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An Analysis of the Role of the Democratic Party in the Development and Implementation of Mass
Incarceration and the War on Drugs

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Mass Incarceration, Race, and the Politics of Abolition

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Mass incarceration refers to the “web of laws, rules, policies, and customs that control those labeled criminals both in and out of prison” (Alexander 15). This web primarily ensnares minority groups, particularly African American men, due to social biases within every aspect of the criminal justice system from policing to sentencing. While many scholars and journalists point the finger solely at the Republican Party and prominent conservative figures such as Nixon and Reagan, in this essay, I argue that Democrats in Congress and the Presidency also contributed substantially to the development and implementation of mass incarceration and the War on Drugs.

One way Democrats perpetuated the systems of mass incarceration is through the rhetoric and symbolism lawmakers used concerning crime legislation. Democrats at both the Congressional and Presidential levels of the federal government engaged in this rhetoric, garnering support for harsh crime bills as they vied for the Southern vote. For instance, Bill Clinton openly competed with Republicans to be “tough on crime” (Alexander 71). In 1992, Bill Clinton strayed from the conventional campaign path to oversee a mentally-impaired black man’s execution in his home state of Arkansas, a symbolic gesture intended to demonstrate his toughness on crime. Following the execution, “Clinton remarked, ‘I can be nicked a lot, but no one can say I’m soft on crime’” (Alexander 71). In light of “moderate and conservative Democrats’” concern that Clinton was “moving too far left” on crime, his campaign saw these gestures as crucial to appealing to a broader electorate (Gorman 371). The need for Clinton to shift to the right on crime policy reflects growing anti-crime sentiment as a result of harsh 1980s policies pushed not only by Nixon and Reagan, but also by Democrats in Congress. His willingness to abide by these political pressures reflects a prioritization of electability over Civil Rights reform. Clinton’s rhetoric ushered in a new age of bipartisan backing and competition within the War on Drugs movement, as the severity of crime legislation was seen as increasingly competitive between the Democratic and Republican parties.

In a similar vein, current president Joe Biden consistently used harsh rhetoric to advance his crime legislation. For instance, in 1989, Biden publicly sparred with George H.W. Bush over crime laws, calling the Republican president’s plan “not tough enough, bold enough, or imaginative enough” (Lopez).

He also responded fiercely to criticisms of his legislation that labeled it not tough enough on crime. When critics claimed his 1994 crime bill “protected criminals,” Biden responded by saying that his bill does “everything but hang people for jaywalking” (Lopez). In doing so, Biden linked those convicted of drug crimes, the type of crime his bill targeted, with the death penalty, planting the seed of dehumanization of drug users into the minds of Americans. By dehumanizing drug users, Joe Biden garnered support for the exorbitant and inhumane prison sentences his legislation would create for drug crimes—legislation that contributed directly to the development and implementation of mass incarceration by keeping people locked up for extended periods of time.

While the rhetoric of these Democratic politicians served to amass support for policies that contributed to mass incarceration, the actions and policies of Democratic presidents served to create the foundation for the War on Drugs and mass incarceration. For example, Bill Clinton not only built his campaign on victims of mass incarceration, as previously mentioned, but he also perpetuated the system through legislation he pushed through Congress. His most famous legislation targeting these systems was the Violent Crime Control and Law Enforcement Act, or the “Three Strikes” Bill. Clinton openly “advocated for this bill in his 1994 State of the Union address” (Alexander 71). According to this bill, individuals convicted of three felony charges would be sentenced to life in prison without the possibility of parole. It does not matter if their third crime was a nonviolent burglary, possession with intent to distribute, or an aggravated assault. All third strikes would be viewed through the same lens under this bill and receive the same penalty of life imprisonment, a punishment some judges viewed as “unjust, cruel, and even irrational” (Alexander 116). The Three Strikes law resulted in the imprisonment of hundreds of thousands across the country as it created a ripple effect across state legislatures (Krikorian). The bill also created dozens of new federal capital crimes and provided billions in funding for state and local prisons (Lopez). The creation of new federal capital crimes led to harsher penalties, imprisoning convicted criminals for longer periods. The funding for new prisons accommodated the resulting larger prison population. Additionally, Bill Clinton allocated federal funds to prioritize punishment for drug crimes rather than to combat their root causes. Nearly immediately after his election, Clinton announced a budget

that “showed virtually no shift in emphasis from that of [his] Republican predecessor,” George H. W. Bush (Gorman 369). Clinton’s budget doubled the amount of drug-related spending on law enforcement when compared to the amount spent on treatment and prevention, despite public anticipation of the opposite (Gorman 369). The funding Bill Clinton allocated towards police allowed them to implement the harsh drug laws that Bill Clinton and his predecessors had created. It also militarized police departments, providing them with tactical gear and assault weapons, leading to public perception of an actual War on Drugs. In summary, Bill Clinton made his mark on federal crime policy through his support for and signing of what became one of the most consequential pieces of crime legislation, as well as his allocation of funding for law enforcement rather than drug treatment.

While Bill Clinton’s contributions to mass incarceration and the War on Drugs are significant, it is also essential to analyze the Democrat who laid the foundation for the War on Drugs, Lyndon B. Johnson. Johnson’s most influential pieces of legislation created the Great Society and initiated what he referred to as The War on Poverty (Hinton 2). These acts invested in urban renewal, aiming to make cities safer through investing in programs that reduced poverty. Many heralded them as progressive movements, while Southern Democrats and many conservatives felt the acts invested far too much in urban areas (Hinton 53). Johnson claimed his antipoverty programs and Civil Rights laws would eliminate the root causes of crime, eliminating the need for harsh crime legislation his colleagues championed on the other side of the aisle (Alexander 58). However, whether intentionally or not, through his social welfare legislation, “Johnson paradoxically paved the way for the anticrime policies of the Nixon and Ford administrations to be turned against his own antipoverty programs” (Hinton 14). Johnson’s legislation contributed to mass incarceration in a variety of ways. To begin with, it provided the funds that would later be allocated to local and state police departments throughout the War on Drugs. The “capstone of Johnson’s Great Society,” the Safe Streets Act of 1968, provided for “\$400 million worth of ‘seed money’ in the War on Crime” (Hinton 2). This money would later be invested in police departments, laying the foundation for their role in the War on Drugs. Further, Johnson’s Great Society programs created links between agencies that would prove crucial in the creation of mass incarceration. Many “programs

required employment initiatives, public schools, and grassroots organizations to partner with juvenile courts, police departments, and correctional facilities in order to receive funding,” resulting in a vast network of organizations and institutions working in conjunction to maintain social control (Hinton 14). This network would later prove crucial in creating laws and institutions, such as the school-to-prison pipeline and employment discrimination laws, that would contribute significantly to mass incarceration. A final way Johnson’s War on Poverty translated into the War on Drugs was through the Crime Commission he formed in 1965 (Hinton 80). This commission aimed to design an effective national law enforcement program that could be passed through Congress. Ultimately, the commission recommended, among other things, deadlier weapons for police, contributing to the militarized police departments we see today. When considered altogether, Johnson’s Great Society may have seemed amenable to the African-American populace. However, when scrutinized closely, one can tell that distinct portions of this movement laid the foundation for the carceral system that would follow just years later.

Perhaps no president is viewed as amicably when it comes to race relations than Barack Obama, the country’s first Black president. However, Obama followed the same path his predecessors had charted when it came to advancing mass incarceration, both actively and passively. To begin with, Barack Obama greatly increased funding for programs relating to drug enforcement. One such program is the Byrne Grant program, created by Clinton, which directs around half its funds toward drug enforcement. In a 2009 stimulus package, Obama increased funding for the program “twelve-fold” (Rodger). According to Michelle Alexander, this program is “one of the worst federal drug programs of the Clinton era” (Alexander 314). Obama also appointed “drug warrior[s],” such as Joe Biden for vice president and Eric Holder for attorney general, a former Washington D.C. prosecutor who fought for mandatory minimums for marijuana possession (Alexander 313). While Obama’s support for the Byrne Grant Program and his staunch anti-drug appointees were prime examples of active steps Obama took in the incarceration system, it is also important to analyze his passive inaction on the issue. Most critical was his refusal to grant clemency for drug crimes in the first seven years of his holding office. During his first two years in office, Obama did not grant a single clemency or pardon request despite receiving over a thousand, with

more than a thousand other requests pending from Bush's administration ("Clemency Statistics"). In the next four years, from 2011-2014, Obama granted an average of .5% of his clemency requests. An important trend to note in these four years is the decrease in clemency requests granted during a major election year. When Obama was up for reelection in 2012, the percentage of clemency requests granted fell to .3% from .8% the year prior. This was likely to appear "tough on crime" to secure the votes of conservative Democrats and independents. Similarly, during the 2014 midterms, the rate fell by half to .3% from .6% in 2013 ("Clemency Statistics"). After these elections concluded and Obama no longer felt as responsive to electoral pressures, his pardon rates increased drastically to 2.7% in 2015, 4.8% in 2016, and 27% in the final 3.5 months of his presidency in 2017. Despite these increases, Obama's overall clemency rate fell short of Clinton, George H.W. Bush, and even Reagan. When not considering the 2017 outlier, Obama's clemency rate is lower than any other President since 1900 ("Clemency Statistics"). It is important to note that the chart from which these statistics are derived does not specify for which crimes pardons and commutations were requested. However, due to a seemingly amenable position on drug law reform, the vast majority of pardon requests sent to Barack Obama were drug-related ("President Obama's Record on Commutations"). As a result, the conclusion that he was one of the most brutal presidents when it comes to clemency grants for drug crimes is undeniable.

While Democrats in the executive branch were hard at work advancing the anti-crime agenda through their respective channels, two Democrats, Joseph Biden and Ted Kennedy, took the lead in Congress. Both serving at the peak of the War on Crime era, Biden and Kennedy worked hand-in-hand in the Senate to pass bills that aided in the development and implementation of the War on Drugs. For example, in 1984, Senator Ted Kennedy led the charge in creating and passing the Sentencing Reform Act. This Act created a commission that would eliminate judicial discretion in sentencing guidelines. The commission set mandatory minimums that judges were required to follow when deciding prison sentences (Adelman 9). While Ted Kennedy led the effort to pass this bill, Joe Biden, as ranking member of the Senate Judiciary Committee, also played an instrumental role in getting the bill out of committee and onto the Senate floor (Adelman 9). The bill was rebuked by criminal justice advocates, judges, defense

attorneys, and many progressive Democrats. The Sentencing Reform Act empowered prosecutors to choose the sentence for defendants based on the crime they chose to prosecute them on (Adelman 9). Often, defendants, guilty or not, were faced with nearly certain convictions and the accompanying decade or more in prison or a plea deal that cut their sentence by a few years (Alexander 110). Many defendants opted for the latter regardless of their guilt, greatly increasing the incarcerated population and contributing to the current system of mass incarceration. While the commission created by the Sentencing Reform Act made considerable contributions to mass incarceration, most scholars view the aforementioned Violent Crime Control and Law Enforcement Act of 1994 as even more consequential. As previously mentioned, Bill Clinton publicly backed this bill and signed it into law. However, the bill was sponsored and championed by Joe Biden (Adelman 8). Through the bill's creation of a "three strikes" rule for felonies, elimination of parole, and funding for prison construction, it exploded the prison population and exacerbated the mass incarceration system its predecessor laws created.

While Democrats from all branches of government have made significant contributions to the systems of mass incarceration and the War on Drugs, many current Democrats have sought to make up for their party's past. One prominent example is President Joe Biden. Previously in this essay, I pointed out numerous policies Biden has backed and harmful words he has said. However, since returning to the spotlight in his presidential campaign, Biden has apologized for his past actions, admitting he "hasn't always been right" (Lopez). However, Biden's repentance extends beyond apologies. He supported legislation while in Congress reducing the sentencing disparities between crack and powder cocaine and providing counseling services for inmates (Lopez). As president, he has released a sweeping criminal justice reform plan that decriminalizes marijuana and eliminates mandatory minimums. Additionally, Barack Obama greatly increased his pardons and commutations for drug crimes in his final months in office, granting a greater absolute number of commutations over the course of his two terms than any other president in United States history, albeit not the greatest *rate* of commutations ("President Obama's Record on Commutations" and "Clemency Statistics"). As a whole, the Democratic Party has begun to rally around criminal justice reform, most clearly beginning in 2016 with the police killing of Black man

Freddie Gray (Ofer). In their 2020 proposed platform, Democrats sought to tackle facets of the mass incarceration system, such as the school-to-prison pipeline, mandatory minimums, and cash bail (Ofer). Regardless, many believe these reforms do not do enough to rectify the party's poor track record on criminal justice.

Bearing in mind these policies were supported and sometimes led by democratic politicians, an important question to ask is what one does with these historical instances. The immediate response may be to disavow any politicians, including the current president, that contributed to mass incarceration. However, this response is neither reasonable nor pragmatic. For one, to withdraw support for any Democrat who voted for a major piece of crime legislation would be to withdraw support for much of the Democratic Party. The unfortunate reality is that, up until recently, these policies garnered significant bipartisan support, as Democratic presidents, Senators, and Representatives all contributed immensely to crime legislation and mass incarceration as a whole. In addition, some of the most electable democratic politicians would be disavowed if the impulsive route were taken, setting back years of progress on criminal justice reform by electing hard-line conservatives. Perhaps the more practical response is to educate voters and politicians on the party's past. I, for one, entered this class and my research with the mindset that Republicans were essentially the *only* contributors to America's carceral state. Through the class and my research, however, I am now aware of the significant role Democrats played as well. This knowledge allows me to be more informed in my critiques of past politicians and my voting for future ones. Pursuing a path of education rather than outright repudiation is substantially more likely to result in significant criminal justice reform that can put the country on a path toward atonement for previous wrongs.

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