THE FOREVER SCARLET LETTER: THE NEED TO REFORM THE COLLATERAL CONSEQUENCES OF CRIMINAL CONVICTIONS

ROUZHNA NAYERI

I. INTRODUCTION 110

II. HISTORY & IDENTITY OF THE PRISONER & EX-PRISONER 113
   A. EBB AND FLOW OF INCARCERATION & COLLATERAL CONSEQUENCES 113
   B. IDENTITY OF PRISONERS, SOON TO BE EX-PRISONERS 114
      1. Age 114
      2. Race 115
      3. Gender 115
      4. Mental Conditions 116
      5. Education 116

III. BRIEF SUMMARY OF COLLATERAL CONSEQUENCES & EFFECTIVENESS 117
   A. CURRENT CONDITIONS 117
   B. EMPLOYMENT 117
   C. HOUSING 118
   D. STUDENT LOANS AND PUBLIC ASSISTANCE 118
   E. VOTING RIGHTS 119
   F. INFLUENCE OF COLLATERAL CONSEQUENCES ON RE-OFFENDING 120

IV. COMPARISON COUNTRIES 121
   A. CANADA 121
   B. GERMANY 122
   C. SWEDEN 124
   D. ENGLAND 125

V. POSSIBLE EXPLANATIONS FOR COLLATERAL CONSEQUENCES 126
   A. COLLATERAL CONSEQUENCES TO PROMOTE SAFETY AND MINIMIZE CRIMINAL ACTIVITY 126
   B. RACE-BASED POLICY OF “WAR ON DRUGS” & ITS COLLATERAL CONSEQUENCES 127

VI. RECOMMENDATIONS 129
   A. MAKE COLLATERAL CONSEQUENCES VISIBLE 130
   B. IMPLEMENT TARGETED REHABILITATIVE PROGRAMS & COMMUNITY INVOLVEMENT 130
      1. Treatment, Training, and Pre-Release Programs 131
      2. Promote Responsible Behaviors 132
   C. APPLY AN EASIER PROCESS FOR PARDONS AND CERTIFICATES OF GOOD CONDUCT 133
   D. RE-ANALYZE DRUG OFFENSE POLICIES 134
   E. ALLEVIATE INVISIBLE PUNISHMENTS AND LINK AND PROPORTIONALIZE CONSEQUENCES WITH UNDERLYING OFFENSE AND REHABILITATION PROGRESS 136
   F. REVERSE IN THE PHILOSOPHICAL AND MORAL TREATMENT OF PRISONERS AND EX-PRISONERS AND ENACTMENT OF UNIFORM COLLATERAL CONSEQUENCES OF CONVICTION ACT 139

VII. CONCLUSION 141
I. INTRODUCTION

In a national study, the American Bar Association ("ABA") found there are 38,000 federal and state statutory and regulatory restrictions and barriers for people that have a criminal record.1 These "civil punishments" are called collateral consequences because they are imposed by operation of law and not part of the sentencing jurisprudence.2 As a result, these punishments, which are mostly "riders" to other pieces of legislation, often go unnoticed by the general public and are not considered by the judiciary committees.3 Such "invisible punishments" chip away from the core foundations necessary to provide support for the poor in our country.4 They emphasize that one’s debt to society is never paid, and have been viewed as a tool for “internal exile.”5 In fact, studies show that collateral consequences have a negative effect on reintegration and increase recidivism.6 Moreover, such growing collateral consequences are now affecting roughly 30 percent of Americans who have a criminal record, as well as 6.5 percent of citizens who are serving or have served a prison sentence.7

With about 700,000 adults, 1,600 per day, leaving the state and federal prisons each year, the biggest challenge is determining how to reintegrate these individuals into our society.8 A large, disproportionate number of those individuals return to urban “core counties” or low-income communities, which now deal with tremendous waves of returning ex-prisoners.9 Furthermore, most of these individuals have serious social and medical issues, with about one in

---

1 ABA, ABA Criminal Justice Section Collateral Consequences Project, NAT’L INST. OF JUSTICE (Jan. 5, 2012), http://www.abacollateralconsequences.org/CollateralConsequences/map.jsp.


3 Id.

4 Id. at 18.


8 Id. at 3. Also, note that 93 percent of the 1.6 million prisoners are at some point released. Id.

three suffering from mental illness and two in three having a history of substance abuse. They are further excluded from society by voting disenfranchisement laws, which exist in all states except two. Even more, lack of education and skill hinder the reintegration process, as well as both the formal and informal stigma associated with having a prison record, which creates problems in acquiring employment and social benefits. These “invisible punishments” become a tool for social exclusion. When compared to other “institutionally similar nations,” the propensity to incarcerate for violent crimes is not different in the United States; however, for property and drug related crimes, the United States has the highest incarceration rate, as well as harsher, more permanent collateral consequences.

Even if one takes the view that these individuals deserve those collateral consequences, the denial of certain rights has a harsh effect on the ex-offender’s community. In fact, the communities that ex-offenders are returning to suffer disproportionately from lack of cohesion, unemployment, homelessness and family instability. When the number of barriers expands, an ex-offender’s “chances of succeeding in this environment are further reduced, with detrimental consequences for these communities.” Collateral consequences do not merely affect the prisoner or the prison system, but have vicious and brutal social, political, and economic consequences for a prisoner’s family and community. Such consequences either limit or completely bar lower-income individuals from the support system in our country. Furthermore, formal consequences hinder the ex-prisoner’s ability to gain employment or housing, which

---


11 Id. at 4, 50.


13 PETERSILIA, supra note 7, at 105-07.

14 Travis, supra note 2, at 16-18.


16 PETERSILIA, supra note 7, at 22.

17 Nora V. Demleitner, Collateral Damage: No Re-entry for Drug Offenders, 47 VILL. L. REV. 1027, 1048 (2002).


19 Id.; see Andrews & Bonta, supra note 19, at 39-55.

20 Demleitner, supra note 17, at 1048.

21 Travis, supra note 2, at 18.
increases the chance of recidivism.\textsuperscript{22} Consequently, the community’s workforce becomes diminished, thereby resulting in the departure of businesses and the creation of less sustainable communities.\textsuperscript{23}

This article asserts that harsh and broad collateral consequences socially exclude ex-prisoners; are not effective in reducing future crime; are more longstanding than formal criminal sentences; impact poor and urban communities severely; and stand as a contrast to the modes of collateral consequences employed by other countries. This article also requests rehabilitation reform during imprisonment in an attempt to diminish the need for such collateral consequences, and finally encourages a reversal from the broad, status-generated punishments to recognizing redemption and setting reintegration as the goal. Part I details the history of the collateral consequence policies since the 1950s, noting the evolution from rehabilitation to continuous and permanent punishment, followed by an identification of demographics concerning soon to be released inmates. Part II briefly summarizes the growth of such collateral consequences, focusing on employment, housing, student loans, public benefits, and voting rights. This Part of the article also details the harsh reality created by some collateral consequences along with the lack of direct relation these collateral consequences have to the underlying offense. Part II notes how collateral consequences are not only ineffective, but also serve as a hindrance to the reintegration process by showing that current collateral consequences actually impede and counteract an ex-prisoner’s ability to be a productive member of the society, even though they have already served their time. Part III sets forth a comparative approach by describing the collateral consequences and conditions in Canada, Germany, Sweden, and England, to demonstrate how a similarly situated individual in the United States is in fact more stigmatized by the operation of law than an ex-prisoner in any of those four countries. Part IV provides a detailed summary of plausible explanations and arguments for the imposition of such harsh collateral consequences. First, Part IV discredits the argument that collateral consequences promote safety and minimize criminal activity. Second, this section analyzes the argument that, although facially neutral, such collateral consequences have a disproportionate effect, resulting in the criminalization of both the poor and minorities. Finally, Part V discusses recommendations for reform within the sentencing period and the process for pardons, and further advocates for a change in the drug-offense policies reflected through imprisonment and harsh, unrelated collateral consequences. Part V further argues that collateral consequences must be alleviated, and some even abolished, specifically felon disenfranchisement. If these harsh collateral consequences are not to be abolished, they must at least be proportional and directly related to the underlying offense. Finally, this section asks for a re-analysis and transformation in our philosophical and moral understanding of an ex-offender, appreciating their dignity rather than silencing and ostracizing them long after they have done their time.


\textsuperscript{23} Id.
II. HISTORY & IDENTITY OF THE PRISONER & EX-PRISONER

A. Ebb and Flow of Incarceration & Collateral Consequences

Today, the United States has the highest incarceration rate in the world.\textsuperscript{24} In 2011, our country incarcerated 1.6 million people,\textsuperscript{25} followed by 2.3 million in 2012.\textsuperscript{26} Consequently, for every 100,000 residents, there are 492 inmates.\textsuperscript{27} Considering that there are now approximately 700,000 individuals released from state and federal prisons each year, the impact of such high incarceration rates continues long after the end of an inmate’s sentence and regularly impacts minorities and low-income communities.\textsuperscript{28}

The numbers were not always this troubling. Since 1970, the federal and state prison population has increased by more than 700 percent.\textsuperscript{29} The overwhelming growth of incarcerations throughout the country is primarily due to a shift in sentencing and correction policy.\textsuperscript{30} Before the 1980s, the predominant policy consideration was one of indeterminate, treatment-orientated sentencing.\textsuperscript{31} As a result, many Supreme Court rulings granted rights and protections to inmates, and in 1955, the National Council on Crime and Delinquency proposed that the “civil rights” of an offender should be returned after his sentence.\textsuperscript{32} In 1973, the National Advisory Commission on Corrections contended that disenfranchisement was unnecessary and prohibited the reintegration process.\textsuperscript{33} Additionally, the ABA recommended that


\textsuperscript{30} Michael Pinard, \textit{Reflections and Perspectives on Reentry and Collateral Consequences}, 100 J. CRIM. L. & CRIMINOLOGY 1213, 1217 (2010).

\textsuperscript{31} Id.

\textsuperscript{32} Travis, \textit{supra} note 2, at 20; See NATIONAL COUNCIL ON CRIME AND DELINQUENCY, STANDARD PROBATION AND PAROLE ACT § 27 (1955).

\textsuperscript{33} Travis, \textit{supra} note 2, at 21.
civil disabilities not be automatically imposed, other than those directly connected to the offense and necessary for governmental or public interest, but rather, only impose civil disabilities for a limited time with a possibility of early termination upon review.34 However, contrary to past recommendations, the policy has been transformed from one of rehabilitation and reintegration to one of maintenance within prison and social exclusion outside of prison.35 In fact, the decrease in collateral consequences during the 1960s and early 1970s was not only reversed, but also expanded in the 1980s and 1990s.36 Such restrictions now relate to public benefits, and many target drug offenders as opposed to violent crime offenders.37 Beginning in the 1980s, both federal and state legislatures passed several laws and regulations that now restrict employment, parental rights, public housing, welfare benefits, child support, educational loans, and the right to vote.38 This phenomenon, although not necessarily new, is unique because the restrictions continue growing in number and are applied to a larger percentage of the American population: 59 million Americans, almost 30 percent of the country, have a criminal record and about 13 million are now serving or already have served a felony sentence.39

B. Identity of Prisoners & Soon to be Ex-Prisoners

To better understand the implications of such harsh collateral consequences and to improve the current system, one must understand the identity of the soon to be ex-prisoner. This section will provide a brief overview of the demographics and characteristics.

1. Age

Approximately 61 percent of state and federal prisoners are aged 39 years old or younger, with 34 years of age being the average.40 This means that more than half of our prisoners, and possible ex-prisoners are very young. Given the large percentage of young ex-prisoners and the denial of access to basic citizenship rights and social programs, this not only has significant implications on their re-entry and reintegration process, but also their family and community.41

34 Id.; Pinard, supra note 30, at 1218.
35 Pinard, supra note 30, at 1217.
36 Id.
37 Id. at 1218. Considering that the number of individuals imprisoned for drug possession has increased more than 1,000 percent an alarming percentage of our population is targeted and punished by post-sentencing restrictions. Don Stemen, Reconsidering Incarceration: New Directions for Reducing Crime, VERA INSTITUTE OF JUSTICE 8 (2007), http://www.vera.org/download?file=407/veraincarc_vFW2.pdf.
38 Travis, supra note 2, at 67-69.
39 PETERSILIA, supra note 7, at 136.
40 Id. at 24 (noting the average age in 1999).
41 Margaret C. Love, Paying Their Debt to Society: Forgiveness, Redemption, and the Uniform Collateral Consequences of Conviction Act, 54 HOWARD L. J. 753, 771 (2010-11) (stating that young ex-prisoners can be precluded from receiving public benefits, employment, educational loans, and housing).
2. Race

Based on a study by the Bureau of Justice Statistics, about 841,000 Black males, compared to 693,000 White males and 442,000 Hispanic males were held in state and federal prisons.\textsuperscript{42} Black males are incarcerated at rates six times higher than White non-Hispanic males and about three times higher than Hispanic males.\textsuperscript{43} In fact, we have more young Black men in the criminal justice system than in college, and 25 percent of Black males are estimated to experience a prison term before the age of 35, compared to fewer than 5 percent of White males.\textsuperscript{44}

3. Gender

Women are also rapidly growing among the prison population.\textsuperscript{45} Two-thirds of imprisoned women are minorities and about half are drug offenders.\textsuperscript{46} From 1986 to 1996, the number of women incarcerated for drug related crimes increased 888 percent.\textsuperscript{47} It is important to note the difference between the needs of male and female offenders, since about 57 percent of female prisoners have had prior physical or sexual abuse and have higher drug addiction rates than male prisoners.\textsuperscript{48} Female prisoners also have higher infectious disease rates than their male counterparts.\textsuperscript{49} The collateral consequences are gender-neutral and eschew consideration of the prominent role of women in child rearing, the subordinate role of women in crimes, and the lower rates of recidivism of women as compared to men.\textsuperscript{50} When a mother is imprisoned, the likelihood of a family being broken is greater than if a father is arrested; women are simply ostracized more than male offenders.\textsuperscript{51} Furthermore, about 1.5 million children have a parent in


\textsuperscript{43} Becky Pettit & Bruce Western, \textit{Incarceration & Social Inequality}, J. AMERICAN. ACAD. OF ARTS & SCIENCES 8, at 11 (Summer 2010).

\textsuperscript{44} Id.

\textsuperscript{45} PETERSILLA, \textit{supra} note 7, at 26-27.

\textsuperscript{46} Id.


\textsuperscript{50} Harlow, \textit{supra} note 48.

prison, thus increasing the number people that are affected by the collateral consequences placed on their parents.  

4. Mental Conditions

Mental illness is an important consideration as it affects the success of reintegration, especially job placement. Such illnesses are often ignored, unless they become an explicit part of the offense or are very obvious at discharge. About 50 percent of prisoners have mental health problems. Furthermore, mental illnesses such as schizophrenia, anxiety, and bipolar disorders are disproportionally higher among inmates than the overall U.S. population.

5. Education

While education is not the direct cause of criminal convictions, those who are poorly educated are disproportionately found in prison. Seventy percent of inmates do not possess a high school degree, about 19 percent are completely illiterate, and a staggering 40 percent are functionally illiterate. Since the elimination of Pell grants for inmates in 1994, inmate college programs drastically declined, even though less than 1 percent of recipients were prisoners. These numbers are highly relevant because the lower one’s education level, the more likely they will be re-arrested. In fact, one study shows that every dollar spent on prison education yielded two more dollars in savings from re-incarceration costs.

52 Pinard et al., supra note 15, at 600.
57 Id.
59 See generally, Denis Gottfredson et al., CRIME: PUBLIC POLICIES FOR CRIME CONTROL 149 (2002).
III. BRIEF SUMMARY OF COLLATERAL CONSEQUENCES & EFFECTIVENESS

A. Current Conditions

Even though state spending on corrections has quadrupled over the past two decades,61 one commenter noted that educational and rehabilitative programs are among the first to be cut in times of fiscal belt-tightening.62 We spend $50 billion annually on corrections for in-prison rehabilitation programs, with some of the money being put into hiring more correction officers and constructing more prisons.63 Only one-third of all prisoners released received some sort of vocational or education training, and one-fourth received drug or alcohol substance abuse treatment (even though three-quarters of all inmates have some sort of alcohol or drug abuse problem).64 Moreover, while we have decreased in-prison rehabilitation services, we have increased barriers and statutory restrictions on ex-prisoners.65

B. Employment

Employment is a vital factor for successful reintegration, but the likelihood of gaining employment as an ex-prisoner is often bleak.66 Aside from the stigma of being an ex-offender, other common obstacles to gainful employment include: (i) “low levels of education and previous work experience,” (ii) “substance abuse or other mental health issues,” (iii) “residing in poor inner-city neighborhoods,” and (iv) “a lack of motivation” and “alienation from of traditional work.”67 In addition, manufacturers are more willing to hire ex-offenders; however, those kinds of job are becoming almost non-existent as we move away from blue-collar jobs to a more service based economy. Further, since 1992, some states revoke or suspend the driver’s license of those with a drug-related felony for at least six months, causing a huge hinder on one’s


63 PEW, supra note 61.

64 PETERSILIA, supra note 7, at 105.

65 Id. A number of these statutory restrictions are the byproduct of the 1980s and 1990s “Get Tough” movement. Id. States vary from one another on restrictions, and some allow the restoration of such rights through passage of time, affirmative executive or judicial act, or occurrence of a specific event.

66 Id. at 113.

67 Id. (citations omitted).
mobility to find a job or even be hired without identification. Finally, almost all states restrict former offenders from being licensed in certain professions or trades.\textsuperscript{68}

\textbf{C. Housing}

Although having a stable residence is essential to successful reintegration and continuance in substance abuse and mental health treatment, for an ex-prisoner, finding such a residence is nearly an impossible task. First, the private housing market is cost prohibitive, especially considering the ex-prisoner’s low income or lack of income. And even if the ex-prisoner can afford it, they are usually denied due to background checks. Second, under public housing, certain felons, such as drug offenders, are denied housing based on statutory restrictions.\textsuperscript{69} In fact, all members of the ex-prisoner’s household can be evicted for criminal activity committed by just one member of the household.\textsuperscript{70} Thus, such statutory restrictions do not merely impact the ex-offender, but have consequential effects on the community at large, as their relapse may create a vicious cycle of repeat offenses, imprisonment, fear within the community, and detrimental consequences to the family unit.

\textbf{D. Student Loans and Public Assistance}

An ex-prisoner’s eligibility for public assistance can be a very important component of a successful reintegration plan. Specifically, ex-drug offenders are denied access to student loans and other educational grants under the Higher Education Act of 1992.\textsuperscript{71} Considering that the majority of ex-offenders are young, education is an integral part of the reintegration process and the denial of access to higher education can create detrimental effects. Further, as stated above, finding secure employment is very difficult for ex-prisoners, who often need to participate in mental health, substance abuse, job training, or education programs.\textsuperscript{72} Without public assistance, many are left without a way to pay for necessities and treatment programs. In fact, some states permanently bar those with drug-related felonies from receiving federally funded public

\begin{itemize}
\item \textsuperscript{68} Legal Action Ctr., \textit{After Prison: Roadblocks to Reentry—A Report on State Legal Barriers Facing People with Criminal Records}, at 21-24 (2009), http://www.lac.org/roadblocks-to-reentry/upload/lacreport/Roadblocks-to-Reentry--2009.pdf. For example, even though many in-prison training programs are geared toward the barbering trade, many states bar former offenders from gaining their license in this profession.
\item \textsuperscript{69} \textit{Id.}
\item \textsuperscript{70} Regina Austin, \textit{“Step on a Crack, Break Your Mothers Back”: Poor Moms, Myths of Authority, and Drug-Related Evictions from Public Housing}, 14 YALE J. L. & FEMINISM 273, 274-75 (2002) (citations omitted). For example, even if one of the children of the family is convicted, his entire family will be denied public housing and may have to be placed in shelters.
\item \textsuperscript{71} Travis, \textit{supra} note 2, at 24.
\item \textsuperscript{72} PETERSILIA, \textit{supra} note 7, at 126 (citations omitted).
\end{itemize}
assistance and food stamps.\textsuperscript{73} Thus, even ex-prisoners convicted of a violent crime such as murder may at some point be eligible for welfare benefits and food stamps, while an individual, even if a first time offender, convicted of a drug related offense is completely barred. About 22 states permanently ban welfare benefits for those with drug felonies and 10 deny the benefits for a term.\textsuperscript{74}

Although many would view such treatment as “necessary” to punish the drug ex-offender, we have to look at who needs such government benefits. It is not the manufacturer or the large drug distributors of illegal drugs, but rather the poor, minor offender or addict ex-prisoner who is trying to “make it.”\textsuperscript{75} Even more, 65 percent of female prisoners, the fastest growing demographic within the prison population, have children.\textsuperscript{76} Therefore, it is not merely the ex-offender that is affected by such laws, but also their immediate family and children, who are often left with no safety net, because of the hardship ex-prisoner parents face in finding employment, thus leaving them without any access to welfare benefits.

\textit{E. Voting Rights}

Over 5.3 million Americans are currently ineligible to vote because of their felon or ex-felon status; noteworthy is the fact that many of these people have already paid their debt to society by completing their sentences.\textsuperscript{77} With the exception of Maine and Vermont, all states have some form of law barring felons and/or ex-felons from voting; however, these laws vary from state to state as to when, if ever, voting rights may be restored.\textsuperscript{78} As discussed above, the indigent and racial minority populations are convicted at a disproportionate rate when compared to other socioeconomic groups; thus members of these populations, many of whom live, work, and raise families, are denied one of the most valued rights of American citizenship. Because both of these groups tend to vote for Democratic candidates, “disenfranchisement laws have provided a small but clear advantage to Republican candidates in every presidential and


\textsuperscript{75} See PETERSILIA, supra note 7, at 126.

\textsuperscript{76} Id.


\textsuperscript{78} Rottinghaus, supra note 77, at 29-31. Thirteen states permanently ban the right to vote for ex-felons.
senatorial election from 1972 to 2000.” A study by Uggen and Manza found that if about 15 percent of the nearly 900,000 disfranchised felons in Florida had been able to participate in the 2000 presidential election, Al Gore, rather than George W. Bush, would have prevailed in Florida. Regardless of one’s political views and party affiliation, there is no denying that a substantial population goes unheard because disenfranchisement laws serve as barriers to the ballot box, thereby alienating some American citizens from the political process. Thus, it is necessary that we re-examine felony disfranchisement laws and whether they serve a legitimate public purpose.

F. Influence of Collateral Consequences on Reoffending

It is imperative to examine whether such wide-reaching collateral consequences are effective in reducing recidivism rates. About two-thirds of former inmates are re-arrested and return to the prison system within three years of their release for a new act of crime; about 30 percent of such arrests occur within just the first six months. Recidivism rates are the highest among inmates originally incarcerated for property crimes (“crimes for money”) such as burglary, robbery, larceny, and theft of a motor vehicle, while drug offenders have the next highest rate of return. The lowest recidivism rates are from inmates who were originally imprisoned for crimes not motivated by the desire for material gain, such as homicide, sexual assault, rape, or driving under the influence of drugs or alcohol. This begs the question of whether collateral consequences, such as the inability to find employment, housing, or receive government assistance, promote or at least catalyze economic crimes. As some post-imprisonment restrictions apply for a limited time, many others are permanent and directly affect an inmate for more than just the first few years after release. There is a strong argument that such restrictions hamper the rehabilitation and reintegration process, resulting in new arrests of former inmates for economically related crimes that may have been avoided but for the extreme restrictions placed on former inmates.

---


80 Id. at 797; see also Florida Department of State, Division of Elections, November 7, 2000, *General Election Official Results*, http://election.dos.state.fl.us/Elections/ResultsArchive/Index.asp?ElectionDate=11/7/2000&DATAMODE=.

81 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, 629 (2006); Petersilia, supra note 7, at 143.


83 Id.; Petersilia, supra note 7, at 141.

84 Petersilia, supra note 7, at 141.

85 Travis, supra note 2, at 24.
Moreover, there is correlation between age and the likelihood that one will reoffend. Recidivism is inversely related to age with about 80 percent of juvenile offenders who are released from correctional facilities being re-arrested, compared to 43 percent of those older than 45 years of age and older. This drastic difference may be attributed to the fact that many young offenders are incarcerated for drug-related offenses rendering them ineligible for student loans, at least for a specific period of time after release, under the Higher Education Act of 1998. Lacking the resources to get an education results in few legal means for former inmates to make money, which explains why “crimes for money” occur at such an alarming rate within the young offender population, thereby resulting in a higher recidivism rate.

IV. COMPARISON COUNTRIES

To provide possible suggestions, this article looks at the treatment of inmates as well as ex-prisoners in Canada, Germany, Sweden, and England. These countries were chosen because they are Western democratic societies and have similar prison reentry and reintegration issues. There are also specific similarities that will be detailed in each country’s section.

A. Canada

Both Canada and the United States’ laws originated from the British Common Law and have federalist political structures. Furthermore, as the United States’ incarceration rates have increased, so have Canada’s and, analogous to the disproportionate imprisonment of minorities in the United States, Canada disproportionately incarcerates Aborigines. However, in contrast to the United States, Canada has a more “liberal, penal welfare” policy, with higher rehabilitative treatments and programs available for inmates while in prison, and less harsh post-imprisonment restrictions. First, Canada only prohibits those on probation or parole from obtaining welfare assistance. Second, unlike the United States, it does not disenfranchise nor deny public

86 PETERSILIA, supra note 7, at 142.
87 Travis, supra note 2, at 24 (eligibility may be restored after meeting certain criteria).
91 Id. at 498.
housing to those with a felony conviction. In fact, the Canadian Supreme Court has stated that disenfranchisement excludes inmates from society and “undermines correctional law and policy directed towards rehabilitation and integration,” and has further stated that the right to vote allows prisoners to learn “democratic values and social responsibility.” Although there are practical difficulties in obtaining housing caused by the informal stigma of a criminal record or lack of financial resources, there are no institutionalized statutory laws that exclude ex-prisoners. In the United States, pardons are rare and limited usually to misdemeanors or first-time offenders. Moreover, expunging or sealing may have no actual effect on certain federal collateral restrictions in America. On the other hand, Canadian ex-prisoners can have their criminal records pardoned, expunged, or sealed by the National Parole Board. It is available for not only those convicted of a misdemeanor, but also felonies. Unlike their American counterparts, the Canadian government approves 98.5 percent of all pardon applications.

B. Germany

Similar to the United States, beginning in the early 1990s, imprisonment population in Germany increased with drug offenders comprising one-fourth of the prison population. Dissimilar to the United States, in 1976, the Prison Act, a result of decisions by the Federal Constitutional Court of Germany, explicitly identified reintegration as the goal of corrections. Thus, the Prison Act provides: “[w]hile serving the sentence, the prisoner shall be enabled to lead, in social responsibility, a life without criminal offences (goal of corrections). The execution of the prison sentence also serves to safeguard the public of further [offenses].” Further, Section 3 of the Prison Act notes the following three principles that are to guide prison practice and the interpretation of the Act: (1) the principle of normalization, as in life in prison

---

92 Id.
93 Suave v. Canada, 3 S.C.R. 519, 522-47 (Can. 2002). In Suave v. Canada, the Canadian Supreme Court overruled a law denying the right to vote those serving more than two years in prison. The Court specifically tied the right to vote to one’s “dignity…that lies at the heart of Canadian democracy” and the country’s constitution.
94 Pinard, supra note 90, at 498.
96 Id.
97 Pinard, supra note 90, at 503.
98 Id.
99 Id. at 503-04.
101 Id. at 370.
102 Id.
must resemble, as much as possible, general living conditions outside prisons; (2) the principle of
damage reduction, where the “damaging consequences” of imprisonment must be counteracted;
and (3) the principle of integration, where prison life is organized to help prisoners integrate
themselves into society after imprisonment. Thus, German principles stand in sharp contrast
to the punitive ideologies perpetuated through the United States current and post-incarceration
systems.

One of the fundamental programs present in Germany’s correctional system is the
“individual reintegration plan.” A thorough assessment is carried out at the very beginning of
the inmate’s prison term, focusing on factors that are essential for methodical treatment and
reintegration after release. The assessment involves prison administrators investigating the
inmate’s background to create tools and plans for re-entry. The plan is created for specific
workplace or training placement with individualized goals and tools for measurement. The
plan is revised throughout the inmate’s sentence and fully discussed with him. The first step
to rehabilitation and reintegration is to provide individualized assessments for reintegration when
inmates are admitted initially, which continue through the end of their sentence, instead of at the
end. Considering the decrease in rehabilitation and reintegration programs, one cannot find
such an attentive, individualized plan in the United States. In Germany, once convicted and after
sentencing, the inmate is transferred to a prison located in his home region. The benefits that
it creates are stability in the assessment planning and sustainability of the essential connections
with family and community. In addition, through a practice called “work-day releases,” a
prisoner is released to “sample” a particular work with external employers or to attend education
and training courses, viewed as an integral part of the “normalization” principle stated above.

103 Id. However, beginning in 1998, some politicians have demanded a more punitive system.
104 Id. at 371.
105 Id.
106 Id. at 372.
107 Id. at 371-72.
108 Id at 371. Although it should be noted that these individualized plans are far from perfect, since they
depend on the implementation by the specific state. Some have designated diagnostic facilities that analyze and
classify inmates before serving imprisonment, while other states the inmate is assessed while serving his sentence.
Further, some prisons have brought the individual reintegration planning to mere bureaucratic exercise, where forms
are merely completed lacking content and attention.
109 Id.
110 Id at 372.
111 Id.
112 Rehabilitation of Prisoners, House of Commons Home Affairs Committee, at 56 (Dec. 2004),
More than 70 percent of ex-prisoners continue to work with that particular employer after release and others are able to secure positions through experience gained while in prison.\footnote{113} 

\section*{C. Sweden}

Sweden is somewhat similar to Germany in its treatment of its prisoners and ex-prisoners.\footnote{114} In Sweden, the philosophy is that prison is the last possible resort, with alternative sanctions being more prevalent.\footnote{115} Such alternatives include fines, conditional sentences, probation, and commitment to special care.\footnote{116} In fact, the legislature and judiciary have continued to aim at decreasing prison sentences and finding alternatives that do not take an individual’s liberty.\footnote{117} Unlike the United States, the Swedish prison population has actually decreased, due to imprisonment alternatives such as electronic monitoring.\footnote{118} Even more, once imprisoned, the policy is to promote prisoner reintegration and re-socialization while counteracting the adverse consequences of imprisonment\footnote{119} In contrast to the United States, the Prison Administration in Sweden is under a statutory duty to give prisoners work, but prisoners are also under obligation to work or participate in vocational training or education, some of which takes place outside of prison.\footnote{120} The philosophy is one that “every person deprived of freedom must spend the time in a useful way” and thus, education or work must be available.\footnote{121} Swedish law also has day or short-term releases, with prison administration discretion, so inmates can remain outside the prison to work, participate in drug or mental health treatment, or take part in vocational education, which may be continued once the individual is on parole.\footnote{122}

\begin{footnotes}
113 Id. at 57. Moreover, if an ex-prisoner is unable to find work after a period of time from being released, they are able to receive unemployment benefits. HERTA TÓTH, Women, Integration and Prison: An Analysis of the Processes of Socio-Labor Integration of Women After Prison in Europe, COMPARATIVE REPORT BASED ON NATIONAL REPORTS’ FIELDWORK FINDINGS, at 45 (March 2005), available at http://cps.ceu.hu/sites/default/files/publications/cps-working-paper-mip-comparative-report-short-verison-2005.pdf.

114 Id. at 154.

115 Id.

116 Id.

117 Id. at 154.

118 Id. at 155. Compare to the United States’ 1.6 million prisoners or 492 inmates for 100,000 residents.

119 Id.

120 322 ch. 10-12 § (SFS 1974: 203) (Swed.).

121 Id.

122 Rehabilitation of Prisoners, supra note 112, at 156-57.
\end{footnotes}
**D. England**

Similar to the United States, ex-prisoners in England deal with several barriers and restrictions after incarceration.\(^{123}\) However, the amount and type of crimes that can make an ex-prisoner ineligible are much narrower in scope and many are only temporary.\(^{124}\)

English ex-prisoners have significant difficulty in securing employment and housing. Several English laws make those with a criminal record ineligible for professional trades, and the stigma of a criminal record carries the same consequences prevalent in the United States.\(^{125}\) Yet, since England has recognized the parallel between increased recidivism and unemployment, it has established services that attempt to find employment for such individuals, while asking and urging its citizens to hire those with criminal records to decrease such recidivism.\(^{126}\) Ex-prisoners in England are given benefits such as Job Seekers Allowance and Crisis Loans.\(^{127}\) Further, only those with welfare fraud convictions are restricted from receiving welfare benefits, and such ineligibility is restricted to a period of four weeks following release.\(^{128}\) This is in contrast to an ex-felon in the United States, who is permanently banned from welfare benefits not just for fraud offenses but also for minor drug offenses, even if the individual is a first time offender.\(^{129}\) In addition, convicted inmates in England cannot vote during their sentencing period; however, their right to vote is immediately restored upon release.\(^{130}\) Recently, the European Court of Human Rights, which is overseen by the Council of Europe, ruled that a blanket ban on sentencing inmates is also illegal.\(^{131}\) Therefore, it is possible that with enough public and international pressure, England will restore prisoners’ right to vote.\(^{132}\)

\(^{123}\) Pinard, supra note 90, at 495.

\(^{124}\) Id.

\(^{125}\) Id.

\(^{126}\) Id.

\(^{127}\) Id. at 496-97. However it should be noted that application for such programs is often complicated and contains large logistical hurdles.

\(^{128}\) Id.

\(^{129}\) Travis, supra note 2, at 23.

\(^{130}\) Pinard, supra note 90, at 497.

\(^{131}\) Council of Europe warns over UK's prisoner vote option, BBC News (Dec. 10, 2012), http://www.bbc.co.uk/news/uk-politics-20667357. Though it seems that the Parliament is opposed to drafting such a bill, and its opposition could lead to strain relations and England leaving the European Convention on Human Rights.

\(^{132}\) Id.
V. POSSIBLE EXPLANATIONS FOR COLLATERAL CONSEQUENCES

This Article examines the two most common arguments or plausible explanations for the broad and harsh post-imprisonment restrictions prevalent throughout the United States. These arguments also demonstrate the differences in foreign policy between the United States and the nations stated above. Current post-imprisonment restrictions for traditional purposes of punishment are categorized as deterrence, prevention, retribution, and incapacitation, which are neither rehabilitative nor consistent with rehabilitation or reintegration purposes. Considering that the United States incarcerates more of its citizens than any other country, it is necessary to examine the plausibility of such explanations while also considering political, cultural, and social factors prevailing in the United States.

A. Collateral Consequences to Promote Safety and Minimize Criminal Activity

Purportedly by those who call for a change from rehabilitation to more “get tough” policies; an argument exists that harsher collateral consequences promote decreased criminal activity and improved public safety. However, this argument is problematic for several reasons. First, most of the current collateral consequences, such as inability to receive public housing or educational loans, do not directly coincide with the underlying offense, and thus, do very little to actually prevent future harm. Second, the recidivism rate for ex-inmates is significant, as approximately two-thirds of ex-inmates are repeat offenders, with such rates most significant for economic crimes. Therefore, instead of decreasing crime, the harsh and mostly unrelated collateral consequences actually catalyze re-offending individuals.

There is also an argument that the general public demands such harsh consequences to ensure public safety. Since 1980, between 70 and 90 percent of the American public believes that criminals receive lenient treatment in courts. Although this assertion supports a more

133 Travis, supra note 2, at 26.
135 Id.; On the other hand, certain collateral consequences, when they are directly related to the underlying crime, may hold to be more effective in preventing future crime. For example, child sex offenders are barred from employment in context with children. As opposed to a low-level drug offender who is unable to get an educational loan.
136 Cole, supra note 18, at 20; Petersilga, supra note 7, at 143.
140 Travis, supra note 2, at 27-28 (study done by the General Social Survey).
punitive treatment of prisoners, a survey conducted by the Gallup organization found that between one-half to two-thirds of Americans favor “educations and jobs to address ‘the social and economic problems that lead to crime’ as opposed to ‘more prisons, police, and judges.””\footnote{Id.} This survey demonstrates that the American public favors policies that prevent individuals from ever becoming offenders, supporting the argument that the United States should focus on creating policies that advocate social programs that prevent crimes from even occurring.\footnote{Further, even if the punitive view is the current political and general public view, the collateral consequences held by various courts do not constitute criminal punishment (as would be required by a punitive approach) but rather “civil disabilities.” \textit{See} Smith v. Doe, 538 U.S. 84, 105 (2003); \textit{see also} United States v. Ward, 448 U.S. 242, 249 (1980).}

Conversely, others argue that harsher collateral consequences act as a deterrent, no matter the public opinion or relation to the underlying offense; however, a basic requirement for deterrence is that those whom the collateral consequence are intended for are actually aware of such consequences.\footnote{Jeffrey Fagan & Tracey L. Meares, \textit{Punishment, Deterrence and Social Control: The Paradox of Punishment in Minority Communities,} 6 OHIO ST. J. CRIM. L. 173, 181 (2008).} The current collateral consequences are “invisible punishments” because: (i) they take outside of the traditional sentencing process (i.e. are statutory imposed rather than by judicial decisions); (ii) are usually “riders to other, major pieces of legislation”; and (iii) are part of a complex and dispersed set of laws across states.\footnote{Travis, supra note 2, at 16-17.} Therefore, not only are such collateral consequences “invisible” to those within the criminal justice system, but also those outside the intended reach. Ultimately, the invisibility of collateral consequences essentially fails its deterrence purpose.

\textbf{B. Race-based Policy of “War on Drugs” & its Collateral Consequences}

Many scholars argue that “War on Drugs” policies had, and continue to have, a tremendous impact on minorities and impoverished communities, especially Black Americans.\footnote{Jeffrey Fagan & Tracey L. Meares, \textit{Punishment, Deterrence and Social Control: The Paradox of Punishment in Minority Communities,} 6 OHIO ST. J. CRIM. L. 173, 181 (2008).} Similarly, some argue that such movements not only disproportionately affect minorities, but were created with race as a silent motivating factor.\footnote{Id. at 4; TODD R. CLEAR, \textit{IMPRISONING COMMUNITIES: HOW MASS INCARCERATION MAKES DISADVANTAGED NEIGHBORHOODS WORSE} 54-55 (Oxford University Press 2007).} Today, the United States stands out from other countries of similar standing as being far more punitive in its treatment of drug offenders.\footnote{ALEXANDER, \textit{supra} note 145, at 181; CLEAR, \textit{supra} note 146, at 54-55; Devah Pager, \textit{Double Jeopardy: Race, Crime, and Getting A Job,} 2005 WIS. L. REV. 617, 618 (2005); R. Richard Banks, \textit{Beyond Profiling: Race, Policing, and the Drug War,} 56 STAN. L. REV. 571, 596 (2003); David A. Sklansky, \textit{Cocaine, Race and Equal Protection,} 47 STAN. L. REV. 1283, 1294 (1995).} Admission increased most dramatically for Black drug offenders, followed closely
by Hispanic offenders.\textsuperscript{148} The increase in admission for White drug offenders, however, is considerably less dramatic.\textsuperscript{149} Although this article does not attempt to prove the effectiveness of the “War on Drugs” policies or the considerable racial disparities present in said policies, race can provide critical insights as we attempt to reconfigure current policies, particularly when considering that many of the collateral consequences of criminal convictions explicitly impact ex-drug offenders.\textsuperscript{150}

Some scholars analogize the current expansion of collateral consequences with Jim Crow laws.\textsuperscript{151} This analogy is strongly evidenced by felon disenfranchisement.\textsuperscript{152} Incarceration was a tool employed to control former slaves following emancipation, with sentences carried out not in reformatories but rather labor camps.\textsuperscript{153} The theory of imprisonment being utilized as an alternative to enslavement was especially demonstrated by the disproportionate number of Black Americans who are sentenced.\textsuperscript{154} Between 1890 and 1910, disenfranchisement grew markedly in the south and in Texas, where poll taxes, literacy tests, grandfather clauses, and, most importantly, criminal disenfranchisement laws were designed to specifically single out Blacks.\textsuperscript{155} Today, roughly 13 percent of Black men—seven times the national average—do not have the right to vote.\textsuperscript{156} About 4 million Americans, or 1 out of 50 adults, do not have the right to vote; 1.4 million of those individuals being Black men.\textsuperscript{157} In fact, one in every four Black men in Iowa, Mississippi, New Mexico, Virginia, Washington, and Wyoming, and one in every three Black men in Alabama and Florida are permanently disenfranchised.\textsuperscript{158} With a disproportionate number of Black American men returning to more urban, minority-dominated areas, decrease in

\begin{itemize}
\item \textsuperscript{148}PETERSILIA, supra note 7, at 29.
\item \textsuperscript{149}Id.
\item \textsuperscript{150}See supra Part II.
\item \textsuperscript{151}ALEXANDER, supra note 145, at 186-87.
\item \textsuperscript{152}Id. at 187-88.
\item \textsuperscript{154}PETERSILIA, supra note 7, at 29.
\item \textsuperscript{156}Erika Wood, Restoring the Right To Vote, BRENNA\textsuperscript{C}NTR. FOR JUSTICE, 1, 6-7 (2009), http://brennan.3cdn.net/5c8532e8134b233182_z5m6ibv1n.pdf.
\item \textsuperscript{157}Rottinghaus, supra note 77, at 28. Further, it is important to note that this number does not include the women, even though minority women are the fastest growing group in prisons. AMERICAN CIVIL LIBERTIES UNION, Facts About the Over-Incarceration of Women in the United States, (Dec. 12, 2007), https://www.aclu.org/womens-rights/facts-about-over-incarceration-women-united-states.
\item \textsuperscript{158}Rottinghaus, supra note 77, at 29.
\end{itemize}
political power of such communities is perpetuated, which results in less attention and support from politicians.\textsuperscript{159} In addition to the decrease in power politically, “War on Drugs” policies create numerous other post-imprisonment consequences, such as disqualification from student loans.\textsuperscript{160} At the same time, the majority of offenders convicted of drug offenses are Blacks and Hispanics, even though studies indicate that Whites have higher drug use rates.\textsuperscript{161} Even if one assumes such policies do not consider race as a factor, there is still strong evidence that a disproportionate percentage of our population, especially Blacks and Hispanics, are the ones who continue to bear the excessively harsh consequences.

Although it would be foolish to blindly implement policies from other countries without taking into consideration the differences in historical and cultural backgrounds, it may help to compare the remedial steps taken by some other countries mentioned above. As discussed in Part III, Canada disproportionately incarcerates Aborigines; however, in 1996 Canada codified a statute that requires judges to pay “particular attention to the circumstances of aboriginal offenders,” and the Canadian Supreme Court noted that Aborigines have “circumstances . . . [that are] unique, and different from those of non-aboriginal offenders.”\textsuperscript{162} Even more, in \textit{Suave v. Canada}, the Canadian Supreme Court overruled a statute disenfranchising inmates with two or more years of incarceration, noting that with “disproportionate number of Aboriginal people in penitentiaries” such disenfranchisement would result in a “disproportionate impact on Canada’s already disadvantaged Aboriginal population.”\textsuperscript{163} This is a strong indication that, even if we do not incorporate policies directly from other countries, we need to rethink our current collateral consequences resulting from criminal convictions as it continues to create harsher and more institutionalized “us” versus “them” ideologies in the United States.

\section*{VI. Recommendations}

As shown by the above data and country comparisons, harsh, broad, and invisible collateral consequences hinder the reintegration of United States ex-offenders. This practice continues to punish and stigmatize an ex-offender far after his release. In light of the fact that

\footnotesize{\textsuperscript{159} Pinard et al., \textit{supra} note 11, at 603.}\n
\footnotesize{\textsuperscript{160} See \textit{supra} Part II.}\n
\footnotesize{\textsuperscript{161} Gabriel J. Chin, \textit{Race, The War on Drugs, and the Collateral Consequences of Criminal Conviction}, 6 J. GENDER RACE \& JUST. 253, 265-66 (2002) (stating that whites “seem less likely to be arrested; if arrested, less likely to be convicted; and if convicted, less likely to be imprisoned” even though they “represent the vast majority of drug [users]”).}\n
\footnotesize{\textsuperscript{163} \textit{Suave}, 3 S.C.R. at 523 (Can.).}
this affects both the offender and the community they return to, this article proposes several recommendations considering the lessons learned from the comparison countries. Although there are numerous changes to policy that should be made, the most integral is how to better reintegrate the ex-offender back into his community so that they may become a productive member of society. The suggested reforms include the following: (1) make collateral consequences visible; (2) implement targeted rehabilitative programs and community involvement; (3) apply easier process for pardons and certifications; (4) reexamine the collateral consequences for ex-drug offenders; (5) alleviate invisible punishments and link proportional consequences with the underlying offense and rehabilitation progress; and (6) change our philosophical and cultural perspectives on ex-offenders returning to society.

A. Make Collateral Consequences Visible

Before we can implement change, we must first recognize that legislation authorizes an increasing number of collateral consequences, which in essence are permanent punishments. Although this article refers to them as “invisible punishments,” to better deal with the issues as stated above, we need to make them visible.164 This includes uniformly codifying both federal and state collateral consequences, requiring more thorough analysis by the legislature, and demanding that the offender acknowledge the potential collateral consequences.165 As they become more visible, not only will deterrence increase, but it will also help the general public question the disproportionate effect on the poor and minority groups as well as its ineffectiveness, thus eventually leading to reform.

B. Implement Targeted Rehabilitative Programs & Community Involvement

Rehabilitative reform during imprisonment will help smooth the reintegration process and eliminate the need for collateral consequences. First and foremost, during imprisonment and the transition period, mental health or substance abuse programs and work and education trainings must improve. Additionally, the prison culture must change to better reflect the outside world and incorporate prison officials in implementing each prisoner’s reintegration as one of their core responsibilities. Similar to Germany and Sweden, our goal for imprisonment should be beyond punishment; as such, we must identify reintegration as the main goal. Such reintegration begins during imprisonment and continues throughout the collateral consequences. Although this article

164 TRAVIS, supra note 5, at 75-76.
165 For example, the Public Defender Service's Civil Legal Services, in D.C., specifically informs its clients on related collateral consequences. Avis E. Buchanan, Fiscal Year 2013 Cong. Budget Justification, PUB. DEFENDERS SERVICE FOR D.C. 11-12 (Feb 13, 2012.), http://www.pdsdc.org/Resources/Publication/PDS%20FY%202013%20Budget%20Justification%20-%20FINAL%20Feb%202012%209%2023am.pdf.
does not attempt to give a thorough recommendation for in-prison treatment, it is important to note that incorporation of the improvements noted below, there will be no need for such harsh and broad collateral consequences to control the ex-offender. Even more so, the current collateral consequences actually hinder the success of reintegration, thereby counteracting the rehabilitative benefits.

1. Treatment, Training, and Pre-Release Programs

While numerous studies show that rehabilitation programs actually reduce recidivism with highly successful rates, states are cutting many of these programs because of budget constraints. There are several forms of rehabilitation regimes, the most common include: (i) education; (ii) needs assessments; (iii) vocational training; (iv) employment; (v) behavioral, mental health, and substance abuse treatment; and (vi) resettlement in community through assistance in finding employment and housing. However, all prisoners are not the same, and it would be unwise to apply every rehabilitative program to every inmate. Much like the individualized plans created for inmates in Germany, each American inmate program should be customized, identifying measurable goals and tools from the beginning and implementing them post-release. It should focus on the inmate’s background, knowledge, and capabilities to build training and workplace programs. For younger offenders, educational programs are more beneficial, whereas for older offenders, job placement services are more effective and useful. Many argue that this would be a costly decision; however, a study by the Washington State Institute for Public Policy showed that the ratio of benefits per dollar of costs is actually positive for every correctional treatment, with work release programs receiving the highest ratio. In Germany, work release programs have been very successful, resulting in 70 percent of inmates maintaining a job with that employer after release. The goals of such work release programs are to prepare inmates for work after prison and connect them to work opportunities in their own communities. This article places more importance on employment and education programs, because recidivism rates are highest in economic crimes. Although one can argue several other factors for recidivism, several studies show there is an inverse relationship between employment and involvement in crime. Not only is it a “basic human” right to give an ex-offender a fair

---


167 Rehabilitation of Prisoners, supra note 112, at 11-12.

168 PETERSILIA, supra note 7, at 120.

169 Id. at 178-79.

170 Rehabilitation of Prisoners, supra note 112, at 56.

chance to seek employment, it is also “one of the surest ways to reduce crime.” Employment encourages desistance by the following: (i) reduction in “association[s] with criminal peers by expanding social networks to include more law-abiding citizens”; (ii) disassociation with criminal identity and adoption of a pro-social role; and (iii) reduction in crime due to an alternate source of financial support. Furthermore, pre-release programs have become a “shallow institutional ‘after thought’ of little importance.” If pre-release programs are given more thought and attention, the need for such broad and harsh collateral consequences becomes obsolete. In addition, because there are obvious and well-founded concerns with the costs associated with such programs, both in and out of prison, the most cost-effective suggestion is to eliminate the formal, statutory-based collateral consequences restricting employment opportunities, job training, and educational funding, especially for those whose underlying offense does not related to the collateral consequence.

2. Promote Responsible Behaviors

Even if the system promotes and implements various rehabilitative programs, the reality is that the inmate, once released, is essentially on their own and with little support. The current prison system is one that prison officials decide “when, where, and with whom prisoners will work, live, eat, and play.” Such control may be necessary for management; however, it harms the prisoner’s ability to survive in the outside world, where he, not the official, will be responsible for his decisions. Thus, his daily life in prison should somewhat resemble the one he will have outside. This idea, entitled “Parallel Universe,” was developed by Dr. Schriro and consists of four components, where each inmate: (i) works or attends school, and receives mental and substance abuse treatment (as applicable) during working hours; and participates in community service, reparative activities, and recreation during non-working hours; (ii) must retain relapse prevention strategies while abstaining from unauthorized activities; (iii) must earn opportunities to make choices and is held accountable for those choices; and (iv) is recognized for good conduct. In fact, there is an interview process for the in-prison job, and as the inmate’s education increases, his pay increases. This program was applied in Missouri, where

---

172 Radice, supra note 133, at 722.
173 See Christopher Uggest et al., Work and Family Perspectives on Reentry, in PRISONER REENTRY AND CRIME IN AMERICA 209, 234 (Jeremy Travis & Christy Visher eds., 2005).
174 PETERSILIA, supra note 7, at 184 (noting that only 12 percent of state prisoners participate in prerelease programs).
175 Uggest et al., supra note 173 at 235, 237.
176 PETERSILIA, supra note 7, at 182.
177 Id. at 183.
178 Id. at 184.
Recidivism rates decreased 13 percent after implementation. Since there is an almost colonized culture within prisons, an inmate’s personal accountability is diminished, which negatively affects reintegration. With an increased sense of personal accountability, the need for invisible punishments to control or decrease recidivism weakens and may even work against the reintegration of the now accountable ex-offender.

C. Apply an Easier Process for Pardons and Certificates of Good Conduct

Although we have a system for pardons or certificates of good conduct and/or rehabilitation, both are given infrequently and are very difficult to obtain. On the other hand, in Canada about 98.5 percent of such pardons are approved if the ex-offender is crime-free for a period of time. Similarly, under England’s Rehabilitation of Offenders Act, if no felony occurs after a period of time, the criminal conviction is “spent,” or ignored. Furthermore, minor offenses such as misdemeanors do not influence that time period; instead, the rehabilitation time period is based on the sentence period. If such a rule is applied in the United States, the invisibility of such collateral consequences can be alleviated since the judge may consider such rehabilitation period as it correlates with the sentence. Yet, even though we have the second highest incarceration rate, we also have an excruciatingly difficult process when it comes to removing the stigmatizing effects of a criminal record. Beyond the practical effects (e.g. employment), “wiping the slate clean” allows the ex-offender, legally, to “rewrite his or her history to make it more in line with his or her present, reformed identity.” Rewriting can help alleviate the self-fulfilling prophecy and the antisocial behaviors. Humans reframe their experiences, expectations, and explanations from their self-concept, which is derived from labels others place on them. Thus, criminal labels actually diminish the ex-offender’s ability to change, increase recidivism, and promote community ostracism. A more effective process in

---

179 See id. at 184.
180 Id. at 216.
182 See Rehabilitation of Offenders Act, 1974, c. 53 (Eng.). However, compared to other European countries, this Act is actually tougher with longer rehabilitation periods. It, however, is still less harsh than pardon rules found in the United States.
183 See id.
184 Pinard, supra note 90, at 504.
186 See Bruce J. Winick, Sex Offender Law in the 1990s: A Therapeutic Jurisprudence Analysis, 4 PSYCHOL. PUB. POL’Y & L. 505, 539 (1998); see also Petersilia, supra note 7, at 219. This “rebiographing” is already applied to juvenile records upon adulthood and credit histories after a set time period.
187 Petersilia, supra note 7, at 227.
188 Id.
removing criminal history must be implemented by displacing relevant collateral consequences in order to break the “us” and “them” dichotomy, and allow ex-offenders to become productive, free citizens.

D. Re-analyze Drug Offense Policies

The United States must change its policies as applied to drug offenders, especially those with minor offenses. For these populations, imprisonment provides little benefit, but a vast amount of harm is done, especially with broad, unrelated collateral consequences. Furthermore, as discussed above, “War on Drugs” policies have disproportionately affected the poor, women, and minorities.\textsuperscript{189} Therefore, it is vital to re-think our goals and the actual effectiveness of such harsh and expanded collateral consequences. Today, an unbalanced number of restrictive collateral consequences, as well as a vast portion of our limited criminal justice spending, results from drug offense-related incarcerations, as opposed to violent crimes.\textsuperscript{190} The annual operating cost for drug offenders in federal and state prisons is $6 billion.\textsuperscript{191} Furthermore, the majority of those imprisoned are low-level offenders, though numerous studies show little benefit in criminal behavior or crime reduction of low-level drug offenders.\textsuperscript{192} This is especially true since most drug crimes function as “businesses,” where each individual fills a necessary role, easily replaced by another.\textsuperscript{193} Even though criminologists continue to discourage reliance on imprisonment and harsher post-imprisonment policies, legislatures continue to pass and advocate for tough-on-crime laws that target drug offenders.\textsuperscript{194} On the other hand, about three-quarters or 76 percent of Americans favor supervised drug treatment and community service as opposed to prison time for drug offenders.\textsuperscript{195} It is clear that a change is necessary. Non-violent and low-level drug offenders should be treated with community-based programs and given access to education, training, and job programs. Prisons should be the last possible resort because, as

\begin{itemize}
\item \textsuperscript{189} See Barbara Bloom et al., \textit{Women Offenders and the Gendered Effects of Public Policy}, 21 REV. OF POLY RES. 31, 38 (2004); Jamie Fellner, \textit{Race, Drugs, and Law Enforcement in the United States}, 20 STAN. L. & POLY REV. 257, 257 (2009). The Human Rights Watch reported that, in seven states, Blacks constituted 80 to 90 percent of all drug offenders sent to prison, and in fifteen states, Blacks are admitted to prison on drug charges 20 to 57 times greater than Whites. ALEXANDER, \textit{supra} note 145, at 96. On the other hand, Blacks were no more likely to be guilty of drug crimes than Whites, while White youth are more likely (about three times) to have illegal drugs than Black youth and White youth actually comprise the vast majority of drug users and dealers. \textit{Id.} at 97; See Fellner at 266-68. Thus, the notion that Blacks have higher rates of drug abuse is unfounded.
\item \textsuperscript{190} See Pinard, \textit{supra} note 90, at 459.
\item \textsuperscript{191} PETERSILIA, \textit{supra} note 7, at 226.
\item \textsuperscript{192} Marc Mauer & Michael Coyle, \textit{The Social Cost of America's Race to Incarcerate}, 23 J. RELIGION & SPIRITUALITY IN SOC. WORK: SOC. THOUGHT, 7, 14 (2004) (stating that expanding prison population through low-level drug offenders has very little influence on the crime or drug abuse.).
\item \textsuperscript{193} \textit{Id.}
\item \textsuperscript{194} \textit{Id.} at 11-15.
\end{itemize}
shown above, imprisonment of drug offenders does not reduce recidivism or allow for successful reintegration.\(^{196}\) Prisons are “warehouses for outcasts; they put problem people at a distance from those who may shame . . . and . . . help reintegrate them.”\(^{197}\) In fact, drug treatment and therapeutic community programs outside of prison, such as work release, yield a benefit of $8.87 for every dollar spent.\(^{198}\) In contrast, in-prison treatments only yield a benefit of $1.91 to $2.69 for every dollar spent.\(^{199}\) Moreover, states can save money by mandating treatment instead of incarceration.\(^{200}\) On the other hand, “[b]y linking treatment to punishment, these programs risk having a counter therapeutic effect because they stigmatize the user” and “would-be employers may refuse to hire users with a record of incarcerations” which “may ultimately slow recovery.”\(^{201}\) After all, such imprisonment results in both the formal and informal collateral consequences listed above. Similar to Sweden, there must be reform in our treatment of drug offenders, with re-commitment to special care or probation as alternatives and promotion of reintegration and readjustment with drug treatment programs, family, and community support services. Overall, imprisoning drug offenders is more costly and less beneficial. It disproportionally singles out minorities in our country without fixing community problems and fails to successfully reintegrate ex-offenders in our community, placing harsh and broad post-imprisonment consequences on them. The collateral consequences for drug offenders, such as denial of student loans or housing, should be removed as they are not only ineffective but also harmful to the ex-offender’s reintegration process and participation in his community.\(^{202}\) Reconnecting an ex-offender with legitimate employment is also crucial to sustaining recovery and reducing recidivism.\(^{203}\) “Chronic joblessness or underemployment limits their ability to leave the drug-crime lifestyle, to support a family and to successfully transition from the treatment program to the community.”\(^{204}\) Additionally, many former drug-offenders are ineligible for federal education grants or loans, membership in certain jobs, and public assistance programs, thereby compounding the fact that most lack social, educational, or vocational training or skills to find

\(^{196}\) See Petersilia, supra note 7, at 245.

\(^{197}\) Id.


\(^{199}\) Id.

\(^{200}\) Id. at 6, 15. In fact, the yearly cost of incarcerating a drug offender versus treatment in California is $27,000 as opposed to $4,500. That is a saving of $22,500 per person, per year. In Maryland, the cost of incarceration per year is $20,000 as opposed to $4,000 for cost of treatment. Id.


\(^{202}\) See McVay et al., supra note 198, at 17.

\(^{203}\) Id. at 18.

\(^{204}\) Id.
and sustain employment. Therefore, many of these collateral consequences must be removed because they are ineffective and unrelated to the underlying offense.

E. Alleviate Invisible Punishments and Link and Proportionalize Consequences with Underlying Offense and Rehabilitation Progress

Current collateral consequences are too broad, lack proportion, promote perpetual punishment and are a revolving door into imprisonment, while socially excluding individuals who already “paid for the crime.” This article suggests that there should be more measures to assist ex-offenders obtain housing, financial, healthcare, employment, education, and training needs. Similar to Canada, ex-offenders should not be denied public welfare, should be able to receive an opportunity to gain public housing and be allowed to vote. Currently, post-imprisonment policies are “one size fits all” or, in the event of modification, the modifications do not follow the offense of the individual. Rather, consequences imposed upon ex-offenders should relate to the underlying offense and be proportionate to the criminal conduct. Public safety or reduction of criminal activity may be true when the collateral consequence is directly related to the underlying offense. However, this argument gains little traction when the consequence has almost no relation to the underlying act. While there may be a good argument as to why a sex offender is barred from working in child-care facilities or any child-related employment, the reasoning for increased public safety or reduction in recidivism is weak when a minor drug offender is barred from educational loans and grants. This same argument can be made for ex-prisoners who cannot obtain public housing, because this only negatively influences their ability to support themselves, sustain their mental or substance abuse health

205 Id.
206 Perpetual punishment is highlighted in the case of Mr. La Cloche. La Cloche v. Daniels, 755 N.Y.S.2d 827 (N.Y. Sup. Ct. 2003). Mr. La Cloche learned the trade of barbering while serving eleven years in prison for first-degree robbery. Although he worked in a barbershop for a few years after his release, his license was taken away, because Mr. La Cloche’s criminal background indicated a lack of “good moral character.” Mr. La Cloche was so passionate about his future with the trade he obtained a tattoo of barber’s clippers and comb on his arm. Because this was the only trade he knew, following revocation of his license, Mr. La Cloche was no longer employed and dependent on public assistance. Ironically, the same state that financed La Cloche learning the barbering trade denied his ability to practice that trade. This example shows not only the retroactive effect of such licensing laws on the particular individual’s ability to reintegrate and reduce recidivism but also the eventual need for welfare dependency. Clyde Haberman, He Did Time, So He’s Unfit to do Hair, N.Y. TIMES, March 4, 2005, http://www.nytimes.com/2005/03/04/nyregion/04nyc.html?pagewanted=print&position=&_r=0.
207 Rottinghaus, supra note 77, at 22, 38.
208 See Demleitner, supra note 17, at 1027-28, 1033; Pinard, supra note 90, at 507-08.
209 Demleitner, supra note 17, at 1033.
210 Pinard, supra note 90, at 508.
211 Id.
212 See Pinard, supra note 90, at 507-08; see also Demleitner, supra note 17, at 1039; Uggest et al., supra note 173, at 237.
treatment, and may even increase crime in their community through homelessness. Conversely, in England, only those convicted of welfare fraud are denied from receiving welfare benefits; therefore, there is a relationship between the crime and collateral consequence.

Furthermore, felony disenfranchisement must be abolished. Disenfranchisement has almost no relation to preventing future crimes. In fact, an alternative argument is that there is actually an increase, given that it excludes and alienates ex-prisoners and acts as an inhibitor to re-socialization and reintegration. This article argues that the ability to vote is an integral part of a successful reintegration process. Similar to countries explained below, the United States should allow its citizens, including those in prison and ex-offenders, to participate in the political process because the equal right to vote is a key aspect for the success of a democratic society. As Robert Dahl portrayed in his study of democratization, a vital component of democracy is “that citizens have an opportunity to participate in the governance of their country and that this participation is equal.”

Opponents to this argument respond that disenfranchisement is the punishment for breaking the “social contract,” thus an ex-offender forfeits their right to participate in democracy, or that the only voters should be “moral persons.” In furthering the argument to stop disenfranchisement, proponents respond that prison is a physical, dislocating element of punishment and formed to rehabilitate individuals; however, disenfranchisement does not meet such a goal.

A look at other countries may help better recognize which argument is stronger. Interestingly enough, the countries with the most restrictive voting laws, such as Russia and the United States, also have the largest prison populations. There is no evident pattern with regard to a country’s geography, age, or size of democracy. Rather, felon disenfranchisement depends on the specific country’s history (including its treatment of minority groups), along with the size of penal population and public politicization of crime. Although many would expect “westernized” countries to not disenfranchise prisoners or ex-prisoners, in reality, no such

---

213 Ugest et al., supra note 173, at 237.
214 Pinard, supra note 118, at 496.
215 Rottinghaus, supra note 77, at 4.
217 See Travis, supra note 2, at 20. For example, an 18-year-old individual, serving his sentence, loses his right to vote in the first election he can participate in, further alienating and extricating him from society after release. It would be foolish to think this individual will feel like he has a stake in society and even think about the political process. Id. at 31.
218 Rottinghaus, supra note 77, at 25. United States has the largest rate of incarceration.
219 Id. at 27.
220 Id. The country’s historical, social, and colonial legacies seem to have the big impact.
pattern exists.\textsuperscript{221} Today, 30 countries allow prisoners to vote.\textsuperscript{222} The two countries that stand out are Canada and Sweden.\textsuperscript{223} Also, several recently democratized countries in Central and Eastern Europe also allow inmates the right to vote.\textsuperscript{224} Other countries extend voting rights only under certain circumstances or based on the underlying offense. For example, in Germany, only those convicted of treason, electoral fraud, espionage, or membership in illegal organizations are banned.\textsuperscript{225} This ban seems to better parallel the “invisible punishment” with the underlying offense, as opposed to a drug offender disenfranchised. Even more, such crimes are considered the most egregious and somewhat follow the “social contract” argument. Several countries, including many in Latin America and Africa, disenfranchise prisoners.\textsuperscript{226} An argument can be made that “state-dominated hegemony, the colonial legacy in Africa and the political and social history of strong . . . dictatorships in Latin America may contribute” to the practice of disenfranchisement.\textsuperscript{227} However, in direct contrast to the aforementioned argument, England is also included in such countries.\textsuperscript{228} Recently, the European Convention on Human Rights ruled that a blanket ban from voting on those imprisoned is illegal.\textsuperscript{229} Finally, the most restrictive countries are those where prisoners and ex-prisoners are banned from voting. Even within this restrictive group of only eight countries, the United States has the most restrictive practice, with some states permanently disenfranchising ex-felons.\textsuperscript{230}

The three countries that portray a philosophical difference in treatment of felon disenfranchisement are Germany, Sweden, and Canada. Germany actually requires its inmates to register to vote while in prison.\textsuperscript{231} However, an offender may be stripped of his voting rights by the power and authority of the judiciary rather than by operation of law, in contrast to the practice carried out in the United States.\textsuperscript{232} Therefore, it becomes less of an “invisible” punishment. Comparably, in Sweden, in addition to universal suffrage, the country carries out a

\begin{itemize}
\item \textsuperscript{221} Id. at 21.
\item \textsuperscript{222} Id. at 22.
\item \textsuperscript{223} Id. at 22 tbl.1. Other Scandinavian countries such as Norway and Finland also allow prisoners the right to vote.
\item \textsuperscript{224} Id. at 21.
\item \textsuperscript{225} Id. at 22.
\item \textsuperscript{226} Id. at 23.
\item \textsuperscript{227} Id.
\item \textsuperscript{228} Id. at 24.
\item \textsuperscript{229} Council of Europe warns over UK’s prisoner vote option, supra note 131.
\item \textsuperscript{230} Rottinghaus, supra note 77, at 24.
\item \textsuperscript{231} Id. at 35. Although, judges have the power and authority to disenfranchise certain criminals convicted for treason, electoral fraud, espionage, or membership in illegal organization. Id.
\item \textsuperscript{232} Id.
\end{itemize}
detailed and impressive process to administer inmates’ ballots.\textsuperscript{233} Similarly, the Canadian Supreme Court overruled a statute banning federal inmates from voting, because the right to vote teaches “democratic values and social responsibility.”\textsuperscript{234} To ensure successful reintegration, the United States should follow these countries and reinstate inmates and ex-felons’ right to vote, especially considering the trend among those newly democratized countries, the disproportionate effect on minorities and the poor, the human rights protocols,\textsuperscript{235} and the importance of the political process.

Finally, similar to the sentencing grids, the collateral sanctions should at least be proportional to the criminal offense. Currently, a serial murderer loses his right to vote, as does a one-time felon convicted of the lowest felony.\textsuperscript{236} One suggestion is for states to adopt the Uniform Collateral Consequences of Conviction Act’s (“UCCCA”) relief provision. The UCCCA asks for an “individualized assessment” to grant or deny a right based on the “particular facts and circumstances” involved in the offense, and it establishes a paramedic to determine whether there is a “substantial relationship” between the offense and the collateral consequence.\textsuperscript{237} An Order of Limited Relief is available starting at the sentencing phase and allows the court or agency to remove the automatic collateral restriction, based on each individual’s merits.\textsuperscript{238} An additional form of relief provided by the UCCCA is a Certificate of Restoration of Rights.\textsuperscript{239} This relief is available after a certain “law-abiding” period, and offers all potential employers, landlords, and licensing agencies objective information about the ex-offender’s progress toward rehabilitation and a degree of assurance.\textsuperscript{240}

\textit{F. Reverse in the Philosophical and Moral Treatment of Prisoners and Ex-Prisoners and Enactment of Uniform Collateral Consequences of Conviction Act}

The strongest recommendation and the one which is the hardest to implement, is a switch from exclusion to reintegration. Due to the “get tough movement” of the mid-1970s, the United States has adopted an incredibly narrow vision of the dignity interests of currently and formerly

\begin{itemize}
\item \textsuperscript{233} Id. at 36. Sweden uses two processes: a special polling place and proxy voting via the mail.
\item \textsuperscript{234} Suave v. Canada, [2002] 3 S.C.R. 519, 522-547 (Can.).
\item \textsuperscript{236} Travis, supra note 2, at 35.
\item \textsuperscript{238} Id. at § 10.
\item \textsuperscript{239} Id. at § 11.
\item \textsuperscript{240} Id. at §§ 11, 14.
\end{itemize}
incarcerated individuals.\textsuperscript{241} We must re-think our concept of the social safety nets,\textsuperscript{242} as well as the dignity and humanity of ex-offenders.

Modern Americans are far more isolated from society than their forefathers, lacking personal connections and supportive bonds with those unlike themselves. These trends would indicate shallow social support systems and a reflection that civic virtue and social capital do not matter.\textsuperscript{243} These trends result in shallow social support systems, a decrease in the collective responsibility for the plight of one’s “neighbors,” and the fear of the “other” as cultural distance and stereotyping between different classes increases. As the social and cultural distance from between the underprivileged and the body of society expands, the more likely that collateral consequences are to be implemented.\textsuperscript{244}

The more money we spend on prisons, the less money we spend on education and social services.\textsuperscript{245} This leads to the creation of two groups: those who are uneducated and unable to survive in a competitive job market and those with untreated substance abuse or mental health issues.\textsuperscript{246} Both groups are associated with increased crime.\textsuperscript{247} Two-thirds of the public agree that because social and economic problems lead to crime, the best tools to prevent crime are education and jobs.\textsuperscript{248} Two-thirds of the public also support rehabilitation over longer sentencing.\textsuperscript{249} However, rehabilitative programs are not enough. We must re-consider our stance on such a large prison-industrial complex as well as the long, sometimes permanent, collateral consequences faced by ex-offenders. We must reverse the post-imprisonment punishment by providing ex-offenders with the tools necessary to become free-citizens with opportunities to contribute productively to society. Currently, the United States’ post-imprisonment policies differ significantly from countries discussed above, because the United States continues to punish, degrade, marginalize, and suppress those who have already paid for their crimes. One suggestion is for states to enact the relief provision of the UCCCA. The Act’s Section 10 permits an ex-prisoner to receive relief from a specific collateral sanction if they can prove that such relief would “materially assist” in gaining employment, education, housing, public benefits,

\textsuperscript{241} Pinard, supra note 90, at 519.
\textsuperscript{244} PETERSILIA, supra note 7, at 245.
\textsuperscript{245} CHRISTIAN PARENTI, LOCKDOWN AMERICA: POLICE AND PRISONS IN THE AGE OF CRISIS 213 (2008).
\textsuperscript{246} Id.
\textsuperscript{247} Id.
\textsuperscript{248} Id.
\textsuperscript{249} Id.
and that he or she has “substantial need” for the benefit to live a law-abiding life.\(^250\) This parallels Sweden’s and Germany’s reintegration policies, treating the ex-offenders with dignity by providing each of them with a chance to reintegrate into society. Instead of ostracizing and silencing ex-offenders, we should promote the role of ex-offenders within our communities.

VII. CONCLUSION

This article advocates for the destruction of collateral consequences as institutionalized tools for social exclusion. With the highest incarceration rate in the world, an alarming number of America’s ex-offenders are returning to their communities in which strict collateral consequences continue to punish and exclude them from society. Such consequences hinder the reintegration processes, disproportionately affect minorities, and lead to future crimes. This article argues that such ex-offenders, when compared to their counterparts in countries such as Canada, Germany, Sweden, and England, face the harshest formal restrictions. Such post-imprisonment consequences affect both the ex-offender and members of his or her community.

To resolve the aforementioned problem, invisible punishments must become visible. Furthermore, rehabilitation reform is necessary throughout the imprisonment period in order to reduce the need for severe post-imprisonment restrictions. Once convicted, one is tremendously restricted by his or her criminal status through collateral consequences; thus, the process for pardons must effectively help ex-offenders to rewrite their identity, break self-fulfilling prophecies, and avoid social and economic ostracism. Also, drug offense policies must be re-analyzed, where the end result is further exclusion of ex-drug offenders through harsh collateral consequences that have proven to be not only ineffective but also counteractive. The current broad collateral consequences must also be reduced and made proportional to the underlying offense or rehabilitation progress. Finally, successful reintegration must become the main goal, as opposed to social exclusion. Instead of ostracizing and silencing those returning to our communities, the post-imprisonment treatment should at least incorporate dignity in order to help ex-offenders successfully reintegrate into society.
