

The Collateral Consequences of Wrongful Conviction

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Abstract: A collateral consequence are formal and informal disabilities that are imposed by the law as a result of any criminal conviction regardless of the sentence. Collateral consequences are not a form of invisible punishment that just impacts the formerly incarcerated. Wrongful convictions are an occurrence that is not only a reality but a commonality. The collateral consequences of a wrongful conviction hold a heavier impact as an individual who was wrongfully convicted are not only trying to regain their life and dignity back, but they are also attempting to navigate their new realities. Collateral consequences imposed onto the wrongfully convicted are not only a testament to our system, but an unwarranted form of limitations placed upon a victim. This article details the collateral consequences of wrongful convictions. By providing additional insight onto the harmful nature of wrongful convictions, this article examines and critiques the collateral consequences of wrongful conviction.

Keywords: Collateral Consequences, Impact of Incarceration, Mass Incarceration, Wrongful Conviction, Wrongful Incarceration.

I. Introduction

The criminal justice system was created as an outlet to punish individuals for harms they have committed against other individuals or communities. In essence, punishment does not cease once an individual has completed their sentence. Punishment continues far beyond the completion of a sentence. These are what we call collateral consequences. Despite having left the physical entrapment of prison, collateral consequences follow the formerly incarcerated (and anyone with a conviction) as they attempt to try and reintegrate back into society. These consequences do not only create barriers that limit the formerly incarcerated but make the transition back into mainstream society extremely rigorous. The United States is the leading nation in incarceration rates. Although the United States has only 5% of the world's population, we hold 25% of the world's prisoners.¹

Since the early 1970's the prison population in the United States began to rise substantially. Although there have been several theories as to why America began to focus on crime, solving mass incarceration and reducing our prison populations have slowly become part of political agenda as we have oriented our focus away from retributivism towards restorative.

There are about 473 people in prison for every 100,000 American citizens.² One of the main and most persisting theories as to why the United States began to focus on incarceration ties back to the War on Drugs.

¹ The Pudding "Why does the U.S. lead the world in incarceration?" available at <https://pudding.cool/2017/03/incarceration/> [accessed on March 19, 2021]. The United States has been a leading competitor in incarceration rates. It is known that most people admitted to prison often face short sentences. That being said, even with low time-served, the United States refills prison populations with about the same number of people each year. In the beginning of January 2015, there were 1.5 million people in prison. Over the following year 640 thousand people were released. At the end of the year, the person population was still at 1.5 million.

² The Pudding "Why does the U.S. lead the world in incarceration?" available at <https://pudding.cool/2017/03/incarceration/> [accessed on March 19, 2021].

The War on Drugs was initiated by the Nixon Administration as well as a series of “tough on crime” policies which dramatically helped in increasing incarceration rates. As of 2015, drug offenders made up 15% of the total prison populations.³ Another key factor in helping increase prison populations in the United States can be attributed to the high recidivism rates in the United States.

There are several reasons why the United States holds high rates of recidivism. We can attribute many of these factors relating to the collateral consequences that make it difficult for formerly incarcerated individuals to reintegrate back into society: “over the same period of time that prisons and criminal justice supervision have increased significantly, the laws and regulations that serve to diminish the rights and privileges of those convicted of crimes have also expanded.”⁴ When a formerly incarcerated individual does not have the sufficient means nor the support in the reintegration process, they can often fall back onto criminality as a means of survival. Homelessness, food insecurity, and loss of support systems are just a few of barriers that can lead a formerly incarcerated individual back to crime.

Not only can these collateral consequences be extremely harmful and limiting for the formerly incarcerated, but these policies also impose unnecessary burdens upon those who were wrongfully convicted. As wrongful convictions are beginning to take rise in the United States, understanding the consequences of conviction are an essential part in understanding the troubles that the wrongfully convicted face. Additionally, have this baseline understanding of the full scope of wrongful conviction consequences helps society to better support these individuals whom our system has failed.

II. The Nature Of Collateral Consequences

The idea that convicted offenders should be denied certain rights and the benefits of citizenship is not a newly founded concept of the modern era. We can see the ideas of collateral consequences translated as far back as the early Roman era. In ancient Athens, there was a penalty entitled “infamy” which denied convicted offenders the right to attend public assemblies, hold office, make speeches, and serve in the army.⁵ This can be further understood within the context of the medieval era where a life sentence led to “civil death” which denied convicted offenders the right to inherit property, enter into contracts, and vote.⁶ Similarly, in the United States, we can see mirrors of these traditions. The American government has created invisible burdens that serve as a continued punishment for convicted offenders. We can see this being translated to denial of basic rights or as barriers from a wide variety of jobs and benefits. The Fourteenth Amendment in the United States Constitution explicitly recognizes the power of the states to deny the right to vote to convicted offenders.

Convicted offenders face a host of collateral consequences: formal measures including legal restrictions on voting, employment, housing, or public assistance, as well as informal consequences such as stigma or financial insecurity.⁷ Though these formal measures were created in act of security in attempt to deter crime, the collateral consequences that follow are questionable in their success. It is arguable to conclude that most

³ The Pudding “Why does the U.S. lead the world in incarceration?” available at <https://pudding.cool/2017/03/incarceration/> [accessed on March 19, 2021]. The “War on Drugs” and “tough on crime policies” both were substantial aids in criminalizing drug offenses. Not only did these policies play a hefty part in creating a narrative surrounding the nature of crime and punishment, but these ideologies would find themselves to be persisting long into the present day. Ideologies were created during this era would find themselves to be well engrained into the perceptions of crime into the modern day.

⁴ Mauer M, Chesney-Lind M, *Invisible Punishment the Collateral Consequences of Mass Incarceration* (New York, NY: The New Press, 2002). We have seen that as the United States has continued to increase incarceration rates, there have also been an equally growing increase in the legislation and policies that limit, regulate, and diminish the rights of the formerly incarcerated making it harder for these individuals to reintegrate back into mainstream society following their release.

⁵ Mauer M, Chesney-Lind M, *Invisible Punishment the Collateral Consequences of Mass Incarceration* (New York, NY: The New Press, 2002)

⁶ Mauer M, Chesney-Lind M, *Invisible Punishment the Collateral Consequences of Mass Incarceration* (New York, NY: The New Press, 2002)

⁷ Hoskins Z, “Ex-offender Restrictions,” *Journal of Applied Philosophy* 31(1) (2014): 33–48.

criminal convictions invoke a judgement of dangerousness that serve as a basis for limiting individual liberty.⁸ A direct result of these collateral consequences is that many offenders begin to lose their social safety net.⁹

Having a support system following incarceration is crucial. Many people need guidance after leaving prison. Some people may be facing mental health problems while other just need support. Prison itself can be emotionally, mentally, and physical draining and once a person is released, they need someone to lean on to help them during their reintegration. Having to navigate the world alone after serving time can be a daunting task. It can also be understood that some people who do not have a support system, fall back onto crime.

Additionally, we can see that these collateral consequences often face no judicial repercussions because these punishments typically take effect outside of the traditional sentencing framework in which they are not considered to be part of the practice or jurisprudence of sentencing.¹⁰ When we look at the extent of collateral consequences, it must be understood that there are both formal and informal consequences of incarceration.

Formal collateral consequences work to create barriers of opportunities to the formerly incarcerated. Some examples of formal collateral consequences include denial of the basic right to vote, barriers to educational opportunities, barriers to housing opportunities, and/or barriers to employment opportunities. It is important that we understand that once an individual has a criminal conviction, this conviction acts as a brand that serves as a continued punishment that follows an individual from prison into mainstream society. There is no surprise that individuals with criminal records often have difficulty finding employment upon their release. This is attributed to both the formal and informal consequences in place. Formally, there are policies in place that restrict felons from attaining certain jobs. Informally, employer bias and prejudice against felons also factor into a formerly incarcerated individual not being able to find a job. This can also be exemplified through other circumstances such as housing. Landlords have a right to deny a formerly incarcerated individual housing based on a criminal conviction.

In this regard, we can understand that despite having completed a sentence, the idealistic perception of “freedom” is forever changed. In other words, the mere identification of a criminal record acts a perpetual punishment preventing full and permissive freedom: “today, convict status serves as a perpetual badge of infamy, even serving to impugn reputation beyond the grave.”¹¹

With conviction comes stigma. There are several impacts of stigma including: self-fulfilling criminogenic effects, limited employment prospects, and secondary stigma placed onto family and friends. When looking at self-fulfilling prophecies, individuals who are constantly being told that are just a “criminal” can begin to act upon these labels because they began to internalize these brands and begin to see themselves as criminal. Additionally, when looking at the stigma that is placed onto family and friends, we can see this being illustrated through the changes of perception about a family after learning that someone within that family was incarcerated. It becomes a stigma surrounding not just the formerly incarcerated individual but the family in its entirety.

When examining the impact and nature of mass incarceration, Michelle Alexander claims that “it is fair to say we have witnessed an evolution in the United States from a racial caste system based entirely on exploitation (slavery), to one based largely on subordination (Jim Crow), to one defined by marginalization”.¹² People who have a criminal record are stereotyped and marginalized within society. The premise follows that people with criminal records are dangerous, deviant, and untrustworthy. Thus, society intentionally created these formal and informal collateral consequences as a preventative measure to deter crime. This ideology that people with criminal convictions are dangerous and therefore must be protected against through these formal and informal invisible punishments are flawed on the very notion that human tendency cannot be thoroughly

⁸ Mayson S, “Collateral Consequences and the Preventive State,” *Notre Dame Law Review* 91(1) (2015): 301-362.

⁹ Mauer M, Chesney-Lind M, *Invisible Punishment the Collateral Consequences of Mass Incarceration* (New York, NY: The New Press, 2002)

¹⁰ Mauer M, Chesney-Lind M, *Invisible Punishment the Collateral Consequences of Mass Incarceration* (New York, NY: The New Press, 2002).

¹¹ Mauer M, Chesney-Lind M, *Invisible Punishment the Collateral Consequences of Mass Incarceration* (New York, NY: The New Press, 2002).

¹² Alexander M, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York, NY: The New Press, 2010).

predicted. Additionally, these lasting punishments pose extreme moral concerns in relation to wrongful conviction.

III. Wrongful Conviction And Collateral Consequences

The very implications of collateral consequences when looking at the wrongfully convicted pose multiple concerns about the morality of these invisible punishments. It can be understood that once an individual violates the law and therefore breaks social contract, they are no longer morally part of the community.¹³ When looking at wrongful convictions however, they have not broken the social contract but instead were victims of judicial error. What does this mean? When analyzing the morality of collateral consequences under the scope of wrongful conviction, it is assumed that these invisible punishments are illegal and illegitimate. The very notion that a collateral consequence is morally acceptable when an individual has broken the social contract within their community is completely diminished under the circumstances of wrongful conviction.

Because the study of wrongful conviction is fairly new and has been gaining traction within modern society, how can we accurately measure how many individuals have been wrongfully impacted by collateral consequences? Furthermore, how can we measure how extensive the impact of collateral consequences has affected a wrongfully convicted individual? These questions, and many others, comprehensively take part in acknowledging the moral considerations of collateral consequences. If we cannot measure the immoral prospects of collateral consequences how can we judge these practices holistically?

It is important that we begin to de-stigmatize the branding of “criminals”. Within the lens of the wrongfully convicted, it is noted that the wrongfully convicted are branded as criminals as well. When looking at the aspects of wrongful conviction, it is understood that these individuals had suffered from judiciary error. Despite having a re-trial or exoneration, people will continue to hold these labels and stereotypes against these individuals. The characterization of ex-felon must be reevaluated as these stereotypes can be damaging. Within the scope of the wrongfully convicted, these individuals are faced with the consequences of being victimized by the system and the consequences of being labeled as a criminal. The very notion of a conviction carries significant weight, and this weight is not exclusive of those who were wrongfully convicted.

IV. Conclusion

As we continue to enter into this new era of restorative justice, it is important that we take extra importance in maintaining the wellbeing and protecting the wrongfully convicted. Those who have suffered judicial error have already lost in some respects, what they considered to be a normative reality. In other words, it is important that we support those whom the system has failed.

The collateral consequences that follow the wrongfully convicted are not only imposed upon by society but are also perpetrated by the collateral consequences that follow their adjacent. The wrongfully convicted have not only endured persecution under the system but then are faced with the difficulty of entering into a new world where they have to 1.) maintain and prove their already proven innocence and 2.) navigate back into society with the stigma that follows conviction.

As Michelle Alexander argues, “today a criminal freed from prison has scarcely more rights, and arguably less respect, than a freed slave or black person living ‘free’ in Mississippi at the height of Jim Crow.”¹⁴ For the wrongfully convicted, they are branded as a criminal despite having been exonerated, pardoned, or have completed time for a crime they did not commit. Due to persisting beliefs regarding criminalization and the supportive nature of punitive punishment, it can be understood that even if a wrongfully convicted individual was proven to be innocent, the label of “criminal” that was branded onto them during their conviction will persist. Thus, we are able to understand the context of collateral consequences within the scope of wrongful conviction.

¹³ Lafollette H, “Collateral Consequences of Punishment: Civil Penalties Accompanying Formal Punishment,” *Journal of Applied Philosophy* 22(3) (2005): 241-261.

¹⁴ Alexander M, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York, NY: The New Press, 2010). In her book *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, Michelle Alexander builds the narrative that the criminal justice system creates and perpetuates racial hierarchy in the United States by branding ex-felons as dangerous and denying these individuals certain rights after completing their sentence.

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