

You Can't Reform the Criminal Justice System by Cutting Costs

By [Stephen Lurie @luriethereal](#)

The current bipartisan consensus on the need to pursue criminal justice reform has been heralded—[again](#), and [again](#), and [again](#)—as the long-awaited agreement that ends mass incarceration and its many ills: the incredible size and the exorbitant cost of the police and prison system; the qualities of discrimination and poverty that lead to arrests; and the preeminence of incarceration as social policy. Republicans and Democrats are finally uniting conservative and liberal values to cure a diseased system, a rot in the nation at large.

That's the news, at least. The consensus may be bipartisan, but it's not ideologically balanced. The language advocates use to describe the problems at hand and the nature of their proposed policy solutions demonstrate that this moment is far more concerned with *mass* than *incarceration*. Despite reports of meeting in the middle, we're witnessing a liberal acquiescence: Nearly everything is phrased in conservative terms—cutting costs, saving funds, and minimizing the size of the system.

Consider the eerily compatible messaging of the leading conservative, liberal, and centrist advocacy groups. Right on Crime—the conservative organization [credited](#) with kick starting and leading the current reform movement and [efforts in many states](#)—centers their drive for reform in fiscal responsibility. The organization's short [statement of principles](#) is replete with concern for “cost”, “taxpayers” and “spending” (but not “fairness,” “equality,” or “rights”).

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Meanwhile, the ACLU's new Campaign to End Mass Incarceration ([Smart Justice, Fair Justice](#)) starts by putting “needlessly throwing away too many lives” on par with “wasting trillions of taxpayer dollars.” The Campaign's listed priorities all deal with the size of the justice system and cost cutting in some form. Even the call to “Invest in Better Systems” emphasizes that “services like drug treatment and affordable housing cost less and can have a better record of success” than the criminal justice system. Likewise, the [Coalition for Public Safety](#), a new bipartisan umbrella campaign sponsored by the likes of Koch Industries and the MacArthur Foundation and led by groups from the Center for American Progress to Americans for Tax Reform, emphasizes their “comprehensive” [approach](#) but also tends to be minimalist in practice. Presenting the Coalition's case on [PBS](#) recently, Mark Holden (senior vice president of Koch Industries) and Neera Tanden (president of the Center for American Progress) laid out the vision. “What we're talking about are [*sic*] more non-violent offenders, first-time offenders, low-level offenders not getting really long sentences.” Tanden expressed concern with how the “criminal justice system is actually increasing poverty.” That poverty itself also contributes to a cycle of poverty, crime, and incarceration—or that only focusing on specific offenders will hardly address the size of the problem—remained unsaid.

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It's not an acquiescence that's caused by organizational bargaining, either. Consider the remarkable primary document published last week by the Brennan Center for Justice, a law and public policy institute, which reveals just how far this frame of thinking persists in our nation's main political and policy leaders. The volume of essays, titled “[Solutions: American Leaders Speak Out on Criminal Justice](#),” has opinions from both sides of the aisle on how to fix criminal justice; it includes writing from a former president, our current vice-president, and almost a dozen more politicians with presidential candidacy either in their past or their future. As an incredible compendium of

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voices, and proof of criminal justice reform's sudden bipartisan relevance, it merited [coverage](#) on the front page of *The New York Times*.

Remove the bylines, though, and it's hard to believe that the set contains arguments from a cohort of left-of-center power players. For one, there's how authors approach the economic conditions surrounding mass incarceration. In its 130 pages, "income" is mentioned just seven times. "Taxpayers," on the other hand, appears three times as often. Nearly every time poverty is discussed, an author is describing how mass incarceration causes it—not how poverty contributes to crime and structural inequality. There's plenty of discussion on how much mass incarceration costs and how much we could save, but, with some exceptions, there isn't much in the way of considering preemptive changes to economic conditions, making the case for unpopular penal reform to reduce incarceration, supporting spending to improve conditions of incarceration, or dealing with the major costs of investing in feasible alternatives to incarceration. The dollar sign, though, makes thirty-nine appearances.

The direction of this fundamentally conservative thinking is unmistakable in pending bipartisan reform legislation. All the major bipartisan proposals—the [REDEEM](#), [CORRECTIONS](#), and [Smarter Sentencing](#) acts—focus on cutting spending, or cost- and risk-free changes to existing codes. The Smarter Sentencing Act's official [purpose](#) is "To focus limited Federal resources on the most serious offenders," which reads a lot like "We'd keep doing what we're doing, but we just can't afford it." A major selling point for the [CORRECTIONS](#) act, whose ECT stands for "Eliminating Costs for Taxpayers," is that it "[contains no new authorized spending](#)."

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The bills do propose some worthwhile fixes with benefits beyond the budget—like reducing mandatory minimums, offering time credits towards release, and reinstalling [SNAP](#) and [TANF](#) benefits for ex-felons—but each seems to exclude more people than they help, particularly leaving out the ones most in need.

The Smarter Sentencing Act [intends](#) to “save billions” by reducing only *some* mandatory minimum drug sentences and by creating a slightly larger [exception](#) to certain mandatory minimums offenses. The CORRECTIONS Act, supposedly intent on reducing recidivism, “excludes all sex offenders, terrorism offenders, violent offenders, repeat offenders, major organized crime offenders, and major fraud offenders from earning credits under the program.” Most disappointingly, REDEEM, which is the only legislation to dare to risk spending on ex-felons newly eligible for government benefits, would only affect (1) non-violent offenders, of (2) drug laws, who (3) were only guilty of possession/use, or (4) distributed as a part of an addiction.

The exceptions written into these bills are completely illogical from a public policy standpoint, if the authors' goals are really to reduce recidivism or genuinely support citizens. The exceptions are perfectly reasonable, however, if their sponsors want to spend as little money as possible on the least objectionable offenders. Cost, political or monetary, is unacceptable to these self-styled reformers.

With little exception, political and organizational power-players have bought in to an agenda of austerity, addressing size rather than nature, isolating silos rather than implicating systems. This could be a policy tragedy for everyone: The narrative excludes vital fixes and alternatives to a justice system that require more resources, not less, and it ignores the proactive governance needed to transform the background conditions that foment crime in the first place.

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In addition to mostly overlooking the need for increased spending in areas like indigent defense or domestic violence prevention, the current approach to carceral downsizing—in itself a positive end—doesn't contend with the burden that penal policy has taken on as *de factosocial* welfare. It has assumed the role of housing, feeding, and providing health care to millions. As Loic Wacquant explains in *Prisons of Poverty*, since 1985, corrections spending basically replaced spending on poverty assistance and public housing. For example, Wacquant explains, “in 1980, net budget appropriations by the Department of Housing and Urban Development amounted to three times the funds for corrections; by 1995, that ratio had been inverted, with prison and jail disbursements exceeding three times the new outlays for public housing.” Only cutting carceral spending—without simultaneously recommitting resources outside the prison walls—will leave the vulnerable to an even less supportive world than before mass incarceration.

One of the gravest examples is mental health care, which comes with its own history lesson. As the United States pursued a policy of deinstitutionalization in the 1970s, people with mental illness did not just disappear: They were just [indirectly fed into the growing prison system](#). One recent [report](#) “estimated that in 2012, more than 350,000 people with serious mental illness were housed in prisons and jails, while a tenth as many—about 35,000—were in state mental hospitals.” If diversion of non-violent offenders (or other alternatives to incarceration) succeeds in keeping the mentally ill out of jail, what will become of them? Professor Bernard Harcourt [wonders](#) whether “there is a significant risk that [decarceration] will simply produce new populations for other institutions, whether homeless shelters, inpatient treatment facilities, or other locked-down facilities.” The extant mental health facilities are “[in tatters](#),” too. The leaders of current reform won't discuss the costs of creating robust state mental health

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programs—or many replacement social services. Releasing and diverting people convicted of crimes will be cost-free, but ensuring their well being out of prison will almost definitely require “new authorized spending.”

That's a job for a robust welfare state, which is anathema to this current of small-government reform. Embracing what scholar Marie Gottschalk [calls](#) “the pathologies of deficit politics” in our criminal justice reforms, as this movement does, means that we will “reinforce the premise that eliminating government deficits and government debt should be the top national priority.” While would-be prison reformers discuss their work in isolation from background conditions, the narrative won't stay that way: The success of a savings-oriented reform movement will reinforce the importance of cost cutting as a solution for all government ills. That's bad news for liberals, for the people being released and diverted from the prison system, and for authentic crime reduction. Crucial reduction strategies, like [living wages and stable and affordable housing](#), are not first on a conservative fiscal agenda. With the direction of current reform, incarceration will contribute less to a cycle of poverty, but poverty will still cycle—and the poor will continue to be disproportionately [victimized](#) by violent crime. The neglected, now free, will still be neglected.

Luckily, there is at least one dissenter, and she happens to be the front-runner for the presidency. Hillary Clinton's first major policy [speech](#) a few weeks ago—and her contribution to the Brennan volume—offered a radically comprehensive approach to criminal justice reform and demonstrated a rare understanding of the difficulty of reform. Though many are [skeptical](#) of her [back and forth](#) on the issue, she hardly jumped on the politically palatable bandwagon. She denounced “siloes” discussions of criminal justice that ignore “what's needed to provide economic opportunity,” acknowledged areas that will require resources, like legal aid, and pointed to lessons learned from deinstitutionalization. Most importantly, she insisted on the difficulty of substantive change that isn't just about cutting mass. “In a time when we're

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afflicted by short-termism, we're not looking over the horizon for the investments that we need to make in our fellow citizens," she said. "Progress will not be easy, despite the emerging bipartisan consensus for certain reforms." Clinton is saying that, in the long run, freedom won't come for free. Who else will listen?

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