

The New York Times

Republicans and Democrats Begin to Sharply Diverge on Crime

This week's Senate hearings underscored the fragility of a bipartisan alliance that seeks to reduce the impact of America's vast prison complex.

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March 25, 2022

For the bipartisan group of lawmakers, policy experts and activists who have long desired to overhaul the nation's criminal justice system, this week's Supreme Court nomination hearings were ominous.

They watched as Republicans pummeled Judge Ketanji Brown Jackson with questions about her time on the United States Sentencing Commission and attacked her sentencing decisions in criminal cases.

And they noted how Mitch McConnell, the Senate's top Republican, said the United States was "in the midst of a national violent crime wave" as he accused President Biden of carrying out "a national campaign to make the federal bench systematically softer on crime."

As our colleague Carl Hulse wrote, "The Jackson hearing seemed to open a new frontier in vilification by focusing so heavily on her sentencing history, meaning any sentences handed down by future nominees will now become fodder for attack."

But there's more at stake here than the tactics of Supreme Court nomination battles. This week was a pointed demonstration that we may be witnessing the end of an era of widespread agreement that the nation's approach to crime needs an overhaul.

Conservative support for that project was always fragile and selective, at least at the congressional level. It was propped up artificially by an infusion of cash from certain donors — along with arm-twisting by a Republican president who saw an opportunity to peel Black voters away from Democrats.

But now, said Clark Neily, senior vice president for legal studies at the Cato Institute, a libertarian think tank, "the bloom is off the criminal justice rose for many on the right."

The backlash

The First Step Act, a modest bill that tweaked the nation's federal sentencing laws, passed with overwhelming bipartisan support in 2018 and was signed into law by President Donald Trump. Thirty-eight Republican senators voted for it, including a reluctant McConnell.

At the time, reformers in both parties envisioned it as only the beginning of a series of major changes to a system widely seen as overburdened and rife with inequity.

Instead, with violent crime rising during the coronavirus pandemic, such efforts are presenting a fat political target. Public opinion surveys show an unmistakable trend: 72 percent of Americans said they were dissatisfied with national policies to control or reduce crime in Gallup's latest poll on the subject, with 42 percent very dissatisfied.

In a recent speech, Senator Tom Cotton, a Republican of Arkansas, baselessly blamed the First Step Act for the rise in violent crime and said its passage had harmed the Republican Party's image as "the party of public safety."

A follow-on law to the First Step Act promoted by Senator Cory Booker, Democrat of New Jersey, has gone nowhere.

Nor can Democrats and Republicans agree on policing changes spurred by the murder of George Floyd. Bipartisan talks on the issue collapsed last fall, leading to finger-pointing between Booker and Senator Tim Scott, Republican of South Carolina, over which side was to blame.

The United States Sentencing Commission, which Judge Jackson served on for four years, has lacked a quorum since 2019. It currently has only one voting member, out of a possible seven, and has essentially ceased to function.

And at the local level, mayors from New York to Portland, Ore., have quarreled with progressive prosecutors and embraced higher funding levels for their police departments, in a rebuke of the protest movement that broke out in cities across the country after Floyd's murder.

Even some Democrats are sensing a shift in the political winds and adapting accordingly. The leading challenger to Gov. Kathy Hochul in New York's Democratic primary race, Representative Tom Suozzi of Long Island, this week joined Republicans in Albany who have criticized the state's 2020 bail reform law as too soft on dangerous criminals.

"When there's no consequences for crime," Suozzi said, "crime keeps going up."

'Retrenchment,' not reversal

What a return to "tough-on-crime" messaging could mean for policy at the national and state level remains an open question.

The United States presides over one of the largest inmate populations on Earth — about two million incarcerated people spread across more than 1,500 state prisons, 102 federal prisons and thousands of other detention facilities large and small. During the 2020 presidential

campaign, Biden pledged to cut the number of people in prison by more than half, but there is scant sign of progress toward that goal.

A conservative turn against reducing the prison population would make Biden's promise nearly impossible to fulfill.

Adam Gelb, the president and chief executive of the Council on Criminal Justice, a nonpartisan policy and research organization based in Atlanta, said he saw signs of "retrenchment" on the right, but added, "Too many strands of the conservative coalition have been woven together to unravel entirely."

That coalition has been an unusual set of political bedfellows: fiscal conservatives who object to prisons as a bloated, expensive bureaucracy; libertarians who fear government overreach into people's private lives, especially when it comes to drug use; and evangelical Christians who believe in second chances and redemption. Hard-right traditionalists like Cotton and Senator Josh Hawley of Missouri were never part of that group, advocates emphasize.

Meanwhile, Republican-controlled states including Kentucky, Mississippi, Oklahoma, Tennessee and Utah are all moving ahead with moves to limit no-knock warrants, revamp civil forfeiture rules and expunge criminal records for nonviolent offenses.

"We're not seeing a departure on the state level," said Brett Tolman, a former U.S. attorney who is now the executive director of Right on Crime, a conservative reform group. On the federal level, he said, "Roughly the same crowd has just gotten louder."

Conservatives also blame some Democrats for seeking maximal goals, rather than pragmatic compromise, on issues like qualified immunity for police officers.

"I think what we're hearing is a reflection that the reform movement has moved beyond modest goals to some fairly radical ideas," said Rafael Mangual, a fellow at the conservative Manhattan Institute who is the author of a forthcoming book that is critical of criminal justice reform.

Groups on the left are nonetheless watching the escalating language on the right with trepidation, warning of the costs of returning to '80s- and '90s-era crime policies that filled prisons with low-level drug users and other nonviolent offenders. To that end, the Brennan Center for Justice, a leading critic of those policies, is publishing a series of essays on "punitive excess" that aim to push back at narratives in favor of mass incarceration.

"This is a really important moment for justice reform," said Lauren-Brooke Eisen, who directs the center's Justice Program. "It would be a mistake to regress, to go back to policies that did not produce public safety."

Several advocates pointed to a recent breakthrough on the EQUAL Act, a long-awaited federal bill to reduce the disparity in sentencing between powder and crack cocaine offenders. This week, the bill reached the key threshold of 10 Republican co-sponsors in the Senate, breaking a potential filibuster.

To Jillian Snider, a retired New York City police officer and policy director at R Street, a right-leaning think tank, it was a sign that the antics on the Senate Judiciary Committee were hardly representative of Republicans as a whole.

“I don’t want people to think that what happened on TV this week is where we are,” she said.

A presidential pie

On Politics regularly features work by Times photographers. Here’s what Doug Mills told us about capturing the image above:

President Biden, who is very comfortable around members of the military, sat down and had a slice of spicy pizza with the 82nd Airborne during his visit here.

He told stories about his son, and also thanked them for their service and told them what they were doing was so important during this time of conflict.

His tie was off and he was so relaxed with them — not something we see all the time. No Teleprompter, no note cards. He spent at least an hour with them.