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Twenty Years After the Education Apocalypse: The Ongoing Fall Out from the 1994 Omnibus Crime Bill

Mary Rachel Gould
Saint Louis University, Mgould9@slu.edu

SpearIt .
Texas Southern University Thurgood Marshall School of Law, SpearIt@tsu.edu

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INTRODUCTION

TWENTY YEARS AFTER THE EDUCATION APOCALYPSE: THE ONGOING FALL OUT FROM THE 1994 OMNIBUS CRIME BILL

MARY RACHEL GOULD* AND SPEARIT**

I. DOCUMENTING A DISCUSSION ON HIGHER EDUCATION IN PRISON

This symposium highlights presentations at the *2013 National Conference on Higher Education in Prison*, organized by the Saint Louis University Prison Program.[1] Although it is often appropriate to introduce a publication by saying it could not be timelier, this discussion is, in fact, long overdue. The Issue, taken wholly, offers a snapshot of prison education two decades since the signing of the 1994 Omnibus Crime Bill,[2] the public law that effectively killed prison higher education in the United States and left millions of incarcerated men and women with drastically reduced educational opportunities. This plight of prisoners has received almost no attention from apathetic public officials and private citizens.

The present essay is a primer on the current state of higher education in prison. It provides a social-legal framework for the conference and the symposium essays that follow. Beginning with the recent history of the exponential growth of incarceration in the past four decades, it charts the unprecedented reliance on incarceration that, at present, distinguishes the country as holding the largest population of prisoners and maintaining the

* Assistant Professor of Communication, Saint Louis University and the co-director of the Saint Louis University Prison Arts and Education Program. The author would like to thank the editors of the *Saint Louis University Public Law Review* for their recognition of the critical need to publish work on mass incarceration.
** Associate Professor of Law, Thurgood Marshall School of Law at Texas Southern University; Fellow, Institute for Social Policy & Understanding (ISPU). The author would like to thank the organizers of this program and the unwavering service of Dr. Kenneth Parker and the Prison Program Advisory Board. Special thanks for research support from the Seattle University School of Law—Establish Justice.

1. *Prison Program: Education, Research, Service*, ST. LOUIS U. SCH. OF PROF. STUD., https://www.slu.edu/prison-program (last visited May 22, 2014) [hereinafter *Prison Program*].

2. *See* 33 ST. LOUIS U. PUB. L. REV. (2014).

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highest incarceration rate in the world.[3] It was in the middle of this shift that the 1994 Omnibus Crime Bill was born, which effectively arrested higher education in prison. In a blink, hundreds of programs offering college courses to inmates were downsized to less than a dozen.[4] Today, nearly two decades since the legislation, the programs in existence struggle to survive.[5]

The essays in this Issue[6] feature the work of some of these programs that have managed to build or sustain educational opportunities amidst the cacophony of voices—public officials and private citizens—who actively challenge programming that makes life in prison anything but punitive. In contrast to this understanding, the essays operate from the underlying assumption that educating inmates is an integral part of preparing currently incarcerated men and women for success outside prison; moreover, there is a strong conviction that the failure of prison education is not because of the individuals and institutions that are currently providing such opportunities, rather, the failure rests in the lack of federal and public support for existing and potential programs. To be certain, "despite the acknowledged importance of

3. Incarceration statistics take into account men and women held in jails (facilities that hold individuals awaiting trial or possibly those sentenced to serve less than one year of incarceration) and prisons (facilities holding individuals sentenced to more than one year of incarceration). *See* CHRISTOPHER HARNEY, NAT'L COUNCIL ON CRIME & DELINQUENCY, US RATES OF INCARCERATION: A GLOBAL PERSPECTIVE 1 (2006), *available at* http://www.nccdglobal.org/sites/default/files/publication_pdf/factsheet-us-incarceration.pdf.

4. Daniel Karpowitz, *Prison, College, and the Paradox of Punishment*, 37 STUD. L. POL. & SOC'Y 305, 309 (2005).

5. DIANNA M. SPYCHER ET AL., THE OTHER PIPELINE: FROM PRISON TO DIPLOMA 17 (2012). Currently, the known programs offering for-credit higher education courses in U.S. prisons are as follows: Adams State College in Prison Program, Ball State University Corrections Education Program, Bard Prison Initiative, Bedford Hills College Program, Boston University Prison Education Program, Campus Within Walls, The College of New Jersey Center for Prison Outreach and Education, The Consortium of the Niagara Frontier, Cornell Prison Education Program, Coyote Ridge Correctional Center, Donnelly College Prison Program, Education Justice Project, Evergreen State College, Grace College Prison Extension Program, Goucher Prison Education Partnership, Grinnell Liberal Arts in Prison Program, Harvard Prison Studies Program, Hudson Link for Higher Education in Prison, Indiana State Corrections Education Program, Maine State Prison College Program, The Mohawk Consortium College-in-Prison Program, New York Theological Seminary, Oakland City University Prison Ministry Projects, Ohio University College Program for the Incarcerated, Prison Teaching Initiative, Prison University Project, Purdue University North Central, Rising Hope, Inc., Saint Louis University Prison Program, Tennessee Higher Education Initiative, University Behind Bars, University of North Carolina Continuing Education Program, Windham School District, Wesleyan Center for Prison Education, and Zane State College. *Directory*, PRISON STUD. PROJECT, http://prisonstudiesproject.org/directory/ (last visited May 22, 2014) (listing state-by-state all post-secondary prison education programs).

6. *See* 33 ST. LOUIS U. PUB. L. REV. (2014).

education to the individual and society, the Supreme Court has never classified education as a fundamental right protected by the Fourteenth Amendment."[7]

This symposium draws attention to the critical challenges presented by public law and the public itself, which continues to adhere to "tough on crime" politics over common sense policy. Prior to entering prison, the men and women living in the correctional systems are already disadvantaged and under-resourced. According to one study, approximately 41 percent of prison and jail inmates had not completed high school.[8] A study conducted by the Begin to Read Project suggests that over 70 percent of all inmates in U.S. prisons and jails cannot read above the fourth-grade level.[9] In similar tone, in *Retarding America: The Imprisonment of Potential*, Michael Brunner contends that the link between academic failure and criminal delinquency is "welded to reading failure."[10] The diminishing focus on education is one of the most damaging outcomes of the politics of punishment that has become the norm in the United States.

II. HISTORY OF THE PRESENT: THE SHIFT TO MASS IMPRISONMENT

In 1971, David Rothman, a leading scholar on the history of the penitentiary, ended his influential text, *The Discovery of the Asylum*, with a bold claim about its future.[11] Rothman enthusiastically predicted, "we have been gradually escaping from institutional responses and one can foresee the period when incarceration will be used still more rarely than it is today."[12] In hindsight, Rothman's words seem almost absurd, but at the time there was little to suggest that such a prediction would go so awry. Rothman's vision of a society less dependent upon systems of institutional punishment came as a result of seeing a reduction in crime rates amidst an active network of social services working to prevent crime and rehabilitate offenders.[13]

7. Emily A. Whitney, *Correctional Rehabilitation Programs and the Adoption of International Standards: How the United States Can Reduce Recidivism and Promote the National Interest*, 18 TRANSNAT'L L. & CONTEMP. PROBS. 777, 789 (2009) (noting that *Plyer v. Doe*, 457 U.S. 202, 221 (1982), held that, although it was a violation of the Equal Protection Clause to Prohibit illegal aliens from enrolling in local public schools, "[p]ublic education is not a 'right' granted to individuals by the Constitution.").

8. CAROLINE WOLF HARLOW, BUREAU OF JUST. STAT., EDUCATION AND CORRECTIONAL POPULATIONS 1 (2003), *available at* http://www.bjs.gov/content/pub/pdf/ecp.pdf.

In comparison, only 18 percent of the non-incarcerated public had not completed high school. *Id.*

9. *Literacy Statistics*, BEGIN TO READ, www.begintoread.com/research/literacystatistics.html (last visited May 22, 2014).

10. MICHAEL S. BRUNNER, RETARDING AMERICA, THE IMPRISONMENT OF POTENTIAL, at v (1993).

11. DAVID J. ROTHMAN, THE DISCOVERY OF THE ASYLUM: ORDER AND DISORDER IN THE NEW REPUBLIC 295 (Little Brown 1971).

12. *Id*.

13. *Id.*

Contrary to Rothman's prediction, incarceration in the United States moved in the opposite direction—radically. An "incarceration nation" emerged, as rates of imprisonment steadily increased.[14] The year after Rothman's pronouncement—1972—marked the beginning of an incarceration-escalation that held for more than three decades, producing a 705 percent increase in inmate populations between 1972 and 2008.[15] The Justice Policy Institute's analysis of U.S. Department of Justice data cited the level of U.S. incarceration at 338,029 in 1970.[16] At mid-year 2011, the U.S. Bureau of Justice Statistics reports a combined 2,334,381 men and women incarcerated in prisons[17] and jails[18] in the United States, which is estimated as nearly one quarter of the world's incarcerated population.[19]

As incarceration rates embarked on a meteoric rise, public and political debate was inundated by "tough on crime" political platforms that focused on victims' rights and a number of crime-related issues.[20] In the area of sentencing, harsher repeat offender laws were implemented including the notorious "three strikes and you're out" legislation,[21] while sentences for other crimes were lengthened outright.[22] More remarkable was the shift to plea-bargain settlements, which became the normative way of disposing of cases, making the once revered jury trial the exception rather than rule.[23]

This punitive posture impacted drug law and policy to dramatic ends. Crimes of possession and distribution were harshly penalized under "zero

14. PCARE, *Fighting the Prison-Industrial Complex: A Call to Communication and Cultural Studies Scholars to Change the World*, 4 COMM. & CRITICAL/CULTURAL STUD. 402, 404 (2007).

15. PEW CENTER FOR THE STATES, PRISON COUNT 2010: STATE POPULATIONS DECLINE FOR THE FIRST TIME IN 38 YEARS, at 1 (2010), *available at* http://www.cjpc.org/Prison_Coun_2010%20Pew%20%20Center%20report.pdf.

16. JUST. POL'Y INST., THE PUNISHMENT DECADE: PRISON AND JAIL ESTIMATES AT THE MILLENNIUM 1 Graph 1 (2000), *available at* http://www.justicepolicy.org/images/upload/00-05_rep_punishingdecade_ac.pdf.

17. E. ANN CARSON & WILLIAM J. SABOL, BUREAU OF JUST. STAT., PRISONERS IN 2011, at 1 (2012), *available at* http://www.bjs.gov/content/pub/pdf/p11.pdf.

18. TODD D. MINTON, BUREAU OF JUST. STAT., JAIL INMATES AT MIDYEAR 2011 – STATISTICAL TABLES, at 1 (2012), *available at* http://www.bjs.gov/content/pub/pdf/jim11st.pdf.

19. Adam Liptak, *Inmate Count in U.S. Dwarfs Other Nations'*, N.Y. TIMES (Apr. 23, 2008), http://www.nytimes.com/2008/04/23/us/23prison.html?pagewanted=all&_r=0.

20. For an overview of the shift to tough on crime policies, see SpearIt, *Legal Punishment as Civil Ritual: Making Cultural Sense of Harsh Punishment*, 82 MISS. L.J. 1, 2 (2013).

21. *See, e.g.*, CAL. ATT'Y GEN., THREE STRIKES LAW. REPEAT FELONY OFFENDERS. PENALTIES. INITIATIVE STATUTE 48 (2012), *available at* http://vig.cdn.sos.ca.gov/2012/general/pdf/36-title-summ-analysis.pdf.

22. PEW CTR. ON THE STATES, TIME SERVED: THE HIGH COST, LOW RETURN OF LONGER PRISON TERMS 2 (2012), *available at* http://www.cdcr.ca.gov/realignment/docs/Report-Prison_Time_Served.pdf.

23. SpearIt, *supra* note 20, at 41.

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tolerance" drug laws that imposed mandatory minimum sentences.[24] The all out "war on drugs" saw the number of citizens arrested and convicted of drug crimes climb to heights such that nearly a quarter of all inmates in the country were there on drug-related offenses.[25] In 2011, more than 1.5 million people were arrested on drug related charges.[26]

The 1970s also saw the country recommit itself to the death penalty. In 1972, in *Furman v. Georgia*, the Supreme Court effectively put a moratorium on the death penalty based on the Eight Amendment's prohibition on cruel and unusual punishment.[27] This opinion inspired some 70 percent of the states back to the drawing board to rewrite death-penalty statutes in accordance with the mandates of this case. Four years later, the waters were tested again in *Gregg v. Georgia*, which upheld as constitutional the death penalty as administered under Georgia's new laws.[28] *Gregg* effectively ushered in the modern era of capital execution. Like Rothman's claim about incarceration, one might be tempted to suggest that in 1972, the death penalty itself was facing death, only to undergo resuscitation. Today, the United States ranks among the top five countries for the total number of capital executions each year.[29]

III. THE OMNIBUS CRIME BILL—DROPPING THE BOMB ON PRISONERS

One of the least publicly discussed events that occurred during the rise of mass incarceration was passage of the 1994 Omnibus Crime Bill.[30] Signed into law on September 13, 1994, by former president Bill Clinton, the bill was a comprehensive piece of legislation that provided $30.07 billion in crime-fighting funding, the majority of which was for grants to improve public safety and reduce violence and crime through law enforcement enhancement.[31] More

24. NICOLE D. PORTER & VALERIE WRIGHT, SENT'G PROJECT, CRACKED JUSTICE 6 (2011), *available at* http://sentencingproject.org/doc/publications/dp_Cracked%20Justice.pdf.

25. MICHAEL SPIESS & DEBORAH FALLOW, WHITE HOUSE OFF. OF NAT'L DRUG CONTROL POL'Y, DRUG RELATED CRIME tbl.2 (March 2000), *available at* http://www.policyalmanac.org/crime/archive/drug_related_crime.shtml.

26. FED. BUREAU OF INVESTIGATION, *Uniform Crime Reports: Crime in the United States 2011*, http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/persons-arrested/persons-arrested (last visited May 22, 2014).

27. Furman v. Georgia, 408 U.S. 238, 239–40 (1972).

28. Gregg v. Georgia, 428 U.S. 153, 169, 187, 207 (1976).

29. According to a 2010 report by Amnesty International, the United States ranks fifth behind China, Iran, North Korea, and Yemen in annual capital executions. Other countries on the list include Saudi Arabia, Libya, Syria, Bangladesh, Somalia, Sudan, and Egypt. AMNESTY INTERNATIONAL, DEATH SENTENCES AND EXECUTIONS 2010, at 5 (2011), *available at* http://www.amnesty.org/en/library/asset/ACT50/.../act500012011en.pdf.

30. Violent Crime Control and Law Enforcement Act of 1994 § 20411, 20 U.S.C. § 1070a(b)(6) (2012).

31. *HR 3355 - Omnibus Crime Bill - Key Vote*, PROJECT VOTE SMART, http://votesmart.org/bill/2666/#.UmSFFxZOG2w (last visited May 22, 2014).

than 25 percent ($8 billion) of the funding was earmarked for the construction of new prisons.[32]

One of the more controversial provisions, which garnered almost no public attention, was a section that amended Title IV of the Higher Education Act. Passed by Congress in 1965, the Act explicitly allowed for inmates to apply for Pell Grants to attend college while incarcerated.[33] The Pell Grant funds thus allowed for hundreds of college programs to flourish inside prisons across the country between 1965 and 1994 by reducing financial barriers, such as tuition and textbook costs, for poor students.[34] By 1982, an active network of college-in-prison programs were available in forty-five states and hundreds of prisons.[35] The findings of one study showed that in the early 1980s, there were 350 programs with more than 27,000 inmate-students; five years later, forty-six states offered some form of postsecondary education with 772 prison college programs enrolling more than 35,000 inmate-students;[36] at the zenith in 1990, there were 1,039 secondary academic programs and 782 programs across the country in state and federal facilities enrolling more than 77,300 inmate-students.[37] At the federal level, one study noted that in 1981, 145 college degrees were awarded to federal prisoners, and this number reached a highpoint in 1991 with 252 degrees awarded.[38]

Many of these prison education programs were sustained with the smallest possible allocation of Pell Grant funds. According to the U.S. Department of Education, in the year leading up to the passing of the Omnibus Crime Bill, "of the $5.3 billion awarded in 1993, $34 million was given to institutions serving inmates."[39] In other words, only a miniscule percent, less than one tenth of one percent of the federal Pell Grant budget, was supporting the entire infrastructure of prison education in the United States.[40]

Prison education's thirty-year renaissance came to a sudden death with the passage of the Omnibus Crime Bill in 1994. The bill essentially revoked the

32. MARC MAUER, RACE TO INCARCERATE 77 (1999).

33. DANIEL KARPOWITZ & MAX KENNER, EDUCATION AS CRIME PREVENTION: THE CASE FOR REINSTATING PELL GRANT ELIGIBILITY FOR THE INCARCERATED 6 (2003).

34. Shelby M. Palmer, *Postsecondary Correctional Education: Recognizing and Overcoming Barriers to Success*, 23 ADULT LEARNING 163, 164 (2012).

35. Karpowitz, *supra* note 4, at 309.

36. Richard Tewksbury & Jon Marc Taylor, *The Consequences of Eliminating Pell Grant Eligibility for Students in Post-Secondary Correctional Education Programs*, 60 FED. PROBATION, Sept. 1996, at 60, 60.

37. JAMES STEPHAN, BUREAU OF JUST. STAT., U.S. DEP'T OF JUSTICE, NCJ-137003, CENSUS OF STATE AND FEDERAL CORRECTIONAL FACILITIES, 1990, at 11–12 (1992).

38. Sylvia G. McCollum, *Prison College Programs*, 74 PRISON J. 51, 56 tbl.1 (1994).

39. KARPOWITZ & KENNER, *supra* note 33, at 7.

40. *Id.*

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Pell legislation that provided government funding for prisoner education programs:

IN GENERAL—Section 401(b)(8) of the Higher Education Act of 1965 (20 U.S.C. 1070a(b)(8)) is amended to read as follows:

> (8) No basic grant shall be awarded under this subpart to any individual who is incarcerated in any Federal or State penal institution.[41]

Within weeks after the bill was passed by Congress and signed into law, the infrastructure supporting almost all college programming began to crumble. New York offers a dramatic example. College in prison programs thrived there in the 1970s and 1980s and, according to one commentator, "by the late 1970s, nearly every one of the seventy state prisons in New York hosted such a program," yet by the end of 1994 only four remained.[42]

It is difficult to track the number of prison higher education programs currently offering courses. There are numerous reasons this information is not easily obtained, foremost of which is because there is lack of a central or national network of prison higher education programs. Additionally, because many programs "fly under the radar" for political reasons, including the fear of public or policy backlash, many programs remain out of public view.[43] Recently, one of the most comprehensive efforts to account for all programs in the United States was engaged by the Prison Studies Project at Harvard University under the direction of Dr. Kaia Stern and Dr. Bruce Western.[44] In 2011, the project established a map tracking all known college-in-prison programs in the United States. The reported programs, both for-credit and not-for-credit, exist in twenty-five states, with nine states reporting having more than one program.[45] Indeed the blast was survived, but as these numbers suggest, just barely.

The Omnibus Crime Bill was the unveiling of violence against prison higher education, an apocalypse that wasted an active network of colleges and universities that were providing important services to society. Although there were indeed internal issues that contributed to the problem,[46] the elimination of

41. Violent Crime Control and Law Enforcement Act of 1994, H.R. 3355, 103rd Cong. § 20411 (2nd Sess. 1994).

42. Karpowitz, *supra* note 4, at 309, 329 n.5.

43. *See* Emily Payne, *BU's Prison Education Program Thrives Despite Pell Grant Ban*, THE QUAD (Mar. 22, 2013), http://buquad.com/2013/03/22/bus-prison-education-program-thrives-despite-pell-grant-ban/.

44. *About*, PRISON STUD. PROJECT, http://prisonstudiesproject.org/about/ (last visited May 22, 2014).

45. *Directory*, *supra* note 5.

46. *See, e.g.*, Charles B. A. Ubah, *Abolition of Pell Grants for Higher Education of Prisoners: Examining Antecedents and Consequences*, 39 J. OFFENDER REHABILITATION 73, 80 (2004) (describing how "internal factors," including "confused professional identity" and the

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Pell Grant funding effectively ended prison higher education and removed some of the most effective rehabilitative programs offered in prison.[47] It is uncertain just how severe the cost has been, yet one prison educator laments, "No one will ever know the extent of the loss in unrealized educational goals and dashed dreams of freedom, good jobs, and a crime-free future."[48]

IV. SURVIVING THE BLAST, TWO DECADES OUT

The year after the bill took effect, a New York state prisoner challenged the statute as a violation of equal protection, due process, and the Administrative Procedures Act.[49] The district court did not agree with the prisoner and held that denial of Pell Grants to prisoners solely on account of their status as prisoners did not violate equal protection and that a prisoner did not have any constitutional entitlement to continued receipt of Pell Grant funds that triggered procedural due process protections prior to revocation.[50] In the twenty years following this court opinion, educators and private organizations have been attempting to bring higher education back to federal and state prisons in the absence of Pell Grant funding and legislative and public support. The effect of the bill was devastating, and some scholars have argued that the legislation was a critical component of the war on drugs and poverty and the creation of an underclass.[51] Although many advocates of the reinstatement of Pell Grants contend that eligibility for the incarcerated is the most critical policy reform, such change is unlikely anytime soon as the punitive nature of the political landscape and politicians' fears about appearing to be "soft on crime" or "rewarding" prisoners with college degrees make Pell Grant

status of "good old boys" within the penal system were also major players in the demise of prison-based schooling).

47. *See* MILES D. HARER, FED. BUREAU OF PRISONS, RECIDIVISM AMONG FEDERAL PRISONERS RELEASED IN 1987, at 23 (1994).

48. John Garmon, *The Power of Prison Education*, COMMUNITY C. WK., Aug. 5, 2002, at 4, 4. *See also* Jon Marc Taylor, *Deny Pell Grants to Prisoners? That Would Be a Crime*, 9 CRIM. JUST., Summer 1994, at 19 (giving an inmate's account of the impending bill); Kathy Yarbro, *Saving Money or Wasting Minds?*, 58 CORR. TODAY, Aug. 1996, at 12, 12 (highlighting one inmate who was pursuing a degree, only to have the program shut down in the middle of his studies); Marjorie Coeyman, *Maximum-Security College*, CHRISTIAN SCI. MONITOR, June 30, 1998, at B1 (highlighting others struggling to keep their program alive two years later).

49. Nicholas v. Riley, 874 F. Supp. 10, 11 (D.D.C. 1995).

50. *Id.* at 12–13.

51. *See* Eric Blumenson & Eva S. Nilsen, *How to Construct an Underclass, or How the War on Drugs Became a War on Education*, 6 J. GENDER RACE & JUST. 61, 61–63 (2002).

reinstatement nearly unimaginable.[52] Although the country is in the midst of the unrelenting desire to punish, there remains a push for reform.[53]

Without government intervention for financial and political support of postsecondary education in prison, the alternative is the situation today—a small network of institutions of higher education, which, often at their own cost or through private charities, provide the programming that exists. Considering that approximately 95 percent of the 2.3 million men and women currently incarcerated will return to their community, roughly 10,000 per week,[54] along with studies showing that education is demonstrably the most effective means to reduce recidivism, there are both penological and public policy rationales for supporting efforts to provide higher educational opportunities in prison.[55] Accordingly, it has been argued that education in prison might be better conceived as a form of risk management for prison administrators.[56]

Although determining outcomes among inmates participating in prison college programs is no easy task, there are correlations between education and prevention of recidivism.[57] Rates of recidivism, or reincarceration usually within three years post release, in the United States are extraordinarily high; Michael Harer's research on recidivism in the United States cites the current range of reincarceration over the past three decades between 41 percent and 71

52. *See* Michael K. Greene, *"Show Me the Money!" Should Taxpayer Funds Be Used to Educate Prisoners Under the Guise of Reducing Recidivism?*, 24 NEW ENG. J. ON CRIM & CIV. CONFINEMENT 173, 205 (1998).

53. *See* Jean Trounstine, *The Battle to Bring Back Pell Grants for Prisoners*, BOS. DAILY (Mar. 4, 2013), http://www.bostonmagazine.com/news/blog/2013/03/04/the-battle-to-bring-back-pell-grants-for-prisoners/.

54. U.S. DEP'T OF JUSTICE, PRISONERS AND PRISONER RE-ENTRY, http://www.justice.gov/archive/fbci/progmenu_reentry.html (last visited May 22, 2014).

55. *See* JEREMY TRAVIS ET AL., URBAN INST. JUSTICE POLICY CTR., FROM PRISON TO HOME: THE DIMENSION AND CONSEQUENCES OF PRISON REENTRY 1–2 (2001); THE GRADUATE CTR. OF THE CITY UNIV. OF N.Y. & WOMEN IN PRISON AT BEDFORD HILLS CORR. FACILITY, CHANGING MINDS, THE IMPACT OF COLLEGE IN A MAXIMUM-SECURITY PRISON: EFFECTS ON WOMEN IN PRISON, THE PRISON ENVIRONMENT, REINCARCERATION RATES, AND POST RELEASE OUTCOMES 4 (2001) (examining recidivism rates among college participants at a female prison); Maria Ellen Torre & Michelle Fine, *Bar None: Extending Affirmative Action to Higher Education in Prison*, 61 J. SOC. ISSUES 569, 569–70 (2005) (documenting "the academic, economic, and civic consequences of higher education in prison for women prisoners while in prison, and post-release," and including "the impact of college in prison on prisoners, their children, and the prison environment").

56. Gregory A. Knott, *Cost and Punishment: Reassessing Incarceration Costs and the Value of College-In-Prison Programs,* 32 N. ILL. U. L. REV. 267, 288–90 (2012).

57. Miles Harer has written extensively about the benefits of education in prison, primarily as it relates to lower recidivism rates. HARER, *supra* note 47, at 23–24. *See also* MILES D. HARER, FED. BUREAU OF PRISONS, PRISON EDUCATION PROGRAM PARTICIPATION AND RECIDIVISM: A TEST OF THE NORMALIZATION HYPOTHESIS 1–3 (1994).

percent.[58] Higher education in prison is demonstrably a preventative to reincarceration according to one study conducted in 1997 by the Correctional Education Association.[59] The study focused on 3,200 persons from prisons in Maryland, Minnesota, and Ohio, showing that simply attending school behind bars reduces the likelihood of reincarceration by 29 percent.[60] In 2000, the Texas Department of Education conducted a longitudinal study of 883 men and women who earned college degrees while incarcerated, founding recidivism rates between 27.2 percent (completion of an AA degree) and 7.8 percent (completion of a BA degree).[61] Compared to a system-wide recidivism rate between 40 percent and 43 percent in the state of Texas, the study's findings are significant.[62] One report, sponsored by the Correctional Education Association, focused on recidivism in three states, has declaratively argued that education prevents crime.[63]

Even the U.S. Department of Education resisted the change in Pell Grant policy, recognizing that the reduction of higher education opportunities would be detrimental to efforts to prevent reincarceration. In 1995, the department issued a facts and commentary publication entitled *Pell Grants for Prisoners*, making a clear argument for the benefit of higher education in prison and a connection to the prevention of recidivism. The report states that "Pell Grants help inmates obtain the skills and education needed to acquire and keep a job following their eventual release," and, in effect, prevent reincarceration.[64] The 1995 report was a direct response to the passing of the Omnibus Crime Bill in the previous year.

Yet, solely focusing on recidivism as the metric for advocating for prison higher education programs would miss the more substantial argument about the need for higher education opportunities in prison. According to studies conducted by The U.S. Department of Justice, "the typical offender is undereducated, unemployed and living in poverty before incarceration."[65] Access to higher education in prison is a second chance to gain the needed

58. HARER, *supra* note 47, at 2–13.

59. STEPHEN J. STEURER ET AL., CORR. EDUC. ASSOC., EDUCATION REDUCES CRIME: THREE-STATE RECIDIVISM STUDY 49 (2001).

60. *Id.*

61. KARPOWITZ & KENNER, *supra* note 33, at 5 (citing WINDHAM SCH. DIST., TEX. DEP'T OF CRIMINAL JUST., DIVISION OF CONTINUING EDUCATION POST-SECONDARY EXECUTIVE SUMMARY 4 (2000)).

62. STATE OF TEX. LEG. BUDGET BD. STAFF, STATEWIDE CRIMINAL JUSTICE RECIDIVISM AND REVOCATION RATES 15 fig.3 (2011), *available at* http://www.lbb.state.tx.us/Public_Safety_Criminal_Justice/RecRev_Rates/Statewide%20Criminal%20Justice%20Recidivism%20and%20Revocation%20Rates2011.pdf.

63. STEURER ET AL., *supra* note 59, at 49.

64. KARPOWITZ & KENNER, *supra* note 33, at 6–7.

65. CHRIS TRACY & CHERYL JOHNSON, WINDHAM SCH. SYS., REVIEW OF VARIOUS OUTCOMES STUDIES RELATING PRISON EDUCATION TO REDUCED RECIDIVISM 1 (1994).

social and vocational skills not just to prevent return to prison, but to be a citizen fully willing and able to participate in a community. Just as many in higher education actively resist "job placement" as the only measure of success for college graduates or as a justification for programming support, prison educators must resist "recidivism findings" as the only way to argue for the need for prison education or as the sole outcome that determines the success or failure of a particular program.[66]

Higher education, whether it is administered within a prison or on a traditional college campus is a matter of self-discovery, the development of critical thinking skills, and acquisition of the social and intellectual competencies necessary to navigate the world beyond the campus or prison. The traditional university was established as a place for engaging with new and challenging ideas, and the prison university should be no different. Lack of higher educational opportunities for the incarcerated widens the gulf between the inside and outside and stifles efforts to allow individuals on both sides of the divide to see the other as fully human. Colleges and universities around the country that administer prison education programs not only bring opportunities into the prison, they also make present, on campus, issues related to the U.S. prison system. Students, faculty, and staff are afforded the opportunity to participate in dialogue about incarceration in ways they might not if the institution did not have a prison education program.[67]

Yet, even after a program is established, there remain many challenges. One of the most significant barriers is that prisons, in the age of punitive mass incarceration, are not equipped to support the intellectual pursuits of the incarcerated.[68] In addition to issues of access, according to a recent study, persisting problems include "ensuring student academic readiness, providing adequate guidance for administrators when selecting a provider, outlining clear expectations of each key partner, dedicating sufficient education staff to facilitate programming, providing practical assistance in building and maintaining a new program, ensuring quality-of service with distance learning

66. This is true for various reasons, but most particularly because there are various factors at play that result in a released individual's recidivism, some of which have no bearing on educational status. Moreover, recidivism rates should be read with a critical eye as to whether they include returns as a result of a violating a technical condition of release as opposed to the commission of a new crime; furthermore, because mentally ill individuals tend to recidivate, they inflate recidivism rates. All of these factors undermines recidivism rates as successful indicator of education programming success.

69. Palmer, *supra* note 34, at 168.

68. *See id.* at 167 (discussing how lack of academic resources is a significant issue for student inmates including libraries that are "often quite small and do not contain the rigorous academic literature needed to complete complex assignments").

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providers, and gaining buy-in from site-level noneducation staff."[69] Though at times the barriers to prison higher education might seem insurmountable, the efforts of a small number of programs remain stalwart.

V. THE SYMPOSIUM CONTRIBUTIONS

It was in this vacuum that the Saint Louis University Prison Program (SLU Prison Program) was created in 2007.[70] The new program represented a joint venture between the university's College of Arts and Sciences and School for Professional Studies. It was thus a great honor for the program to have hosted the *2013 National Conference on Higher Education in Prison* (April 26–28, 2013), which is the third such event of its kind.[71] Since establishing the first prison education program in Missouri, the SLU Prison Program has developed a robust curriculum offering an Associates of Arts degree for incarcerated and staff students and now offers a series of humanities-based speaker events and workshops designed to engage the entire prison population in intellectual conversations and experiences.[72] The conference brought together academics and community activists and educators from across the country to meet and strategize ways to develop and sustain higher education programs in correctional facilities, be they degree-conferring or otherwise. Additionally, the conference was an opportunity to further coalition-building efforts and information sharing among prison education program administrators, educators, and corrections personnel.

By bringing together scholars and prison education activists from across the country, the conference addressed a range of fundamental issues at the

69. *Compare* Cindy Borden et al., *Establishing Successful Postsecondary Academic Programs: A Practical Guide*, 63 J. CORR. EDUC. 6, 8–9 (2012), *and* Palmer, *supra* note 34, at 167 (stating that the success of postsecondary prison program as a function of the "willingness of administrators and academics to partner with correctional institutions to implement effective curriculum"), *with* Allison Daniel Anders & George W. Noblit, *Understanding Effective Higher Education Programs in Prisons: Considerations from the Incarcerated Individuals Program in North Carolina*, 62 J. CORR. EDUC. 77, 78 (2011) (listing the markers of success for "effectiveness" in prison programming, including growth in number of students and participating facilities, strong support from prison staff, positive feedback from students about the education, and lower recidivism rates for participants, which at this institution had a nine-year recidivism rate of 19 percent).

70. *Prison Program*, *supra* note 1.

71. The inaugural conference was hosted by the University of Illinois at Urbana-Champaign and the Education Justice Project in 2010. The second conference was hosted by the University of Washington and the University Behind Bars Program in 2011.

72. Unlike most active programs that focus their course offerings only for the incarcerated, the Saint Louis University Prison Program also offers a degree program for prison staff and incarcerated students. The incarcerated and staff students do not attend classes together, but do follow the same curriculum. The first cohort of students (staff and incarcerated) will graduate in Summer 2015. *Prison Program*, *supra* note 1.

heart of the debate over access to higher education in state and federal prisons. Conference panels were designed around the themes of fund-raising, pedagogy, program development and design, and post-release and reentry issues. Conference panels were cross-disciplinary, not only reaching across a variety of departments, including anthropology, communications, English, sociology, criminal justice, and theology, but also including presenters from local, state, and federal organizations in for-profit, not-for-profit, and government sectors. Consistent with the diverse aspirations of the conference, the symposium essays cover a wide array of topics and represent a variety of methodological and theoretical perspectives on prison higher education.

It is axiomatic that each of the authors contend that the creation of more opportunities for the currently incarcerated to access higher education will benefit the 2.3 million of men and women in jails and prisons throughout the United States *and* the non-incarcerated community. There is less agreement about how to develop and sustain such programming. The essays confront various dilemmas facing prison higher education programs, ranging from administrative concerns involving best practices for forming a partnership between a university and department of corrections, to the practical, on the ground needs of teachers navigating the always shifting terrain of prison education. Each of the authors addresses these concerns in some way or other, and according their role in conference.

The conference began with a welcome by Jennifer Giancola, former dean of the School for Professional Studies, which has provided an institutional "home" for the SLU Prison Program since its inception in 2007. Giancola spoke not only of the support her school has provided to the SLU Prison Program as the "right thing to do" but also about her personal journey to understanding the connection between prison higher education and the educational opportunities provided to adult learners by the School for Professional Studies. She describes both the personal and professional transformation that prison higher education provides for learners, educators, and program administrators.

Following Giancola, Jody Lewen, executive director of the Prison University Project at San Quentin State Prison, delivered the conference's keynote address.[73] Lewen's thinking on prison education has evolved over more than a decade directing one of the most robust prison higher education programs in the United States. Lewen's address spoke to the power of prison higher education to transform the social structure that supports mass incarceration, paying specific attention to the collective imagination of non-incarcerated citizens and the damages caused by their lack of understanding of

73. Heather Jane McCarty, *Educating Felons: Reflections on Higher Education in Prison*, 96 RADICAL HIST. REV. 87, 89–90 (2006).

the prison system. In effect, Lewen presents what she considers a "theory of change."

Two presenters focused presentations on the ways to develop and sustain a prison higher education program. Jennifer Drew, former director of the Boston University Prison Education Programs, uniquely examines relationships between prison college programs, corrections, and academic institutions. At this juncture, striking the right cooperative balance is critical to the creation and maintenance of viable prison programs. Drew's work uses the "preposition" as an analytic to identify the "prepositional relationship" of college programs *vis-a-vis* their partners is the work. Although this work is as creative as enjoyable to read, it is required for anyone seriously contemplating starting a college program in a prison.[74] Kenneth Parker, founder and director of the SLU Prison Program, provides a history of the formation and growth of the program, from its inception as a five-course Certificate in Theological Studies to a sixty-four credit Associate of Arts degree program for incarcerated men and prison staff. Connecting the Catholic Jesuit mission of the university to the mission of the SLU Prison Program, the essay articulates how the university has come to recognize their role attending to marginalized members of the St. Louis community and has become part of the solution to the education crisis plaguing prisons throughout Missouri.

Multiple presenters at the conference turned their attention to pedagogy, and two authors provide insight into the opportunities and challenges of teaching in the physical setting of the prison. Robert Scott, executive director of the Cornell Prison Education Program at Cornell University and Auburn Correctional Facility in New York, addresses the schism between radical prison educators and prison abolitionists. Scott draws upon the philosophy of critical pedagogy as a theoretical bridge that he argues can connect the work of the prison educator to that of the activism of prison abolitionists. The essay begins with the assumption that the groups are united by the common goal of inverting in the prison pipeline and presents a call to both for a new vision of collaboration by which all sides are recognized as contributors to anti-prison activism in the United States.

Susannah Bannon, a Master's candidate at Texas State University in San Marcos, turns her attention to the roles prison educators play in the lives of their students and the correctional facilities in which they teach and, as a result, how prison students motivate their teachers. Exploring the often-overlooked communicative and relational elements of the prison classroom from the teacher's perspective, Bannon's work reveals that teachers in the prison setting gain motivation from the relationships they build with their students, and these relationships transcend the walls of a prison and classroom in ways that are

74. *See also* Borden et al., *supra* note 69, at 8–9.

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qualitatively different from their relationships with students in traditional educational settings.

Remaining within the setting of the prison as a space of education, Becca Sorgert makes a call to librarians to fulfill their ethical responsibilities, as outlined in the Association of College and Research Library standards, to serve under-resourced and remote patrons. Sorgert, a librarian with the Education Justice Project located at the Danville Correctional Center in Illinois, argues that the library profession must become more conscious to the deleterious effects mass incarceration has on access to library resources for the incarcerated (primary men and women in higher education programs, but also the general population). The essay reviews a history of neglect in the relationship between the academic and prison library as a partner and offers examples of services libraries can offer if partnerships are explored.

Two presenters at the conference focused on the administrative and political responsibilities of those overseeing the day-to-day operations of carceral institutions (private and public). Rick Seiter, reflecting on over three decades of work in private and public corrections, examines institutional privatization and poses an argument in defense of private prisons. Seiter has worked in corrections on multiple levels, including as director of Ohio Corrections, warden, academic and author, as well as longtime professional in private corrections. In this piece, Seiter addresses some of the controversies surrounding private prisons and lays bare the myths about private prisons. Seiter challenges those who disagree in principle with the concept of private prisons, especially since prison facilities run by the government are hardly exemplary models and are known to suffer under harsh prison conditions. Furthermore, Seiter notes the false dichotomy between private and public since government facilities have been relying on private services to operate for decades. Built into this critique is acknowledgement of the importance of inmate education for promoting safe, humane, and secure environments. The work points to the startling idea that inmates are more likely to encounter programing opportunities, including educational opportunities, in private facilities.

Grounding his discussion from the perspective of a government official, George Lombardi, director of the Missouri Department of Corrections, offers insight to the state of incarceration in his state. The discussion is based on an interview with Lombardi in which he candidly discusses the important issues facing education in prison, as well as his goals of using education as a tool to help return incarcerated men and women to the community. Combined, Seiter and Lombardi draw upon more than sixty years of experience in corrections, and along with the other contributors, make for a profound and provocative collection of readings. They also help fill an important gap in the knowledge of higher education in prison and offer the most cutting-edge resources for those engaged in prison reform or the creation of a prison college program.

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Two authors draw upon the voices of the currently incarcerated to frame a broader argument about the social and political barriers to providing higher education in U.S. prisons. Kaia Stern, director of the Prison Studies Project at Harvard University, drawing on more than a decade of work teaching within U.S. prisons, argues that our "will to punish" supersedes the willingness to acknowledge the transformative power of prison education. Yet, Stern contends that higher education is only part of the "mass incarceration crisis" in the United States. Stern weaves together the voices of the incarcerated, Judeo-Christian philosophy, and contemporary political rhetoric as the foundation for a proposal to reduce the prison population by half[75] within the next eight years.

Jim Earhart, a current Saint Louis University Prison Program student, perhaps asks the question that is on the mind of many readers: "why allocate resources to a criminal who, even if reformed, may never see the streets again?" Earhart constructs an answer to the question that draws upon academic and state and federal studies of recidivism and the personal experiences that can only be gained from living within the U.S. prison system. Earhart contends that "bottom line" arguments are not enough, and that the only way to increase the effectiveness of institutional efforts to rehabilitate the millions of men and women currently incarcerated is to radically change prison culture. Earhart presents higher education not as a panacea, but as a vital component in efforts to challenge the current mass incarceration imbroglio in the United States.

VI. REBUILDING THE PRISON HIGHER EDUCATION INFRASTRUCTURE

The success and sustainability of prison higher education depends upon the active collaboration among programs and individuals interested in expanding opportunities for prisoners. There are no shortcuts or easy answers to solving the crisis of access to higher education in prison. In many cases, our collective knowledge of these highly complex systems and social-legal practices are limited, and, as such, our need and desire to address them head on is imperative. Each of the authors, many drawing upon decades of experience, opened up a dialogue and upheld the notion that a small group of highly motivated people can change the course of history. Whether a state or federal program can achieve its educational goals will differ depending on the resources available to the academic institution, their specific philosophy on prison higher education, and the access and support offered by the respective department of corrections.

Each of the contributing writers in this issue is working at the ground level, teaching, or administering a prison education program, and, in many cases,

75. Project Half was born out of Stern's work with the Norval Morris Project Keystone Group, which is part of the National Institute of Corrections, an agency within the U.S. Department of Justice.

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moving fluidly between the free and incarcerated world. Their efforts to expand the intellectual discussions of prison higher education, provide practical and sustainable resources for emerging and established programs, and, most importantly, draw attention to the critical, and often overlooked, need to bring more educational opportunities to prisons are represented in each essay that follows. Additionally, publishing this inaugural symposium on prison higher education is not only an extension of the need to bring critical awareness to the issue, but also to articulate an argument for the formation of a national organization on prison higher education.

A national network of prison higher education programs will provide more robust dialogue between existing programs and potential new programs and the public. As we have seen, even institutions that have functional education programs have many problems, including class disruptions for security or celling purposes, programs and courses terminated at the whim of prison administrators, waiting lists that go on for years, limited access to training in information technology, and the withdrawal of education as a form of punishment. Our hope is that each of the essays in this collection offers the reader a foundation for thinking about the present and future challenges for education in the correctional context. As a nation we are at a tipping point in our need to address both the causes and outcomes of mass incarceration and failing public education. This entails recognition of the connection between education and personal empowerment and the necessity of building an infrastructure that recognizes access to education as a basic human need that is also convergent with correctional goals.