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In Consideration of Reinstating Pell for Incarcerated Students

Erin S. Corbett and Julie Ajinkya

Data about the epidemic of mass incarceration and the collateral consequences of conviction are widely known. Past research has highlighted racial disparities in the criminal justice system, demonstrating that Black citizens were incarcerated at rates almost seven times higher than that of White citizens and a little over two times higher than that of Hispanic citizens (Prison Policy Initiative, 2012). Recent data released by the Bureau of Justice Assistance (2017) underscored these disparities, highlighting that one in three Black men and one in six Hispanic men will face criminal justice involvement at some point in their adult lives. The RAND Corporation (2013, 2014, 2018) has explored post-release outcomes for the nation's incarcerated population, asking critical questions about the relationship between education and post-release outcomes like recidivism and employment; not surprisingly, their research also found that young adults who do not complete high school have a greater likelihood of criminal justice involvement than their peers who graduate. In addition to educational attainment gaps between justice-involved individuals and the population at large (PIAAC 2014), research has also found disparities in income level between justice-involved individuals and the average US Household [CITATION Rab15 \l 1033]. In short, the possibilities for those impacted by the criminal justice system are quite grim.

The trend of mass incarceration was, and in many instances continues to be, a direct result of tough-on-crime, law-and-order rhetoric. The legislation that emerged from this rhetoric in the late 20th century amplified criminal justice practices like mandatory minimums and truth-in-sentencing statutes, imposing longer sentences and mandating a higher percentage of the longer sentence be served before parole eligibility. The implementation of these laws, and the deployment of law enforcement to uphold them, resulted in black and brown communities being disproportionately targeted and ending up behind bars. Adding nuance to the conversation about disproportionate impact are data that highlight age distribution of those in carceral custody. The Bureau of Justice Statistics reported that 1,612,395 individuals were incarcerated in 2010; almost 50% of those individuals were between the ages of 18-29 (Child Trends 2016). Alas, when viewing this cross-section of facts, it becomes clear that the intersectionality of the various components presented (race, socioeconomic status, educational attainment) paints a clear and unfortunate picture. Those populating the country's jails and prisons are mostly young men – and increasingly women – of color from low-income backgrounds with lower educational attainment than their peers.

As the prison population began to increase at record rates in the late 20th century, higher education programs inside correctional facilities also began to increase to meet the demand of the influx of “college age” persons. From the mid-1970s, incarcerated individuals were allowed to use federal Pell Grants in pursuit of a postsecondary credential and, up until 1994, there were over 300 higher education programs inside prisons; these programs were jointly run by colleges and universities in partnership with departments of correction(s) across the country (Zoukis

2015). However, the Violent Crime Control and Law Enforcement Act of 1994 banned Pell access for individuals incarcerated in federal and state facilities; almost immediately, college in prison programs drastically declined. What remained, however, was an understanding of, and a steadily increasing body of research that touted, the benefits of higher education in prison and linked participation in, and completion of, these programs to higher rates of positive post-release outcomes.

There is significant bipartisan support among policymakers agreeing that federal financial aid barriers rooted in retributive policies do more harm than good, both fiscally and socially. Programs and policies, at both state and federal levels, that expand access to quality, postsecondary opportunities for incarcerated individuals lead to increased civic engagement, public safety, and social mobility post-release. Given this idea, the re-examination of the prohibition of Pell Grant access for incarcerated learners is one way to think through strengthening postsecondary pathways to increased societal gains.

Current HEA reauthorization discussions offer the opportunity to thoughtfully explore the impact of federal Pell Grants and answer the question of whether access to this need-based financial aid mechanism has, in fact, increased equitable access to postsecondary opportunities. While the Pell Grant has provided financial relief for many families, educational attainment gaps persist across several identity indicators. Joint work between The Pell Institute and the Penn AHEAD Center [CITATION Penn \l 1033] examines equity indicators in higher education; the data assert that little has changed since the 1970s [CITATION Penn \l 1033]. Postsecondary enrollment trends continue to indicate that students from wealthier families enroll in postsecondary education at higher rates, although the differences have decreased over time. Yet, when considering enrollment rates by race and ethnicity, Black and Hispanic students enroll at significantly lower rates than their White counterparts [CITATION Penn \l 1033]. While it seems that Pell is slowly closing access gaps along some equity indicators such as income, a significant gap in postsecondary access along race and ethnic lines persists. How, then, might Pell dollars be better leveraged to substantively address these gaps? The solution proposed herein is the reinstatement of Pell Grant access for incarcerated learners with a lifting of the 1994 ban.

The Historical Need for Pell Grants

The history of equitable higher education access in the United States is complex and the need to legislate the inclusion of certain population subgroups is historically rooted. Arguably until 1862 – when the first Morrill Act, 7 U.S.C.S. § 301, created public land-grant universities – entry to the select few elite postsecondary institutions was primarily limited to upper-income White men; however, this Act allowed the state legislatures to determine the manner in which postsecondary education was carried out at these institutions. As a result, Black citizens were not allowed to enroll in college if their state restricted access based upon race. With the Second Morrill Act – also known as the Agricultural College Act, 7 U.S.C.S. § 321 (1890) – the federal government provided funds for the expansion of the land-grant universities and, among other pieces, saw the creation of 18 Black land-grant universities which would be the precursors to what we now consider Historically Black Colleges and Universities. This effectively served as

the first piece of federal legislation that explicitly addressed inequity in postsecondary access along race/ethnicity lines.

However, this legislation was not enough to address the inequities inherent in the educational system, and cases like *Plessy v. Ferguson*, 163 U.S. 537 (1896) and *Brown v. Board of Education of Topeka*, 348 U.S. 886, (1954) – while not explicitly linked to higher education – set the broader stage for the passing of The Higher Education Act (HEA) of 1965, as amended, 20 U.S.C. 1071 et seq., by addressing racial segregation in access to facilities and education broadly. One primary mechanism that HEA employed to improve equitable postsecondary access focused on decreasing financial barriers for students. For instance, HEA called for the creation of the first ever low-interest student loans; seven years later, in 1972, Senator Claiborne Pell (D-RI) lobbied for what was then called the Basic Educational Opportunity Grant, a program that would provide low-income students with need-based aid that need not be repaid. Renamed the Pell Grant in the senator’s honor, this now-well-known financial aid mechanism seeks to address issues of affordability in higher education and provide increased access to those communities most affected by historical marginalization and segregation.

Given the demographic shifts in the student population pursuing higher education since 1965 – an increase in women and students of color, in particular – it is fitting that HEA undergo reauthorizations to ensure that it continue to deliver on its original intent to improve equitable access for students. The landscape of higher education has changed in ways unimaginable in 1965; for instance, the advent and proliferation of technology in the classroom is responsible for a myriad of innovative content delivery methods available for educators as well as new conversations about affordability. Since its inception, HEA has had eight reauthorizations and each version has sought to address the evolution of the nation’s higher education system and rapidly changing demographics. *See generally* 20 U.S.C. § 1070.

Pell Grants and the Rise of the Carceral State

Until the late twentieth century, Pell grants served not only those students viewed as traditional students, but “nontraditional” students as well. Incarcerated persons, for instance, could access Pell funds to enroll in college courses offered either inside facilities or by correspondence; however, the Violent Crime Control and Law Enforcement Act (VCA) of 1994, 108 Stat. 1796, instated a ban on Pell access for all incarcerated persons (in addition to those who had completed sentences for a sexual offense conviction but were still under supervision in a mandated civil commitment). The VCA, through the Judiciary Committee, amended the Higher Education Act of 1965, which is under the jurisdiction of the Senate Committee on Health, Education, Labor, and Pensions (HELP). The Act barred individuals who were incarcerated in federal or state penal institutions from accessing Pell funds. *Id.* at *1828.

Contrary to popular belief, the restriction of Pell for confined learners was not a sudden shift but was in fact a process that occurred over the course of almost a decade and culminated with the 1994 ban[CITATION Geh97 \l 1033]. The late 1980s, for instance, saw multiple congressional attempts to decrease Pell funding for confined learners through decreases in

appropriations. By 1992, concrete federal aid restrictions around student and institutional eligibility were in place, which profoundly impacted confined learners enrolled in postsecondary education. Students sentenced to either life without parole or who were sentenced to death row were deemed ineligible; institutions with more than 25% incarcerated students were deemed ineligible; institutions that offered more than 50% of their courses through distance methods were deemed ineligible; institutions that enrolled more than 50% of their total student body in distance courses were deemed ineligible; and, institutions in which more than 50% of the student body did not have a secondary credential were deemed ineligible. Despite these regulations' presumed intent to guard against institutional misuse of taxpayer dollars, they in effect constrained postsecondary access for the 1,053,738 persons in carceral custody at the time [CITATION BJS1995 \l 1033].

The 1994 ban further impacted program completion rates for the approximately 27,000 confined learners projected to access Pell grant funds for postsecondary coursework in the 1994 academic year [CITATION 1994 \l 1033]. As a direct result of the ban, the number of available programs plummeted by 40% and enrollment in the remaining programs decreased by 44% due to the prohibitive cost of higher education for an incarcerated student [CITATION Geh97 \l 1033].

The VCA not only implemented the Pell ban and decreased the provision of higher education programs in prison, but also had a disproportionately profound social impact on poor communities and communities of color. As the country's largest crime bill in history, it significantly increased policing and invested heavily in prisons, alongside funds for prevention programs. Justice policies enabled by this legislation, such as community policing (more commonly referred to as 'stop-and-frisk'), arrests, and sentencing (mandatory minimums and truth-in-sentencing) disproportionately impacted communities of color, leading to a substantial increase in people of color incarcerated in correctional facilities. In addition, the mid-1990s saw the creation of a generation of "school-to-prison pipeline" policies that brought poor communities and communities of color into earlier and more frequent contact with law enforcement and various iterations of confinement and supervision.

Additionally, and closely related to the "school-to-prison-pipeline," is the fact that educational attainment of the criminal justice involved (CJI) population is much lower than the average United States household. As school policies in lower resourced communities continued to suspend, expel, and arrest young adults before completing high school, the custody population demonstrated less educational attainment. According to the United States Department of Justice, 41% of federal and state inmates do not possess a secondary – high school – credential in comparison to 18% of the general population. Data from the Program for the International Assessment of Adult Competencies (PIAAC) Survey of Incarcerated Adults (2012-2014) affirm these equity gaps and indicate that incarcerated persons consistently demonstrate lower educational attainment than the overall United States household; incarcerated individuals represent a larger portion of those with less than a high school diploma, yet a smaller portion of those with any postsecondary credential (PIAAC 2014). These data underscore that the nation's incarcerated population more closely resembles the population that the Pell grant was originally

designed to help, those from underserved communities who were systematically denied educational access. Restricting Pell access, and ultimately severely constraining an incarcerated person's access to postsecondary education, exacerbates the inequities that have emerged as byproducts of a criminal justice system predicated upon the institutionalization of racism.

The intersection of these criminal justice trends, which also sat at the intersection of social identity indicators like race, gender, and class, created an epidemic of mass incarceration and gave rise to a carceral state that currently sees people of color imprisoned at rates that are on average 4 times higher than their White counterparts (Alexander 2012; Clear 2007; Gottschalk 2015; Western 2006). The Bureau of Justice Statistics (2015) estimates that the racial composition of the incarcerated population is 37.8% Black, 21% Hispanic, and 39% White; this is in contrast to the reality that Blacks only comprise 13% of the country's overall population, those of Hispanic origin comprise 16%, and Whites are 64% [CITATION PrisonPolicy \l 1033]. Incarcerated individuals also report pre-incarceration income levels far lower than the average household [CITATION Rab15 \l 1033]. Given these data, a troubling trend becomes clear: more people were becoming incarcerated at the same time that access to educational opportunities systematically decreased for incarcerated learners, and people of color were disproportionately excluded from postsecondary access because of their incommensurate involvement with the criminal justice system.

None of this information, however, is novel. The fact that access, matriculation, and attainment gaps exist along certain demographic axes [CITATION Penn \l 1033] is a byproduct of the reality that higher education was never designed to comprehensively include and address the needs of students of color. Sincere equity-minded considerations of postsecondary attainment gaps in this country require institutions to interrogate: (1) why communities of color report disproportionately low postsecondary attainment rates; and, (2) the challenges presented by systemic interactions with discrimination that impact access and success for communities of color. This conceptualization of equity encourages institutions to challenge their norms around campus-based instruction and student body composition, as well as consider what it would mean to offer postsecondary opportunities in correctional facilities and include incarcerated students on their rosters.

In addition to racial, ethnic, and income demographics, we must also consider whether and to what extent women have access to postsecondary opportunities, particularly given the gender breakdown within correctional facilities. While it is true that the incarceration rate for women has increased 700% in the past three decades (The Sentencing Project 2014), women, overall, comprise less than 10% of the incarcerated population. What, then, does equitable postsecondary access and attainment along gender lines look like for women who are imprisoned? Rather than a focus on numerical equality in terms of access, it becomes important to also consider the trauma, violence and exploitation that many incarcerated women experience at extraordinarily high rates. How do their lived experiences, and the trauma embedded in those experiences, impact their ability to participate in, and contribute to, higher education programs and how can the content of available programming address their unique needs (Vera 2018).

Implicit in higher education conversations, as well as most equity analyses that continue to advocate for HEA's intent to improve underserved student outcomes, is the assumption that the student populations in question are not incarcerated; these are students who attend school outside of the correctional context. In that regard, incarcerated students have largely been rendered invisible in broader postsecondary equity conversations. The tide is shifting, however, and as the long overdue HEA reauthorization remains a priority for both practitioners and policymakers, the case to improve postsecondary educational access for the incarcerated student, and embed them in conversations about higher education, writ large, continues to gain momentum on both sides of the aisle.

Debating Benefits of Postsecondary Education for Incarcerated Individuals

The debate around the provision of postsecondary education to incarcerated persons has deep historical routes. Data in support of this type of programming date back to the late nineteenth century when Louis Pilsbury, the president of the Board of Managers at the New York State Reformatory at Elmira, noted that inmate behavior was positively impacted by participation in educational programming [CITATION Pil77 \l 1033]. Almost a century later, Seashore & Haberfeld (1976) penned their seminal work *Prisoner Education: project NewGate and Other College Programs*, similarly highlighting the benefits of educating incarcerated persons. Following their work, programs continued to increase in states like Texas (Texas Prison College System), Alabama (J.F. Ingram Community College), and New York (Niagara Consortium at Attica) while research continued to demonstrate the positive impacts of education behind bars (Gehring 1997). Specifically, research has demonstrated that a formerly incarcerated individual with a postsecondary credential has a better chance of securing post-release employment than a formerly incarcerated individual without a credential (Gordon & Weldon 2003; Kim 2010; Kim & Clark 2013; Nally, Lockwood, Knutson, & Ho 2012). Contextualizing these overall findings regarding the link between education and post-release outcomes, Pager (2007) provides empirical evidence that even with the “negative credential” of the “ex-offender” label, White ex-offenders are more likely to secure employment post-release than their similarly credentialed Black counterparts. The research around the importance of higher education programs in prison is clear; on average, returning citizens with education credentials fare better in post-release employment and other outcomes than those without credentials, however race and ethnicity still play a significant role.

Despite over a century's worth of research on the benefits of postsecondary access for incarcerated students, the debates were recently reignited by then-President Obama's criminal justice reform agenda. A 2013 RAND study represented the contemporary watershed moment in research examining the impact of educational opportunities on incarcerated students' post-release outcomes. Commissioned by former Attorney General Eric Holder, the study entitled *Evaluating the Effectiveness of Correctional Education* highlighted the individual and societal post-release benefits of the completion of education programs while behind bars. The study's findings noted that ex-offenders who completed an education program while incarcerated had 43% lower odds of returning to custody than those who did not, translating to a 13 percentage-point reduction in recidivism risk for program participants [CITATION Dav13 \l 1033].

Toward the end of the Obama administration, in the fall of 2016, the Department of Education used its Experience Sites Initiative (ESI) authority, permitted by HEA in 1965, to announce a Second Chance Pell Pilot (U.S. Department of Education, 2016; Wexler 2016). As a result, 67 colleges and universities were selected to participate in the pilot and offer credit-bearing postsecondary programs inside correctional facilities, offering a range of credentials that included career and technical certificates, associate's degrees, and bachelor's degrees. The Vera Institute of Justice (2018) noted that, by the conclusion of Fall 2017, student enrollment had increased 231% since the beginning of the experiment and the number of courses offered had increased 124%. In terms of completion metrics, 954 postsecondary credentials have been awarded since the start of the experiment; 701 are certificates, 230 are associate's, and 23 are bachelor's degrees. These data indicate that not only did more students enroll as the program progressed, but institutional capacity increased to accommodate more available courses and, most importantly, incarcerated students were succeeding.

It is important to understand that these experimental sites represent only 33% of all higher education programs in correctional facilities when discerning the pilot's ability to meaningfully increase postsecondary access for the broader population of incarcerated learners. Research examining the 2009-2010 academic year indicated that select correctional facilities in 43 states undertook some form of postsecondary education (IHEP 2011), though recent research reports that the number of programs has grown significantly over the last decade with now over 200 credit-bearing postsecondary programs in corrections facilities around the country, and each of the 50 states reporting at least one facility offering a higher education program (Castro 2018). The reinstatement of Pell grants for incarcerated learners could be a significant tactic to expand access to such programs and effectively address educational attainment equity gaps among today's students.

Moving Forward

Ongoing discussions about HEA reauthorization have included the possibility of reinstating Pell for incarcerated learners, in no small part due to the attention that the Second Chance Pell pilot program has garnered across the country, and particularly within the beltway. While the Promoting Real Opportunity, Success and Prosperity through Education Reform (PROSPER) Act, introduced in December 2017 by U.S. House Education and Workforce Committee Chairwoman, Rep. Virginia Foxx (R-NC) and Rep. Brett Guthrie (R-KY), chairman of the Higher Education and Workforce Development subcommittee does not propose reinstating Pell access to this population, the Aim Higher Act, introduced in July 2018 by U.S. House Education and Workforce Committee Ranking Member Bobby Scott (D-VA) repeals the 1994 provision banning Pell access.

In the Senate, however, there has been more bipartisan interest in Pell reinstatement for this population and members have expressed interest in the DOE pilot program as a key opportunity to collect comprehensive data about the impact of higher education programs in prison and effectively inform legislative debate around lifting the ban (Green 2018). For instance, in February 2018, Senate HELP Committee Chairman Lamar Alexander (R-TN) and Ranking Member Patty Murray (D-WA) were individually cited in the media expressing interest

in reconsidering Pell grants for incarcerated students (Green 2018). Both members cited an interest in setting incarcerated students up for success upon release and the need for better data to inform policymakers about the efficacy of such educational opportunities.

Similarly, in the executive branch, Secretary Betsy DeVos has gone on the record calling the potential reinstatement of Pell grants for inmates a “very good and interesting possibility” (Green 2018) and her own postsecondary advisors have expressed a renewed interest in examining data and learning about best practices in offering postsecondary opportunities incarcerated individuals (Kreighbaum 2018). The department’s own ESI item inventory, which serves as the basis upon which to evaluate ex-site programs like Second Chance Pell, highlights the need for practitioners, researchers, and policymakers to collect and analyze data in a way that speaks to both program quality, student success, and the nature of education as a transformative endeavor. The current “education in prison” research paradigm rests squarely on the questions of whether and to what extent education reduces recidivism. While post-release outcomes are certainly important to note from an accountability perspective, relevant outcomes must be defined beyond public safety. In broader postsecondary education, for instance, outcomes might include employment, civic engagement, leadership roles, and even post-graduation income and earnings data to contemplate return on investment for certain majors and programs.

A narrow focus on recidivism reduction as the ultimate objective of a higher education program in prison ignores the complexity of recidivism as a composite variable. In the same way that socioeconomic status is a combination of a number of variables (i.e. individual income, parent educational level, zip code, individual educational attainment, etc.), so, too, is recidivism a combination of variables such as access to housing, the extent of employment discrimination, availability of mental health services, access to public assistance, and other collateral consequences not currently under the prison education research umbrella. To broaden the context within which we think about and define program success, and ultimately how we embed access for this population into HEA reauthorization, we must advocate for rigorous evaluation and nuanced analysis that properly re-contextualizes performance indicators for confined learners and embeds their needs in the equity lexicon. This nuanced understanding of the impact of higher education programs in prison has the potential to align itself well within the initial goals of the HEA and the ethos undergirding the existence of Pell grants.

Sen. Pell’s passion for access and the removal of barriers to postsecondary education has provided millions of students with the opportunity to realize their college dreams. Given his original advocacy for Pell funds to remain accessible to incarcerated people, it seems that these financial aid mechanisms were in fact designed precisely to increase access to the communities that the 1994 ban excluded from receiving these benefits. As HEA reauthorization conversations continue to debate reinstating Pell grants for incarcerated students, we must remind ourselves about the transformative power of postsecondary education in this country and the original intent behind 1965’s legislation that sought to open these opportunities to otherwise marginalized populations. To that end, we recommend a close and critical conversation around the ways in which Pell Grant access for incarcerated students can and should be structured to determine the

best tenets of student and institutional eligibility. These conversations must, above all, focus on the humanity of the individuals being served and center the idea that access to education is an essential human right.

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