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Beyond the New Jim Crow: Public Support for Removing and Regulating Collateral Consequences

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IN 2010, MICHELLE Alexander published *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. This volume proved to be not only an important academic work but also a best-selling trade book. Its status as a contemporary classic can be traced to the fact that its message resonated with the growing sense that the policy of mass conviction and incarceration, which disproportionately impacted African American communities, was doing considerable harm (see also Clear, 2007; Kennedy, 1997; Pattillo, Weiman, & Western, 2004; Tonry, 1995, 2011; Wacquant, 2001, 2009).

Alexander's (2010) chapter on "The Cruel Hand" was particularly poignant. She drew this title from a statement by Frederick Douglass in which he noted how many Americans, despite being "strangers to our character," subjected Blacks to "the withering influence of a nation's scorn and contempt," which resulted in "a heavy and cruel hand [being] laid against us" (quoted in Alexander, 2010, p. 137). Because of the collateral consequences attached to a criminal conviction, observed Alexander

(2010, p. 138), "today a criminal freed from prison has scarcely more rights, and arguably less respect, than a freed slave or a black person living 'free' in Mississippi at the height of Jim Crow." Criminals "are the one group in America we have permission to hate" (p. 138).

But this animus reflected in the contemporary cruel hand—whether against Blacks or many Whites—is masked by its apparent colorblindness and neutrality. It is rationalized as just a matter of applying the law. "A criminal record today," Alexander (2010, p. 138) points out, "authorizes precisely the forms of discrimination we supposedly left behind—discrimination in employment, housing, education, public benefits, and jury service. Those labeled criminal can even be denied the right to vote" (see also Jacobs, 2015; Lageson, 2020). Echoing this theme, Wacquant (2001, p. 119, emphasis in original) observes that "*mass incarceration also induces the civic death* of those it ensnares by extruding them from the social compact"—including the denial of access to cultural capital (e.g., educational benefits), social

redistribution (e.g., welfare benefits), and political participation (e.g., voting).

Alexander draws the parallel between the new and old Jim Crow, trying to show that its contemporary version manifests similar characteristics. These include, among other facets, a lifetime of "legalized discrimination" such as in employment, "political disenfranchisement," and "exclusion from juries" (2010, pp. 186–189). The policy implications of Alexander's analysis are clear: Lift the weight of the cruel hand off offenders. In this regard, the current project focuses on the issues of employment discrimination, voting rights, and jury service. Using two sources of national-level data, we examine the extent to which the public supports *removing* these collateral consequences. Are they prepared to move "beyond the new Jim Crow"?

In her analysis, Alexander (2010, p. 140) illuminates a particularly insidious aspect of the collateral consequences attached to conviction: "judges are not required to inform criminal defendants of some of the most important rights they are forfeiting when

they plead guilty to a felony.” In all likelihood, she notes, “judges, prosecutors, and defense attorneys may not even be aware of the full range of collateral consequences for a felony conviction” (p. 140). In the current project, we probe whether the American public supports the mandatory disclosure of collateral consequences at the time of a plea bargain or jury verdict. Further, given the proliferation of economic, social, and civic disabilities attached to a criminal conviction, we assess public support for reviewing the need for collateral consequences, especially with regard to their effectiveness in reducing crime. In short, we examine the extent to which the citizenry endorses the *regulation* of collateral consequences.

The removal and regulation of collateral consequences address a problem large in scope and, as Alexander (2010) shows, involving racial disparity. Each day, the FBI adds more than 10,000 names to its database of criminal records (Murray, 2016; Roberts, 2015). The Sentencing Project (2019, p. 1) estimates that “between 70 and 100 million—or as many as one in three Americans—have some type of criminal record” (see also Bureau of Justice Statistics, 2014). Twenty million of these are felony records (Jacobs, 2015). But Blacks are differentially affected by criminalization, starting with being more likely to be arrested (Brame, Bushway, Paternoster, & Turner, 2014). One study found that in the United States, 8 percent of all adults but 33 percent of African Americans had a felony conviction—a status incurring the most diverse and damaging collateral consequences (Shannon et al., 2017). These impacts are felt widely. According to Enns et al. (2019), 45 percent of all Americans but 63 percent of African Americans have had a family member incarcerated for one night or longer; the racial divide for a family member locked up for over one year is 14 percent versus 31 percent. As such, any decrease in collateral consequences potentially has a disproportionate benefit to Black citizens and Black communities.

The sheer number of collateral consequences in the United States is disquieting. A national inventory of statutes and regulations compiled by the Council of State Governments (2020) placed the current number at 44,778. One analysis calculated the number of collateral consequences as varying from a low of 342 in Vermont to a high of 1,831 in California (Denver, Pickett, & Bushway, 2017). Most of these legally imposed disabilities remain invisible to the convicted until they seek to enjoy

the fruits of their rights as full citizens (Travis, 2002). Again, the challenge of disclosing these consequences and weighing their justification for existing remains a public policy concern (Chin, 2012, 2017).

Notably, corrections in the United States is at a policy turning point—a time when mass incarceration is in decline and get-tough rhetoric seems to strike the wrong chord (Butler, Cullen, Burton, Thielo, & Burton, 2020; Petersilia & Cullen, 2015). A wealth of evidence shows that public opinion has a pronounced effect on criminal justice policymaking (Pickett, 2019). Strong public support in favor of removing and/or regulating collateral consequences would provide policymakers with the incentive, or at least the political permission, to consider a range of modifications (Thielo, Cullen, Cohen, & Chouhy, 2016). Most salient are the attitudes of White Americans and whether they will resist reform efforts. Although Whites are also subject to collateral consequences if convicted, the impact of criminal records falls disproportionately on African Americans. A key issue is thus whether a racial divide exists in the public’s willingness to reform collateral consequences statutes or whether people of all colors support such an initiative. Another issue is whether beliefs about redeemability, which appear to influence attitudes toward reentry and criminal record policies (Burton et al., 2020; Burton et al., in press; Lehmann et al., 2020), shape views about collateral consequences. We address both questions in our study.

Collateral Consequences in an Era of Mass Conviction

In recent times, writings on collateral consequences have been extensive (see, e.g., Chin, 2017; United States Commission on Civil Rights, 2019; Whittle, 2018). Within criminology, scholarship detailing the pervasiveness of these restrictions extends back several decades, most notably in the writings of Burton and colleagues (see, e.g., Burton, 1990; Burton, Cullen, & Travis, 1987; Burton, Travis, & Cullen, 1988; Olivares, Burton, & Cullen, 1996). The concern over reentry, which surfaced early in the 2000s—especially in the work of Jeremy Travis (2002, 2005) on invisible punishments—was crucial in calling attention to how collateral consequences serve as barriers to reentry (see also Bushway, Stoll, & Weiman, 2007; Petersilia, 2003). As noted, Alexander’s (2010) *The New Jim Crow* reinforced these insights, showing how these legal

restrictions disproportionately affect African Americans.

Again, our study focuses on public opinion about collateral consequences in two domains fundamental to adult life in the United States. The first area is civic participation, where we assess whether respondents believe that felony records should restrict voting and jury service, two “pillars of American democracy” (Binnall & Peterson, 2020, p. 2). The second area is employment, where we examine the sample’s support for “ban-the-box” laws. Following this analysis, we then consider the extent to which the public favors the regulation of collateral consequences statutes. Until now, laws imposing these statutes have been passed over many years in a piecemeal fashion with no consistent scrutiny, let alone empirical evaluation.

Removing Collateral Consequences Disenfranchisement

In the United States, more than 6 million Americans are prohibited from voting due to a felony conviction (Chung, 2019; Jacobs, 2015). A 2016 study found that only 23 percent of disenfranchised felons were in prison or jails, while 77 percent were residing in the community. Among those in the community, about 1 in 4 were on probation (8 percent) or parole (18 percent). More than half (51 percent) had completed their sentences (Uggen, Larson, & Shannon, 2016). At present, two states, Maine and Vermont, do not restrict the franchise, allowing even prison inmates to vote. From the remaining 48 states and the District of Columbia, 38 permit offenders to vote once they have completed either their imprisonment or their entire sentence—prison, parole, and/or probation. Eleven states ban voting for at least some offenders permanently (e.g., those convicted of a violent or sex crime or more than one felony), until a waiting period is completed, or unless the governor awards clemency (Chung, 2019; “Felon Voting Rights,” 2019; Uggen et al., 2016).

The forfeiture of this constitutional right of citizens is a case of American exceptionalism. “European democracies,” notes Jacobs (2015, p. 250), “mostly permit even incarcerated felons to vote” (see also Lemon, 2019). Including the United States, only four democracies limit the franchise following incarceration (Lemon, 2019). As Manza and Uggen (2006, p. 41) observe, “Felon disenfranchisement laws in the United States are unique in the democratic world. Nowhere else are millions of offenders who are not in prison denied the right to vote.” Although

other factors likely played a role, they argue that race is central to this story—first following the Civil War when many restrictions on the franchise were passed and then in more modern times when racial threat seemed to inspire limits on voting (Manza & Uggen, 2006; see also United States Commission on Civil Rights, 2019). The extant racial disparity is telling: “One in 13 African Americans of voting age is disenfranchised, a rate more than four times more than non-African Americans” (Uggen et al., 2016, p. 3).

Still, there is promising news to report. In December 2019, New Jersey Governor Phil Murphy signed a bill that extended the franchise to 80,000 people on probation and parole, and Kentucky Governor Andy Beshear issued an executive order restoring the vote to 140,000 nonviolent offenders who had completed their sentence (Romo, 2019; Vasilogambros, 2020). In August 2020, Iowa Governor Kim Reynolds followed suit, issuing an executive order restoring the franchise to all felons completing their sentence, with the exception of those convicted of a homicide offense. Prior to this order, convicted felons in Iowa faced a lifetime ban on voting unless an appeal to the governor was granted (Stracqualursi, 2020). These gubernatorial actions reflect a growing trend. In fact, since 2019, a number of states have had legislative initiatives to limit or end felony disenfranchisement that were introduced in a legislative committee, passed one chamber of the legislature, or were implemented (“Disenfranchisement and Rights Restoration,” 2020).

Most notably, in 2018, more than 65 percent of Florida voters passed a constitutional amendment overturning a 150-year-old law permanently banning felons from voting, thus extending the franchise to 1.4 million individuals (Breslow, 2020; Gardner, & Rozsa, 2020; Vasilogambros, 2020). Governor Ron DeSantis and Republicans in the Florida legislature have attempted to delay ex-felons from voting until all their court-related fees, fines, and restitution are paid—though no system exists to tell ex-offenders what is owed. The U.S. Supreme Court refused to vacate a decision by the 11th Circuit Court of Appeals blocking an earlier injunction that ruled Florida’s action unconstitutional. The matter will now receive a hearing by the full 11th Circuit Court (Gardner & Rozsa, 2020; Totenberg, 2020).

Although not plentiful, existing polls indicate that a clear majority of the public

supports extending the vote to ex-felons who have completed their sentence (see Wilson, Owens, & Davis, 2015, p. 73). In a notable study, Manza, Brooks, and Uggen (2004, p. 284) reported on a 2002 survey finding that 80 percent of their national sample supported extending the franchise to “people convicted of a crime who have served their entire sentence, and are now living in the community.” When specific crime types were used, the level of support declined, but was still 66 percent for violent offenders, 63 percent for white-collar offenders, and 52 percent for sex offenders. Similarly, Chiricos, Padgett, Bratton, Pickett, & Gertz (2012) found that 73 percent of Floridians supported extending the right to vote to felons generally, 50 percent to violent offenders, 69 percent to white-collar offenders, and 49 percent to sex offenders. A 2017 California survey ($N = 815$) found that 67 percent believed that felons “should be allowed to vote” as opposed to being “barred from voting permanently” (Binnall & Peterson, 2020, pp. 9, 11). Three national 2018 polls revealed similar results. First, in the PRRI/*Atlantic* 2018 Pluralism Survey ($N = 1,073$), 71 percent of the sample agreed that “A person who has been convicted of a felony should be allowed to vote after they have served their sentence” (Najile & Jones, 2019). Second, a Pew Research Center survey found that 69 percent endorsed extending the vote to felons who had paid their debt to society (Bialik, 2018). Third, a YouGov study conducted for the Huffington Post ($N = 1,000$) showed that 63 percent supported the proposal, compared to only 20 percent who opposed it; 16 percent were not sure (“HuffPost: Restoration of Voting Rights,” 2018).

The dividing line, however, comes when the public is asked about extending the vote to those still in prison. About 7 in 10 oppose doing so, or 6 in 10 if “not sure” is a response option in the survey (“HuffPost: Restoration of Voting Rights,” 2018; Manza et al., 2004; Sheffield, 2019). Foretelling possible change in the time ahead, the 2018 YouGov poll showed that among those 18–29 years old, 40 percent supported restoring felons “their voting rights while they are in prison” as opposed to 37 percent who opposed this initiative and 24 percent who were not sure (“HuffPost: Restoration of Voting Rights,” 2018).

Exclusion from Juries

In the United States, Maine is the only jurisdiction that allows felons to serve on a jury

without restrictions (Binnall, 2018a). The federal government and 27 states permanently exclude convicted felons from jury duty. Twelve states prohibit such service while on probation or parole for a felony conviction. The remaining states impose some conditions limiting jury service, such as a waiting period following sentence completion, nature of the conviction offense, type of jury, and dismissal as a potential juror simply on the basis of a felony conviction (see Binnall, 2016, 2018a). Given that about a third of African Americans have a felony conviction, these restrictions have a disparate effect on the racial composition of juries (Binnall, 2014b; see also Wheelock, 2011).

Two reasons are given for excluding felons from jury service (Kalt, 2003; United States Commission on Civil Rights, 2019). The first is that their inclusion would threaten the “probity” of the jury because they lack the character and trustworthiness to judge their peers. The second is their “inherent bias” in rendering a verdict either because of their compassion toward offenders or because of their active animus toward the state. These arguments fall apart upon further scrutiny. For example, because most Americans commit crimes for which they have not been detected (e.g., illegal drug use, driving while intoxicated, domestic violence, tax fraud, and common crimes), it is an empirical question whether a criminal record reliably distinguishes who is morally appropriate for jury service (see Barnes, 2014; Pratt, Barnes, Cullen, & Turanovic, 2016). Similarly, research suggests that convicted felons tend to be pro-defense in their attitudes, but so do other groups (Binnall, 2014a). More instructive, except through the voir dire process that could also be applied to felons, the state makes no effort to exclude from juries those with strong pro-prosecution views (e.g., crime victims and their families, law enforcement officers and their kin, those with racial resentment or with strongly held punitive sentiments).

Binnall and Petersen’s (2020) California survey noted above is the only prior study to examine public support for felon jury service. Their question asked whether “a citizen who has been convicted of a felony” (A) “should be allowed to serve as a juror” or (B) “should be barred from serving as a juror permanently” (2020, p. 9). Forty-nine percent chose option A, meaning that the sample was about evenly divided on the issue of felon jury service.

Ban the Box

“The mark of a criminal record,” notes Pager (2007, p. 145), “indeed represents a powerful barrier to employment” (see also Holzer, Raphael, & Stoll, 2004). For young Black men, the combination of race and a criminal record so limits their employability as to be described as “two strikes and you’re out” (Pager, 2007, p. 100). The ability to avoid disclosure of a past record is limited by job applications that require prospective candidates to check a box noting an arrest or conviction. Notably, Denver, Pickett, and Bushway (2018, p. 584) estimated that in a single year, “over 31 million U.S. adults were asked about a criminal record on a job application.” To be sure, employers have reason to ask about applicants’ past involvement in crime, given high recidivism rates among reentering prisoners and the fact that criminal history is a predictor of future law-breaking (Bonta & Andrews, 2017; Doleac, 2019; Jonson & Cullen, 2015). Still, the near-automatic culling of ex-offenders from job pools ignores the heterogeneity in antisocial propensity among justice-involved people and the risks of encouraging recidivism by excluding them from meaningful employment (Doleac, 2019; Flake, 2019).

First proposed two decades ago, one compromise solution is to preclude employers from asking about an applicant’s criminal record until later in the job-hiring process (e.g., until interviewees were decided upon; Mauer, 2018). The candidates’ criminal history would still be disclosed, but only after employers had judged offenders’ qualifications absent the taint of a criminal mark. In this way, these applicants would have the same chance at further review as all others in the pool of candidates. Because job applications would no longer require anyone to “check the box” revealing their criminal record, these laws are known as “ban-the-box” laws. According to Avery (2019, p. 1), “Nationwide, 35 states and over 150 cities and counties have adopted what is known as ‘ban the box’ so that employers consider a job candidate’s qualifications first—without the stigma of a conviction or arrest record.” This legal reform now means that “over 258 million people in the United States—more than three-fourths of the U.S. population—live in a jurisdiction with some form of ban-the-box or fair-chance policy” (Avery, 2019, p. 2; see also Flake, 2019).

Notably, some research has challenged the efficacy of this reform, arguing that ban the box might have the unanticipated consequence of depressing the hiring of African American

applicants. The logic is that with no criminal-history information available, employers will be unable to differentiate which Black applicants are record-free. Assuming that Blacks as a group are more at risk than Whites of having a criminal record, employers will “play it safe” by not calling back such job-seekers for in-person interviews (for a summary, see Doleac, 2019). Not all research, however, finds this racially disparate effect (see, e.g., Flake, 2019).

Research that asks directly about the policy of ban the box is in short supply. Investigations using public samples have been conducted on the weight respondents give to various factors (e.g., offender race, type of conviction offense, job qualifications) if they were making hiring decisions (see, e.g., Cerda, Stenstrom, & Curtis, 2015; Varghese, Hardin, Bauder, & Morgan, 2010). Two decades ago, the Bureau of Justice Statistics (2001) conducted a comprehensive study of how the public views the uses of criminal history information. To our knowledge, however, only two studies have probed the extent to which the public might support the policy of ban the box.

First, in a 2016 survey ($N = 1,009$), Denver et al. (2018) asked the following question: “In your view, when should employers FIRST be allowed to ask about a job applicant’s criminal record, or do you think they should never be allowed to ask?” Almost 6 in 10 respondents (57 percent) chose “on the job application,” suggesting opposition to the ban-the-box policy. The other results were 28 percent for “at the interview stage,” 6 percent for “after the hiring decision,” and 9 percent for “never.” Second, another 2016 survey ($N = 1,203$) used the same question, with slightly more support for the ban-the-box principle on when records could be used: 49.1 percent at the application stage; 34.1 percent at the interview stage, 9.3 percent at the final hiring stage, and 8.5 percent never (Lehmann, Pickett, & Denver, 2020). Although suggestive, these surveys did not explain the ban-the-box policy to the sample members (or use the term) prior to asking them if they would endorse the measure. The current study does so and, as will be reported, finds a higher level of support.

Regulating Collateral Consequences

In offender sentencing, the courts distinguish between “direct” consequences such as probation, fines, or incarceration and “collateral consequences” such as being ineligible to vote, receive government benefits, or earn professional occupational licenses.

Direct consequences are defined as part of the criminal law—as punishments—and thus are protected by the U.S. Constitution. The courts have ruled, however, that collateral consequences are not criminal punishments but civil regulations. They can be found to be unconstitutional if they are purely punitive and cannot be shown to serve any “rational basis” (Chin, 2012, p. 1809). For all practical purposes, virtually any collateral consequence can pass the rationale standard if shown to save taxpayers money or contribute to public safety (Chin, 2012, 2017).

It is possible that the courts might extend protections to offenders, at least to the extent that, at the time of plea bargaining or sentencing, they are told the full civil, social, and economic disabilities that will attach to a criminal conviction. In the landmark case of *Padilla v. Kentucky* (130 S. Ct. 1473 [2010]), José Padilla, an immigrant from Honduras who had lived in the United States for 40 years, was told by his lawyer that if he pled guilty on a charge of transporting marijuana, he would not be deported. Although deportation is a collateral consequence, the U.S. Supreme Court ruled that Padilla had to be advised of this possible outcome by his lawyer prior to reaching his plea deal. On a personal level, José Padilla, a Vietnam War veteran, would avoid deportation and become a U.S. citizen on March 19, 2019 (Das, 2019). On a policy level, the possibility now exists—as yet unfulfilled—that the Supreme Court might use this logic to require defense attorneys or the trial court to inform defendants of all consequences a guilty verdict entails. Doing so would eliminate the fiction that collateral consequences are not, in reality, often a form of certain and unavoidable punishment (Chin & Love, 2010; see also Love, 2011; Quincy, 2018; Wikstrom, 2012).

However, there is a silver lining to the definition of collateral consequences as civil regulations. Because they are not embedded in the criminal law, these restrictions could be open to scrutiny just as any other government regulation can be (Cullen, Jonson, & Mears, 2017; Love, 2011). Although Americans favor state measures that protect their safety (e.g., from unsafe consumer products), they generally have ambivalent views about expanding government regulations (Bowman, 2017; Jones & Saad, 2019). In particular, Republicans are far less likely than Democrats to endorse governmental regulations as impeding business productivity (Bowman, 2017; Jones & Saad, 2019). These findings have implications for

the existing civil regulations imposed by collateral consequence laws: Bipartisan support for their reevaluation might exist. For those on the political Right, such regulations may lose legitimacy if they cannot be shown to pass the standards of transparency, utility, and crime-reduction effectiveness. Government regulations themselves must be regulated to ensure that they are helpful rather than hurtful. Those on the political Left might have similar concerns, but they are likely to favor scrutinizing offender-related restrictions because they are seen as punitive rather than as progressive.

In this context, the current study probes whether the public supports subjecting collateral consequences statutes to careful regulation to determine whether they can be justified. Three issues are examined: transparency—the disclosure of restrictions to offenders; evaluation of their utility—whether statutes should be assessed regularly to ensure that they still serve a purpose; and effectiveness—whether prescribed collateral consequences can be linked to the reduction of crime. Public concern over how collateral consequences are being imposed potentially opens a new avenue of reform. No prior public opinion research has been conducted on this salient issue.

Research Strategy

Based on a 2017 national-level survey, the analysis explores the level of public support for individuals convicted of felonies to vote and sit on juries. We then follow up these results by reporting public opinion on these same issues drawn from a 2019 national-level survey. Data from the 2017 survey are also used to examine Americans' endorsement of ban-the-box reform and of the increased regulation of collateral consequences statutes that ensure they are imposed with transparency and have demonstrably defensible outcomes. The current study makes a contribution in adding to prior opinion studies on offender disenfranchisement and provides data on topics where few or no studies exist—public support for jury service, ban the box, and regulating collateral consequences.

Although the current project is primarily concerned with presenting public opinion on removing and regulating collateral consequences, we also explore potential sources of support for this policy agenda—a contribution many polls reported above did not make. In addition to standard control variables, the multivariate analyses focus on four factors.

First, given that previous research finds

that Whites are more punitive than people of color (Unnever, Cullen, & Jonson, 2008) and the disproportionate impact of collateral consequences on African Americans (Alexander, 2010; Manza & Uggen, 2006; United States Commission on Civil Rights, 2019), we predict that Whites will be less supportive of collateral consequences reform than non-Whites. Second, although differences are not always large or statistically significant (see, e.g., Thiello et al., 2016), research shows that political partisanship and ideology affect support for criminal justice reform, with Republicans and those with a conservative ideology being more punitive and less progressive in their policy preferences (Lageson, Denver, & Pickett, 2019; Pickett & Baker, 2014; Unnever & Cullen, 2010). In particular, prior public opinion polls report those with rightward political leanings are less favorable to convicted felons voting (see, e.g., Bialik, 2018; “HuffPost: Restoration of Voting Rights,” 2018; Najile & Jones, 2019). We anticipate finding a political effect in our analyses.

Notably, race and politics are central to Alexander's (2010) analysis in *The New Jim Crow*. Collateral consequences are “color-blind” in the sense that they apply to all those convicted of a criminal offense, but their “Jim Crow” effect lies in how they disproportionately impinge on the lives of African Americans. Scholars have argued that punitive collateral consequences were part of a larger get-tough movement aimed at securing White political support for the Republican Party, especially among conservatives, by passing criminal justice policies that would reduce a supposed racial threat (see, e.g., Chiricos et al., 2012; Wilson et al., 2015; see also Maxwell & Shields, 2019). The goal was to fuel and capitalize upon racial resentment. Beyond Blacks' utilitarian interest in reducing racially disparate restrictions, it is possible that Whites have been inspired to favor policies punitive toward people of color. The alternative possibility is that a racial and political divide no longer exists—or is now a small rather than a large cleavage—and that there is a consensus among Americans with regard to reforming the collateral consequences attached to a conviction.

Third, consistent with past research showing the effect of correctional orientation on policy preferences, we explore the influence of punitiveness and support for offender rehabilitation on whether the public endorses removing and regulating collateral consequences (Burton et al., 2020; Lehmann et al., 2020). It is anticipated that favoring relief from

collateral consequences will be negatively related to punitive sentiments and positively related to rehabilitative sentiments, although we do not expect these relationships to be large, given that retributiveness appears to have less influence on attitudes about post-release policies (Lehmann et al., 2020).

Fourth and closely related, we include a measure of the public's belief in the redeemability of offenders. Although still evolving, research is emerging showing that when people view offenders as malleable and capable of growth, they are less supportive of a punitive criminal justice system and more supportive of a range of progressive policies aimed at including offenders in the community—such as restorative justice, reentry services, and criminal record expungement (see Burton et al., 2020; Burton et al., in press; Maruna & King, 2009; Moss, Lee, Berman, & Rung, 2019; Ouellette, Applegate, & Vuk, 2017; Rade, Desmarais, & Burnett, 2018; Reich, 2017; Sloas & Atklin-Plunk, 2019; Tam, Shu, Ng, & Tong, 2013). It is hypothesized that respondents who believe more strongly in offender redeemability will be more favorable to limiting collateral consequences. We also anticipate that the effects of redeemability will be stronger than the punishment and rehabilitative correctional orientations. Punishment and rehabilitation are perhaps more relevant to the response to offenders at sentencing and under correctional control, whereas redeemability might be particularly salient to post-conviction and post-corrections policies, such as exposure to collateral consequences (Lehmann et al., 2020).

Methods

As noted, the main data for this paper are drawn from a 2017 survey, which was then supplemented by a 2019 survey. The sample and methods for the 2017 survey are discussed first, followed by information on the 2019 survey.

Sample for 2017 Survey

Participants in this study were surveyed by YouGov, a large survey research firm that conducts public opinion research globally. YouGov is considered to be at the forefront of opt-in web-based survey designs (Graham, Pickett, & Cullen, 2020; Kennedy et al., 2016), and as a result, is relied upon often by criminal justice researchers (e.g., Burton et al., 2020). For the current study, we commissioned YouGov to survey 1,000 U.S. adults (18

TABLE 1.
Descriptive Statistics

Variables	Bivariate Correlations with Outcomes									
	YouGov 2017 Sample		YouGov 2019 Sample		YouGov 2017 Sample				YouGov 2019 Sample	
	Mean or %	SD	Mean or %	SD	Voting Rights	Jury Duty Rights	Ban-the-Box	Regulate CCs	Voting Rights	Jury Rights
Outcome Variables										
Voting Rights (%)	76.40	-	59.56	-	-	-	-	-	-	-
Jury Duty Rights (%)	48.25	-	41.71	-	-	-	-	-	-	-
Ban-the-Box (%)	64.72	-	-	-	-	-	-	-	-	-
Regulate CCs	4.52	0.93	-	-	-	-	-	-	-	-
Independent Variables										
White (%)	66.76	-	64.16	-	-.06	-.04	.02	-.03	-.01	.07*
Redeemability	3.56	0.83	3.87	0.58	.38***	.42***	.32***	.38***	.25***	.38***
Punitiveness	1.48	1.09	1.09	0.98	-.36***	-.38***	-.30***	-.32***	-.01	-.21***
Rehabilitation	4.19	0.97	3.77	0.74	.38***	.41***	.28***	.49***	.21***	.47***
Control Variables										
Republican (%)	23.46	-	27.27	-	-.20***	-.18***	-.11***	-.15***	.05	-.16***
Conservative (%)	34.66	-	33.24	-	-.28***	-.25***	-.21***	-.19***	.01	-.21***
Male (%)	48.48	-	48.74	-	-.01	.05	-.06	-.03	-.01	.01
Age	48.08	17.52	48.19	17.60	-.15***	-.13***	-.01	-.05	.17***	-.02
Education	3.17	1.53	3.32	1.53	-.05	-.11***	.05	.09**	.03	.13***
Southerner (%)	36.00	-	38.02	-	-.03	-.02	.05	-.02	.00	-.01
Married (%)	44.10	-	47.75	-	-.07*	-.10**	-.02	-.03	.05	-.04
Religiosity	0.01	0.78	0.00	0.88	-.11***	-.13***	-.07*	-.11***	.06*	-.20***

Notes: The data are weighted; * $p < .05$; ** $p < .01$; *** $p < .001$ (two-tailed).

and over) between March 3–7, 2017.

To field the sample, YouGov used a two-stage, sample-matching design. First, YouGov selected a matched (on the joint distribution covariates, e.g., political ideology) sample of respondents from its online panel (over two million adult U.S. panelists) using distance matching with a synthetic sampling frame (the synthetic sampling frame came from the American Community Survey [ACS]). Then, propensity score matching is used to weight the sample to resemble the U.S. population on the matched covariates (Ansolabehere & Rivers, 2013). Clear evidence exists showing that findings from YouGov surveys often generalize to the U.S. population (Simmons & Bobo, 2015).

When compared to estimates from the U.S. Census and the 2017 ACS 5-year estimates (in parentheses), preliminary analyses reveal the weighted sample looks much like the U.S. population: non-Hispanic White, 66.8 percent (64.5 percent); male, 48.5 percent (48.7 percent); Bachelor's degree, 26.5

percent (28.4 percent); married, 44.1 percent (48.2 percent); Northeast, 18.7 percent (17.2 percent); Midwest, 20.1 percent (20.9 percent); South, 36.0 percent (38.1 percent); West, 25.3 percent (23.8 percent) (U.S. Census Bureau, n.d., 2017). When compared to the Pew Research Center's (2018) estimates of party identification among registered voters (in parentheses), the weighted sample also looks like the U.S. population: lean Republican or Republican, 41 percent (42 percent); lean Democrat or Democrat, 46 percent (50 percent). Given these similarities in major population demographics, we have greater confidence that the sample generalizes to all adults in the United States.

Dependent Variables

The survey included a battery of questions that assess support for removing and regulating collateral consequences policies. *Voting Rights* is a binary variable that assesses whether individuals convicted of felonies should either retain or lose their right to vote. The variable

was coded such that 0 = *they should lose permanently lose their right to vote*, 1 = *they should not lose their right to vote at all/they should lose their right to vote only until they have completed their sentence*. Table 2 shows the question wording and response options provided to the respondents.

Jury Rights is a binary variable (0 = *convicted felons should be permanently excluded from sitting on juries*, 1 = *convicted felons should be allowed to sit on juries once their sentence is complete*) that assesses whether the respondents believe those convicted of felonies should be able to serve on juries. *Ban the Box* is also a binary variable (0 = *banning the box is a bad idea*, 1 = *banning the box is a good idea*) that assesses whether the respondents believe individuals convicted of felonies should have to mark a box that denotes their felony status on employment applications. See Table 3 for the exact question wordings and response options provided to the respondents.

Regulate CCs is a mean index ($\alpha = .743$) comprising three items that assess support

for providing offenders with information about collateral consequences and eliminating collateral sanctions unless they are shown to reduce crime. These items tap whether the respondents believe the collateral consequence incurred upon conviction should be transparent to those receiving them and whether collateral consequences policies should be regularly reviewed and discarded if they are shown to have no crime-reducing effect. See Table 4 for the full question wordings and response categories. The respondents indicated their support for all of the items using a 6-point Likert scale (1 = *strongly disagree*, 6 = *strongly agree*). The variable was coded such that higher values on the index correspond with greater support for regulating collateral consequences.

Independent Variables

With regard to race, *White* is a binary variable where 1 = *all White respondents* and 0 = *all other races*. We focus on Whites because, as noted, their role in supporting or resisting collateral consequences reform may be distinct from that of other racial groups. We also ran all analyses (tables available upon request) in which we compared 1 = *White* versus only 0 = *Blacks*, excluding respondents from other groups from these analyses (e.g., Asians, Hispanics). The results proved to be the same substantively.

To measure the respondents' belief in redeemability, we used questions from Burton et al. (2020). Similar measures of this construct have been used in prior research (e.g., Dodd, 2018; Maruna & King, 2009). Thus, *Redeemability* is a mean index ($\alpha = .718$) created from the respondents' opinions (1 = *strongly disagree*, 6 = *strongly agree*) to the following four statements: (1) "Most offenders can go on to lead productive lives with help and hard work"; (2) "Given the right conditions, a great many offenders can turn their lives around and become law-abiding citizens"; (3) "Most criminal offenders are unlikely to change for the better"; and (4) "Some offenders are so damaged that they can never lead productive lives." Items 3 and 4 were reverse coded such that higher values on the index represent a greater belief in redeemability.

The respondents' punitiveness was assessed using three widely used measures of this construct (see Enns, 2016): support for the death penalty, support for harsher courts, and belief that the main goal of prisons should be

punitive, rather than rehabilitative. We used question wordings drawn from the General Social Survey (death penalty and harsher courts questions) and the Harris Poll (main goal of prisons question) (see Cullen, Fisher, & Applegate, 2000; Enns, 2016). The respondents endorsing the punitive option for each item were coded as 1, whereas those not supporting the punitive option(s) were coded as 0. Thus, the three items were summed together to create *Punitiveness*, a 3-item index that ranges from 0 to 3, where higher values correspond to greater punitiveness.

Five items were used to measure the respondents' support for correctional rehabilitation. Accordingly, *Rehabilitation* is a 5-item mean index ($\alpha = .841$) measured with questions that asked how much the respondents supported five statements. Examples of these items include: (1) "It is important to try to rehabilitate adults who have committed crimes and are now in the correctional system," and (2) "It is a good idea to provide treatment for offenders who are supervised by the courts and live in the community." The same scale was used in Burton et al. (2020). Items were all coded in a direction such that higher values indicated greater support for rehabilitation.

Control Variables

Our analyses include additional factors that are commonly controlled for in public opinion studies on criminal justice policies (e.g., Burton et al., 2020; Thielo, Cullen, Burton, Moon, & Burton, 2019). The control variables in the analyses are the respondents' political party affiliation (1 = *Republican*) and ideology (1 = *Conservative*), gender (1 = *Male*), Age (in years), Education (1 = *no high school*, 6 = *graduate degree*), region of residence (1 = *Southerner*), and marital status (1 = *Married*). Finally, we also control for religious beliefs using a 3-item standardized mean index, *Religiosity* ($\alpha = .741$), based on three questions assessing the importance of religion in the respondents' lives, their frequency of church attendance, and their frequency of praying.

Table 1 provides the descriptive statistics for all of the variables, and the bivariate correlations between each independent and dependent variable included in the multivariate analyses. Regression assumptions were assessed and appeared to be met in all of the models. In the multivariate models, VIF values ranged from 1.02 to 2.11, indicating that multicollinearity was not a concern.

Analysis Based on 2019 YouGov Survey

To further assess the extent and correlates of attitudes toward collateral consequences policies, we analyze data from a 2019 YouGov survey—designed for other purposes (see Butler, 2020)—that included measures of the constructs examined in the current study. The measures of *Punitiveness*, *Rehabilitation*, and all control variables were identical to those used in the 2017 YouGov survey. The measure of *Redeemability* in the 2019 YouGov survey was a similar measure to the Burton et al. (2020) scale. Thus, *Redeemability* in the 2019 YouGov survey is an 8-item mean index using select items from a scale developed by O'Sullivan, Holderness, Hong, Bright, and Kemp (2017). *Voting rights* was measured with an item that asked respondents to indicate the extent to which they agree or disagree with the statement "If someone is convicted of a crime, they should lose their right to vote, but have it restored once they have completed their sentence and paid their debt to society" (0 = *strongly disagree*, *disagree*, or *neither agree nor disagree*; 1 = *agree* or *strongly agree*).¹ *Jury Rights* was measured with a single item that asked respondents to indicate the extent to which they agree or disagree with the statement "If someone is convicted of a crime, they should be permanently excluded from sitting on a jury, even after they have paid their debt to society" (0 = *strongly disagree*, *disagree*, or *neither agree nor disagree*; 1 = *agree* or *strongly agree*). To be consistent with the measures of these policy opinions in the 2017 YouGov survey, both *Voting Rights* and *Jury Rights* were coded as dichotomous indicators of attitudes in favor of removing collateral consequences.

Note that YouGov used the same procedures for sampling and fielding the 2019 survey as were used for the 2017 survey. Accordingly, the 2019 sample looks similar to U.S. population estimates from the U.S. Census and the 2017 ACS five-year estimates: non-Hispanic White, 64.2 percent (64.5 percent); male, 48.7 percent (48.7 percent);

¹ A possible limitation on this question should be noted. The question was framed to elicit who favored extending voting rights to offenders. However, someone who believed that offenders should have the right to vote under all circumstances could have answered "neither agree nor disagree" or "disagree/strongly disagree." Substantively, this means that the response to this item underestimates support for voting rights. Given that nearly 6 in 10 respondents answered in support of extending the franchise to offenders, the conclusion that public support was strong would not be affected by the question wording.

Bachelor's degree, 28.7 percent (28.4 percent); married, 47.8 percent (48.2 percent); Northeast, 18.7 percent (17.2 percent); Midwest, 20.2 percent (20.9 percent); South, 38.0 percent (38.1 percent); West, 23.2 percent (23.8 percent) (U.S. Census Bureau, n.d.; U.S. Census Bureau, 2017). When compared to the Pew Research Center's estimates of party identification among registered voters (in parentheses), the weighted 2019 sample also looks like the U.S. population in terms of party identification. When compared to estimates from the Pew Research Center (2018), the data are as follows: lean Republican or Republican, 39 percent (42 percent); lean Democrat or Democrat, 45 percent (50 percent). Thus, we have confidence that the 2019 YouGov sample also generalizes to all adults in the United States.

Results

Table 2 (Items 1 and 3) reports on the sample members' support for allowing convicted offenders to vote across the 2017 and 2019 YouGov national-level surveys. Although two different questions are used (forced-choice and Likert agree-disagree responses), the results are consistent. In both samples, about 6 in 10 respondents favored extending the right to vote to those convicted of a crime once they have completed their sentence. In the 2017 sample, less than a quarter of the respondents (23.6 percent) believed that felons should permanently lose the right to vote, whereas 17.0 percent favored no restrictions on the right to vote—presumably meaning that the franchise should be extended to those offenders not only outside but inside prisons.

Support for allowing convicted offenders to sit on juries is evenly split. The 2017 survey found that 51.8 percent favored and 48.2 percent opposed the permanent exclusion of convicted felons from jury duty (see Table 2, Item 2). Item 4, drawn from the 2019 survey, may be more instructive. Here, only about a quarter of the sample (27.3 percent who answered agree or strongly agree) favored excluding offenders for jury service, whereas about 4 in 10 (41.7 percent disagreed or disagreed strongly) did not. However, about 3 in 10 respondents (31.0 percent) answered "neither agree nor disagree." This undecided group might truly be uninformed or might endorse jury service under certain conditions—an issue future research should explore.

Support for ban-the-box laws is clear. About two thirds of the respondents (64.7

percent) chose the option that this reform was a "good idea" versus only a third (35.3 percent) who thought it was a "bad idea" (see Table 3). In other words, most respondents support delaying or eliminating background checks during the hiring process. Other data in the 2017 survey (not presented in the tables) reveal that the respondents believed that employment was integral to offender reentry. First, when asked what would help reentering offenders "stay out of crime" after "being in prison for five years," nearly 8 in 10 sample members (79.1 percent) selected "employers who give them a chance to work" as a measure that would "help them stay crime-free." Second, when asked "what services should be provided to offenders after release from prison," 94.7 percent supported "job training" (48.8 percent strongly agreed this service should be available, 27.8 percent agreed, and 18.1 percent somewhat agreed).

Table 4 presents public views on the regulation of the collateral consequences of a conviction. A unifying theme emerges from the responses: The sample members believe that restrictions should be imposed with transparency and only if they can be shown to have utility. They do not favor civil sanctions

that are not disclosed to offenders at the time of trial (Table 4, Item 1) or that are never reviewed (Item 2) and do not reduce crime (Item 3). Thus, more than 9 in 10 respondents (91.3 percent total agree) agreed that offenders should be informed about potential collateral consequences both when charged with a crime and when pleading guilty; more than 8 in 10 (86.2 percent) agreed that collateral consequences statutes should be reviewed every five years and eliminated if they had "no useful purpose"; and more than 7 in 10 (73.5 percent) favored the elimination of a collateral sanction "unless it is shown to reduce crime."

The multivariate results are presented for the 2017 survey in Table 5 and for the 2019 survey in Table 6. Note that a significant race effect was revealed in only one model (in Table 5), where Whites were less supportive than people of color in extending voting rights to offenders. Even at the zero-order level, the bivariate correlation for race is nonsignificant for 5 of 6 outcomes and never exceeds .07 (see Table 1). When Whites were compared only to Blacks, similar results were obtained. For the 2017 survey, race was not significantly related to support for voting rights and to support for regulating collateral consequences. Whites

TABLE 2.
Public Support for Voting and Jury Rights for Offenders (Percentages Reported)

Questions (YouGov 2107 Survey)	Percent					
1. Which of the following comes closest to your opinion about voting for U.S. citizens who have been convicted of felonies?						
A. They should permanently lose their right to vote	23.6					
B. They should lose their right to vote only until they have completed their sentence	59.4					
C. They should not lose their right to vote at all	17.0					
2. Which of the following comes closest to your opinion about people who have been convicted of felonies sitting on juries?						
A. They should be permanently excluded from sitting on juries	51.8					
B. They should be allowed to sit on juries once their sentence is complete	48.2					
Items (YouGov 2019 Survey)	TA	SA	A	NAND	D	SD
3. If someone is convicted of a crime, they should lose their right to vote, but have it restored once they have completed their sentence and paid their debt to society.	59.6	27.5	32.1	23.6	10.3	6.6
4. If someone is convicted of a crime, they should be permanently excluded from sitting on a jury, even after they have paid their debt to society.	27.3	10.4	16.9	31.0	23.5	18.2

Note: TA = total agree; SA = strongly agree; A = agree; NANAD = neither agree nor disagree; D = disagree; SD = strongly disagree.

Note: Total Agree includes respondents answering 1= strongly agree and 2 = agree.

were found to be significantly less supportive of jury rights but more supportive of ban the box. For the 2019 survey, Whites were significantly less supportive of voting rights than Blacks, but race was unrelated to support for jury rights. The takeaway from these findings is clear. Although some differences were reported, our results do not indicate a consistent or large racial divide in attitudes toward collateral consequences; in most cases, Whites are just as supportive as Blacks of reform, or are only slightly less supportive.

Turning to the other variables of interest,

we see that political allegiances do not appear to be a consistent dividing line in support for or opposition to collateral consequences policy. In some models, being a Republican or having a conservative ideology was significantly associated with opposition to extending voting rights to felons and with support for excluding them from jury service. Across all the dependent variables, however, being a Republican was significant in only 2 of 6 models and holding a conservative political ideology was significant in only 1 of 6 models. Although political ideology was

not consistently important, having a rehabilitative orientation was; in 5 of the 6 models, those with a rehabilitative orientation were significantly more supportive of progressive collateral-consequences policies. By contrast, punitiveness reached statistical significance in only 2 of the 6 models, where it was associated with less support for extending voting and jury rights to the convicted. It does not appear then, that public opinion about collateral consequences is driven by retributive concerns.

Although most independent variables in the analyses had weak relationships with the various outcomes, which were either non-significant or inconsistently significant, one pattern was apparent across outcomes, survey years, and question wording: Belief in offender redeemability increased support for eliminating and regulating collateral consequences. Indeed, in every model, belief in redeemability had a statistically significant positive effect. Thus, it had a more robust effect than race, political ideology, and correctional ideology. Such belief was associated with support for extending voting and jury rights to the convicted, with implementing ban-the-box laws, and with policies ensuring that collateral consequences were disclosed to offenders and eliminated if lacking any demonstrable utility.

TABLE 3.
Public Support for “Ban the Box” Laws

Question	Percent
Which of the following views about ban the box laws is closer to your own?	
A. “Ban the box” laws are a <i>good idea</i> because ex-offenders’ skills and qualifications for jobs will be considered. This could help them get jobs because they won’t just be rejected right away for having criminal records.	64.7
B. “Ban the box” laws are a <i>bad idea</i> because they make employers waste time considering hiring people that they may end up rejecting later when they find out about their criminal records.	35.3

Note: Question Asked—As you may know, many job applications contain a “box” that a person applying for the job must check if they have a criminal record from their past. Recently, however, many elected officials have passed “ban the box” laws. These laws say that employers must remove this “box” on job applications that people must check if they have been arrested and/or convicted of a crime. With ban the box laws, employers can still conduct criminal background checks and choose not to hire someone who has a criminal record. However, they can only do this AFTER they have looked at the person’s job application and decided to interview them or give them a job offer. Which of the following views about ban the box laws is closer to your own?

TABLE 4.
Public Support for Regulating the Collateral Consequences of Conviction

Items	TA	SA	A	SWA	SWD	D	SD
1. Offenders should be given information regarding all of the possible collateral sanctions they may face if they are convicted of a crime, both at the time they are charged with a crime and before entering a plea of guilty or innocent.	91.3	32.6	33.1	25.6	6.0	2.2	0.6
2. Every five years, state and federal lawmakers should review all of the existing collateral sanctions of convictions, and eliminate the ones that are found to have no useful purpose.	86.2	23.1	32.3.	30.8	9.1	3.3	1.4
3. A collateral sanction should be eliminated unless it is shown to reduce crime.	73.5	13.7	26.8	34.1	12.6	8.8	3.9

Note: TA = total agree; SA = strongly agree; A = agree; SWA = somewhat agree; SDA = somewhat disagree; D = disagree; SD = strongly disagree.

Note: Total agree includes respondents answering 4= somewhat agree, 5 = agree, 6 = strongly agree (versus 3 = somewhat disagree, 2 = disagree, and 1 = strongly disagree).

Note: Question Asked— As you may know, when people are convicted of many types of misdemeanor and felony crimes, they often also face a lot of other regulatory or civil penalties, called collateral sanctions. Collateral sanctions are separate from the direct punishments for crimes (such as a prison sentence or a probation term) and offenders are generally not told about these restrictions when they are convicted of a crime. Thus, someone convicted of a crime might face many different types of restrictions on the rights and privileges that U.S. citizens typically have. Such collateral sanctions include not being allowed to work in a lot of jobs, to serve on a jury, to join the military, to receive student loans and other forms of public assistance, and to have a driver’s license. How much do you agree or disagree with each of the following statements?

Discussion

Beyond the New Jim Crow

Michelle Alexander’s *The New Jim Crow* was a milestone publication. It captured sentiments at the heart of a new era in corrections that was marked by the growing sense that the nation’s four-decade punitive movement was ideologically bankrupt and burdened by too many iatrogenic effects. Part of Alexander’s special contribution was in illuminating what was especially pernicious about this past policy agenda—that seemingly “colorblind” or race-neutral laws and practices could have racially disparate outcomes. The other part was in showing that the collateral consequences of mass criminalization and mass imprisonment were oppressive. Some disabilities imposed on the convicted were purposefully oppressive—pushing down our collective thumbs on offenders simply to be nasty (e.g., limiting government benefits). Other disabilities were imposed with some rational basis in mind but with an absence of any scientific proof of their effectiveness. As Alexander made clear, the end result was an extensive legal apparatus—never systematically and publicly codified for all to see—that compromised the lives of millions of justice-involved individuals.

Academic criminologists are unified in arguing that we must move beyond *The New Jim Crow* (see, e.g., Chin, 2012, 2017; Manza & Uggen, 2006; Mears & Cochran, 2015; Whittle, 2018). To be sure, some restrictions on ex-offenders might make sense (e.g., excluding those convicted of certain sex crimes from teaching children). But it is clear that the time has come to separate the wheat from the chaff—to eliminate the practices that are gratuitously punitive and that do not serve the public commonweal. Any reform movement, however, must align with the public will. Research on public opinion is important for at least two reasons. First, it reveals where opportunities for change are more promising (what the public supports) or less promising (what the public opposes). In the latter case, it becomes possible to probe how deeply and for what reasons citizens resist a given policy proposal—and perhaps to learn how their concerns might be addressed and their minds changed. Second, knowing what the public favors provides reformers with a resource to use in campaigns to alter extant policies. Other factors certainly matter—financial cost, effectiveness, political loyalties and values, the views of interest groups—but it is a valuable

asset to be able to say that “70 percent of voters support the proposed reform.”

In this context, the current project explored public opinion about policies intended to remove key collateral consequences of conviction and, more generally, to regulate an area of legal restrictions that heretofore has received scant empirical scrutiny. As a qualification, the survey did not probe the full array of restrictions that offenders—especially individuals with felony convictions—experience, and each analysis presented can be studied in future research in ways that examine contingencies that might shape opinions. Nonetheless, taken as a whole, the results indicate a clear willingness of the American public to reduce the negative impacts of collateral consequences and, in this sense, to remedy many of the concerns raised by Alexander and others (see also Johnston & Wozniak, 2020). We explore this promising theme further below.

Removing Collateral Consequences

Combined with similar results from prior opinion polls cited previously, our data from two recent national-level surveys suggest that a clear majority of the American public endorses extending the franchise to

convicted felons once they have “paid their dues to society.” At least with regard to voting, the full completion of a sentence wipes the slate clean. Given this consensus, laws or ballot initiatives expanding the right to vote to ex-offenders (with the exception of murderers and sex offenders) are likely to earn widespread support. As noted, Florida’s 2018 Voting Registration Amendment, which restored voting rights to 1.4 million offenders (excluding those convicted of murder and sex offenses) comprising 10.6 percent of the state’s voting-age population, was approved by about a two-thirds margin (United States Commission on Civil Rights, 2019). Such reforms matter (Manza & Uggen, 2006). The United States Commission on Civil Rights (2019, pp. 112–113) points out the racial impact of the Florida initiative:

In Tampa alone, during the first week that the amendment took effect, the average numbers of voter registrations surged to about 2.5 times the weekly average in the preceding months. Moreover, at the start of 2019, black people represented 22 percent of Tampa’s registered voters; but on the

TABLE 5.
Regression Analyses Predicting Support for Removing and Regulating Collateral Consequences (YouGov 2017 Sample)

Variables	Model 1: Voting Rights			Model 2: Jury Rights			Model 3: Ban-the-Box			Model 4: Limit CCs	
	<i>b</i>	SE	OR	<i>b</i>	SE	OR	<i>b</i>	SE	OR	<i>b</i>	SE
Race											
White	.059	.28	1.061	-.064	.22	.938	.363	.33	1.438	.056	.08
View of Offenders											
Redeemability	.701**	.46	2.015	.612**	.35	1.845	.817***	.42	2.264	.113*	.06
Correctional Orientations											
Punitiveness	-.303*	.10	0.739	-.387***	.07	0.679	-.151	.09	0.860	-.003	.04
Rehabilitation	.504**	.25	1.656	.402**	.23	1.495	.001	.15	1.001	.386***	.05
Control Variables											
Republican	-.582*	.15	0.559	-.078	.25	0.925	.180	.28	1.197	-.048	.08
Conservative	-.219	.21	0.804	-.187	.22	0.830	-.486	.16	0.615	.011	.08
Male	-.126	.19	0.882	.325	.27	1.384	-.004	.20	0.996	.053	.07
Age	-.010	.01	0.990	-.003	.01	0.997	.011	.01	1.011	.005*	.00
Education	-.049	.07	0.952	.069	.07	1.071	-.013	.06	0.987	-.009	.02
Southerner	.022	.08	1.022	-.020	.07	0.980	.132	.08	1.141	-.026	.02
Married	.245	.30	1.278	-.132	.18	0.876	-.029	.19	0.971	.067	.07
Religiosity	-.175	.14	0.840	-.143	.13	0.866	-.020	.13	0.980	-.051	.05
<i>N</i>	989			978			973			989	
<i>R</i> -squared	.212			.182			.109			.236	

Notes: The data are weighted. *b* = unstandardized regression coefficient; SE = standard error; OR = odds ratio; pseudo *R*-squared reported for Models 1–3, adjusted *R*-squared reported for Model 4; * *p* < .05, ** *p* < .01, *** *p* < .001 (two-tailed).

first day the amendment took effect (January 8), black people accounted for 47 percent of new voter registrations. . . . These numbers illustrate the disproportionate effect of felony disenfranchisement on black voters in just one city in Florida.

At least without additional information, the public is unlikely to support prisoners voting. Beyond Bernie Sanders and the progressive Left, few politicians are likely to assume the mantle leading such a reform. Dismissive rhetoric is a common response, with opponents saying they would welcome debating “whether Dylann Roof and the Marathon bomber should have the right to vote” (Sheffield, 2019). Still, as noted, younger voters are more open to the idea, and it might be possible to carve out a reform where the right to vote could be earned by inmates who “signaled” their reform (e.g., record of good behavior, complete treatment program or citizenship class; see Bushway & Apel, 2012).

More compelling is that denying the right to vote to the incarcerated is a case of “prisonization without representation.” Often called “prison gerrymandering,” 44 states count

inmates as residents where their institution is located rather than in their “usual” or home residence (Ebenstein, 2018; United States Commission on Civil Rights, 2019). This practice has two pernicious effects. First, because many prisons are located away from cities where inmates originate, it “shifts political power from urban to more rural areas,” skewing the distribution of government resources and “legislative apportionment” (Ebenstein, 2018, p. 325). The racial bias is palpable, as Black inmates are counted as residents of rural White communities. Second, although counted as a resident, they do not enjoy the privileges of local citizenship—from sending their children to community schools to voting. As Ebenstein (2018, p. 372) notes, they have no “representational nexus” with elected officials because they “cannot vote, take their concerns to their representatives, or seek redress for the issues that affect their daily lives.” This political hypocrisy might create a rationale for extending the vote to prisoners: It is simply un-American and anti-democratic—and thus indefensible—to crassly use a person’s body for one’s own political purposes and then to turn around and say that this very person has no ethical claim to the franchise.

As reported, the public seems divided on allowing felons to serve on juries (see also Binnall & Petersen, 2020). But let us probe this a bit more. The 2019 survey, which included a “neither agree nor disagree” category, found that nearly a third of the respondents selected this option. This finding suggests that many Americans may not have thought much about this issue, so their views may be uncertain or weakly held. At first blush, it might seem obvious to many people that convicted offenders would be suspect as jurors, given their past moral deficits and potential bias against “the system.” But as noted, a moment’s thought undermines this understandable but knee-jerk view that a criminal record is necessarily a good predictor of juror quality (Kalt, 2003). With more information, minds might be changed. Thus, it is clear that most Americans have not abstained from crime themselves and import their own biases into the courtroom. Further, those ex-offenders who see service as a privilege might be better jurors than so-called upstanding citizens who see jury duty as an inconvenient, unwanted interference in their lives (Binnall, 2018b). Future research on this issue should focus on the conditions under which citizens might support offender jury service (e.g., crime-free waiting periods, signals of rehabilitation). Further, studies should examine whether support for not excluding the convicted from this civil right would be increased if respondents were alerted to the racially disparate effect of laws prohibiting offender jury participation (Binnall, 2014b; Wheelock, 2011).

Finally, as Alexander (2010, p. 145) reminds us, “Aside from figuring out where to sleep, nothing is more worrisome for people leaving prison than figuring out where to work” (see also Western, 2018). Americans seem to understand this stubborn reality. Almost 8 in 10 in the 2017 sample saw the need for employers to give offenders a chance at employment, and more than 9 in 10 favored job training as a reentry necessity. Most notably, nearly two-thirds endorsed ban the box as a “good idea.” They seem to understand the barriers offenders face in employment (Pager, 2007) and the role a stable job can play in desistance (see Bushway et al., 2007; Denver, Siwach, & Bushway, 2017; Sampson & Laub, 1993; Western, 2018). Future research should probe public support for reducing another barrier to employment—the use of criminal records to bar or limit access to occupational licenses. Across the United States, there are an estimated 15,000 “provisions of law (contained

TABLE 6.
Logistic Regression Analyses Predicting Support for Removing Collateral Consequences (YouGov 2019 Sample)

Independent Variables	Voting Rights			Jury Rights		
	<i>b</i>	SE	OR	<i>b</i>	SE	OR
Race						
White	-0.313*	.14	0.731	0.097	.15	1.102
View of Offenders						
Redeemability	0.638***	.16	1.894	0.641***	.18	1.898
Correctional Orientation						
Punitiveness	0.083	.07	1.086	-0.052	.08	0.950
Rehabilitation	0.316*	.13	1.372	1.052***	.15	2.863
Controls						
Republican	0.352*	.17	1.422	-0.122	.20	0.885
Conservative	-0.299	.17	0.741	-0.562**	.19	0.570
Male	0.059	.13	1.061	0.278*	.14	1.321
Age	0.017***	.00	1.017	-0.003	.00	0.997
Education	-0.011	.04	0.989	0.122**	.05	1.130
Southerner	-0.092	.13	0.912	0.104	.14	1.110
Married	0.060	.13	1.062	0.108	.15	1.114
Religiosity	0.111	.08	1.118	-0.287**	.09	0.750
<i>N</i>		1,195			1,195	
Cox & Snell <i>R</i> -Squared		.092			.250	

Notes: The data are weighted. *b* = unstandardized regression coefficient; SE = standard error; OR = odds ratio; * *p* < .05, ** *p* < .01, *** *p* < .001 (two-tailed).

in both statutory and regulatory codes) that limit occupational licensing opportunity for individual with criminal records” (Umez & Pirius, 2018, p. 1). One possible reform is prohibiting blanket bans and excluding people from licenses only if “convictions are recent, relevant, and pose a threat to public safety” (quoted in Fetsch, 2016, p. 13).

Regulating Collateral Consequences

One of the current study’s most salient findings is that the public appears prepared to support the systemic reform of collateral consequences. Right now, collateral consequences attached to criminal convictions in any given jurisdiction comprise a byzantine system of largely unknown and unreviewable restrictions (Cullen et al., 2017). In the internet age where information can be available with a few clicks of a mouse (Lageson, 2020), it is indefensible for states not to codify all penalties triggered by any given criminal conviction. More than 9 in 10 respondents thus favored giving offenders, when charged and when entering a plea, “information regarding all of the possible collateral sanctions they may face.” The American public thus would support reforms requiring transparency in the disclosure of restrictions to offenders.

As noted, the civil nature of collateral consequences makes them an inviting target for regulatory review. Collateral consequences are a form of regulation, not of punishment (Chin, 2012; Cullen et al., 2017). This legal status may mean that, in most instances today, the courts will not mandate their disclosure as they would a criminal sanction. But as regulations, their very existence hinges on serving a purpose other than imposing just deserts. Liberals see gratuitous restrictions as unjust; conservatives may see them as an unnecessary infringement of liberty (Cullen et al., 2017). Our data suggest that more than 8 in 10 Americans would endorse a reform mandating the periodic review of collateral consequences and the elimination of those “found to have no useful purpose.” In particular, more than 7 in 10 respondents wanted collateral sanctions eliminated unless they could be “shown to reduce crime.” Importantly, reformers can argue that the public only supports the regulation of ex-offenders’ behavior if the restriction serves a purpose and lowers crime. If not, then its existence imposes a cost on the convicted that accrues no benefits. Regulatory reform is thus good public policy likely to be embraced by the American public.

Sources of Support for Limiting Collateral Consequences

One key finding that must be reemphasized is the lack of a racial divide in attitudes toward policies regarding collateral consequences. Whatever effects racial politics about crime and other social issues have had at the ballot box (Maxwell & Shields, 2019), the data suggest that Blacks and Whites now see collateral consequences in similar ways. Racially resentful Whites do exist, and studies suggest they may oppose criminal justice reform, including about collateral consequences (see, e.g., Chiricos et al., 2012; Lehmann et al., 2020; Wilson et al., 2015). But Whites overall do not comprise an adult voting block that would staunchly resist attempts to move “beyond the New Jim Crow.” A recent study focusing on the willingness to deny benefits to convicted offenders has reached a similar conclusion. There is “little evidence,” observe Johnston and Wozniak (2020, p. 1), “that any group of Americans would mobilize to vote against a legislator who works to reform collateral consequences policies.”

Another important finding is that even controlling for political variables and measures of correctional ideology—which had some effects on support for the policy outcomes—the most consistent factor across two independent surveys influencing support for removing and regulating collateral consequences was belief in offender redeemability. This finding is consistent with a limited body of past research (see, in particular, Burton et al., 2020; Maruna & King, 2009). Its substantive significance is that how the public and policymakers view the malleability of offenders’ criminality will shape their advocacy of correctional second chances. During the height of the get-tough era, images of justice-involved individuals as remorseless “super-predators” (DiIulio, 1995, p. 23) and as “an unchanging lethal threat” (Simon, 2014, p. 131) for whom “we can have no sympathy and for whom there is no effective help” (Garland, 2001, p. 136) justified their incapacitation. Now, however, belief in offender redeemability is fairly widespread, perhaps due to increased interpersonal contact among members of the public with people who have criminal records (Lageson et al., 2019), and is likely to be a source of inclusionary, rather than exclusionary, public policies—including support for limiting the imposition of collateral consequences.

Criminology and Public Policy

The take-away message of this study is that the public is receptive to limiting collateral consequences, whether by removing restrictions or requiring the restrictions to be regulated. The respondents were divided in their approval of former offenders serving on juries but were supportive of extending the franchise to those who had completed their sentence, of ban the box, of disclosing collateral consequences to those being prosecuted, and of eliminating any disabilities that served no purpose and did not reduce crime. More nuanced studies can build on these results, but the general finding of a public favoring inclusive correctional policies because it believes in offender redeemability is likely to remain robust. The implication is that in a time when concern for social justice runs high, the possibility of moving “beyond the New Jim Crow” awaits us.

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