

When the Fallout of a Criminal Conviction Goes too Far:

Challenging Collateral Consequences

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The fallout of criminal convictions permeates nearly every aspect of an individual's life long after sentences have been served and court files have been closed. This truth appears to contradict our popular beliefs that people are free to move forward with their lives after they've "done their time" and "paid their debt to society." But too often people find it extremely difficult to extricate themselves from the collateral consequences of their convictions and reintegrate back into the community. Employment rights and voting rights are strongly linked to collateral consequences. These two fundamental facets of life, work and political participation, are foreclosed to millions of people because of their criminal histories. Criminal record expungements have the potential to ameliorate the impact of collateral consequences, but even these remedies should be bolstered. This Article challenges the legitimacy of collateral consequences of convictions insofar as they are illogical, purely punitive, or counterintuitive given our expectation that people achieve meaningful reintegration. The Article further implores us to analyze these challenges within a larger social, political, and historical landscape.

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“In recognizing the humanity of our fellow beings, we pay ourselves the highest tribute.”^[1]

- Justice Thurgood Marshall

Introduction

I write through the lens of my work at the Stanford Community Law Clinic, where I practice law and teach law students. My office is in East Palo Alto and, in partnership with my students, I have represented over 150 clients in court proceedings to clear their criminal records through California’s postconviction expungement and felony reduction remedies.^[2] As so many of my clients have expressed to me and my students, their greatest desire is to move forward with their lives after contact with the criminal justice system.^[3] This can be almost impossible for some people because of the current structures and systems in place designed to curtail ex-offenders’ freedoms. These restrictions do not always correlate to the direct consequences of convictions, like jail time, fines, or probationary terms. The fallout explored in this Article relates to the collateral consequences of convictions experienced by individuals reentering, and ultimately reintegrating,^[4] back into the community. The reality is that criminal records have the power to trail individuals in perpetuity: on job interviews, on applications for government assistance (ranging from subsidized housing to student loans), and even on election day, when so many people with felonies are precluded from voting because of a criminal conviction.^[5]

People pursue criminal record expungements because they are seeking a clean slate, a second chance, a new opportunity to realize their hopes and dreams. I was first initiated into the purpose behind record expungements as a tool to ameliorate the collateral fallout of convictions. In this context, I thought about a person fighting a drug addiction, or stealing clothes for their kids, or stealing food to feed their families. Indeed, I have represented people facing these exact situations.^[6] From my perspective, the fact that people are struggling through these kinds of awful challenges is more of an indictment of our country’s policy priorities and systemic failures than an indictment of the individual who “committed” the crime. And I certainly believed that people with a record should be able to secure employment (including access to state-issued licenses) and housing, student loans and government benefits just like anyone else.^[7] I most certainly believed that *everyone* with a conviction should retain the right to vote and serve on juries.^[8] The more I learned about the fallout of a criminal record, the more I realized that these fundamental facets of life were foreclosed to millions of people all across America.

As I gained experience through my practice at the Community Law Clinic, I realized that the collateral consequences of convictions go too far, as do society’s mantras and mottos when it comes to people with criminal histories. The concept of “do the crime, do the time” fell flat. So did the common refrain, “you have to live with the consequences of your poor decisions.” I was troubled that these pithy catchphrases never turned the corner to answer the question of “then what?” These ideas also seemed to ignore the larger social and political context within which criminal convictions occur.^[9]

I was deeply troubled by the glaring racial overlays and civil rights concerns that presented at nearly every stage of the criminal justice system. While my work is focused on the postconviction realm, I am frequently in court mentoring my students and representing my own clients. Most of the people I see in criminal court facing prosecution are people of color, mostly men of color, and mostly black and Latino men. Many of these individuals are in court for drug offenses and petty theft crimes (not surprisingly,

these are the kinds of expungement cases my office routinely handles). For anyone paying attention, it does not take long to connect the dots that ultimately lead to the debilitating collateral consequences explored in this Article. Our current situation is tragically tied to federal crime busting policies of the 1970s and 1980s.[10] The disparate impact of these policies on communities of color, and on black men in particular, is impossible to ignore.[11] Expanding my understanding of these issues only deepened my commitment to representing people seeking to clear their criminal records, hoping to get a second chance and meaningfully reenter the community.

Nearly ten years into this work, I still passionately believe that people deserve a second chance—a chance to redeem themselves,[12] to heal wounds, and to secure work and put roots down in their community. They deserve a chance to exercise the freedoms associated with our democracy—to participate in the political process through voting and other aspects of civic engagement. I have been exposed to many of the issues explored in this Article through my own journey as a practitioner at the Community Law Clinic. But my journey researching and writing this Article has deepened my resolve to explore the boundaries of my own sphere of influence to facilitate change as a practitioner, clinical supervising attorney, and concerned citizen.

This Article seeks to explore the high price of collateral consequences as they relate to the affected individual as well as to society. Part I considers the contours and origins of collateral consequences, including a brief review of how courts have treated the legitimacy (and parameters) of collateral consequences. Part II explores the impact of convictions on employment and voting rights as well as the real impacts on families and communities. Part III discusses the potential of postconviction remedies like record expungement in ameliorating the deleterious effects of criminal records. Part IV considers a path forward through my lens as a practitioner in the field, which asks each of us to deepen our understanding of the fallout discussed herein, including the larger social, political, and legal context.

I. Collateral Consequences

A. Contours and the Problem of Civil Death

The United States has the highest incarceration rate in the world.[13] Over 2.2 million people are incarcerated in America's prisons and jails.[14] Another 4.7 million people are subject to some form of community correctional supervision, including parole or probation.[15] The total number of people under some form of state supervision is approximately 7 million people.[16] These statistics are staggering from any angle,[17] and they shed light only on individuals who have officially sustained a conviction. But when one considers that more than 65 million people in the United States have some form of criminal history, ranging from an arrest to a conviction leading to incarceration,[18] a stunning picture emerges. Understanding the consequences that can attach to people with criminal histories and supporting them as they reenter society becomes of paramount concern from both policy and humanitarian perspectives. The truth is that the vast majority of people with records “will spend most of their lives in free society.”[19]

Legal scholars, advocates, and concerned citizens have enumerated the myriad ways convictions and their attendant sentences linger long after a person has served and completed their formal sentence. Like apparitions lying in wait, collateral consequences emerge from the shadows the instant an ex-offender attempts to reintegrate into the community after sustaining a conviction.

Professor Gabriel Chin summarizes the problem as follows: “For many people convicted of crimes, the most severe and long-lasting effect of conviction is not imprisonment or fine. Rather, it is being subjected to collateral consequences involving the actual or potential loss of civil rights, parental rights, public benefits, and employment opportunities.”[20]

The scope of barriers that ensnare individuals with past convictions is vast and wide. The fallout of criminal convictions is extensive because of the complex regulatory schemes that govern ex-offenders. Every state in the nation sets forth its own regulations in this realm, creating a nearly unintelligible mosaic of regulatory restrictions.[21] The spectrum of rights and benefits implicated include: restrictions

on employment opportunities and the ability to obtain professional licenses, the loss of voting rights, the inability to serve on a jury or run for public office, exclusion from specific federal benefits (including those relating to housing and welfare).[22] Additionally, depending on the nature of the crime, some people are subject to registration and community notification requirements.[23]

Collateral consequences are considered the indirect fallout of a conviction. Direct consequences, on the other hand, have tangible origins in the sentence itself. For example, direct consequences include: jail or prison time, massive statutory fines and restitution payments, and specified probationary terms. In essence, direct consequences attach to the sentence imposed by the court while collateral consequences “comprise a mixture of federal and state statutory and regulatory law, as well as local policies” that regulate everything from employment opportunities to qualifications for government benefits.[24] Additionally, these collateral sanctions are not limited to felony convictions, but extend to misdemeanor convictions as well.[25] Some consequences attach automatically following a conviction, others are discretionary; yet others still can be assessed by regulatory bodies.[26] Scholars have acknowledged that the depth and breadth of collateral consequences “tend to be unknown” even to those working within the criminal justice system “often because they are scattered throughout different bodies of law.”[27]

The legitimacy of collateral consequences has been challenged on various constitutional grounds.[28] However, with some limited exceptions, most courts have concluded that collateral consequences are indirect civil disabilities rather than direct criminal punishments putting them outside the realm of the criminal justice system, and, therefore, beyond the court’s purview.[29] An individual facing prosecution is thus not entitled to counsel on these indirect consequences.[30] Nor are courts required to educate the individual about these collateral consequences at the time of plea or sentencing.[31]

Despite the fact that collateral consequences do not get classified as “punishment,” state regulation of individuals with convictions is still subject to rational basis analysis under the Equal Protection Clause.[32] Historically, “[t]he Supreme Court has found denial or burdening the exercise of civil rights to be unobjectionable in many circumstances.”[33] These “unobjectionable” burdens have included the “deportation [of] noncitizens and deprivation of a citizen’s right to vote, hold public office, serve on a jury, testify [in court], and possess firearms.”[34] Further, the Supreme Court has approved “denial of public benefits” and particularized restrictions imposed on sex offenders such as state-sanctioned registration requirements.[35]

As Professor Chin observes:

Because collateral consequences are not, strictly speaking, punishment, existing limitations may be imposed retroactively on people not subject to them at the time of conviction. In addition, states are free to create new restrictions in previously unregulated areas. Thus, if rational basis review is taken seriously, then it appears that a truly unfortunate and spectacular range of potential discriminations may be visited long after the fact on those convicted of crime.

It would seem that virtually all denials of public benefits or services are rational because such benefits direct scarce resources to the most deserving. . . .

Courts could find virtually all employment and licensing restrictions rational, as long as the job or occupation is one for which honesty, integrity, and moral character are relevant”[36]

The Supreme Court recently revisited the issue of collateral consequences with respect to deportation consequences of a criminal conviction. In *Kentucky v. Padilla*,[37] the Court took up the narrow issue of whether deportation should be considered a direct consequence of a criminal conviction mandating specific admonitions at the time of sentencing or a collateral consequence, not requiring explicit notice of potential deportation consequences before a plea can be accepted or a sentence imposed by the court.[38] The Court in *Padilla*[39] held that deportation should be classified as punishment,[40] by requiring that a person be explicitly informed of the possibility of deportation in a criminal proceeding.

While the court acknowledged that deportation is a special civil consequence that should be treated as punishment, the court did not explicitly state that other civil collateral consequences should be considered punishment as well.

Having considered the contours of collateral consequences, we are left with several questions regarding their legitimacy and scope. And these are big questions that are critically important to people facing criminal prosecution and conviction: What is the true purpose behind collateral consequences? Is it punitive? If not punitive, then what? What are the actual parameters and limitations of collateral consequences? Should states and localities be given such wide latitude to decide the breadth and legitimacy of collateral consequences?

An even deeper look into the ancient origins of modern day collateral consequences inevitably means confronting the problem of “civil death.” Like Grandma said, there’s nothing new under the sun. As the Second Circuit laid out in *Hayden v. Pataki*, it turns out that many of the collateral consequences that attach to criminal convictions today have their origins in ancient Greece, the Roman Republic, and Medieval England.^[41] In ancient Athens, the punishment for committing particular crimes transitioned the offender from citizen to a state of “infamy”; the person was thereafter stripped of the right to participate in public affairs.^[42] For example, someone tagged with this label would lose their right to: (1) vote (2) hold public office (3) attend public assemblies and (4) make public speeches.^[43] The Roman Republic continued this tradition for people “convicted of crimes involving moral turpitude.”^[44] The “infamy” designation, marking those with convictions in the Ancient world, would later become “civil death” laws in Medieval Europe.^[45] Ultimately “civil death” traditions evolved into the “attainder laws” of Medieval England which “caused all family and political rights to be forfeited as additional punishment for crimes carrying sentences of death or life imprisonment.”^[46]

Under English common law, anyone who sustained a felony conviction (including treason) was “placed in a state of attainder.”^[47] Bearing this mark carried three particular consequences: (1) forfeiture of all property to the king; (2) “corruption of blood,” which destroyed the offender’s right “to transmit his estate to his heirs”; and (3) “extinction” of all cognizable civil rights.^[48]

Some of the ancient collateral consequences hold power today. As discussed below, a staggering 5.85 million people are currently disenfranchised in America because of a felony record.^[49] Are these restrictions merely ancient relics, or have they morphed into a strange and surreal fabric extending traditions from ancient, obsolete times? In the modern era, these relics animate the way our current criminal justice system operates.

At this point, we are left with several more questions: first, why is our system (and by extension, why are we) beholden to customs dating back thousands of years? Second, have we examined the way these ancient traditions have been modernized and updated to result in the systematic exclusion of people with criminal records from nearly every aspect of social, political, and economic personhood, with a disproportionate impact hitting communities of color? Third, how does our adoption of these ancient traditions sync with our modern views and lauded mores encouraging economic and civic participation?

B. The Ripple Effect

While an article could be written on every single collateral consequence across the spectrum, I have chosen to highlight two critical aspects of the fallout of criminal convictions. The first aspect relates to employment restrictions, and the second aspect relates to voting rights. These two elements are emblematic of the stakes involved for those seeking reintegration and nicely represent two sides of the same coin. Employment is considered one of the hallmarks of successful reentry.^[50] And voting is a fundamental expression of political participation.^[51] Scholars have pointed out that one’s ability to surmount the collateral consequences of a conviction, by securing a job or having a voice within the political space contributes to meaningful reintegration and may decrease the likelihood of recidivism.^[52] Two fundamental facets of life—work and political participation—are foreclosed to millions of people because of their criminal histories.^[53] This reality appears to contradict the adage

that after a person has served his or her sentence, that person has “paid his or her debt to society.”^[54] But full payment is rarely accepted, as the criminal record and its attendant labels persist.

1. Employment Rights: Don't Call Us, We'll Call You

Exploration of some of the practical impacts of collateral consequences will help us begin to see the magnitude of the problem. In this way we can start to evaluate the legitimacy of certain collateral consequences from the ground up.

A somewhat counterintuitive reality is that it can be harder for people with convictions for minor offenses to maintain themselves and meaningfully reintegrate into society. Serving jail time for a relatively minor offense can generate a ripple effect of grand proportions.^[55] If a person misses work due to jail time and is subsequently fired because of her absence, she now has to find a new job and may be foreclosed from securing future employment because of her record. Ironically, “as legally and socially significant as a term in prison is, for most people convicted of crimes, collateral consequences will generate the most significant effects.”^[56] As Professor Nora Demleitner notes: “This is especially true given that our society treats labor force participation as a prerequisite for full membership in the polity. Therefore, practical and symbolic consequences of exclusion from employment combine to underscore the internal exile of ex-offenders.”^[57]

On the one hand, people are expected to contribute to our economic structures through work and sustained productivity. This is especially true for individuals ensnared in the criminal justice system. In California, one of the common conditions of probation is securing and maintaining employment.^[58] On the other hand, “[a]cross the nation there is a consistent theme: people with criminal records ‘need not apply’ for available jobs.”^[59] Based upon a National Employment Law Center survey of Craigslist online job advertisements, big corporations and small companies alike regularly deny people with criminal backgrounds the chance to demonstrate their qualifications for the job.^[60] For a range of entry-level positions, including warehouse workers and delivery drivers, employers post unequivocal warnings such as: “No Exceptions! . . . No Misdemeanors and/or Felonies of any type ever in Background,” or “*DO NOT APPLY WITH ANY MISDEMEANORS/FELONIES,*” and “You must not have any felony or misdemeanor convictions on your record. Period.”^[61]

While these punchy job ads get their unforgiving point across, what becomes abundantly clear is that even a minor conviction can morph into “a lifetime of social and economic disadvantage.”^[62] One noted researcher documented that a criminal history

reduces the likelihood of a job callback or offer by nearly 50 percent, an effect even more pronounced for African American men than for white men. Not surprisingly, the U.S. Equal Employment Opportunity Commission (EEOC) has recognized that employer reliance on proxies for race—such as having a criminal record—is “an important civil rights issue.”^[63]

The EEOC has issued “guidances” on the use of criminal records in employment decisions.^[64] Generally these policies are designed to strictly limit the consideration of convictions in hiring. Employers have to justify employment decisions using the “business necessity” defense,^[65] which requires that the conviction be “job-related,” taking into consideration: (1) the nature of the offense, (2) the nature of the job, and (3) how much time has passed since the conviction.^[66]

The EEOC’s policies enforce Title VII of the Civil Rights Act of 1964.^[67] Professor Michael Pinard, who is widely published on issues relating to collateral consequences, points out that these policies connect the dots between race, criminal records, and the issue of employment discrimination.^[68] The EEOC recognizes “that employers have used criminal records to exclude individuals with criminal records from employment, and that the exclusions have disproportionately impacted African Americans and Latinos because of their overrepresentation in the criminal justice system.”^[69] If convictions are used as an absolute bar to employment, an affected individual may be able to establish a disparate impact claim against the employer pursuant to Title VII.

In addition to worrying about getting an initial job interview and surmounting explicitly exclusive job ads, people with records are burdened with the added concern of being identified as a “criminal” or “felon” through easily accessible digital background checks. Professor Pinard observes that this accessibility can be just as onerous as the formal, direct consequences that attach to convictions:

[T]he informal, non-legal consequences of . . . convictions are equally entrenched and, in effect, as severe, particularly as criminal records have become widely accessible to the general public and private actors through databases available on the internet. As a result, employers, landlords, government agencies and anyone else can access criminal records with rapidly increasing ease.[70]

Today, most large companies run digital background checks on prospective employees.[71] Under the right circumstances background checks might enhance safety in the workplace.[72] Indeed, some have argued that criminal records should be readily accessible to facilitate full transparency, especially in hiring scenarios where employers have an interest in knowing the backgrounds of prospective employees.[73] Some have taken the argument further by stating that employers should be “entitled to have law-abiding workers.”[74] Sentiments like these, combined with commonplace job ads discouraging applicants with records from applying in the first instance, paint a daunting picture for people with criminal records seeking employment in the digital age.[75]

It is difficult to make a persuasive argument that employment-related collateral consequences only impact the “criminal” offender.[76] Our political leaders have observed the importance of employment security for the affected individual as well as the community as a whole. In 2011, (then) Secretary of Labor Hilda L. Solis stated: “Stable employment helps ex-offenders stay out of the legal system. Focusing on that end is the right thing to do for these individuals, and it makes sense for local communities and our economy as a whole.”[77]

We would be wise to consider the larger implications of policies that curtail an individual’s ability to reintegrate in the employment realm after contact with the criminal justice system.

2. Voting Rights: When the Political Voice Becomes an Inaudible Whisper

Professor Michelle Alexander, author of the seminal work *The New Jim Crow*, provides a poignant introduction to the spectrum of disenfranchisement policies in the United States:

If shackling former prisoners with a lifetime of debt and authorizing discrimination against them in employment, housing, education, and public benefits is not enough to send the message that they are not wanted and not even considered full citizens, then stripping voting rights from those labeled criminals surely gets the point across.[78]

A staggering 5.85 million people are currently disenfranchised in the United States due to felony convictions.[79] Twelve states have promulgated the most draconian voter restrictions, with individuals in those states comprising forty-five percent of the country’s total disenfranchised population.[80] These twelve states impose prohibitions on voting rights even after individuals have completed their prison or jail sentences and have been discharged from parole or probation.[81] Maine and Vermont are the only states that do not restrict the voting rights of any individual with a felony conviction.[82] Maine and Vermont[83] do not disenfranchise anyone with a felony conviction, including individuals currently serving prison time for their convictions.[84]

Felony disenfranchisement laws have a devastating effect on communities of color. Many have acknowledged that voting “is the cornerstone” and “core principle of American democracy.”[85] Additionally, according to the ACLU, “[v]oter participation actually increases public safety, and people who vote are less likely to be re-arrested than those who do not.”[86] However, one in thirteen black adults is disenfranchised nationally.[87] Three states hold the dubious (and embarrassing) distinction of disenfranchising black voters at the highest national rates. Florida

disenfranchises 23% of its black population, followed by Kentucky at 22%, and Virginia at 20%.^[88] *In each of these three states more than one in five black adults is disenfranchised.*

Scholars suggest that a person's ability to successfully reenter and ultimately reintegrate into society postconviction is directly tied to stable employment opportunities.^[89] Indeed, if an individual is unable to surmount the barriers to securing employment postconviction, the likelihood of recidivism increases significantly.^[90] Similarly, there is evidence that exclusion from the political process, as in the example of temporary or permanent disenfranchisement, can have negative consequences for rates of recidivism.^[91] The idea here is that to the degree a former offender is excluded from the basic building blocks of everyday life, including the right to civic participation, their "outsider" status becomes reified and entrenched.

In this context there is something fundamentally unjust about depriving individuals of the right to vote. To animate the poignancy and human element involved here, consider the following perspective from a former offender:

I have no right to vote on the school referendums that . . . will affect my children. I have no right to vote on how my taxes is [sic] going to be spent or used, which I have to pay whether I'm a felon or not, you know? So basically I've lost all voice or control over my government. . . . I get mad because I can't say anything because I don't have a voice.^[92]

Just as in the employment realm, we as a society should be willing to challenge the legitimacy of collateral consequences resulting in voter disenfranchisement. We should be willing to reexamine our policy priorities when it comes to facilitating meaningful reintegration for people with records. We owe a duty to ourselves in this regard, particularly in situations where specific collateral consequences appear illogical, counterproductive, or purely punitive in nature.

As we turn our attention to the impact of collateral consequences on the often invisible loved ones who, through no fault of their own, also live in the shadows of criminal convictions, we should keep this duty in mind.

3. Not Quite Collateral: Impacts On Children and Families

When Justice Thurgood Marshall inspires us to consider the humanity in our fellow being to touch our transcendent selves,^[93] I interpret his words broadly. When I think about his words in the context of the criminal justice system, I think he is posing the ultimate challenge to those of us willing and able to engage with the difficult issues at play. The "criminal element" among us is probably the easiest population to vilify, essentialize, and ostracize. But just because something is easy does not mean it is right. In the interest of full disclosure, when I first launched my expungement practice at the Community Law Clinic, I had some strong opinions about certain "categories" of crimes. I questioned my own ability to work zealously on cases involving domestic violence or sex crimes because of my own personal perspective on violent crimes, particularly violent crimes against women. Ironically, two of the first prospective clients I counseled after launching my practice were convicted of precisely these kinds of crimes. I was initially startled and uncertain about how I would handle the client interviews, maintain my professional demeanor, and keep my biases in check. What I learned, in short order, was that when you have a human being sitting across the table from you, explaining their circumstances, exposing their darkest secrets, something unexpected happens. That individual becomes much more than the ostensibly heinous crime etched in stone on his (or her) record of arrests and prosecutions (RAP sheet). The person becomes a real flesh and blood manifestation of the vulnerabilities that make up the human experience. The person becomes more than the penal code section they were charged under: they become a person with a family, hopes, dreams, ideas, and regrets. Most of all they become a person who wants a second chance.

I have often considered, and indeed train my law students with, the question: "What would my life be like if I was summed up by the worst thing I've ever done?" A colleague posed this question to me when I was learning about the purpose behind criminal record expungements; it has always stuck with

me. The hard truth is that there is not one among us who has not done something hurtful, deceitful, dangerous, or wrong. If our worldview is to the contrary, we may want to inquire whether we're living in a glass house. I express these thoughts and observations with an understanding of the complexity at stake. People who commit crimes do leave damage in their wake; I have no interest in diminishing the pain and struggle victims of crime experience, along with their families, friends, and communities.

And I also see that the children and families of people who have lost their loved ones to the criminal justice system (either literally through incarceration or figuratively due to the damage of collateral consequences) experience pain and struggle too, through no fault of their own. The fallout of criminal convictions does not begin and end with the person who broke the law. From the instant a parent or guardian is removed from the household, all manner of people are left behind; not the least of which are children.

According to a report by the San Francisco Children of Incarcerated Parents Partnership,^[94] which publishes a Bill of Rights^[95] for children of incarcerated parents and chronicles their experiences: "70 percent of children who were present at a parent's arrest watched that parent being handcuffed."^[96] Furthermore, 30% of children who were present at a parent's arrest "were confronted with drawn weapons."^[97] "Three in 100 American children will go to sleep tonight with a parent in jail or prison."^[98] It continues, "one in eight African American children has a parent behind bars."^[99] Moreover, "half of all children with incarcerated mothers are cared for by grandparents."^[100] Finally, "[n]early two thirds of children being raised by single grandmothers live in poverty."^[101]

Our society claims to hold the family as a sacred unit. Is this a true value, or is it another common refrain that requires reexamination? Do we mean family is sacred to those we deem worthy, or is it a sacred circle worthy of respect and dignity for all of us? We should have the courage to question ourselves here, and claim our cultural identity for what it truly is. Perhaps we can summon the courage to take a different tact and adopt a different perspective. One that supports, empowers, values, and sees those individuals who are left behind and largely become invisible to the watching world whose eyes are trained elsewhere. When we speak of meaningful reintegration, we must realize the positive impacts economic security and civic participation can have on the whole family unit, which can have positive ripple effects in the community at large.

III. The Promise of A Second Chance Made, but Not Realized: Record Expungement and Collateral Consequences

The fallout of convictions felt by individuals, families, and communities has the potential to be ameliorated by postconviction legal remedies, such as record expungements. As previously mentioned, there are two statutes that govern expungements in California.^[102] One statute applies to probation cases and the other statute applies to nonprobation cases.^[103] Both enable mandatory^[104] and discretionary relief,^[105] depending on whether certain conditions are met.

To meet the mandatory prong of the statute, the petitioner must establish that she has met the following four requirements: (1) she has successfully completed the probationary term for the case on which expungement is sought, (2) she is not currently being charged with a new crime, (3) she is not currently serving a sentence for any conviction, and (4) she is not currently on probation associated with an ongoing case.^[106]

To be a contender for the discretionary prong of the expungement statutes, the petitioner either did not successfully complete probation^[107] because she sustained a new conviction during the probationary period, or alternatively, had contact with law enforcement during the one year following the conviction at issue for expungement.^[108] For discretionary motions, the petitioner must show that granting expungement relief is in the "interests of justice."^[109] It is left to the judge's wisdom as to whether that burden is met and the petitioner has demonstrated sufficient facts to justify the exercise of judicial discretion. The petitioner must also meet the remaining statutory requirements that pertain to mandatory petitions (i.e., no current cases or probation terms). A significant number of my clients

proceed on a discretionary theory and can offer several compelling reasons justifying the relief sought. For example, we underscore the distance in time since the conviction occurred, the age of the client (at the time of expungement, and in some cases, at the time the offense was committed), community service and familial connections, educational achievements, work aspirations, and the list goes on. These are common points highlighted in our motions, however every motion is tailored to the client's particular circumstances.

If an individual is successful in expunging his entire record, several benefits can attach.

First, the person is thereafter "released from all penalties and disabilities" resulting from the offense.[110] This is the plain language of the statute, so we have proof that the legislature intended for people to retain specific benefits after securing an expunged record. Second, an expunged conviction effectively dismisses the case, and a notation to that effect is recorded on the person's RAP sheet.[111] Third, and of critical importance, is the fact that an individual who successfully expunges his entire record gains the right to answer "no" to the dreaded question on most private job applications inquiring about criminal conviction history.[112] Fourth, investigation firms hired by employers to run background checks are restricted in what they can report regarding expunged convictions specifically,[113] and criminal records generally.[114] Furthermore, in addition to gaining the right to say "no" to criminal record inquiries on job applications, individuals with expunged records can parlay their advantage in the state licensing realm. Since state licensing boards have broad discretion to issue professional licenses, particularly regarding applicants with records, expungement and other postconviction remedies are critical to demonstrate rehabilitation to these reviewing agencies.[115]

In addition to California's expungement statutes, there is a legal mechanism that enables the reduction of certain felony convictions to misdemeanors.[116] There are concrete benefits that attach to felony reductions including restoration of jury service rights.[117] Additionally, if a petitioner succeeds on her felony reduction motion, that felony becomes "a misdemeanor for all purposes." [118] Since many employers (and housing providers, and others) inquire specifically about felony convictions, it is typically preferable to have a misdemeanor record.

Even with these powerful benefits, expungement and felony reduction remedies have some severe limitations as well. For example, in the State of California, people with expunged records are still required to disclose those "convictions" to state and local licensing boards and in order to run for public office.[119] Furthermore, an expungement does not erase a conviction from the official court or administrative records.[120] Finally, expunged convictions can be used in future criminal prosecutions against the individual and can still negatively influence sentencing terms and lengths.[121]

Additionally, while other states allow for some form of expungement relief, many of them provide limited options.[122] For example, Hawaii[123] and Georgia[124] only permit the expungement of an arrest that did not result in a conviction. In addition, petitioners have to meet very particular requirements to qualify for the remedy. Thus, by national comparison, California's expungement statutes provide petitioners with a fairly strong remedy.

A. Pay to Play

To add further complexity to the mosaic comprised of criminal records, collateral consequences, and record expungements, there is an additional startling reality that tends to settle in at precisely the wrong time. I have represented several expungement clients who have served their jail time, completed their probationary terms, performed community service, and otherwise satisfied the terms of their sentences. My clients are ready, indeed poised, to realize the potential promise of record expungement, only to discover that unpaid fines, fees, and hard-to-identify financial obligations tied to their convictions pose nearly insurmountable barriers to getting their cases dismissed.

One case that I supervised involved a client in her sixties who had long struggled with drug addiction and who had made incredible strides on her path to sobriety. She came to the Community Law Clinic to expunge several related convictions from her record. Considering the venue where this case would be

heard,[125] my student and I made the strategic decision to move forward only on cases where fines and fees were clearly paid off and their status confirmed through our factual investigation. When we appeared in court, we had several motions in front of the judge, each one carrying a confirmed zero-dollar balance on the account. While our client didn't qualify for expungement as a matter of right (due to probation violations), the judge had discretion pursuant to California Penal Code section 1203.4 to grant our motions. We argued that the equities favored the judge expunging her record. The judge denied our petitions for relief, despite compelling arguments, relying primarily on the fact that our client still had outstanding fines on *unrelated cases not presented* to the judge for consideration that day. The judge essentially explained that if there is any outstanding debt to the county, even on unrelated cases, it was the court's practice to deny expungement relief, at least in part, on that basis.

This outcome was heartbreaking for my student, me, and of course our client. In situations like this, clients have actually asked us: "Will the judge let me do jail time instead of paying the fines?" Some of our clients have a clear understanding that they cannot afford to pay off their fines, now or in the foreseeable future. Yet their convictions are firmly in the past and they have hopes of moving forward with their professional and personal lives. And at the end of the process, the best the system can do is compel our clients to ask for the gift of incarceration to pay off their debts. These are the harsh realities that people face when, seeking to reintegrate, they expose themselves to postconviction judicial scrutiny.

Most criminal convictions carry hefty fines and assessment fees levied against the person prosecuted. Some are statutorily ordered, others are mandated by the court, and still others are imposed by administrative agencies, like probation departments. People who are processed through the criminal justice system are expected to pay the price of their prosecution. And they pay mightily. These fees are often unidentifiable and difficult to parse.[126] They can include daily fees for the cost of probation supervision, state restitution fund fees, and other mysterious fines that create huge barriers to realizing the promise of expungement, reentry, and ultimately reintegration. In many instances, people are completely unaware that they have outstanding financial obligations when they begin the expungement process. In other cases, the system itself has inaccurate records that can derail the most straightforward petition for relief.

In *The New Jim Crow*, Professor Alexander explores a powerful case that illuminates the stark intersection between unpaid fines and the employment and voting rights issues explored in Part I. She highlights the story of Clinton Drake, a fifty-five-year-old black man who was a Vietnam veteran from Alabama. Drake was arrested in the late 1980s for possession of marijuana.[127] In the early 1990s he was arrested again for possessing approximately ten dollars worth of marijuana.[128] For this ten-dollar offense, he was looking down the barrel at a ten- to twenty-year prison sentence as a repeat offender.[129] He pled to the possession charge and was sentenced to five years in prison.[130] After his release, he learned that he couldn't vote until he satisfied an unpaid \$900 debt to the court.[131] Drake didn't have the money and wouldn't have it at any point in the foreseeable future. For all intents and purposes, he was permanently disenfranchised with little hope of regaining voting rights in his lifetime.[132] In advance of the 2004 presidential election, he lamented:

I put my life on the line for this country. To me, not voting is not right; it led to a lot of frustration, a lot of anger. My son's in Iraq. In the army just like I was. My oldest son, he fought in the first Persian Gulf conflict. He was in the Marines. This is my baby son over there right now. But I'm not able to vote. They say I owe \$900 in fines. To me, that's a poll tax. You've got to pay to vote. It's "restitution," they say. I came off parole on October 13, 1999, but I'm still not allowed to vote. Last time I voted was in '88. Bush versus Dukakis. Bush won. I voted for Dukakis. If it was up to me, I'd vote his son out this time too. I know a lot of friends got the same cases I got, not able to vote. A lot of guys doing the same things like I was doing. Just marijuana. They treat marijuana in Alabama like you committed treason or something. I was on the 1965 voting rights march from Selma. I was fifteen years old. At eighteen, I was in Vietnam fighting for my country. And now? Unemployed and they won't allow me to vote.[133]

NPR News delved into the issue of unpaid fines in criminal cases and proved that the concept of "Guilty and Charged" is actually a national phenomenon which is pervasive and systemically

entrenched.[134] According to NPR's year-long investigation, all fifty states have a system in place to collect fines, fees, and other expenses from defendants in criminal proceedings.[135] The current costs associated with the criminal justice system tie back to America's "tough-on-crime" policies which began with the "War on Crime in the 1970s" and continued with the "War on Drugs in the 1980s." [136] According to a Michigan county circuit court administrator, Michael Day, it is reasonable to charge defendants with the cost of the criminal justice system's services. He states:

The only reason that the court is in operation and doing business at that point in time is because that defendant has come in and is a user of those services. . . . They don't necessarily see themselves as a customer because obviously they're not choosing to be there. But in reality they are.[137]

NPR's exposé highlighted a particularly poignant case involving a Michigan man named Stephen Papa, an Iraq war veteran who owed the court \$2600 in fees associated with his conviction.[138] At Papa's hearing to follow up on his payment plan, the judge demanded the first \$50 installment.[139] However, Papa didn't have the full amount. Instead, he offered the judge what he had in his pocket, which amounted to \$25.[140] He implored the court for leniency; he explained that he was having a hard time making ends meet and that his finances were "terrible." [141] The judge responded with, "Collect cans! Cut grass!" The judge further commented, "you don't get to be 27 [years old] not having any initiative, do you? You know how to hustle, legally, and earn some money. Make it work." [142] Ultimately, the judge sentenced Papa to twenty-two days in jail for failing to pay the court-ordered \$50.[143] Papa subsequently lost his job because he was incarcerated. He had just secured the position the week before his court appearance.

For this same story, journalist Joseph Shapiro interviewed retired Michigan Judge William Buell.[144] On the issue of fines and fees, Judge Buell commented: "It's money, money, money. And it's going on forever. And the question is, at what point do we stop punishing people for something?" [145] Patrick Boler, another retired judge from Michigan observes, "The feeling for those of us on the front lines that deal with people directly was that the legislature was out of touch with the society and the economic situations in our communities, and how poor people really are." [146] He continued, "[s]ome judges felt like the higher ups were attempting to force judges to get blood out of the proverbial turnip." [147]

From my perspective as a practitioner, all of the cases discussed in this section highlight the experience of people who get ensnared in the criminal justice system.. There are harsh economic realities regarding fees and fines, informed by unforgiving employment realities, all occurring within the larger racial-historical context deeply explored in *The New Jim Crow*.

B. Judicial Discretion: How I Love You, How I Hate You

Fines and fees can haunt our clients, but so too can the dreaded (and lauded) option known to lawyers everywhere as "judicial discretion." Judicial discretion can be a huge benefit to clients in the expungement realm when judges decide to rule in the client's favor. I believe it is crucial for judges to have flexibility in assessing cases and discretion allows judges to consider the individual standing before them, instead of applying cookie-cutter analysis to every situation. However, in my practice, I have seen judges decline to exercise their discretion, resulting in conviction histories that persist with their direct and indirect consequences firmly intact. Sometimes denials are due to unpaid fines and fees. Sometimes denials are due to lengthy RAP sheets or the nature of the convictions involved. Sometimes denials are based upon probation violations sustained during a client's probationary period.

And sometimes expungement denials are based on the fact that my client "sinned" and not enough time had passed to warrant "forgiveness."

As previously mentioned, in cases where a client does not qualify for expungement relief as a matter of right, California judges have the power to grant expungements by exercising their discretion "in the interests of justice." [148]

In one example, I was in court on my own case and also supervising three students on their expungement matters. We were all slated to be heard on the same calendar, which can be a very enjoyable aspect of practicing in partnership with students. Not so this day. With our crew assembled, we all walked into court with well-coifed motions and high hopes—hopes that were dashed in short order.

I presented my client's case first. My client was over sixty years old and had a fairly lengthy RAP sheet comprised of petty offenses. Before I had much of a chance to present my arguments regarding why the judge should exercise his discretion, he explained that my client had "sinned" and that while "forgiveness" in the form of expungement was available at some point in time, we had not yet reached that point. That's because when someone has a long RAP sheet and has "sinned," the passage of some unidentified period of time must lapse before the person is able to prove themselves deserving of "forgiveness." In the moment, I was truly startled by this framing. When it became abundantly clear that I was going to lose my motion, I decided to engage the judge in some additional discussion about the equities of my client's case. I pointed out the incredible progress my client had achieved, which among other things, included obtaining highly specialized professional skills, foreign to most people in the courtroom, and that could be utilized to positive ends in the community (and the market). I also pointed out that the purpose of expungement is not to entangle people in the cobwebs of their past, but rather to empower people, who have shown evidence of rehabilitation, to move forward to achieve true reintegration. The judge nodded and appeared to sympathize with my perspective, but not to a meaningful extent. He denied my expungement motion and went on to give two of my three law students and their clients the same "sin and forgiveness" talk.

I think that most judges want to do their part to ensure fairness and just outcomes in the criminal justice system. I also think that our communities would benefit if judges in criminal courts all around the country were open to rethinking, reconsidering, and reevaluating the way they exercise (or decline to exercise) their judicial discretion in expungement cases specifically, and in criminal cases generally. As this Article illustrates, there are far-reaching consequences that extend well beyond an individual's direct sentence. These consequences should not only be reexamined, but their existence and influence on the affected individual should be evaluated at the time of sentencing. Judges and prosecutors are in a good position to make these assessments. However, such efforts require resolve and commitment to create a criminal justice system that is fair and just. This is not an easy goal given the challenges we face, but it is a goal that should be pursued seriously with focus and determination.

As we consider our collective path forward, we should focus on our own individual spheres of influence. We must remember that each of us can contribute something. We have the power to change the system for the better, even if in small, incremental steps.

IV. The Path Forward From A Practitioner's Perspective: Revisiting Our Policy Priorities

A. Unpaid Fines Should Not Preclude Successful Record Expungement Petitions

I hope that I never have to face another client offering his or her freedom in exchange for debt forgiveness in order to achieve record expungement. But as things stand now, I probably will. In my view, outstanding fines should not present a bar to expungement relief. We should collectively call for an end to the vicious cycle that so many expungement clients face. The cycle goes like this: "I can't pay my fines because I can't get a job. I can't get a job until I expunge my record. I can't expunge my record until I pay my fines. I can't pay my fines because I can't get a job." The absurdity of this cycle is staggering.

Policymakers across the country should take a close look at this issue. If we have collectively identified reentry and reintegration as top policy priorities with respect to former offenders, we have to take a coordinated approach to empowering people in this realm. If we intend for people with records to ultimately secure employment and establish stability, we must dismantle the barriers to expungement, like unpaid fines, that can stand in the way of an individual achieving positive momentum on her journey beyond the dreaded criminal record.

Furthermore, our state legislatures should reexamine the depth, breadth, and power of record expungements. They should consider bolstering the strength of these remedies to more meaningfully allay the collateral consequences of convictions.[149]

B. All Illogical and Counterproductive Collateral Consequences, Like Voter Disenfranchisement Laws, Should Be Eliminated Immediately

Regarding evaluation of the legitimacy of collateral consequences, there have been positive developments under President Barack Obama's leadership, particularly through his former U.S. Attorney General, Eric Holder. In August 2013, the Department of Justice (DOJ) announced an initiative called: "Smart on Crime: Reforming the Criminal Justice System for the 21st Century." [150] Under Holder's leadership, the DOJ announced five core principles that animate various "smart on crime" policies that the DOJ encourages federal and state governments to consider. [151] Among the five core principles is a focus on reentry and reevaluation of the legitimacy of certain collateral consequences. In particular, the DOJ has highlighted two priority areas that should be given special attention with the aim of reducing unnecessary barriers to reentry. The first priority is connecting "the reentering population with legal services to address obstacles such as fines and criminal records expungement" and the second priority is "to highlight efforts to reduce or eliminate fines at the local level." [152]

Additionally, Holder has been specific about eliminating certain collateral consequences immediately. He is the first Attorney General to call for an end to voter disenfranchisement as a collateral consequence of convictions. [153] In a speech at Georgetown University, he articulated these disenfranchisement laws as holdovers from an earlier time that have perpetuated racist policies found largely in the South following the Civil War, when states used the criminal justice system to prevent blacks from engaging in civic participation. [154] He observed: "Those swept up in this system too often had their rights rescinded, their dignity diminished, and the full measure of their citizenship revoked for the rest of their lives. . . . They could not vote." [155] According to the Attorney General, voter disenfranchisement laws in the collateral consequences context "defy the principles—of accountability and rehabilitation—that guide our criminal justice policies. . . . By perpetuating the stigma and isolation imposed on formerly incarcerated individuals, these laws increase the likelihood they will commit future crimes." [156]

In addition to making specific recommendations on the elimination of certain collateral consequences, the DOJ has worked in partnership with the American Bar Association (ABA) [157] to catalog all of the collateral consequences imposed at both federal and state levels. [158] The ABA has established an interactive website that allows users to explore the collateral consequences imposed by all fifty states. [159]

The ABA describes the project as follows:

[Collateral consequences] have become more important and more problematic in the past 20 years for three reasons: they are more numerous and more severe, they affect more people, and they are harder to avoid or mitigate. As a result, millions of Americans are consigned to a kind of legal limbo because at one point in their past they committed a crime. [160]

In this realm, the DOJ has recommended that "if the rules imposing collateral consequences are found to be unduly burdensome and not serving a public safety purpose, they should be narrowly tailored or eliminated." [161]

Ultimately, states that have not yet taken a hard look at the spectrum of collateral consequences within their own jurisdictions would be prudent to consider and incorporate the recommendations of the DOJ and the ABA with respect to the fallout of convictions. Each of the fifty states should analyze and subsequently eliminate any collateral sanctions that are illogical, ineffective, designed strictly as punishment, or contrary overall to the stated goals of reentry and reintegration. Particular focus should be given to impacts on fundamental building blocks of daily life, like employment, and on fundamental building blocks of political participation, like voting rights.

C. Take Note of California Innovations

Recent policy innovations in California demonstrate a progressive view of criminalization in the first instance and grounds for incarceration in the second instance, and keep an eye on reentry and reintegration on the back end of the process. Other jurisdictions might do well to follow suit, both because California is producing some good policies, but also because California is willing to examine its policy priorities and adjust accordingly. California's incarceration rate has declined in recent years, but in 2005, the state's incarceration rate was higher than the national average.^[162] There are lessons to be learned from California.

In November 2014, California voters approved Proposition 47, popularly known as the "Safe Neighborhoods and Schools Act," which is a progressive statute designed to reclassify and "reduce" nonviolent, nonserious felony charges to misdemeanors.^[163] The broad category of charges that were once felonies that now qualify to be reclassified as misdemeanors pertain to specified nonviolent drug possession- and property-related charges.^[164] This new law can be used to reduce qualifying felony charges to misdemeanors for people who are currently incarcerated as well as for people who have already served their sentences.^[165] MSNBC journalist Melissa Harris-Perry,^[166] observed the following about Proposition 47:

[California has passed] what is arguably the most impactful measure this election cycle. . . . The impact of this change in the law will not just be at the margins. 40,000, that's the number of people who this law will prevent from entering the prison system for non-violent offenses every year. . . . In the battle for drug and prison reform, it will be initiatives like this one that produce truly radical outcomes; changing people's lives, by giving them a second chance.^[167]

In 2011, the California legislature passed, and Governor Brown signed, Assembly Bills 109 and 117. Popularly known as the "Public Safety Realignment" statute,^[168] this "historic legislation"^[169] represents a sea change with respect to offender incarceration, supervision, and reintegration. The idea behind the legislation is to transfer responsibility for supervision and rehabilitation from state prison systems to local counties. It mandates that individuals sentenced for "non-serious, non-violent or non-sex offenses will serve their sentences in county jails instead of state prison."^[170] According to Governor Brown: "For too long, the state's prison system has been a revolving door for lower-level offenders and parole violators who are released within months Cycling these offenders through state prisons wastes money, aggravates crowded conditions, thwarts rehabilitation, and impedes local law enforcement supervision."^[171]

In 2010, California decriminalized marijuana possession of 28.5 grams or less.^[172] While "decriminalization" does not equal "legalization," possession of small amounts of the drug for personal use can result in a low-level infraction requiring the payment of a fine. Significantly, possession of marijuana in a quantity less than 28.5 grams does not result in criminal penalties that would ordinarily attach to a felony or misdemeanor, like incarceration and/or probationary terms.

These innovations could provide one version of a roadmap for other states to consider in reevaluating their own policy priorities. These innovations could inspire us to adjust our visions accordingly through targeted legislative action, and by extension, judicial application of the rules. My greatest hope is that social attitudes toward individuals with criminal histories might be influenced by these policy shifts.

D. Expand and Deepen our Collective Understanding

I started this Article by talking about collateral consequences as apparitions lying in wait, ready to emerge from the shadows and pounce. Yet there is a complex context creating the backdrop for this whole discussion which cannot be ignored. As Michelle Alexander documents in *The New Jim Crow*, our current state is inextricably tied to our Jim Crow history.^[173] While collateral consequences can be traced to ancient origins, the current manifestation of conviction fallout has a modern veneer. Until we recognize our painful history as forming the backdrop and context for how our criminal justice system has evolved, we will be stuck in the status quo, something many of us cannot abide. Our task is to

elevate the discourse, deepen our understanding of the issues, and imagine our place in finding points of entry to create reform opportunities. This mandate, however, places tremendous strain on our collective consciousness, because to elevate the discourse means to connect the dots on the complex mosaic of our shared history. It means having real conversations about that history. The kind of sea change we are hoping to witness in our lifetimes likely requires it.

Conclusion

For those of us who care deeply about the issues laid out in this Article, we have an extremely difficult time processing what we hear from our clients, read in the headlines, see on social media, and watch on cable news. We understand the historical context and the high stakes, but are left with behemoth, unwieldy questions like: “What can I do about this?” or “How can we collectively change our current trajectory?” While I cannot possibly profess to know how each of us should work to facilitate the kind of sweeping change that is needed, we can at least agree that change must come. We can also agree that we each have a part to play. Of course, not everyone is expected to be an expungement attorney, or a public defender, or a public interest lawyer of any kind. On the other hand, responsibility for finding resolutions to the complex web of problems we collectively face cannot fall disproportionately on those of us who choose these paths. Partnerships and alliances are required. The old and new Jim Crows, the modern era of mass conviction and incarceration, the legitimacy of collateral consequences, the issues of reentry and reintegration, are all shared challenges. We can choose complacency, or we can choose a path forward that is contemplative, integrated, and collective. This means that folks from all echelons, professions, and backgrounds can hold power in this realm, that is, if we choose to see the power we wield within our own personal circumstances.

But understanding the modern context of how convictions and their attendant collateral consequences work to marginalize whole swaths of our society is only step one.

I think the even harder, more painful reality is that we have to confront our country’s hideous history with slavery and its fallout, from the old Jim Crow to the new.^[174] We have to confront that painful history to gain wisdom in the present moment with respect to the policies that drive a criminal justice system that promises equality and fairness, but doesn’t deliver on that promise. Systemic reforms are required, so legislative efforts are obviously needed. But again, the larger challenge is to heighten awareness, deepen compassion, and expand our understanding so *that a larger shift within our social and political structures can occur*. We need critical mass to facilitate long-term change.

I think we have to collectively resist being seduced by (ostensibly) neutral policies that purport to “crack down” on the “criminal element” among us. We have to summon the courage to pull the screen back and see what’s behind. This operates on many levels, but the distillation calls on us first to engage in collective discourse and critical self-examination. Each one of us should engage the questions explored in this Article. The criminal justice system is just one microcosmic aspect of a much larger system. But that aspect sheds light on larger questions we should be asking ourselves, our friends, our families, our colleagues, and most importantly, our policy makers who hold the key (through us) to systemic reform.

Let us begin with acknowledgement that the fallout of criminal convictions in too many instances goes too far. Let us work to challenge the legitimacy of certain illogical, purely punitive collateral consequences that have far-reaching impacts on people that are too often counter-intuitive, indefinite, and contradict our goals of facilitating reintegration. Let us consider these issues within the larger social, political, economic, and legal landscape at play. I think Justice Thurgood Marshall would approve if we took his words to heart and worked collectively to breathe life into them: “In recognizing the humanity of our fellow beings, we pay ourselves the highest tribute.”^[175] Perhaps if we pursue wisdom in this regard, an awakening will follow.

* Lecturer and Clinical Supervising Attorney, Stanford Community Law Clinic; J.D., Loyola Law School, Los Angeles, CA. I devote the spirit of this writing to my family, particularly to my cosmic daughters, Alana and Ariel, to my husband and partner in life, Teahoen Ubuu Aaron, to my beloved grandparents, Dawson P. Jones and Ophelia B. Jones, and to my darling mom, Jo A. Jones, without whom my life wouldn't have been called forth. I also want to thank my circle of readers: Eumi Lee, Juliet Brodie, Michelle Lamy, Jack Kider, and Neel Lalchandani—much obliged, friends.

[1].John D. Bessler, *The American Death Penalty and the Founders' 8th Amendment* 281 (2012); Helen L. Bevel, *The Non-Violent Right to Vote Movement Almanac, Celebrating 50 Years of Progress* 577 (2013).

[2].Sections 1203.4 and 1203.4a of the California Penal Code govern criminal record expungements and Section 17(b) of the California Penal Code governs postconviction felony reductions. See Cal. Penal Code §§ 17(b), 1203.4, 1203.4a (2015).

[3].In addition to expungement relief, there are other legal remedies available to people seeking to clear their records. For example, in California, additional remedies include the Certificate of Rehabilitation in section 4852.01(a)-(c) of the California Penal Code and a Governor's Pardon. Examination of these remedies is beyond the purview of this writing, but they are indeed options for individuals seeking acknowledgment from "the system" that they are rehabilitated and entitled to the restoration of various important civil, social, and political rights.

[4].While I use the terms "reentry" and "reintegration" interchangeably in this Article, some have noted the distinction between these terms. "Reentry" applies to anyone who has been released from prison or jail and "reintegration" connotes "a successful reentry process." See Michael Pinard, *An Integrated Perspective on the Collateral Consequences of Criminal Convictions and Reentry Issues Faced by Formerly Incarcerated Individuals*, 86 B.U. L. Rev. 623, 625 n.2 (2006).

[5].*Id.* at 635-36.

[6]. This Article includes some stories from our practice: those stories do not compromise client confidentiality.

[7].*Id.*

[8].Nora V. Demleitner, *Preventing Internal Exile: The Need for Restrictions on Collateral Sentencing Consequences*, 11 Stan. L. & Pol'y Rev. 153, 154 (1999).

[9].See *generally* Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (2012).

[10].Devah Pager, *Marked: Race, Crime, and Finding Work in an Era of Mass Incarceration* 9-10 (2007).

[11].*Id.* at 3.

[12].Michael Pinard, *Criminal Records, Race and Redemption*, 16 N.Y.U. J. Legis. & Pub. Pol'y 963, 988 n.124 (2013) (suggesting that redemption should be understood as "the process of 'going straight' and being released from bearing the mark of crime" (quoting Alfred Blumstein & Kiminori Nakamura, *Redemption in the Presence of Widespread Criminal Background Checks*, 47 *Criminology* 327, 328 (2009) (internal quotation marks omitted))).

[13].Pager, *supra* note 10, at 2.

[14].Interactive Map and Graph of Total Corrections Populations, Sentencing Project, www.sentencingproject.org/map/map.cfm (giving national statistics on incarcerated individuals) (last visited May 7, 2015).

[15].*Id.*

[16].*Id.*

[17].These statistics are not new. It has taken the United States about twenty-five years to achieve the dubious distinction of having the highest incarceration rate in the world. The United States incarcerates 25% of the world's prison population. See Dan Roberts & Karen McVeigh, *Eric Holder Unveils New Reforms Aimed at Curbing US Prison Population*, *Guardian* (Aug. 12, 2013, 2:23 PM EDT), <http://www.theguardian.com/world/2013/aug/12/eric-holder-smart-crime-reform-us-prisons>.

[18].Michelle Natividad Rodriguez & Maurice Emsellem, Nat'l Emp't Law Project, 65 Million "Need Not Apply": The Case for Reforming Criminal Background Checks for Employment 27 & n.2 (2011), available at http://nelp.org/content/uploads/2015/03/65_Million_Need_Not_Apply1.pdf.

[19].Gabriel Chin, *The New Civil Death: Rethinking Punishment in the Era of Mass Conviction* 160 U. Pa. L. Rev. 1789, 1805 (2012).

[20].*Id.* at 1791.

[21].Pinard, *supra* note 4, at 634-35, 634 n.56.

[22].Chin, *supra* note 19, at 1791, Demleitner, *supra* note 8, at 154.

[23].Demleitner, *supra* note 8, at 154 & n.13. The convictions that subject individuals to registration requirements include sex crimes, certain drug-related crimes, and others that are designed to serve public safety. See *id.*

[24].Pinard, *supra* note 4 at 634-35 ("Collateral consequences, by contrast, are not part of the explicit punishment handed down by the court; they stem from the fact of conviction rather than from the sentence of the court. These consequences include a vast network of 'civil' sanctions that limit the convicted individual's social, economic, and political access." (footnotes omitted)).

[25].*Id.* at 635. It's important to note that while both felony and misdemeanor convictions carry significant collateral consequences, the fallout of felony convictions often carry heavy, long-lasting consequences, some of which are permanent. See *id.* at 635-36.

[26].Demleitner, *supra* note 8, at 154

[27].*Id.* (noting that collateral consequences are so far-reaching that "[e]ven when the sentence has been completely served, the fact that a man has been convicted of a felony pursues him like Nemesis" (quoting Nat'l Council on Crime & Delinquency, *Annulment of a Conviction of Crime: A Model Act*, 8 Crime & Delinq. 97, 98 (1962)) (internal quotation marks omitted)).

[28].Pinard, *supra* note 4, at 639-42 ("Collateral consequences have been subjected to two primary groups of legal challenges. The first group contains expansive challenges to the very *fairness and propriety* of certain collateral consequences, on the grounds that they are unfairly punitive and that they disproportionately affect particular population segments. Thus, legal claims have been brought challenging consequences such as . . . sex offender registration, felon disenfranchisement, and ineligibility for federal welfare benefits, on due process, equal protection, double jeopardy, and ex post facto grounds. . . . [T]he second group of legal challenges contains narrower legal claims that have not questioned the propriety of any particular consequence, but rather have challenged *the process* by

which consequences were imposed on individual defendants. Specifically, this group contains numerous challenges brought by appellants seeking to overturn their convictions on the ground that they were not informed of the consequences attaching to their convictions until after they entered guilty pleas. Some appellants argued that their defense counsel had an affirmative duty to inform them of relevant collateral consequences, and that failure to do so was a violation of the right to effective assistance of counsel. Others have asserted that the trial court had a duty to inform, and that its failure to do so rendered the plea unknowing.” (footnotes omitted)).

[29]. See Chin, *supra* note 19, at 1814-15, 1815 n.146.

[30]. *Id.*

[31]. *Id.*

[32]. *Id.* at 1809.

[33]. *Id.* at 1810.

[34]. *Id.* (footnotes omitted).

[35]. *Id.*

[36]. *Id.* at 1811-12 (emphasis added) (footnote omitted).

[37]. 559 U.S. 356 (2010).

[38]. *Id.* At 356. This case represents a departure from precedent. See Chin, *supra* note 19, at 1810 (citing Galvan v. Press, 347 U.S. 522, 529 (1954)).

[39]. Majority Opinion written by Justice Stevens joined by Justices Kennedy, Sotomayor, Ginsburg, and Breyer; Justice Alito concurring joined by Roberts; Justice Scalia dissenting joined by Thomas.

[40]. 559 U.S. at 356-57, 365-66, 368. Removal Proceedings (deportations) are *civil* cases heard in federal court.

[41]. Chin, *supra* note 19, at 1793-95, 1795 n.25; Demleitner, *supra* note 8, at 154-55.

[42]. Chin, *supra* note 19, at 1795 n. 25.

[43]. Chin, *supra* note 19, at 1795 n.25 (quoting Hayden v. Pataki, 449 F.3d 305, 316 (2d Cir. 2006) (en banc)).

[44]. *Id.*

[45]. *Id.*

[46]. *Id.*

[47]. Chin, *supra* note 19, at 1794 (quoting Avery v. Everett, 18 N.E. 148, 150 (N.Y. 1888) (“[P]laced in state of attainder.”)).

[48]. *Id.* (noting that the concept of “civil death” worked in tandem with the death sentence because an offender was dead to the state and as a result was also dead to the polity and all attendant social systems.)

[49]. Sentencing Project, *Felony Disenfranchisement: A Primer 1* (2014), available at http://www.sentencingproject.org/doc/publications/fd_Felony%20Disenfranchisement%20Prime.pdf.

[50]. Demleitner, *supra* note 8, at 157 (“[O]ur society treats labor force participation as a prerequisite for full membership in the polity. Therefore, practical and symbolic consequences of exclusion from employment combine to underscore the internal exile of ex-offenders.”). While beyond the purview of this Article, housing is also clearly identified as a critical building block in the reentry process. See Eumi K. Lee, *The Centerpiece to Real Reform? Political, Legal, and Social Barriers to Reentry in California*, 7 *Hastings Race & Poverty L.J.* 243, 253 (2010).

[51]. See Editorial, *6 Million Americans Without A Voice*, N.Y. Times (Feb. 11, 2014), <http://www.nytimes.com/2014/02/12/opinion/6-million-americans-without-a-voice.html> (“The right to vote is the foundation of any democracy.”).

[52]. See Demleitner, *supra* note 8, at 160, 169 nn.127-29.

[53]. *Id.*; Rodriguez & Emsellem, *supra* note 18.

[54]. Demleitner, *supra* note 8, at 160 (quoting Velmer S. Burton, Jr., et al., *The Collateral Consequences of a Felony Conviction: A National Study of State Statutes*, Fed. Probation, Sept. 1987, at 60) (internal quotation marks omitted).

[55]. Chin, *supra* note 19, at 1806 (“Loss of legal status is more important, ironically, for relatively less serious crimes. If a person is sentenced to twenty-five years imprisonment at hard labor, it likely matters little that she will be ineligible to get a license as a chiropractor when she is released. But to a person sentenced to unsupervised probation and a \$250 fine for a minor offense, losing her city job or being unable to teach, care for the elderly, live in public housing, or be a foster parent to a relative can be disastrous. ‘[I]n many cases the most important part’ of the conviction, in terms of both social policy and the legal effect, lies in the collateral consequences.” (alteration in original) (footnote omitted) (quoting *Sutton v. McIlhany*, 1 Ohio Dec. Reprint 235, 236 (C.P. Huron County 1848))).

[56]. *Id.* at 1805-06.

[57]. Demleitner, *supra* note 8, at 157.

[58]. Over the course of the 150 cases that I’ve worked on, my experience has been that it’s commonplace for a defendant sentenced to a probationary term to receive court orders and probation guidelines that clearly articulate their ongoing obligation to seek and secure employment.

[59]. Rodriguez & Emsellem, *supra* note 18, at 2.

[60]. *Id.* at 1.

[61]. *Id.* (alteration in original).

[62]. *Id.* at 4.

[63]. *Id.*

[64]. See EEOC, Enforcement Guidance No. 915.002, *Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964* (2012), available at http://www.eeoc.gov/laws/guidance/upload/arrest_conviction.pdf.

[65]. *Id.* at 1-3, 10-11.

[66].*Id.* at 15 (explaining the legal standard established in *Green v. Missouri Pacific Railroad*, 549 F.2d 1158 (8th Cir. 1977)).

[67].Pinard, *supra* note 12, at 983.

[68].*See id.*

[69].*Id.*; *see also id.* at 983 nn.105-06.

[70]. *Id.* at 970 (footnote omitted).

[71].Rodriguez & Emsellem, *supra* note 18, at 1 (“In recent years, the criminal background industry has grown exponentially. Particularly in the wake of 9/11, the ready availability of inexpensive commercial background checks has made them a popular employee screening tool. In one survey, more than 90 percent of companies reported using criminal background checks for their hiring decisions.”).

[72].*Id.*

[73].Pinard, *supra* note 12, at 990.

[74].Daniel Fisher, *The Government Checks Criminal Records. Why Can't Private Employers?*, Forbes (June 21, 2013, 7:36 AM), <http://www.forbes.com/sites/danielfisher/2013/06/21/the-government-checks-criminal-records-why-cant-private-employers>.

[75].Background checks extend into the professional licensing realm as well. For example, the State of California has numerous licensing boards charged with reviewing and granting state-issued licenses in fields ranging from nursing to selling real estate. *See, e.g., DCA Boards/Bureaus*, Cal. Dep’t Consumer Aff., http://www.dca.ca.gov/about_dca/entities.shtml (last visited May 11, 2015). Licensing boards can consider criminal backgrounds when reviewing licensure applications. A licensing board can deny licensure only if the “crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.” Cal Bus. & Prof. Code § 480(B) (West 2015). In determining an applicant’s eligibility the board can consider various factors including the nature/seriousness of the crime(s), the amount of time that has passed since the offense(s) were committed, and evidence of rehabilitation. *See, e.g., Criminal Convictions*, Cal. Bd. of Behav. Sci., http://www.bbs.ca.gov/app-reg/crim_conv.shtml.

[76].Rodriguez & Emsellem, *supra* note 18, at 4 (“Although greatly impacted by arrest and conviction records, people of color are not the only ones burdened with the indelible mark of a criminal record. The reality that over one in four U.S. adults has a criminal record brings this issue and its public safety and economic consequences to the doorstep of every home in America.”).

[77].*Id.* (quoting Press Release, U.S. Dep’t of Labor, US Department of Labor Announces Grant Competition to Help Former Offenders Gain Career Skills and Rejoin Community Life (Feb. 10, 2011), *available at* <http://www.dol.gov/opa/media/press/eta/ETA20110185.htm>).

[78].Alexander, *supra* note 9, at 158.

[79].Sentencing Project, *supra* note 49.

[80].*Id.* The twelve states include Alabama, Arizona, Delaware, Florida, Iowa, Kentucky, Mississippi, Nebraska, Nevada, Tennessee, Virginia, and Wyoming.

[81].*Id.*

[82].*Id.*

[83]. Notably, as of 2007 Vermont had one of the highest disproportionate black-to-white incarceration rates in the entire United States. See Mark Mauer & Ryan S. King, Sentencing Project, Uneven Justice: State Rates of Incarceration by Race and Ethnicity 3 (2007), available at http://www.sentencingproject.org/doc/publications/rd_stateratesofincbyraceandethnicity.pdf. The State of Vermont may have progressive rules regarding voting rights for people with felony convictions, but it incarcerates black individuals at a much higher rate than their white counterparts.

[84]. Sentencing Project, *supra* note 49.

[85]. ACLU, Voting With a Criminal Record: How Registration Forms Frustrate Democracy 3, 4 (2008), available at <https://www.aclu.org/racial-justice-voting-rights/voting-criminal-record-executive-summary>.

[86]. *Id.* at 4.

[87]. Sentencing Project, *supra* note 49, at 2 (“Black Americans of voting age are four times more likely to lose their voting rights than the rest of the adult population . . .”).

[88]. *Id.*

[89]. Demleitner, *supra* note 8, at 157 (“Our society treats labor force participation as a prerequisite for full membership in the polity. Therefore, practical and symbolic consequences of exclusion from employment combine to underscore the internal exile of ex-offenders.”) As noted earlier, housing is also a fundamental building block of reentry and ultimately reintegration. See Lee, *supra* note 50.

[90]. See Rodriguez & Emsellem *supra* note 18, at 3.

[91]. See *supra* note 86 and accompanying text.

[92]. Alexander, *supra* note 9, at 161.

[93]. Bessler, *supra* note 1 and accompanying text.

[94]. The San Francisco Children of Incarcerated Parents Partnership (SFCIPP) is a coalition of social service providers, representatives of government bodies, advocates and others who work with or are concerned about children of incarcerated parents and their families. Formed in 2000 under the auspices of the Zellerbach Family Foundation, [the organization] works to improve the lives of children of incarcerated parents, and to increase awareness of these children, their needs and their strengths.

S.F. Children of Incarcerated Parents P'Ship, Children of Incarcerated Parents: A Bill of Rights 2 (rev. 2005), available at <http://www.sfcipp.org/images/brochure.pdf>.

[95]. There are eight rights articulated in the Bill of Rights for Incarcerated Children and they are as follows:

1. I have the right to be kept safe and informed at the time of my parent's arrest.
2. I have the right to be heard when decisions are made about me.
3. I have the right to be considered when decisions are made about my parent.
4. I have the right to be well cared for in my parent's absence.
5. I have the right to speak with, see and touch my parent.

6. I have the right to support as I face my parent's incarceration.

7. I have the right not to be judged, blamed or labeled because my parent is incarcerated.

8. I have the right to a lifelong relationship with my parent.

Id. at 1.

[96].*Id.* at 5.

[97].*Id.*

[98].*Id.* at 7 (capitalization omitted).

[99].*Id.* (capitalization omitted).

[100].*Id.* at 11 (capitalization omitted).

[101].*Id.* (capitalization omitted).

[102].Cal. Penal Code §§1203.4(a)-.4a(a) (West 2015).

[103].California Penal Code section 1203.4 applies to probation cases: "In any case in which a defendant has fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of the period of probation . . . the defendant shall, at any time after the termination of the period of probation . . . be permitted by the court to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty." Penal § 1203.4(a)(1) (West 2015). Penal Code section 1203.4a applies to nonprobation cases: "Every defendant convicted of a misdemeanor and not granted probation, and every defendant convicted of an infraction shall . . . be permitted by the court to withdraw his or her plea of guilty." Penal § 1203.4a(a).

[104]. Penal § 1203.4(a)(1); *id.* § 1203.4a(a).

[105].Cal. Penal Code sections 1203.4 and 1203.4a contain discretionary provisions if the petitioner does not qualify for mandatory relief. *See id.* § 1203.4(a); *id.* § 1203.4a(b). Both statutes provide that a court can grant expungement relief "in its discretion" and "in the interests of justice." *See id.* § 1203.4(a); *id.* § 1203.4a(b).

[106]. *Id.* § 1203.4a(a).

[107]. *Id.* § 1203.4.

[108]. *Id.* § 1203.4a.

[109]. *Id.* § 1203.4(a)(1).

[110]. *Id.*

[111]. Through my practice I have seen dozens of RAP sheets that contain the referenced notation. Additionally, over my ten years of practice at the Community Law Clinic, I have personally sent or supervised students in sending letters to the California DOJ requesting that the government add a notation to our clients' RAP sheets reflecting the expungement/dismissal.

[112].*See id.* Job applicants still have to disclose their expunged convictions to public employers such as city, county, state, or federal governments.

[113]. Cal. Lab. Code § 432.7(a) (West 2015).

[114]. For example, these investigation firms are prohibited from reporting on cases over seven years old. Cal. Civ. Code § 1786.18(a) (West 2015). However, the challenge is that it's difficult to monitor these companies and improper reporting has obvious deleterious effects on job applicants.

[115]. See *supra* note 75.

[116]. Cal. Penal Code § 17(b) (West 2015).

[117]. See Cal. Const. art. II, § 4.

[118]. With some limited exceptions, see California Penal Code section 17(b).

[119]. See *id.* § 1203.4(a)(1). Additionally, an expungement does not reinstate restricted firearm privileges. *Id.* § 1203.4(a)(2).

[120]. Through my practice at the Community Law Clinic, I have been informed by local Silicon Valley court staff that the courts retain felony conviction records for approximately ninety-nine years, while misdemeanor records are retained for approximately ten years before the physical files are purged from the court's system. However, digital evidence of these convictions still exists and is easily discoverable through accessible internet databases, investigation firms, and the like.

[121]. For example, an expunged conviction still counts as "a prior" for sentencing purposes if there is a new criminal case in the future. Cal. Penal Code § 1203.4(a)(1).

[122]. State-specific information on criminal record expungements pulled from sources such as state judiciaries, attorneys general, and police agencies can be found through Findlaw. *Expungement and Criminal Records: State-Specific Information*, Findlaw, <http://criminal.findlaw.com/expungement/expungement-and-criminal-records-state-specific-information.html> (last visited Apr. 30, 2015).

[123]. *Expungement: Frequently Asked Questions*, Haw. Crim. Just. Data Center, <http://ag.hawaii.gov/hcjdc/expungement-frequently-asked-questions/#notqualify> (last visited Apr. 30, 2015).

[124]. *Obtaining Criminal History Record Information*, Ga. Bureau of Investigation, <http://gbi.georgia.gov/obtaining-criminal-history-record-information> (last visited Apr. 30, 2015).

[125]. Certain counties are well-known for their unforgiving perspective on unpaid fines and fees. Practitioners know which counties (and which judges) are likely to outright deny expungement relief without further consideration if there is one dime outstanding associated with the case.

[126]. From my experience investigating expungement cases, which includes researching the financial obligations on any given case, it can be incredibly difficult to discern what my clients owe and why. Part of this is because so many financial obligations attach to most criminal cases in California. Some fees are for state restitution funds, some are statutorily mandated based upon the charge, some are victim restitution, some are court fees and fines, and the list goes on. It can sometimes be difficult to get assistance parsing the various fees from the bureaucracies charged with supervising and enforcing payment of these fines. That is because there are so many different classifications, and they are often scratched out on a minute order that's later entered into a computer system. Furthermore, it can be hard to get straight answers about what financial obligations attach to which part of the case.

[127]. Alexander, *supra* note 9, at 159.

[128].*Id.*

[129].*Id.*

[130].*Id.*

[131].*Id.*

[132].*Id.*

[133].*Id.* at 159-60.

[134].*See generally Guilty and Charged: As Court Fees Rise, the Poor Are Paying the Price*, NPR News Investigations, available at www.npr.org/series/313986316/guilty-and-charged; Joseph Shapiro, *As Court Fees Rise, Poor Are Paying the Price*, NPR, (May 19, 2014), <http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>.

[135].*See Guilty and Charged*, *supra* note 134, at 0:10-0:16.

[136].Shapiro, *supra* note 134.

[137].*Id.*

[138].*Profiles of Those Forced to ‘Pay or Stay,’* NPR (May 19, 2014, 4:02 PM ET), <http://www.npr.org/2014/05/19/310710716/profiles-of-those-forced-to-pay-or-stay> [hereinafter *NPR Profiles*].

[139].*Id.*

[140].*Id.*

[141].*See Guilty and Charged*, *supra* note 134.

[142].*See NPR Profiles*, *supra* note 138.

[143].*Id.*

[144].*Guilty and Charged*, *supra* note 134, at 11:00.

[145].*Id.* at 11:00-11:21.

[146].*Id.* at 11:22-11:45.

[147].*Id.*

[148].Cal. Penal Code §§ 1203.4, -.4a (West 2015).

[149].Additionally, the federal government should codify an expansive federal right to record expungement. Currently, there is a severely limited federal dismissal remedy that does not apply to the majority of federal convictions. *See* 18 U.S.C. 3607(c) (2013). A more expansive Senate bill was introduced in Congress in July of 2014, however, the bill died and hasn't been resurrected. Record Expungement Designed to Enhance Employment Act of 2014, S. 2567, 113th Cong. (2014).

We are thus left with a mosaic of restrictive expungement remedies at the state level and no universal federal remedy to emulate. *See* Raj Mukherji, In Search of Redemption: Expungement of

Federal Criminal Records (May 1, 2013) (unpublished note, Seton Hall University School of Law), *available at* http://scholarship.shu.edu/student_scholarship/163.

[150]. See U.S. Dep't of Justice, *Smart on Crime: Reforming the Criminal Justice System for the 21st Century 1* (2013), *available at* <http://www.justice.gov/sites/default/files/ag/legacy/2013/08/12/smart-on-crime.pdf>.

[151]. The five Principles are: (1) "Prioritize prosecutions to focus on [the] most serious cases," (2) "Reform sentencing to eliminate unfair disparities and reduce overburdened prisons," (3) "Pursue alternatives to incarceration for low-level, non-violent crimes," (4) "Improve reentry to curb repeat offenses and re-victimization," and (5) Prioritize "violence prevention and protecting [the] most vulnerable populations." *Id.* at 2-5 (capitalization omitted).

[152]. *Id.* at 5.

[153]. Matt Apuzzo, *Holder Urges States to Lift Bans on Felons' Voting*, N.Y. Times (Feb. 11, 2014), <http://www.nytimes.com/2014/02/12/us/politics/holder-urges-states-to-repeal-bans-on-voting-by-felons.html>.

[154]. *Id.*

[155]. *Id.*

[156]. Editorial, *supra* note 51.

[157]. By way of background, in 2003 the ABA encouraged jurisdictions to "identify and codify collateral sanctions and to limit the imposition of discretionary disqualifications." *Project Description*, ABA Nat'l Inventory of Collateral Consequences of Conviction, <http://abacollateralconsequences.org/description> (last visited Mar. 30, 2015). This prompted additional research and support from Congress and the DOJ to catalog and track the myriad collateral consequences scattered throughout the fifty states. Additionally, in 2004, the ABA adopted standards that, among other things, strongly encourage jurisdictions to notify defendants of collateral consequences at the time of sentencing (or plea) and that mandate that courts take collateral consequences into consideration when imposing sentences. See *generally*, ABA Standards for Criminal Justice: Collateral Sanctions and Discretionary Disqualification of Convicted Persons (3rd ed. 2004), *available at* http://www.americanbar.org/content/dam/publishing/criminal_justice_section_newsletter/crimjust_standards_collateralsanctionwithcommentary.authcheckdam.pdf.

[158]. See *Project Description*, *supra* note 157.

[159]. *Id.*

[160]. *Id.*

[161]. U.S. Dep't of Justice, *supra* note 150, at 5.

[162]. See Mauer & King, *supra* note 83, at 6.

[163]. Cal. Penal Code § 1170.18 (West 2015).

[164]. *Id.*

[165]. *Id.* § 1170.18(a).

[166]. Host of the MSNBC show “Melissa Harris-Perry” and Professor of Politics and International Affairs at Wake Forest University.

[167]. Melissa Harris-Perry, *California’s Prop. 47 Wins*, MSNBC (Nov. 9, 2014), <http://www.msnbc.com/melissa-harris-perry/watch/california-s-prop.-47-wins-355765827719>.

[168]. Penal § 1170(h). Following passage of Assembly Bills 109 and 117, in 2012, California voters approved Governor Brown’s Proposition 30, which created a constitutional amendment protecting funding to the counties for Realignment. See *Public Safety Realignment*, Cal. Dep’t of Corrections & Rehabilitation (Dec. 2013), www.cdcr.ca.gov/realignment.

[169]. *Public Safety Realignment*, *supra* note 168.

[170]. *Id.*

[171]. Press Release, Office of Governor Edmund G. Brown Jr., Governor Brown Signs Legislation to Improve Public Safety and Empower Local Law Enforcement (Apr. 5, 2011), www.gov.ca.gov/news.php?id=16964.

[172]. Cal. S. 1449, 2010 Leg., Reg. Sess. (Cal. 2010).

[173]. See Alexander, *supra* note 9. Alexander argues that the structure of American society has remained largely intact since the Jim Crow era, largely because we have used the criminal justice system to “label people of color [as] ‘criminals’ and then engage in the practices we supposedly left behind.” *Id.* at 2.

[174]. President Bill Clinton apologized for slavery during a 1998 trip to Uganda. John Ryle, *A Sorry Apology From Clinton*, *Guardian* (Apr. 13, 1998), <http://www.theguardian.com/Columnists/Column/0,5673,234216,00.html>. The U.S. House of Representatives issued an unprecedented apology to Black Americans for slavery and Jim Crow segregation in 2008. David Abrams, *House Formally Apologizes for Slavery and Jim Crow*, *Associated Press* (Aug. 6, 2008, 5:12 AM), http://www.huffingtonpost.com/2008/07/29/house-formally-apologizes_n_115743.html. The U.S. Senate had previously issued a 2005 apology for failing to pass anti-lynching laws. *Id.* But our country has never collectively engaged a national discourse and attempt at reconciliation, which is really what is required. I fully acknowledge that this is a task most Americans, including many people of color, want to avoid. The pain is too real, and too raw. While I do not have all of the answers, I do think that we have to find the courage, someday, to confront our past if we have any hope of achieving the kind of just and peaceful society many of us long for. The first step is to have these conversations around our dinner tables or other safe spaces in our communities—that is step one in elevating the discourse. Another step might involve a series of National Days of Reflection and Dialogue that encourage every one of us to discuss our history and its modern day manifestations. Perhaps President Barack Obama could video conference with the nation. People in their individual communities could join a series of national conversations led by the first Black U.S. President. If we care enough to imagine a peaceful, just, and equal society, we should find a way to confront the ongoing vestiges of our shared history, which are so starkly presented through our current criminal justice system.

[175]. See *supra* note 1.