David Farabee, who dismissed the Second Chance Act as a return to “the intuitively appealing programs that we correctly rejected 30 years ago.” Brownback countered in his letter, “We should not be resigned to allowing generation after generation to return to prison because they don’t have the tools to break the cycle.”

When I visited him earlier this year, Brownback seemed highly aware of the dangers, even for a conservative Republican from Kansas, of seeming the slightest bit soft on crime. “I wouldn’t say

I represent the mainstream of this,” he insisted. “I think we have to prove results” — that is, demonstrate an actual reduction in recidivism rates among newly released prisoners. He continued: “I personally favor a number of these faith-based approaches. But if there are other approaches, let’s try them. This is an enormous problem, and since the ’70s, we have basically just said we’ll lock people up.”

Later, in his office in the Senate Hart Building, Brownback implicitly raised the specter of Willie Horton — the fear that he and the other sponsors of the bill would be blamed for crimes committed by the formerly incarcerated: “Imagine you get one bad prisoner coming out and committing a heinous crime, which is likely to happen. And people’s reaction is, they get mad. They don’t want this guy out on the streets that’s doing this. If you can’t show, look, by doing these programs we are cutting the recidivism rate overall, I don’t think it will stand the blowback when that situation inevitably happens.”

Chris Cannon, a Utah conservative who is the bill’s Republican point man in the House, is less circumspect than Brownback. On crime, Cannon can sound like a liberal Democrat, if liberal Democrats still talked the way he did during my first phone conversation with him in August: “Republicans have taken a pretty harsh position, just locking people up.” And: “The system has a very strong tendency to change them for the worse. Everybody knows that, I think.” And: “Our current system is fundamentally immoral.”

A few weeks later, in his Congressional office, Cannon was just as adamant: “I think society has a huge obligation to prisoners. I think that obligation transcends our current view, which is: Lock them up, hide them away, keep my daughter safe, keep my house safe, if he or she burgles, I want that person gone. Out of sight, out of mind. Away. I think that violates the fundamental concepts of who we are as Americans.

“Nobody thinks this is a bill that solves our moral dilemma,” he went on. “Maybe I should say moral crisis. But it is a first step, an agreeable first step, and it allows us to take a look at where we ought to think about ending up.” But even Cannon occasionally realizes he’s treading on dangerous political ground. After this preamble, apropos of nothing, he declared: “In this whole thing, nobody is being soft on crime. Nobody is saying, let these people out. It’s about after someone is found to have committed a crime, what do we do to help that person become a useful, productive member of society?” Which, of course, involves letting them out.

Cannon and his allies toiled hard on behalf of the Second Chance Act, and they helped shepherd it through the House, where the Republican leadership pledged to schedule a vote if the Senate did the same. But despite their efforts, the outgoing Congress failed to move forward. The first sign of trouble came in the summer. When the bill reached the House Judiciary Committee, Representative

Louie Gohmert of Texas tried to amend it so that it explicitly, rather than implicitly, authorized the financing of faith-based organizations. Gohmert’s proposed amendment drew enthusiastic support from Republicans, but it alienated Democrats, who would have scuttled the bill in the Senate. The bill’s Democratic supporters accept that the Bush administration will allocate some of the funds to Christian organizations. But they draw the line at direct legislative authorization to finance religious organizations. Such an authorization was anathema to them unless it

contained additional language restricting faith-based groups from proselytizing and from discriminating on the basis of religion in their hiring decisions. To keep the bill on course, four Republicans — including Cannon and Coble — turned against their colleagues and joined with Democrats to defeat Gohmert's amendment.

In the Senate, with 37 co-sponsors and the support of Republican leaders, the bill seemed sure to pass. But in mid-December, as the legislative term came to an end, Senator Tom Coburn — a Christian conservative from Oklahoma who has said, "As a physician, I believe that we ought to be doing drug treatment rather than incarceration" — ignored personal appeals from Brownback, Specter and others and put a hold on the bill. Coburn supports the bill's objectives and calls it "a good act," but his fiscal-conservative conscience overcame his social-conservative one. He demanded the termination of other federal programs that, in his view, served similar purposes. The bill's supporters must have felt betrayed, as some assumed that Coburn had pledged not to prevent the bill's passage. Even so, the bill seems likely to pass, with some modifications, in the next legislative session.

In order for that to happen, the Democrats will have to take a step similar to the one Bill Clinton encouraged them to take in the 1990s, when they conceded that the country's desire for changes in affirmative action, welfare and crime policy was more than just a proxy for racism. By passing the Second Chance Act, Democrats can acknowledge that the Christian desire to improve the lives of prisoners is more than a mere proxy for evangelism. And in doing so, they can re-embrace a cause of their own: the creation of a criminal-justice system that is more humane and more just. The current moment is, in Michael Jacobson's view, "the best opportunity of the last 25 years for altering the way in which the United States has used incarceration." But if that moment is to be seized, if there's any possibility to reform a prison system that almost everyone thinks has failed, both parties are going to have to rely, at least a little bit, on faith.

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