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Reshaping Goals and Values in Times of Penal Transition: The Dynamics of Penal Change in the Collateral Consequences Reform Space

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Over the past decade, reform efforts in the area of collateral consequences of conviction have succeeded in emancipating themselves from standard discourses and dynamics in the US criminal legal reform space. This article draws on concepts and insights from the literature on penal transformation to explore the unique interplay of goals and values that have led to recent collateral consequences reforms. It identifies three major drivers of change that have had a significant impact, particularly, on softening occupational licensing restrictions for individuals with a criminal history and passing criminal record clearance legislation. First, advocates of the economic libertarian agenda joined forces with civil libertarian groups to reduce occupational licensing hurdles for criminal record holders. Second, an attitude promoting redemption and second chances through criminal record clearance reform has been championed, in particular, by the Christian right. Third, economic concerns by employers seeking to hire individuals with a criminal record have become more pronounced in tight labor markets, both pre- and post-pandemic. The analysis concludes that, although much remains to be done, ongoing reforms represent a significant reshaping of the collateral consequences landscape. A logic of unworthiness toward individuals with criminal records, however, remains hard to eradicate and can easily resurface in the current unstable phase of penal transition.

INTRODUCTION

As "tough-on-crime" rhetoric gained momentum in the United States in the 1980s and 1990s, lawmakers across the country began to pass a range of increasingly punitive punishment policies, including sentence enhancements, mandatory minimum sentences, "three strikes" laws, and "truth-in-sentencing" laws (see, for example, Mauer 1999; Gottschalk 2006, 2019; Tonry 2016). In addition, an increasing number of statutes and regulations were enacted over time, which resulted in the proliferation of "civil" disabilities, disqualifications, and restrictions for individuals with criminal records. These forms of post-sentence discrimination are known as "collateral consequences,"

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and they represent significant barriers to reentry. Collateral consequences limit the full exercise of rights by criminal justice-involved individuals as members of the community and hinder their ability to rejoin the workforce and take advantage of economic benefits and other opportunities (see, for example, Demleitner 1999; Travis 2002; Pinard 2010; Kaiser 2016). The National Inventory of Collateral Consequences of Conviction currently lists nearly forty-five thousand entries (National Reentry Resource Center 2023).

The exponential increase in the number and scope of collateral consequences has resulted in tens of millions of US residents being relegated to a diminished status in society (see, for example, Chin 2012; Jacobs 2015; Corda 2018b; Barkow 2019, ch. 5; Lageson 2020; Corda and Kaspar 2022). This unprecedented expansion of collateral sanctions was motivated by racial attitudes in several ways. One of the primary drivers of the increased punitiveness of the "tough-on-crime" era was the so-called "war on drugs," which was largely fueled by a perception that drug use and drug-related crime were primarily associated with communities of color. Restrictions such as the loss of voting rights, housing, and employment opportunities resulting from drug convictions further exacerbated the disproportionate impact of the criminal legal system on Black and Brown individuals (Chin 2002; McElhattan 2022b). This produced a lasting impact, perpetuating systemic inequality (see, for example, Alexander 2010; Miller 2021).

In recent years, however, significant public support has emerged for scaling back collateral consequences of criminal records (Burton et al. 2020b; Burton et al. 2021; Johnston and Wozniak 2021). In the present-day hyper-partisan and hyper-polarized American political environment, the restoration of opportunities for justice-involved individuals appears to be one of the few policy issues where criminal legal reform is gaining significant traction, especially at the state level (see, for example, Mason 2018; West and Iyengar 2022). This article specifically focuses on reform efforts related to occupational licensing and criminal record clearance, which have emerged as the most widely adopted and positively received sets of collateral consequences reform (Burton et al. 2021; Love 2022). These efforts are of both practical and symbolic significance, as they serve to diminish employment barriers and alleviate stigma for individuals with a criminal record.

The growth of occupational licensing—government regulations that require a specific credential or qualification to practice certain professions (Robinson 2018, 1909–14)—and the process of penal intensification, which led to about one in three American adults having a criminal record of some kind (SEARCH 2020), represent two major shifts in postwar US history. However, since 2015, over thirty-nine states and Washington, DC, have reformed their occupational licensing regulations to make it easier for individuals with a criminal record to find work in industries requiring an occupational license (Sibilla 2020; Love 2022, 114). Similarly, since 2013, almost all US jurisdictions, regardless of political affiliation, have enacted "a torrent of record relief legislation," introducing or expanding criminal record clearance mechanisms (Love and Schlussel 2020, 23–24). As of 2022, "[r]elief via expungement, sealing, or set-aside is now available by statute or court rule for at least some felony convictions in 41 states, for many misdemeanor convictions in 45 states and the District of Columbia, and for most non-conviction records in all

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50 states and D.C." (Love 2022, 32).[1] And there is no sign of stopping in sight (Love and Schlussel 2022).

The spirit of reform that characterized the decades between the 1950s and the 1970s "was dormant for 30 years until reawakened a decade into the 21st century by a dramatic increase in the severity of collateral consequences and the number of people potentially affected by them" (Love and Schlussel 2020, 23). The growing awareness about the increase of collateral consequences in both number and scope, however, does not explain *per se* the reformative trend observed, in particular, during the past ten years, just like the realization about mass incarceration did not trigger any comprehensive responses at the policy level. The recent spate of occupational licensing and criminal record clearance reforms at the state level represents therefore a peculiar success story, especially if compared with the struggles faced by other criminal legal reform initiatives at the federal, state, and local level. In spite of this, little attention thus far has been paid to the political, cultural, and social dynamics that set those reforms in motion.

Drawing on concepts and insights from the literature on penal transformation, in this article I examine the singular interplay of goals and values that led to the above-described legislative outcomes in the collateral consequences reform space in the current phase of penal transition, where the emerging realization of the need to end America's failed mass punishment experiment has triggered conversations, debates, and even opportunities for reform that would have been hard to imagine only two decades ago (Cullen 2022). I do so by identifying and discussing the key factors that have had a particularly significant impact on the relaxation of occupational and professional licensing restrictions for qualified individuals with a criminal record and on the enactment of new criminal record clearance legislation, which allows for the removal of specific arrest and conviction records from an individual's criminal history.

Through an exploration of the complex dynamics of penal change in the realm of collateral sanctions, I argue that collateral consequences have come to represent a *sui generis* reform space that largely succeeded in emancipating itself from standard discourses and narratives observed in other areas of criminal legal reform. Reform areas such as policing, bail, sentencing, and incarceration have been characterized by widely differing narratives and initiatives on the ground and supported by rather volatile political coalitions. In contrast, a genuine across-the-board reform ethos has seemingly emerged with regard to the amelioration of rules governing occupational licensing and criminal record clearance policies. I contend that three distinctive factors, in particular, have materialized in recent years contributing to the significantly greater accomplishments of collateral consequences reform compared to other issues that have been longtime frontrunner candidates for sweeping reforms, which nonetheless never fully materialized. In detail, the article focuses on: (1) the convergence between advocates of the economic libertarian agenda and civil libertarian organizations to reduce

1. "Expungement" is the process by which a criminal record is destroyed from state or federal record; the process of "setting aside" a conviction, similar to an expungement, removes a certain conviction from a person's public criminal record. As a result, penalties are dismissed, and disabilities are vacated. "Sealing" indicates the process by virtue of which a criminal record is not physically destroyed but is made inaccessible without a court order. These terms are sometimes used interchangeably and inconsistently in legislative texts.

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occupational licensing hurdles for individuals with a criminal record; (2) the spreading attitude favoring redemption and second chances through criminal record clearance vocally supported by the Christian right, which, conversely, played a pivotal role in fueling punitive policies during the "tough-on-crime" era; and (3) the practical economic concerns by those seeking to employ or otherwise deal with people with a criminal record in a tight labor market, both in the pre- and post-COVID-19 pandemic period.

Finally, the article reflects on the paths of developments of penal change in the collateral consequences reform space, with possible lessons to be learned and caveats to be aware of moving forward. The analysis suggests that ongoing reforms represent a relevant reordering of the collateral consequences landscape inspired by a unique combination of economic and redemptive rationales and goals. That said, much remains to be done, and the way forward is not without hurdles and risks. Significant variations in occupational licensing and criminal record clearance legislation persist across states, and evidence suggests that justice-involved individuals are still met with considerable obstacles to obtaining relief. Furthermore, a logic of unworthiness looming over people with a criminal record remains hard to fully eradicate and easy to resurface should competing and opposite objectives and values reemerge in the context of the current phase of penal transition in the United States.

DEVELOPMENTS IN COLLATERAL CONSEQUENCES POLICY AS PENAL TRANSFORMATION

This article aims to analyze the distinct patterns and underlying reasons that have contributed to a relatively swift policy shift concerning collateral consequences over the past decade. In what follows, I identify the concepts and insights derived from the existing literature on penal transformation that support this undertaking. This body of scholarly work provides a particularly apt framework for punishment and society scholars to historicize, contextualize, and understand the changes and developments in penal policies and practices over time (see, for example, Pillsbury 1989; Garland 2001; Campbell and Schoenfeld 2013; Rubin 2016, 2019; Goodman, Page, and Phelps 2017; Rubin and Phelps 2017; Annison 2022). Writing about ongoing criminal legal reform is akin to documenting "history in the making" and presents challenges similar to those faced by historians, such as sourcing reliable information, providing coherent explanations, and maintaining objectivity. At the same time, however, it also presents specific challenges (Catterall 1997). Scholars interested in penal change investigate the past, tracing the historical emergence of contemporary systems and modes of penal power (Foucault 1977, 31; Garland 2014), but they also can chronicle the present. Such an endeavor is characterized by a distinctive focus on endings, beginnings, and, above all, transitions—from one era to another, from one policy shift to the next—stressing passages often not particularly noticeable by most.

Reflecting on penal history as it unfolds poses greater challenges compared to examining the distant past. It is also easier to attribute sinister intentions to figures who are no longer present, whereas it is more complex to do the same for contemporary individuals who may have initially pursued reform with good intentions that eventually

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resulted in unintended consequences (Cohen 1985; Aviram 2020). Engaging in this type of scholarly work also requires exercising caution and adopting an attitude of evaluative modesty, even without presuming outright benevolence on the part of the actors involved in criminal legal reform.[2] Engaging in a study of the history of the present involves acknowledging the inseparable interconnection between the recent past and the current era. It emphasizes the contemporary policy significance and implications of the former, shedding light on its relevance in the present context (Berridge 1994). This requires an approach that relies, in part, on still-developing archives and encompasses a focus on narratives and processes that contribute to penal transformations. These transformations arise not only within the policy-making sphere but are also influenced by events within broader economic, cultural, and social contexts (see, for example, Gottschalk 2015). The resulting penal outcomes, whether they are short-lived or enduring, are therefore shaped by various factors including economic and political dynamics, evolving societal attitudes, inter-group relations, and crime trends (Goodman, Page, and Phelps 2017). With that being said, it is crucial to emphasize that a study centered on the contemporary history of criminal legal reform is not primarily focused on providing an exhaustive historical account. Instead, its primary objectives are to conceptualize, contextualize, and explain specific significant aspects of the recent past, while also providing an understanding of current trends and developments (Garland 2001, ch. 1).

This approach entails an "interpretation of both institutionalized and non-institutionalized behaviour at a variety of levels, from those encompassing the whole society to individuals" (Rose 1970, 348). In greater detail, this article will delve into three levels of analysis: macro, meso, and micro. These levels encompass, respectively, changes to the overarching frameworks and arrangements at the national level, changes to specific institutions, and changes to the intricate minutiae of political and policy initiatives, including specific events and personal histories (Annison 2022; Rubin 2023). Ultimately, contemporary penal history research focusing on penal transformations crucially helps with the understanding of policy formations in a way that broadens and enriches the field of criminal legal reform by "encourag[ing] a greater attention to detail, to variation and to contingency in the development of general explanatory accounts" (Garland 2018, 11; see also Green 2015).

THE BROADER LANDSCAPE OF US CRIMINAL LEGAL REFORM: MUCH ADO ABOUT LITTLE?

During the 1980s, 1990s, and early 2000s, both mainstream conservatives and mainstream liberals relentlessly supported the adoption and implementation of punitive

2. It can also be argued that, within the historiography of time related to the penal field, a distinction can be drawn between histories of penal reform and histories of penality *per se*. Histories of penal reform often carry a didactic tone, emphasizing the current state of affairs, which is typically significantly less pronounced in histories of penality. This divergence may be inevitable as historians of penal reform often directly speak to, and engage with, ongoing debates and frequently have the legitimate ambition to shape policy—hence, the didactic/instructional element. I am grateful to Johann Koehler for an interesting discussion on this point.

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policies, effectively overshadowing any other objective of the criminal justice system (see, for example, Simon 2007; Gottschalk 2015). However, especially ever since mass incarceration peaked around 2008–9 and then substantially plateaued, a standard narrative of bipartisan criminal justice reform efforts has started to develop. It is generally argued that the combination of historical low crime rates across the country, including in most of the major urban areas (Zimring 2007; Sharkey 2018), and the fiscal constraints arising from the 2008 global financial crisis, which had its epicenter in the United States, helped remove the taboo label attached to the approaches to crime defined in any terms other than "zero tolerance" or "tough on crime" (Aviram 2015; Green 2015).

In spite of an increasingly polarized political environment on practically any other issue—from foreign policy and political economy to identity politics and climate change—criminal justice seemingly emerged as one of the very few areas in a state of flux where a broad political consensus for meaningful reforms could be reached (Beckett, Reosti, and Knaphus 2016). The factors described above served as external shocks, disrupting to some extent the path dependence of US criminal justice operations (see Beckett 2018, 239–43; Rubin 2023) rooted in the "law-and-order" and "war-on-crime" narratives of the 1960s (Hinton 2016). These approaches advocated for harsher punishment policies and enforcement practices as a response to the rising crime rates of that time (Flamm 2007; Pitzer 2017). Especially beginning in the late 2000s, new reform coalitions started to be built and endorsed by prominent figures on both the political left and the political right as well as by prosecutors, government officials, and organizations working on the ground. Coming from different ideological angles and policy perspectives, liberals and conservatives in different roles and from different backgrounds seemed to agree that something had to be done to reverse, at least in part, what the American penal state had become: costly, ineffective, and excessively punitive (Herman 2018). As a result, a new, composite, and allegedly bipartisan criminal justice reform movement was hailed by many as leading toward "the next phase" of criminal justice policy in the United States following a disastrously punitive era.

At the federal, state, and local level, in particular, bipartisan coalitions began to experiment in various areas of criminal legal reform. The federal First Step Act of 2018 aimed to reduce sentences for nonviolent drug offenders and to improve the rehabilitation and reentry programs for federal prisoners (Hopwood 2019; Gotsch and Mauer 2021).[3] Several states have also enacted sentencing reform measures to reduce mandatory minimums and to provide judges with more discretion in sentencing (Beckett et al. 2018; Porter 2021). Bail reforms have been enacted across the country to ensure that low-risk defendants are not incarcerated simply because they are unable to post bail (Gold and Wright 2020). Reforms have also been passed with regard to diversion programs (Eaglin 2016), alternatives to prison for nonviolent offenses (Seeds 2017), and parole release mechanisms (Reitz 2020).

Although empirical studies found that new laws passed to reduce penal intensity outpaced punitive legislation in number, they also stressed how these changes are not indicative of a paradigm shift since forces pushing in an opposite, more punitive direction persist (Beckett, Reosti, and Knaphus 2016; Beckett et al. 2018). In particular,

3. First Step Act, December 21, 2018, Pub. L. 115-391.

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punitiveness has continued to intensify in rural and suburban areas, with incarceration increasing during this alleged "new era" of criminal legal reform (Kang-Brown and Subramanian 2017; Beckett and Beach 2021; Beckett 2022). Reforms passed in recent years led to thousands of fewer individuals being incarcerated, including in "red" and "purple" states. However, measures adopted so far have only produced a modest impact on the overall scale of punitiveness in America. At the current rate of decline, it will take nearly six decades to cut the US incarcerated population in half (Ghandnoosh 2021). These efforts have predominantly centered around making incremental modifications to the existing system rather than undertaking substantial transformations of the basic tenets underlying America's mass punishment infrastructure. The purported bipartisan consensus in criminal legal reform frequently amounted to little more than recognizing that "the old consensus was wrong" (Astor 2019). Reality presents us with flawed coalitions that are characterized by mutual distrust (Jaros 2014), illustrating how the new consensus still "relies upon different frames and different goals" (Levin 2018b, 263). Many on the left "harbor suspicions about the motives" of conservative criminal justice reform initiatives; many on the right "continue to have serious disagreements with progressives about what to do with the money saved by reducing incarceration levels" (Takei 2017, 169–70). This situation makes it difficult for said coalitions "to establish shared policy initiatives" (Phelps 2016, 163).

Criminal justice reform is a complex and difficult issue that requires political will, public awareness, and collaboration across a range of stakeholders. Despite the recognition of the need for reform, many lawmakers are resistant to change. The tendency to do more of the same is not easily reversed, especially when political incentives to maintain current policies and practices remain in place, such as the risk of being perceived as too moderate by voters (Zimring 2020). Furthermore, and very importantly, criminal justice reform efforts have been often met with strong opposition on policy grounds by law enforcement organizations with vested interests in maintaining the status quo (in particular, police, prosecutors, and correctional officers' unions) (see, for example, Page 2011; Hessick, Wright, and Pishko 2023; Robinson and Rushin 2023). In sum, despite "the rhetoric and public relations campaigns used to market bipartisan reforms" (Whitlock and Heitzeg 2021, 5), the broader picture indicates that criminal justice reform "is only happening at the margins" (Hopwood 2020, 118), and state legislatures, in particular, are still by and large characterized by a "continued *performance* of a 'tough' stance on crime" (Campbell, Schoenfeld, and Vaughn 2020, 405; emphasis in original). Developments in the collateral consequences reform space over the past decade, however, have followed a rather different trajectory, as discussed in what follows.

COLLATERAL CONSEQUENCES AS A *SUI GENERIS* REFORM SPACE: THREE DRIVERS OF PENAL CHANGE

While collateral consequences are now acknowledged as a significant aspect of the US penal system (Garland 2020, 326), this area presents a challenge to the current state of criminal legal reform when examining the legislation that has been enacted in recent

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years and the ongoing reform efforts, especially at the state level. The present landscape differs significantly from the one observed throughout most of the 2000s, when collateral consequences were often overlooked in emerging criminal legal reform conversations, and individuals seeking to put their criminal past behind them were frustrated in their efforts by an ever-growing web of restrictions and a complex and inadequate patchwork of relief mechanisms (Love 2006). In particular, over the past decade, collateral consequences have emerged as a separate domain within criminal legal reform in America. Collateral consequences reform has managed to distinguish itself from the conventional debates that characterize most other areas of reform, where too many "talk the talk" and "few walk it" (Tonry 2016, 6).

The success metrics for collateral consequences reform are based on two primary factors: the significant number of reforms that have been enacted in virtually all states during the past ten years and the distinctive reform ethos that has solidified within the realm of collateral consequences more than in the area of mass incarceration itself. The reforms passed in 2022 "bring the total number of separate laws enacted in the past five years to more than 500," and only two states have enacted no criminal record relief reforms since 2016 (Love and Poggenklass 2023, 2–3). Furthermore, reform dynamics not previously observed have emerged around initiatives aimed at providing second chances for people with a criminal record. A peculiar interplay of factors has driven the proliferation of collateral consequences reform reflecting a convergence of ideological, social, and economic considerations that have created momentum for change.[4] Collateral consequences reform has gained traction across the political spectrum in a distinctive fashion. The new reform ethos has brought together diverse stakeholders, including policy makers, legal experts, organizations, and directly impacted individuals. This collaborative engagement has fostered a shared understanding of the need for reform and has facilitated the development of clear policy proposals and advocacy strategies. Furthermore, collateral consequences reform intersects with other social justice movements, such as racial justice and poverty alleviation. This "intersectionality" has enabled collateral consequences reform to tap into broader networks of advocates and organizations, creating a more cohesive reform movement. A caveat is, however, necessary. As it will be discussed later in this article, the metrics of success identified for recent collateral consequences reforms compared to other areas of criminal legal reform do not necessarily imply that they have been uniform across the country, always effective, or without problems.

In the following sections, I present and discuss what I identify as the three primary drivers of change that have crucially contributed to the current successes in collateral consequences reform, particularly in relation to occupational licensing and criminal record clearance.

4. In recent years, the movement toward marijuana legalization across the United States represents an issue whose success is to be attributed to a somewhat unusual convergence of factors, including changing public attitudes, racial justice concerns, cost savings, tax revenue, and potential impacts on broader criminal justice issues. Since 2010, twenty-one states have legalized marijuana for recreational purposes, and thirty-eight have legalized medical marijuana use. This has resulted in fewer people being incarcerated for marijuana-related offenses. Notably, criminal record clearing has come to be recognized as a key component of marijuana reform efforts (Berman and Kreit 2020).

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Libertarian Values, Reentry, and Occupational Licensing Reform

In 1975, the American Bar Association found 1,948 statutory provisions affecting the possibility of obtaining a professional license for people with an arrest or a conviction (Laudon 1986, 117). In the following decades, states "imposed hundreds of employment bans and licensing restrictions on individuals with convictions, frequently without any discernible nexus between the type of crime committed and the nature of the employment or license sought" (Barkow 2019, 94). Licensing laws may include blanket disqualifications for certain broad categories such as "violent" or "serious" offenses or crimes involving "moral turpitude." Such regulations often include a "good moral character" requirement to hold a particular license. This requirement has frequently been interpreted by licensing authorities as grounds to disqualify individuals with any type of criminal history (Rhode 2018). By the mid-2010s, as many as 15,623 provisions denying occupational and professional licenses and certifications for people with a criminal record were found across US jurisdictions (Kaiser 2016, 133; see also Ewald 2019). Yet, until recently, occupational licensing was largely ignored by major campaigners advocating against civil disabilities and restrictions arising from having a criminal record. The combination of stigma and legal barriers to work, however, routinely prevent formerly criminal justice-involved individuals from securing employment even when they possess the required expertise.[5]

Historically, occupational licensing reform has not been a priority for either liberal Democrats or traditional Republicans. The former typically favored government regulation of the labor market, including access requirements for professions, while the latter's attention since the 1930s was primarily focused on opposing trade unions. Over time, Republicans lost interest in the issue of occupational licensing. Furthermore, during the second half of the 1980s, a faction of pro-regulation Republicans emerged, openly advocating for an expansion of occupational licensing. Currently, approximately one-quarter of US workers require a license to work (Boesch, Lim, and Nunn 2022). Until the 1950s, less than 5 percent of American workers were required to have a license to work (Kleiner and Krueger 2010, 2013). The 1970s and 1980s were the peak years for the enactment of new occupational licensing requirements. The primary justification for this expansion was the focus on health and safety, aligning with the goals of the growing regulatory state (Majone 1997). The growth in occupational licensing can be attributed to several factors. First is the shift from a manufacturing to a service-based economy, which alone was responsible for one-third of the increase in licensing laws. Trade associations also advocated for professional credentials to offset competition. Furthermore, licensing was seen as being consistent with US values such as the importance of education and training. Additionally, limited research had been conducted on the negative effects of licensing for the labor market in terms of income inequality and distribution, labor supply, pricing, and workers' mobility across states

5. The Brennan Center estimated that the aggregate earnings loss for criminal justice-involved individuals due to underemployment related to prior convictions may potentially amount to as much as $372.3 billion annually (Craigie et al. 2020), thus reinforcing the strong link between mass penal control and poverty (DeFina and Hannon 2013).

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(Gittleman, Klee, and Kleiner 2018; Johnson and Kleiner 2020).[6] Until recently, occupational licensing represented one of the most underrated policy problems in the United States, at a time when collateral consequences were probably the largest blind spot of criminal legal reform and economic libertarians were largely perceived as a minority "shouting into the wilderness" on most criminal justice reform issues (Dagan and Teles 2016, 32).

Things began to change about a decade ago. In 2012, the Institute for Justice, an economic libertarian lobbying group, published the first edition of a report titled *License to Work*, which provided a state-by-state comparison highlighting the sheer number of occupational licensing regulations and the various training requirements needed to obtain a license across the country (Carpenter et al. 2012). The report garnered considerable attention and shed light on the work of academics, including University of Minnesota professor Morris Kleiner. Kleiner's (2000, 2006) research on occupational licensing had previously been largely ignored at the policy-making level, despite its significant influence among economic libertarians. Personal histories also play a role in the dynamics of penal change. Lawrence Summers, who served as director of the National Economic Council from 2009 to 2011, and the late professor Alan Kruger, who served as President Barack Obama's chief economic adviser, were instrumental in this regard. Kruger, in particular, had previously worked closely with Kleiner, co-authoring papers with him (Kleiner and Krueger 2010, 2013). The problem of occupational licensing first came to the attention of the Obama administration with regard to licensing barriers for military spouses who moved across state lines (US Department of the Treasury and US Department of Defense 2012). This brought the issue to the forefront of policy making, and the collateral consequences aspect of it was not overlooked. In 2015, the Obama administration published *Occupational Licensing: A Framework for Policymakers*, which was the first comprehensive report on the subject of occupational licensing. The report devoted an entire section to "Licensing for Workers with a Criminal Record," which notes:

> In many cases, a criminal record is an obstacle to obtaining a license. . . . These exclusions have far-reaching implications. It is estimated that between 70 and 100 million Americans . . . have a criminal record. . . . Laws restricting licensing opportunities for workers with criminal records have a disproportionate impact on Black and Hispanic workers. Many of these individuals have criminal histories which should not automatically disqualify them from work in a licensed profession. While it is understandable that some kinds of criminal convictions should disqualify applicants for certain kinds of jobs, in many cases, a criminal conviction of *any* kind may be a bar to licensure. (US Department of the Treasury Office of Economic Policy, Council of Economic Advisers, and US Department of Labor 2015, 35–36)

6. Furthermore, libertarian labor economists believe that, in the digital age, the traditional role of occupational licensing as a means of protecting consumers from low-quality services or products is no longer necessary. They argue that consumers can now easily access information online, such as reviews and comparisons of services and prices, and make informed decisions without the need for licensing or certifying "gatekeeping" bodies.

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This report marked a significant shift in the attention given to occupational licensing as a policy issue. It acknowledged that occupational licensing was detrimental to the labor market, particularly for certain disadvantaged populations, including individuals with a criminal record. This was a "Nixon-goes-to-China" moment in which a left-leaning administration embraced some of the main critiques expressed by economic libertarians and called out the fallacies of occupational licensing regulations, also with regard to the issue of reentry (Yglesias 2015). In this new context, occupational licensing gradually emerged as the "missing piece" of criminal legal reform, with the reintegration of criminal justice-involved individuals into the workforce being seen as becoming "crucial to the eventual success of any criminal justice reform effort" (Slivinski 2016, 2).

The intersection between occupational licensing and criminal justice reform had been established and began to gain increasing attention in the wake of the Obama administration's initiatives. The economic libertarian and civil libertarian perspectives began to join forces, attracting a large consensus that defied traditional partisan and ideological allegiances at the state level. States represent the natural turf to deal with occupational licensing reforms because, like it happens with laws and policies leading to prosecution and punishment, most occupational licensing and regulations are passed at the state level (Kleiner and Kruger 2013). Advocates seeking to reduce the state's role in regulating the economy and those fighting against harsh criminal justice policies and practices standing in the way of an equal and fair society found common ground in their battle against collateral consequences in the area of occupational licensing. A coalition formed including the Cato Institute, the Heritage Foundation, the American Enterprise Institute, and the American Civil Liberties Union (ACLU), which has created a perfect storm, leading to nearly four-fifths of states enacting occupational licensing reforms since 2015—a remarkably fast shift in policy timelines (Boehm 2018; Sibilla 2020; Love 2022, 110–18).

These new laws are primarily aimed at facilitating qualified individuals with a criminal history to obtain occupational and professional licensure. They achieve this by limiting the kinds of records that can be considered, requiring a direct relationship between a conviction and the occupation sought, and introducing procedural protections as well as accountability and monitoring requirements for licensing agencies. Reforms have been significantly influenced by the model occupational licensing laws proposed, in particular, by two national organizations—the National Employment Law Project (NELP) and the Institute for Justice. The main difference between the two models concerns at what point in the licensure process—that is, before or after a license is obtained—a criminal record should be considered. The NELP's model legislation comes from the perspective that views occupational licensing as something that is, in principle a good thing. Under this model, job applicants with a criminal record are still required to be otherwise qualified for a license before their criminal record can be considered and, possibly, "filtered out" by a licensing authority (Rodriguez and Avery 2016).

By contrast, the economic libertarian Institute of Justice's model legislation on collateral consequences and occupational licensing adopts a rather different operational approach. Under this model, the issue of having a criminal record and its consideration must be resolved as the first thing. A criminal record holder is therefore allowed to petition a licensing board for a determination on whether they will be disqualified from

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gaining a given license because of their criminal history (Institute for Justice 2022). This strategy is aimed at preventing the denial of a license due to a criminal record, which would unfairly affect individuals who have already invested time, effort, and money into obtaining the required training. Some of the most ambitious and far-reaching new laws passed at the state level, such as those enacted by Indiana in 2018, Iowa in 2020, and the District of Columbia in 2021, incorporate crucial substantive and procedural elements of the Institute for Justice's model law (Love 2022).

The Christian Right and the Power of Second Chances through Criminal Record Clearance Reform

The second factor that I identify is the new redemption-oriented approach of the Christian right, especially Evangelicals, favoring second chance-oriented criminal record clearance reform. Fundamentalist religious groups, which constitute a significant portion of the American public opinion, have played a non-negligible role in supporting retributive "tough-on-crime" policies, particularly from the 1970s throughout the 1990s (Grasmick et al. 1993; Tonry 2009; Griffith 2020). As noted by Michael Tonry (2009, 383), "[m]oralistic crusades against drugs and crime ... enabled fundamentalist Protestants and social conservatives to express disapproval of people unlike themselves and to assert their moral superiority." Evangelicals largely championed the rise of mass incarceration in America while, at the same time, supporting and encouraging redemption and faith-based programs behind bars (Griffith 2020). Other studies have also showed how Protestant Christian religious beliefs may increase as well as decrease punitiveness with regard to certain specific areas of criminal justice (see, for example, Unnever, Cullen, and Applegate 2005; Unnever and Cullen 2006; Baker and Booth 2016). This aspect has become more apparent over the past two decades when declining crime rates and growing awareness about the reality of mass incarceration have prompted new conversations about crime, punishment, and reentry in both general society and religious communities (Green 2015).

In 2004, when then President George W. Bush—"born again" as an evangelical Christian in 1985—delivered the State of the Union address, mass incarceration was still on the rise, with the 2008 peak yet to be reached. The speech, however, conveyed a sense of hope and optimism for convicted and incarcerated individuals hoping to reintegrate into society. In his address, Bush announced the Prisoner Reentry Initiative, which eventually became the Second Chance Act of 2007.[7] The initiative aimed "to expand job training and placement services, to provide transitional housing, and to help newly released prisoners get mentoring, including from faith-based groups." As the former president noted, "America is the land of second chance [*sic*], and when the gates of the prison open, the path ahead should lead to a better life" (Bush 2004).

The renewed emphasis on reintegration under the Second Chance Act did not explicitly address the burdensome formal and informal consequences of a criminal record, which also apply to non-imprisonable offenses. Instead, the focus of second chance narratives was on imprisonment and traditional aspects of reentry. At both the

7. Second Chance Act, March 20, 2007, Pub. L. 110-199.

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federal and state level, collateral consequences and criminal record relief mechanisms, such as expungement, sealing, set aside, and certificates of rehabilitation,[8] were largely relegated to the margins of the criminal justice reform discussion, despite scholars drawing attention to the epidemic of restrictions arising from a criminal record. In the early 2000s, the late Joan Petersilia (2003, 136) noted how collateral consequences were "growing in number and kind, being applied to a larger percentage of the U.S. population and for longer periods of time than at any point in U.S. history." Priorities such as high incarceration rates and public safety taboos limited the breadth of criminal justice reform conversations, preventing a more holistic approach encompassing the most peripheral aspects of the post-conviction stage of the criminal process.

Faith-based groups and organizations have played a key role in bringing criminal record relief initiatives to the forefront. This is particularly true of Chuck Colson's Prison Fellowship, which is possibly the world's largest Christian nonprofit organization that caters to incarcerated and formerly incarcerated individuals and their families. The organization has been a leading advocate for criminal justice reform on compassionate grounds since the 1980s (Dagan and Teles 2015, 140–44; see also Applegate et al. 2000). While Prison Fellowship was primarily focused on reducing the reliance on incarceration in general, its policy arm gradually became more involved in the issue of collateral consequences stemming from a criminal record in the 1990s. As formerly incarcerated men and women reentered society, they faced barriers that prevented them from living full, productive lives, even though these barriers often had no bearing on community safety or serving the public good (Dagan and Teles 2016, ch. 4). Collateral consequences have long been a concern for religious organizations, but it was only recently that their work on this issue began to have an impact due to what were previously perceived as priorities. Since the late 2000s/early 2010s, Prison Fellowship and other religious groups have "draw[n] on Biblical language of forgiveness to support a dramatic narrowing of collateral consequences … not related to the crime of conviction and not needed to protect the public" (Bibas 2012, 141–42). The existence of so many impactful collateral legal consequences triggered by a criminal record made record clearance and restoration of rights an explicit policy objective.

As noted, traditionally, the religious right supported "tough-on-crime" policies, such as mandatory minimum sentences, three-strikes laws, and harsher penalties for drug offenses. These policies were seen as being tough but fair and as a way to protect society from criminals and keep communities safe. However, as the negative consequences of these policies have become more apparent, the Christian right has increasingly embraced redemption-oriented reforms that focus on helping criminal justice-involved individuals to reintegrate into society and become productive citizens. The current relationship between the Christian right, particularly Evangelicals, and criminal legal reform is complex as it involves a commitment to both harsh "law-and-order" policies and second chances (Griffith 2020). This duality is effectively captured

8. Unlike expungement, sealing, and set aside, a certificate of rehabilitation, issued in some jurisdictions, does not hide a conviction from the public record. Instead, the certificate attests that a person has been deemed rehabilitated by a court, and it can be considered an official judgment of their reliability and good character. The purpose of a certificate of rehabilitation is not to alter the public record but, rather, to help individuals overcome the collateral consequences of having been involved in the criminal justice system.

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by, and encapsulated in, a statement made in 2013 by then governor of Indiana (and future vice-president) Mike Pence, a self-described Evangelical and born-again Christian (Borger 2019). Commenting on the promising results of an ex-offender reentry program, Pence said: "We want Indiana to be the worst place to commit a crime and the best place to get a second chance after you've served your time" (qtd. in Price 2013).

Pence's words reflected the sentiments expressed by former President Bush in his 2004 State of the Union address, which (as previously observed) is widely regarded as the beginning of a new approach to punishment policy from the conservative field (Green 2013). However, Pence's statement also marked a new phase in which collateral consequences reform became a critical aspect of reentry reforms. In May of the same year, Pence signed into law what was then considered "possibly the most comprehensive and forward-looking restoration of rights statute ever enacted" in the country. This law granted courts the power to expunge most criminal records (excluding convictions for serious violence, public corruption, and sexual offenses) after waiting periods linked to the gravity of the offense (Collateral Consequences Resource Center 2014; Gaines and Love 2018).

In 2017, Prison Fellowship launched the Second Chance Month campaign, which was joined by a multitude of organizations across the political spectrum, such as the ACLU, the National Association for the Advancement of Colored People, the Heritage Foundation, and Koch Industries. The campaign aimed to change perceptions and promote second-chance opportunities for the millions of Americans who have served their sentences (Banks 2017; Showalter 2017). Following a bipartisan initiative in the US Senate the year before, the Trump administration declared in 2018 that April was to be "Second Chance Month" for people with a criminal record, and, since then, many state and local governments have followed suit (Foran 2018). In his 2020 proclamation of "Second Chance Month," then president Donald Trump stated: "As Americans, we believe that every person has unbound potential. It is therefore important that we offer former inmates who have served their sentences and learned from their earlier mistakes the opportunity for redemption through a second chance to become productive members of society. . . . While we must be tough on crime, we can also be smart about reducing recidivism" (White House 2020).

The converging interests of pro-redemption Republicans and post-1990s punitive progressives have led to a growing base of support for criminal record clearance reform. The Biden administration also joined this initiative, providing further evidence of its importance. In his first proclamation of Second Chance Month in 2021, President Joe Biden emphasized the significance of providing opportunities for those with a criminal record, stating: "A person's conviction history should not unfairly exclude them from employment, occupational licenses, access to credit, public benefits, or the right to vote. Certain criminal records should be expunged and sealed so people can overcome their past" (White House 2021).[9] Whether it is preferable to forget (through expungement, sealing, or set aside) or forgive (through a pardon or a certificate of rehabilitation)

9. Since its inception in 2017, Prison Fellowship's Second Chance Month initiative has grown tremendously. The campaign launched with around seventy partners, and by its fifth anniversary in 2022, it had over seven hundred partners, including congregations, businesses, and other advocate organizations.

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(Murray 2016; Corda 2018a), the appeal of criminal record clearance reform has transcended ideological divides, gaining support from a broad range of actors, including, crucially, faith groups. These groups recognize post-sentence discrimination as a critical issue that must be addressed to fully promote their belief in second chances at the policy-making level.

Dealing with Individuals Burdened by a Criminal Record in a Tight Labor Market

The third factor identified as one of the main drivers of reforms enacted in recent years in the area of collateral consequences across the United States pertains to the incentives arising from economic cycles. In September 2019, the US unemployment rate dropped to 3.5 percent, near the lowest rate in fifty years (US Bureau of Labor Statistics 2020b). With a record low unemployment rate, businesses faced challenges in attracting and retaining top talent because, under those circumstances, people had the opportunity to be choosier about their employment choices. Surprisingly, this led to a new trend. In a tight labor market, where available workers are scarce, employers began to tap into the previously neglected pool of workers with a criminal history, becoming more open to offer jobs to justice-involved individuals to fill open positions (Abraham, Haltiwanger, and Rendell 2020). As a result, business associations formed alliances with advocates for criminal record and occupational licensing reform. According to a recent large survey of hiring managers, firms began adopting less risk-averse hiring requirements and were increasingly considering applicants with a criminal record: "Today, 35 percent of businesses are 'likely' or 'extremely likely' to hire temporary workers with past criminal convictions. Perhaps more than any data point in this report, this strongly supports the argument to loosen hiring requirements and represents a paradigm shift—a shift forced by the constricted labor market and an evolving sentiment towards what is considered a prohibited offense" (Adecco USA 2019).

In 2021, the Society for Human Resource Management launched the Getting Talent Back to Work Initiative, which surveyed human resources professionals, managers, and business executives. One of the main findings of the survey was that 66 percent of human resources professionals expressed a willingness to work with individuals who have a criminal record, up from less than half who felt the same in 2018 (Society for Human Resource Management 2021, 2). In this case, therefore, the push for occupational licensing and criminal record clearance reforms is primarily driven by practical economic concerns of those seeking to employ or otherwise deal with individuals with a criminal record in a tight job market. As one advocate notes, "[t]here's such a need for skilled labor in particular. That stigma's wearing off. . . . When employers see . . . there's people coming out of prison who have those skills, they're going to be willing to take a chance" (qtd. in Garsd 2019; see also Casselman 2018; Kanno-Youngs 2018). A comparable situation would have been difficult to conceive of in the late 2000s and early 2010s when the Great Recession resulted in many states having unemployment rates as high as 15 percent. During those times, finding a job was nearly impossible for most people, let alone those with a criminal record.

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The changing landscape has led business associations to advocate for criminal record clearance reforms and the adoption of fair chance initiatives such as "Ban-the-Box" policies. Such policies require employers to consider a candidate's qualifications first and criminal history, if any, only later in the hiring process (Avery and Lu 2021). Under these circumstances, employers have been more willing to hire individuals with criminal records, signaling a departure from their traditional aversion to such candidates (Sugie, Zatz, and Augustine 2020), fueled in part by widespread beliefs surrounding the negligent hiring doctrine (Levin 2018a) often reinforced by insurers' threats "to withdraw coverage if employers hire convicted individuals" (Love 2017, 4).[10] In addition to advocacy for reform driven by necessity and further aided by government tax incentives, companies have shown interest in "investing less in screening out workers and more in training and supporting them to capitalize on second chances" (Mullaney 2018).

If in pre-pandemic times a shortage of workers and shifting attitudes were creating more opportunities for people with criminal records, during the pandemic, the national unemployment rate rose to 6.7 percent in December 2020 (US Bureau of Labor Statistics 2020b), well above pre-COVID-19 levels. This stagnation in the labor market recovery was due to a lack of fiscal stimulus and record infections that prompted many US states to impose restrictive measures to respond to the outbreak. However, the pandemic created a new kind of workforce shortage originating from the phenomenon termed "the Great Resignation," referring to the large number of employees leaving their jobs voluntarily for a variety of reasons, including a desire for better work-life balance, higher wages, and more flexibility. During the year 2021, around 47.4 million people voluntarily left their job (US Bureau of Labor Statistics 2022). For comparison, 42.1 million people quit in 2019, which at the time was considered to be the tightest labor market on record (US Bureau of Labor Statistics 2020a).

During the pandemic, an unprecedented number of individuals retired or decided to leave their jobs to pursue other career paths, turned their hobbies into businesses, or found alternative ways to earn a living. As Nobel Prize winner Paul Krugman (2021) bluntly but effectively put it, "the pandemic led many U.S. workers to rethink their lives and ask whether it was worth staying in the lousy jobs too many of them had." In a job market displaying signs of tightness due to different reasons compared to the pre-pandemic situation, employment opportunities have again been increasing for individuals with a criminal record, who represent one of the largest untapped reserves of the workforce (Fuller et al. 2021; Gaskell 2021). Given the described conditions, a shift in attitudes toward hiring policies and practices became once again a necessity, especially considering, as highlighted in recent research by the RAND Corporation, that by the age of thirty-five, 64 percent of unemployed men in America have been arrested and 46 percent have received a conviction, with little variations by race and ethnicity (Bushway et al. 2022).

Before, during, and after the pandemic, such a shift has gradually become more and more apparent, with employers reconsidering their positions and protocols concerning how to deal with job applicants who have some type of criminal history. Employers and

10. In fact, this type of lawsuits appears to be infrequent, and their outcomes suggest a low risk of liability for employers who take basic precautions and exercise reasonable care (McElhattan 2022a).

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business councils and associations have increasingly been advocating for criminal record clearance reform, recognizing that they may not need to know more than what is necessary about the individuals applying for positions, including their criminal past (see, for example, Karlin 2022). One notable example of this shift can be seen in the stance taken by the US Chamber of Commerce. As one of the world's largest business organizations, representing the interests of over three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, the US Chamber of Commerce has fully endorsed the movement toward criminal record clearance reform. In 2021, the chamber published a report titled *The Business Case for Criminal Justice Reform: Second Chance Hiring*, which highlights the economic benefits of employing individuals with criminal records. The report notes that such employment would boost the economy, increase sales and payroll taxes, and improve public safety by reducing recidivism. Furthermore, the report cites several case studies that demonstrate how employees with a criminal history have shown greater loyalty and motivation than those without a criminal record. The public policy proposals listed in the report consistently endorse occupational licensing and criminal record clearance reforms as well as Ban-the-Box initiatives (US Chamber of Commerce 2021).

The changing attitudes toward individuals with a criminal record have been largely influenced by economic cycles and their impact on the labor market. This "business-sensitive" approach reflects a growing awareness among employers that hiring individuals with criminal records can be beneficial, while still maintaining safe and productive workplaces. Interestingly, this dynamic is reminiscent of Georg Rusche and Otto Kirchheimer's (1939) structuralist analysis of punishment, which argues that modes of punishment are social phenomena shaped in their essence by economic drivers. While it is important not to oversimplify the complex social and economic factors at play, it is clear that fluctuations in the labor market have a significant impact on attitudes toward criminal justice-involved individuals as well as criminal record management policies and the way in which these regulate and hinder opportunities for individuals with criminal records.

In the described scenario, the punitive logic of the state is, at least in part, displaced by the (rather opportunistic) logic of the market in a condition of tightness. Penal change is not driven by "the ideas of the reformers" but, rather, by "the conditions of labor and, more specifically, of the labor market" (De Giorgi 2013, 43), prompting, for once, less punitive and more reintegration-oriented policy proposals and actual reform outcomes, although these may only be temporary in nature. Market and punishment dynamics do intersect and interact. From this perspective, the described dynamics of collateral consequences reform seemingly challenge the idea that neoliberal economies tend to be associated almost exclusively with more punitive policies and practices (see, for example, Lacey 2008; Lacey, Soskice and Hope 2018). It is important to note, however, that market forces can drive reforms—either in a more punitive or more lenient direction—in such an unfettered way only in highly deregulated economies that lack structural protections and principled positions concerning vulnerable populations in the workforce, including people with a criminal record.

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THE COLLATERAL CONSEQUENCES REFORM SPACE AND THE DYNAMICS OF PENAL CHANGE

The success of collateral consequences reform has emerged within a new policy environment where public support for most disabilities and restrictions flowing from a criminal record is rapidly decreasing. Likewise, the visibility and intensity of reform efforts have been growing in a way that is unparalleled in other areas of criminal legal reform. As a result of this new scenario, collateral consequences are no longer "candidates for obscure but eternal existence" (Zimring 2020, 195)—a status that characterized them throughout most of the 2000s. The account presented in this article complicates the mainstream discussion surrounding criminal justice reform and the dynamics of penal change in the United States. It suggests that collateral consequences reform is being driven by a unique convergence of narratives, goals, and values across US jurisdictions. This approach to reform differs from traditional criminal legal reform efforts that, with few exceptions, have typically resulted in stalemates or watered-down agreements. This aligns with what Ashley Rubin (2016) refers to as "penal layering"—the stratification of disparate and even conflicting penal narratives, policies, and practices, which coexist rather than replace one another.

While the goal of reducing punitive measures in the criminal justice system has been widely discussed, it has not made substantial progress for the most part. In contrast, collateral consequences reform is making tangible strides due to the ability of actors involved in these efforts—both within and outside legislative bodies—to break away from traditional reform dynamics that often result in meet-in-the-middle solutions or failed compromises (see Gottschalk 2015; Seeds 2017). Through the analysis of the three primary drivers of reform identified in this article, it is evident that a convergence of shared goals has developed within the collateral consequences reform space, which has successfully united individuals and organizations well beyond "standard" bipartisan alliances. Collateral consequences reform has garnered support from both sides of the political spectrum and beyond, as it aligns with economic libertarian principles of limited government and individual freedom, as well as civil libertarian principles of individual rights and social justice. Policy changes concerning collateral sanctions have also been shown to have both economic and regulatory benefits as they reduce barriers to employment faced by individuals with criminal records, leading to increased tax revenue and decreased reliance on public assistance programs. Furthermore, unlike virtually all other areas of criminal legal reform, collateral consequences reform has been perceived in recent years as a relatively low-risk policy change, as it does not involve the release of violent offenders or changes to sentencing laws. Collateral consequences reform has also been crucially promoted by grassroots organizations, often involving individuals who have experienced the impact of collateral sanctions firsthand. These organizations have been instrumental in developing knowledge about collateral sanctions and restrictions from the ground up. They have also used storytelling and media campaigns to raise public awareness about the experiences of criminal justice-involved individuals and the need for reform (see, for example, Fitzgerald 2019; Lake 2020).

The efforts of peculiar and even seemingly fragile coalitions are driving the progress in occupational licensing and criminal record clearance reform. The collateral

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consequences reform space lacks a single, overarching ideological rationale, but this does not mean that it is devoid of underlying values. Rather, a convergence of shared goals has emerged through persistent and effective pressure on key policy makers. While principled ideas do play a role in collateral consequences reform efforts, they are not the sole driving force. The movement is also inspired by reasonable pragmatism and is likely no stranger to 'backroom negotiations' in order to promote certain policy proposals and convey the message through powerful slogans (for example, "Second Chance Month" and "Ban the Box").

The case of different types of libertarians joining forces to support collateral consequences reform is quite illustrative. Economic libertarians and other conservatives who support criminal justice reform often emphasize general principles, such as reducing the government's impact on people's lives, which can apply to various reform areas. However, disagreements with more progressive approaches may arise regarding the application of these principles to specific policy proposals. From this standpoint, allowing individuals who have been punished for previous crimes to rehabilitate themselves and move on with their lives emerged as a more urgent and compelling objective than reforming other aspects of the criminal legal system. As a result of a pragmatic approach, economic libertarians, who advocate for maximizing individual rights and minimizing state intervention, and civil libertarians, who are actively concerned with protecting individual liberties and rights from government infringement, have found common ground in their critique of formally non-punitive restrictions resulting from a criminal conviction (see, for example, Friedersdorf 2011; ACLU 2017; ACLU Kansas 2018; Herman 2018; ACLU Connecticut 2021).

While originating independently, the three drivers of reform identified and discussed in this article did not develop in isolation but, rather, overlapped and intersected in reform efforts at the state and local level. Libertarians, religious groups, and business associations formed alliances around the idea of second chances, drawing from different perspectives. This reformative consensus cut across different regulatory regimes, including hiring processes and occupational licensing, which have not traditionally been a focal point of criminal justice reform. Additionally, these efforts have been aided by contingencies found at the intersection of low crime rates and specific labor market dynamics. For instance, the criminal record clearance reform passed in Utah in 2020 received substantial support from the Chamber of Commerce and employers who were eager to find employees in a tight labor market. However, the initiative's approval would likely not have been possible without the strong endorsement of the faith community in the state (*The Independent* 2022).

This combination of factors has helped to foster agreement and prevent polarization. As a result, it has become easier for legislators, regardless of their political leanings, to agree on bills that are widely popular and non-controversial among voters, address pressing real-life concerns, and do not require elected representatives to risk significant political or ideological capital. This approach has allowed collateral consequences reform to capitalize on changing perceptions and considerations of certain aspects of the criminal justice system, particularly at the state level, where other more publicized reform initiatives have largely failed. Furthermore, with all the caveats previously discussed about how past policies and narratives can create path dependence (Beckett, Reosti, and Knaphus 2016), evidence suggests that the perception and

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consideration of criminal justice policies and practices are now understood and addressed differently at the national and decentralized level. National votes and political mandates tend to be more ideological. The same voters in state and local elections have greater awareness of the direct consequences that a certain policy might have on people and communities, and this is especially relevant when it comes to collateral consequences, reentry, and second chances in a country where so many individuals have a criminal record. This awareness does not necessarily translate into a more lenient approach to criminal legal reform in general, but it does lead voters to be more cognizant, aware, and open to assess different arguments in light of considerations of proximity. Consensus on collateral consequences reform at the state level has also coalesced around more mundane aspects—the micro level of penal change analysis—reflecting personal experiences of policy makers or those around them (family members, partners, friends, and acquaintances) directly affected by certain ramifications and measures of the criminal legal system within a certain jurisdiction—an aspect that is notably absent with regard to policy making at the federal level (see, for example, Berman 2018; Meade 2020).

Although produced as a result of a more successful process compared to other areas of criminal legal reform, it is important to observe that collateral consequences reform is not without challenges, and, moving forward, much remains to be done. While there has been undeniable progress, there are still several limitations that can make it difficult for individuals with criminal records to obtain licenses and find work in certain professions and that prevent individuals with a criminal history to move on from their past mistakes. While many states have implemented significant reforms in recent years, there is still a great deal of variation in the scope and extent of these reforms across jurisdictions. Variations in occupational licensing rules and proceedings for individuals with a criminal record across states highlight the need for consistent and equitable policies that reduce barriers to employment. Furthermore, some licensing boards may resist changes to the licensing process, particularly if they believe ensuring public safety represents their primary mandate (Ewald 2019). Variability across states in criminal record clearance policies can create confusion and inconsistency for individuals seeking to clear their records. Evidence suggests that justice-involved people often face substantial hurdles to obtaining relief (Chien 2020). Furthermore, the most robust versions of criminal record clearance reforms (automatic relief through Clean Slate policies) are still relatively rare, and they have been shown to operate in racialized ways (Mooney, Skog, and Lerman 2022).

CONCLUSION

As illustrated in this article, while acknowledging the caveats, the success of collateral consequences reform seems to challenge, if not openly contradict, the ongoing reform patterns in other areas of criminal legal reform, such as policing, bail, and sentencing, where progress has been limited since the trajectory of mass incarceration slightly changed course after reaching its peak over a decade ago. Some may argue that collateral consequences reform has been more successful in terms of legislation passed and in attracting broader and less ambivalent support among a wider range of actors and

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groups because this area represents a comparatively lower hanging fruit in the criminal justice field. From this perspective, it may be easier to convince law enforcement agencies that someone who has been punished should not be prevented from moving on with their lives than to tell them that much of what they do is misguided and unnecessary for public safety.

However, this apparently compelling argument, which suggests that collateral consequences reform is successful because it represents a comparatively easier area of criminal justice reform, consistently failed in the second half of the 1990s and for most of the 2000s. During this time, crime rates were already declining, and second chances were touted as a primary policy objective under the banner of "bipartisan" criminal justice reform. Instead, the success of criminal record clearance and occupational licensing reforms can be attributed to a unique combination of goals and values that is not present in other areas. Furthermore, while in the collateral consequences reform space there may not be equivalent interest groups comparable to police unions and prosecutors' and prison officers' associations, it would be inaccurate to say that no carceral counter-interests opposing reform efforts exist. In fact, the multi-billion-dollar criminal background checking industry is a prime example of such interests (Corda and Lageson 2020; Lageson 2020). While not necessarily motivated by punitive intentions (Jain 2018, 1420), this industry "meets and stokes demands for criminal background checks" and companies vigorously "lobby for and against laws that affect them," especially those aimed at concealing criminal history information and weakening its visibility and effects (Jacobs 2015, 73).

Alliances between economic and civil libertarians have created a new opportunity for innovative thinking, demonstrating the relationship between economic freedom and civil liberties. Religious groups have been instrumental in promoting the idea of second chances and advocating for individuals with criminal records to be given the opportunity to redeem themselves after serving their sentence. As a result, enabling individuals to move on with their lives and seek redemption after being punished for their crimes has emerged as an important and compelling policy objective (Burton et al., 2020a). Libertarian ideas and the belief in redemption promoted by the Christian right, however, have struggled to impact areas of criminal justice reform outside of the field of collateral consequences. First, libertarian ideas such as reducing the size and power of the government and limiting the use of force and coercion are often at odds with the traditional punishment policies that have come to dominate the US criminal justice system. In light of this, the political will to adopt more libertarian policies has been limited, especially in areas such as policing, sentencing, and incarceration where these policies would require significant changes in current approaches and practices. The libertarian critique challenges collateral consequences as an overreach of state power, violating individual liberties, negatively impacting on the economy, lacking effectiveness, and disproportionately impacting marginalized communities. In times of decreasing risk aversion and rising support for second chances, this critique has succeeded in weakening punitive assumptions behind collateral sanctions, revolving especially around preventative logics and perceived dangerousness. Second, Christian leaders and organizations are still working to address the tension between the traditional support among religious groups for "tough-on-crime" policies at the "front end" of the criminal legal system and the more recent promotion of redemption-oriented reentry

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reforms, with the ultimate goal of creating safer communities while also furthering values of compassion and forgiveness. Finally, regarding the driver inspired by labor market dynamics, this was first triggered by the very tight job market before the start of the pandemic and, more recently, by the ongoing "Great Resignation." Low crime rates and a greatly diminished fear of victimization and sensitivity to risk have certainly helped business organizations abandon their traditional risk-averse reluctance to hire "ex-cons" and endorse initiatives to pass collateral consequences reforms to pragmatically meet their business needs.

The overall picture seemingly suggests an evolution in attitudes at a deeper level. During the 1990s, when "get-tough" policies were widely popular, libertarian values and religious beliefs in second chances were completely absent in debates about criminal justice reform. In the current climate, economic and civil libertarians have found a new voice and common ground in their support for collateral consequences reform. They argue that reducing or eliminating collateral consequences can promote economic opportunity, decrease recidivism rates, and uphold the principles of fairness and proportionality in criminal justice. In the past, a strong economy did not challenge the notion that convicted individuals should be widely excluded from the labor market, as the prevailing logic had little to do with rational risk assessment and management of actual dangers, and much to do with a mostly irrational precautionary and "zero-tolerance-for-any-risk" approach. That being said, writing about penal change during times of transformation and adjustment remains a challenging task in general, due to the noted difficulties in writing histories of the present, and when it comes to penal developments in the United States in particular. The high degree of politicization of the actors in the criminal legal system makes the United States more susceptible than other Western countries to abrupt changes in penal policies and practices, particularly when patterns of penal moderation are still emerging and fragile.

This observation, when applied to the collateral consequences reform space, suggests that it may be premature to conclude whether a lasting paradigm shift has occurred or whether state-level reforms will suffer significant setbacks despite the undeniable successes of the described reform efforts over the past decade and the compelling force of the three main drivers of reform discussed in this article. While the ongoing reform wave represents an important and non-ephemeral reordering of the collateral consequences landscape, much remains to be achieved. The United States continues to be fragmented when it comes to criminal record and occupational licensing relief, particularly in terms of safeguards and protections for people with a criminal history seeking a license to work (Sibilla 2020) and in terms of eligible offenses, waiting periods, and relief procedures for criminal record clearance (Collateral Consequences Resource Center 2023).

Criminal justice-involved individuals, who have been historically excluded or marginalized at the societal level in general, and in the labor market in particular (Smith and Simon 2020), continue to be vulnerable to shifts in macro-economic factors and fear-of-crime attitudes. Economic uncertainties (see, for example, Reuters 2020; Smith and Gilbert 2022) and the increase in shootings and violent crime in major cities across the country (see, for example, Thompson 2021; Abt, Bocanegra, and Tingirides 2022; Grawert and Kim 2022) may act as significant obstacles for collateral consequences reform in the future. If "tough-on-crime" and "law-and-order" advocates

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succeeded in regaining control of the narrative, the promising progress made by collateral consequences reform over the past decade could be in jeopardy. Media outlets may use the recent rise in crime rates and growing perceptions of unease, especially in urban areas, to stoke fears about crime and portray certain groups of people, such as Black and Brown communities, as especially dangerous. Politicians on both sides of the aisle may face pressure from their constituents to take, once again, an un-nuanced "tough-on-crime" approach (Rizer 2023; Seitz-Wald and Lee 2023). This would make it extremely difficult to pass reforms that are seen as lenient or permissive, even if capable of improving public safety in the long term by reducing obstacles to reentry that increase the likelihood of recidivism and further involvement with the criminal legal system. In such an uncertain landscape, the logic of unworthiness toward people with a criminal record remains hard to fully eradicate and prone to resurface amid the current unstable phase of penal transition.

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