

2016

Keeping It REAL: Why Congress Must Act to Restore Pell Grant Funding for Prisoners

Spearlt

Follow this and additional works at: https://scholarship.law.pitt.edu/fac_articles



Part of the Criminal Law Commons, Educational Sociology Commons, Human Resources Management Commons, Inequality and Stratification Commons, Law and Society Commons, Law Enforcement and Corrections Commons, Legal Education Commons, Legislation Commons, Political Economy Commons, Social and Cultural Anthropology Commons, and the Social Welfare Commons

Recommended Citation

Spearlt, *Keeping It REAL: Why Congress Must Act to Restore Pell Grant Funding for Prisoners*, 11 University of Massachusetts Law Review 26 (2016).

Available at: https://scholarship.law.pitt.edu/fac_articles/489

This Article is brought to you for free and open access by the Faculty Publications at Scholarship@PITT LAW. It has been accepted for inclusion in Articles by an authorized administrator of Scholarship@PITT LAW. For more information, please contact leers@pitt.edu, shephard@pitt.edu.

Keeping it REAL: Why Congress Must Act to Restore Pell Grant Funding For Prisoners

SpearIt

11 U. MASS. L. REV. 26

ABSTRACT

In 1994, Congress passed the Violent Crime Control and Law Enforcement Act (VCCLEA), a provision of which revoked Pell Grant funding “to any individual who is incarcerated in any federal or state penal institution.” This essay highlights the counter-productive effects this particular provision has on penological goals. The essay suggests Congress acknowledge the failures of the ban on Pell Grant funding for prisoners, and restore such funding for all qualified prisoners.

AUTHOR NOTE

Associate Professor, Thurgood Marshall School of Law, Texas Southern University. This work received generous support from the Thurgood Marshall School of Law. Special thanks to Keramet Reiter, W. David Ball, Jack Donson, and Kevin Scruggs for their thoughtful suggestions, and to Monica Lopez, Jason Burt, and the Seattle University School of Law for research support.

I.	A HISTORY OF INCREASING PUBLIC SAFETY, CUTTING COSTS	29
II.	FAILURE TO ACHIEVE THE PURPOSES OF PUNISHMENT	32
III.	KEEPING IT REAL: GROWING MOMENTUM FOR RESTORING PRISONER ELIGIBILITY	34
IV.	TOWARD A BETTER TOMORROW	36

This essay urges Congress to restore Pell Grant funding for all prisoners who qualify under existing need-based criteria. Congress revoked this source of funding for post-secondary education some two decades ago in 1994 when it passed the Violent Crime Control and Law Enforcement Act (VCCLEA).¹ A provision of this Act overturned a section of the Higher Education Act of 1965, which created the Pell Grant for postsecondary education. The provision reads, “No basic grant shall be awarded under this subpart to any individual who is incarcerated in any Federal or State penal institution.”² The following explains why Congress must act on this failed law and policy.

The primary arguments that fuel this essay are twofold: First, there are genuine penal and public benefits that derive from educating prisoners. Second, and perhaps more critically, revoking Pell funding fails to advance any of the stated purposes of punishment. In the decades since the VCCLEA’s enactment, there is little indication that removing prisoners from Pell eligibility has produced tangible benefits; on the contrary, among other unfavorable outcomes, disqualifying prisoners may reduce public safety and exact severe social and financial costs. To be sure, the ban has done little, if anything, to alleviate recidivism rates in the decades following its enactment.³

This essay advocates restoring Pell funding for prisoners under no illusion that it will be a cure-all to the question of funding for postsecondary education in prison. There is also no pretending that education is the cure for recidivism since there are always a number of important factors that determine whether an individual succeeds on the outside. Education alone is never the sole ingredient for successful reentry, but it is often a part of what rehabilitates, therefore increasing educational opportunities makes for better public policy. This is particularly so for prisoners, since the vast majority are indigent, and thus have the very financial need that the Pell Grant was intended to assist. Still, it is not difficult to understand why education and training

¹ Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (1994).

² *Id.* at 1828.

³ See generally Pew Ctr. on the States, *State of Recidivism: The Revolving Door of America’s Prisons* (April 2011), http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2011/PewStateofRecidivismpdf.pdf.

can help with landing a job and staying on the outside. These are the commonsense notions that led to legislation that granted prisoners eligibility for Pell funding in the first place. The remainder of this essay explains why it is past time to revisit these notions.

I. A HISTORY OF INCREASING PUBLIC SAFETY, CUTTING COSTS

Prisoners first became eligible for federal funding in 1972, when legislation directly allowed for imprisoned individuals to apply for Pell Grants.⁴ The push to include prisoners for Pell eligibility was consistent with the Grant's design to assist economically challenged Americans working toward postsecondary study and training. For over two decades, prisoners were accurately viewed as a part of the economic underclass in America, with the average inmate being impoverished and undereducated. Pell funding aimed to counter these problems by helping to equip individuals for a successful reintegration into society, arming them with diplomas, skills, and certifications.⁵

It is an understatement to say that the ban on Pell funding was a major educational setback in prison. The ban spelled even less educational opportunity for the men and women in prison who suffer disadvantages and under-resourcing in education, well before they enter the prison gates. According to a 2003 study, approximately forty-one percent of prison and jail inmates had not completed high school.⁶ A decade prior, it was claimed that academic failure and criminal delinquency were correlated to "reading failure."⁷ More recent data by

⁴ Education Amendments of 1972, Pub. L. No. 92-318, 86 Stat. 251 (1972).

⁵ See Rachel Mary Gould & SpearIt, *Introduction Twenty Years After the Education Apocalypse: The Ongoing Fall Out from the 1994 Omnibus Crime Bill*, 33 ST. LOUIS U. PUB. L. REV. 283 (2014); Kenneth L. Parker, *The Saint Louis University Prison Program: An Ancient Mission, A New Beginning*, 33 ST. LOUIS U. PUB. L. REV. 377, 383-84 (2014) (detailing other research on college-in-prison programs that demonstrated a correlation between college education and reduced recidivism); Kaia Stern, *Prison Education and Our Will to Punish*, 33 ST. LOUIS U. PUB. L. REV. 443, 452-455 (2014) (discussing the penal and social benefits of higher education in prison).

⁶ Caroline Wolf Harlow, *Education and Correctional Populations*, BUREAU OF JUST. STAT. 1 (2003), <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.*

⁷ MICHAEL BRUNNER, *RETARDING AMERICA, THE IMPRISONMENT OF POTENTIAL* (Halcyon House 1993).

the Begin to Read Project suggests that sixty percent of all inmates in U.S. prisons and jails are functionally illiterate.⁸

With such existing deficiencies among prisoners, the ban on Pell was felt immediately. Although the original grant had helped to create a robust and growing infrastructure of college and vocational programs in prison, the 1994 legislation single-handedly decimated it. While figures show that in 1990 there had been several hundred college programs in prison, nearly every program disappeared following the 1994 legislation.⁹ Today, the situation has hardly improved, and there are only a few prisons offering in-person instruction for degrees and certificates.¹⁰

Unlike the 1994 legislation's leveling of higher education in prison, the penological outcomes are less certain. There has been little improvement in public safety, with one study showing that from 1994 to 2007, recidivism rates have remained stagnant.¹¹ According to a study of thirty states, over seventy-five percent of released prisoners were rearrested within five years of their release.¹² With new offenses and new social harms being committed at such high rates, society continues to bear the brunt of recidivism. Thus, despite uncertainty concerning the legislation's other impacts, the public safety realm remains uninfluenced.

The financial returns of the legislation are equally uncertain. Despite the fact that the ban on Pell funding was partially based on the pretexts of cost and saving taxpayer money,¹³ whether these incentives have materialized is debatable. For starters, determining "costs" and "savings" is a complicated task. For example, there are an array of hidden costs associated with lost educational opportunities that must be accounted for, as one prison instructor describes: "No one will ever know the extent of the loss in unrealized educational goals and dashed

⁸ *Literacy Statistics*, BEGINTOREAD.COM, <http://www.begintoread.com/research/literacystatistics.html> (last visited May 22, 2014).

⁹ Gould & SpearIt, *supra* note 5, at 288.

¹⁰ *Id.* at 284.

¹¹ Pew Ctr., *supra* note 3.

¹² Matthew R. Durose, Alexia D. Cooper, & Howard N. Snyder, *Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010*, U.S. DEP'T OF JUST.: BUREAU OF JUSTICE STAT. (SPECIAL REPORT) (2014).

¹³ 140 CONG. REC. E857-03 (1994); 140 CONG. REC. H2539-02 (1994).

dreams of freedom, good jobs, and a crime-free future.”¹⁴ Although these determinations defy quantification, there is little doubt that the housing and maintaining of prisoners, as well as the costs of reprocessing recidivist offenders, account for the majority of corrections spending, which currently sits at over \$52 billion annually for the States alone.¹⁵

Pell funding offers an added bonus of making religious programming, study, and training more widely available. The expansion of religious programming is a boon for prison culture, since involvement in religion is associated with positive outcomes for prisoners, including lower recidivism, improved self-esteem, and movement away from gang activity through stricter living and prayer regimens.¹⁶ Increased opportunity for religious study is a unique aspect of education known to transform the lives of inmates, a phenomenon which likely correlates to the content of religion. As religion deals with ultimate issues, including one’s worldview and morality, religious education may be a natural ally in the quest for inmate rehabilitation.

More specifically, over the last decade, a shortage of Muslim chaplains at both state and federal levels has created a vacuum in religious leadership.¹⁷ The lack of leadership spawned multiple problems leading to increased gang activity conducted in the name of religion, and increased prisoner radicalization.¹⁸ With Pell funding, divinity and seminary schools could develop vocational programming to fill some of these gaps in chaplaincy. These important benefits derive from formal education, which, according to one report, also promotes institutional security and acts as a buffer against extremism.¹⁹

¹⁴ John Garmon, *The Power of Prison Education*, 14 CMTY. COLL. WK. 26, Aug. 5, 2002, at 4.

¹⁵ Pew Ctr., *supra* note 3, at 5; according to the Department of Justice, the 2015 budget for federal prisons and detention was 8.5 billion, <http://www.justice.gov/sites/default/files/jmd/legacy/2013/09/07/prisons-detention.pdf>.

¹⁶ See SpearIt, *Religion as Rehabilitation? Reflection on Islam in the Correctional Settings*, 34 WHITTIER L. REV. 29, 31-33 (2012).

¹⁷ SpearIt, *Muslim Radicalization in Prison: Responding with Sound Penal Policy or the Sound of Alarm?*, 49 GONZ. L. REV. 37, 60-61 (2014).

¹⁸ See *id.* at 64.

¹⁹ Azeem Ibrahim, *Tackling Muslim Radicalization: Lessons from Scotland*, INST. FOR SOC. POL’Y AND UNDERSTANDING 1 (June 2010), <http://www.ispu.org/pdfs/ispu%20-%20radicalization%20report.pdf>.

By extension, it may be worth exploring how formal education for inmates might reciprocate with the prison in other ways. It is clear that educational programs could be made financially useful to fill gaps where the prison is lacking. Just as the need for more chaplains might be remedied through greater opportunities for vocational training among inmates, other needy areas could be supplied through training experience. Although the history of inmate exploitation should always make one wary about advocating the use of a prisoner as a resource, when there is quid pro quo and the prisoner obtains degrees and professional certification, the benefit to the prisoner extends far beyond his exit from prison.

This section highlights how the Pell Grant came about and what its emergence has meant for prisoners, society, and the criminal justice system. Perhaps most prominent is the growing body of evidence showing a strong correlation between obtaining education and successful reentry into society. As a recent study on the available resources has shown, an individual who participated in educational programs had forty-three percent lower odds of recidivating than inmates who did not participate.²⁰ These figures make the ban on Pell funding deeply suspect, and more so when examined alongside the widely accepted purposes of punishment. Revocation of Pell funding hardly achieves any of the basic, longstanding penal objectives of deterrence, incapacitation, or retribution.

II. FAILURE TO ACHIEVE THE PURPOSES OF PUNISHMENT

Classical theories of punishment offer little support for reducing educational opportunities for prisoners. For example, among primary utilitarian justifications for inflicting punishment is rehabilitation, which reflects one's ability to stay out of prison, and is somewhat synonymous with successful reentry. Former prisoners who commit new crimes, or violate a condition of release, fail at rehabilitation and become a statistic for recidivism. Education, however, works to reduce recidivism, which makes the ban on Pell funding antithetical to rehabilitation. The revoking of Pell funding essentially revokes opportunities for prisoners to obtain the skills and abilities necessary to survive on the outside, which leads to other undesirable consequences.

²⁰ Press Release, Rand Corp., Education and Vocational Training In Prisons Reduces Recidivism, Improves Job Outlook, (Aug. 22, 2013), <http://www.rand.org/news/press/2013/08/22.html>.

Deterrence rationales fail to justify reducing prisoners' educational opportunities to an even greater degree. This is because the logic of deterrence is premised on pedagogy. Indeed, both general and individual deterrence are predicated on a rational actor's learning by example—in this case, learning why it is not worth committing crime—with the punished criminal standing as a deterrent to himself and the rest of society. In fact, deterrence theory is at its core, an endorsement of the benefits of human learning, which would seemingly support movement to greater, not less learning.

Incapacitation, the third conventional justification for incarceration, applies somewhat differently in the context of inmate education. Typical deterrence-based rationales hold that prisons incapacitate the offender from committing more crimes. How reducing educational opportunities fits into that framework is uncertain, but practically speaking, formal education has its own incapacitating effects. For example, inmates in college programs occupy their time with course attendance and homework, which combats inmate idleness. There is less time to participate in the facility subculture of deviance because inmates are occupied with class, homework, and mentoring possibilities presented by tutoring, all leading to a safer and more humane environment for both staff and inmates. As such, educational programming curtails behavior that jeopardizes the safety of staff and other inmates and injects a dose of intellectualism into the correctional system, with inmates discussing reading and writing assignments with other inmates.

Whether retributive principles support the ban on Pell funding is a puzzling question. Advocating punishment through the staple notions of “rights,” “just desserts,” and “proportionality” is premised on the presumption that punishment is doled out to all who commit crime. However, in practice, indigent ethnic minorities are punished in higher numbers than the majority who, statistically speaking, commit the vast majority of crimes.²¹ The prevailing situation seemingly violates the very basis of “just desserts” and leaves little justice in the fact *that*

²¹ Saki Knafo, *When It Comes To Illegal Drug Use, White America Does The Crime, Black America Gets The Time*, HUFFINGTON POST, (Sept. 18, 2013), http://www.huffingtonpost.com/2013/09/17/racial-disparity-drug-use_n_3941346.html (For example, although Whites are more likely than Blacks to have used most kinds of illegal drugs, including cocaine, marijuana and LSD, blacks are far more likely to go to prison for drug offenses.).

many are not getting theirs. The assumption that the justice system punishes everyone who commits crimes thus discords with life on the ground, where certain groups are punished more often and more harshly than others for no principled reason, or worse, for pernicious ones. How reducing educational opportunities for convicted criminals contributes to retributive goals is even more difficult to discern considering that many college students who enjoy Pell funding on the outside, undoubtedly commit, and continue to commit crimes, the vast majority of which will never be prosecuted. It is near impossible to imagine what it would look like if all American college students in possession of marijuana were prosecuted for it. Under today's justice, however, the college students can avoid the criminal justice system, with many continuing to receive Pell funding.

Revoking Pell funding for prisoners is also at odds with retributivist principles since it disrupts the balance of proportionality. Because the scale of punishment for one's sentence has already been determined in the law or guidelines, the ban on Pell funding for prisoners and other collateral consequences serve as *de facto* punishment. The additional penalties undermine proportionality and leave no limit to the disenfranchisement of criminals. From a purely retributivist view, it may seem almost scandalous that the government can define a class as "criminal" and then use that definition to heap on unlimited civil penalties; it looks less like just desserts and more like a government program of economic pogrom.

III. KEEPING IT REAL: GROWING MOMENTUM FOR RESTORING PRISONER ELIGIBILITY

There is growing advocacy for reinstating Pell Grant funding for all prisoners who would qualify, despite their incarceration status.²²

²² See *Criminal Justice Section, Report to the House of Delegates* 108B 1, A.B.A. (2015), http://www.americanbar.org/news/reporter_resources/annual-meeting-2015/house-of-delegates-resolutions/108b.html (For example, this essay is based on research for a report prepared for the American Bar Association, which recently passed a formal resolution urging Congress to restore Pell Grant funding for prisoners who qualify under existing, need-based criteria.); see also Leon Neyfakh, *Throw the Book at Them*, SLATE (Jan. 28, 2015), http://www.slate.com/articles/news_and_politics/crime/2015/01/should_prisons_offer_degree_granting_courses_to_convicted_felons_cardinal.html; SpearIt, *Restore Pell Grants for Prisoners*, HUFFINGTON POST (Jan. 16, 2015), http://www.huffingtonpost.com/spearit/restore-pell-grants-for-p_b_6488342.html;

Perhaps the most prominent statement has come from Congresswoman Donna F. Edwards along with several other members of the House of Representatives who introduced the Restoring Education and Learning Act (REAL Act) in the spring of 2015.²³ The proposed legislation represents a bold step forward that, at the very least, will help put the issue on the table for serious discussion. Edwards' press release underscores the point by outlining numerous advantages to prisoner education, including net benefits to taxpayers who bear the costs of recidivism: "We know that helping economically challenged individuals work toward postsecondary study and training provides a better future for all Americans. We should provide such opportunities to all to ensure that the cyclical process of repeat incarceration does not continue."²⁴

At the executive level, the Obama Administration is backing a program under development at the Department of Education that would allow for a limited lifting of the ban for some prisoners.²⁵ Although the exact details are unknown, according to one report the project has been dubbed the Second Chance Pell Pilot, which would

Ry Rivard, *Prison U.*, INSIDE HIGHER ED (Feb. 28, 2014), <https://www.inside-highered.com/news/2014/02/28/new-yorks-governor-wants-pay-prisoners-college-education>; David Skorton & Glenn Altschuler, *College Behind Bars: How Educating Prisoners Pays Off*, FORBES (Mar.25,2013), <http://www.forbes.com/sites/collegeprose/2013/03/25/college-behind-bars-how-educating-prisoners-pays-off/>; Nick Anderson, *Advocates Push to Renew Pell Grants for Prisoners, Citing Benefits of Higher Education*, WASHINGTON POST (Dec. 3, 2013), http://www.washingtonpost.com/local/education/when-congress-cut-pell-grants-for-prisoners/2013/12/03/fedcabb2-5b94-11e3-a49b-90a0e156254b_story.html; Jean Trounstein, *The Battle to Bring Back Pell Grants for Prisoners*, BOSTON DAILY (Mar. 4, 2013), <http://www.bostonmagazine.com/news/blog/2013/03/04/the-battle-to-bring-back-pell-grants-for-prisoners/>.

²³ Press Release, Donna F. Edwards, Edwards Introduces Pell Grants For Prisoners Bill (May 21, 2015), http://donnaedwards.house.gov/index.php?option=com_content&view=article&id=784:edwards-introduces-pell-grants-for-prisoners-bill&catid=10:press-releases&Itemid=18.

²⁴ Press Release, Donna F. Edwards, Edwards Statement on Commerce-Justice-Science Bill (June 3, 2015), http://donnaedwards.house.gov/index.php?option=com_content&view=article&id=784:edwards-introduces-pell-grants-for-prisoners-bill&catid=10&Itemid=18.

²⁵ Paul Fein, *Obama Administration May Soon Announce Experimental Access to Pell Grants For Incarcerated Students*, INSIDE HIGHER ED (May 20, 2015), <https://www.insidehighered.com/news/2015/05/20/obama-administration-may-soon-announce-experimental-access-pell-grants-incarcerated>.

represent the first reversal of this two-decade-plus trend in order to study the effect of education on recidivism. Realistically, the plan will likely affect a very limited number of inmates and require years of tracking to gather data.

Other advocacy includes a recent Department of Education announcement that clarified the scope of Pell eligibility. In an advisory letter, the Department clarified that individuals confined in juvenile justice facilities are indeed eligible for Pell Grants.²⁶ The clarification also reiterated that individuals in local or county jails, penitentiaries, and correctional facilities are likewise eligible. This interpretive edict confirmed that individuals held in local jails and other detention facilities were indeed eligible for Pell funding. The clarification's net effect was to maximize the number of individuals that could still obtain funding while serving a prison sentence. The previous uncertainty on this issue likely deterred some prisoners from applying for Pell funding, however this illumination ensured, that for some of those behind bars, post-secondary education was attainable.

Most recently, former President Bill Clinton, who himself signed off on the 1994 legislation, called the crime bill a "mistake."²⁷ "I signed a bill that made the problem worse," he lamented at an NAACP meeting in which he admitted his role in creating what stands as the most massive crime bill in U.S. history, which helped catalyze the mass incarceration of poor ethnic minorities. Clinton's disavowal was over two decades in the making— how much longer must we wait before Congress is willing to admit the same?

IV. TOWARD A BETTER TOMORROW

"[E]ducation is our primary hope for rehabilitating prisoners. Without education, I am afraid most inmates leave prison only to return to a life of crime."²⁸ As it was when these words were uttered,

²⁶ Letter from Lynn B. Mahaffie, Federal Pell Grant Eligibility for Students Confined or Incarcerated in Locations That Are Not Federal or State Penal Institutions, U. S. Dep't of Educ. (Dec. 8, 2014), <http://www2.ed.gov/policy/gen/guid/correctional-education/pell-letter.pdf>.

²⁷ Peter Baker, *Bill Clinton Concedes His Crime Law Jailed Too Many for Too Long*, N.Y. TIMES (July 16, 2015), http://www.nytimes.com/2015/07/16/us/politics/bill-clinton-concedes-his-crime-law-jailed-too-many-for-too-long.html?_r=0.

²⁸ 140 CONG. REC. S1275-01 (Mar. 22, 1994) (statements of Sen. Pell).

Pell's vision for prisoners is needed now more than ever to assist the 700,000 individuals who exit prison each year, only the tiniest fraction of whom experience postsecondary education.²⁹ At the time of the 1994 legislation, prisoners received less than one-half of one percent of the entire Pell budget.³⁰ This sadly miniscule number is due in part to the general under-education of prisoners, who typically cannot take advantage of Pell funding in the first place.

Reinstating Pell funding for prisoners simultaneously disavows misguided political efforts that led to the ban. Paramount among these were dogmatic adherences to the "nothing works" penal philosophy,³¹ distortions regarding the cost of Pell funding, and shortsightedness about the penal tradeoffs. This false sentiment was epitomized by the 1994 amendment's sponsor, Representative Gordon, who declared: "Just because one blind hog may occasionally find an acorn does not mean many other blind hogs will. The same principle applies to giving Federal Pell Grants to prisoners. Certainly there is an occasional success story, but when virtually every prisoner in America is eligible for Pell Grants, national priorities and taxpayers lose. That is especially true since the education department has no way to track success or even know for sure if a recipient is a prisoner."³²

Such attitudes were more politically charged than pragmatic, and as scholars have documented, the claim that "nothing works" became a slogan within a pessimistic narrative of prisoner rehabilitation.³³ In fact, the study used to substantiate the slogan pointed to penal strategies that enjoyed some success. Although the study recognized potential for inmate rehabilitation, "nothing works" became a penal

²⁹ Heather C. West & William J. Sabol, *Prisoners in 2007*, BUREAU OF JUST. STAT., U.S. DEP'T OF JUST. (Feb. 12, 2009), <http://www.bjs.gov/content/pub/pdf/p07.pdf>.

³⁰ Daniel Karpowitz & Max Kenner, *Education as Crime Prevention: The Case for Reinstating Pell Grant Eligibility for the Incarcerated*, BARD PRISON INITIATIVE 1, 7 (2003), <http://www.stcloudstate.edu/continuingstudies/distance/documents/educationascrimepreventionthecaseforreinstatingthepellgrantforoffenderskarpowitzandkenner.pdf>.

³¹ CYNDI BANKS, PUNISHMENT IN AMERICA: A REFERENCE HANDBOOK 95 (2005).

³² 140 CONG. REC. H7948 (daily ed. Apr. 20, 1994) (statement of Rep. Gordon).

³³ See Charles B.A. Ubah & Robert L. Robinson Jr., *A Grounded Look at the Debate Over Prison-Based Education: Optimistic Theory Versus Pessimistic Worldview*, 83 PRISON J. 115, 120-21 (2003).

mantra that implicitly made educating inmates pointless.³⁴ Finally, after multiple attempts to push similar bills through Congress, the 1994 legislation codified the philosophy.

At that time, there was limited knowledge about the relationship between education and recidivism, but that has been changing. There is greater indication that education in prison helps prevent reincarceration. According to a 1997 study that focused on 3,200 prisoners in Maryland, Minnesota, and Ohio, simply attending school behind bars reduced the likelihood of reincarceration by twenty-nine percent.³⁵ In 2000, the Texas Department of Education conducted a longitudinal study of 883 men and women who earned college degrees while incarcerated, finding recidivism rates between 27.2 percent (completion of an AA degree) and 7.8 percent (completion of a BA degree), compared to a system-wide recidivism rate between 40 and 43 percent.³⁶ One report, sponsored by the Correctional Education Association, focused on recidivism in three states, concluding that education prevented crime.³⁷ These studies suggest that education is an antidote to recidivism and that an expanded system of higher education nationwide would have the positive impact of lowering recidivism rates.

It is important to consider selection bias when interpreting this type of evidence.³⁸ Self-selection arguments suggest that better-dispositioned prisoners are the ones who seek to take advantage of prison education in the first place. The phenomenon cautions against praising the program for reductions in recidivism when credit may be due to the individual prisoners themselves who were less likely to recidivate before participating in any educational program. Accordingly, successful reduction in recidivism may not be owed entirely to educational programs within prisons, and the character and moral compasses of those who do not possess a natural tendency to recidivate should surely be considered.

³⁴ See *id.* at 121.

³⁵ Stephen J. Steurer et al., *Education Reduces Crime: Three-State Recidivism Study*, CORR. EDUC. ASSOC. 12 (2001).

³⁶ See CRIMINAL JUSTICE SECTION, REPORT TO THE HOUSE OF DELEGATES 108B 1, *supra* note 22.

³⁷ See Steurer, *supra* note 35.

³⁸ See e.g., Alexander Volokh, *Do Faith-based Prisons Work?*, 63 ALA. L. REV. 43 (2011) (describing the self-selection problem in faith based prisons).

Yet, even if it is conceded that better-dispositioned prisoners self-select into college programs, the point is academic since even these prisoners need help surviving beyond the bars. In other words, if the outcomes are also about “prisoners” and not just “programs,” it is still hard to find fault with programming that helps this very class of inmate improve his or her chances of making it on the outside. The vast majority of ex-prisoners struggle in this task, and it has less to do with their disposition than it does with the way they are viewed by society upon reintegration. If self-selection leads to prisoners obtaining degrees and certificates that can make them marketable, then the program is a practical benefit regardless of what reasons guided the prisoner to the classroom.

The self-selection argument might also be conceded to a degree by default. Because taking advantage of the Pell Grant requires one to have earned a high school diploma or a GED, there is already a certain self-selecting that must occur for any individual seeking college or vocational education in prison. Such individuals have already achieved a certain level of intellectual accomplishment that renders them eligible. Charging the phenomenon as a form of self-selection is ingenious considering that the Pell Grant is designed for those prisoners eligible for post-high school education—a specific slice of the prison population. Instead, self-selection arguments seemingly point to the idea that there are more “good” prisoners locked up than can be handled. Despite the rather small selection of prisoners would qualify for Pell funding, this number far exceeds the available resources. Hence, the self-selection problem hardly looms as large as the lack of selection itself.

Pell funding reverses these trends and assists in what is arguably a challenge for any prisoner—finding gainful employment. Legitimate employment is the basis for other requirements on the outside, including the ability to pay for housing and food. Testifying to education’s positive impacts, one recent study found that individuals who participated in vocational training programs while incarcerated had a twenty-eight percent better chance of obtaining post-release employment than individuals who did not participate.³⁹ The virtues of education were propounded well before the 1994 legislation, and includes research presented by Professor James Gilligan in his 1991 Erickson Lectures at Harvard University, where he concluded that “of

³⁹ Rand, *supra* note 21, at xvii.

all the programs available to prisoners in Massachusetts, the one that was most effective in preventing violence (i.e. recidivism, or (re)offending after they had left prison) was the obtaining of a college degree.”⁴⁰

This was the position of the U.S. Department of Education, which denounced the 1994 legislation after its passage. Claiming that reduction of postsecondary education opportunities would be detrimental to efforts to prevent reincarceration, the Department issued a publication that advocated for Pell funding as a means of helping prisoners “obtain the skills and education needed to acquire and keep a job following their eventual release.”⁴¹

Like misguided political slogans that must be repudiated, false financial claims about Pell funding must also be repudiated. For instance, during the hearings on the bill, one senator claimed that giving Pell funding to prisoners shortchanged 100,000 students with no criminal record who were denied because of lack of funds.⁴² Contradicting this claim, the General Accounting Office found Pell Grants awarded to prisoners did not affect availability of Grants to non-incarcerated students: “If incarcerated students received no Pell Grants, no student currently denied a Pell award would have received one and no award amount would have been increased.”⁴³ Thus, everyone with qualifying need received some grant amount, which made the senator’s claim absolutely false. Still, this same Senator would also claim that prisoners received \$200 million in Pell Grant funding, a figure that too was debunked.⁴⁴

Whether the 1994 legislation can claim to produce fiscal savings is uncertain when factoring in tradeoff costs of forsaken college and

⁴⁰ James Gilligan, *Violence in California Prisons: A Proposal for Research into Patterns and Cures*, CAL. S. PUBL’N (2000), <http://www.ebookdb.org/reading/3FG3G44B705C332138G71269/Violence-In-California-Prisons-A-Proposal-For-Research-Into-Patterns-And-Cures>.

⁴¹ Karpowitz & Kenner, *supra* note 30, at 6–7.

⁴² Ian Buruma, *Uncaptive Minds*, N.Y. TIMES (Feb. 20, 2005), http://www.nytimes.com/2005/02/20/magazine/20PRISON.html?_r=0.

⁴³ Letter from Linda G. Morra, Director of Education and Employment Issues, General Accounting Office, to The Honorable Harris Wofford, United States Senate (Aug. 5, 1994), <http://archive.gao.gov/t2pbat2/152342.pdf>.

⁴⁴ See J.M. Taylor, *Pell Grants for Prisoners Part Deux; It’s Déjà Vu All Over Again*, 8 J. PRISONERS ON PRISONS 1 (1997), <http://www.jpp.org/documents/forms/JPP8/Taylor.pdf>.

vocational training. In this regard, research indicates that Pell funding results in a net savings of taxpayer funds and that education may be a better deal than previously imagined, particularly in an environment where basic literacy is a challenge.⁴⁵ One government study claimed that every dollar spent on education returned more than two dollars to the citizens in reduced prison costs;⁴⁶ another study concluded that for every dollar spent on prisoner education, five dollars are saved on reincarceration costs.⁴⁷

Likewise, eligibility arguments that seek to disqualify prisoners because of their incarcerated status must be repudiated. Disdain at the thought that criminals are getting a college education is often juxtaposed by the complaint that “My child can’t even get a Pell Grant.” These attitudes, however, reveal a fundamental misunderstanding of the Pell’s purpose. As described, the Grant was designed to expand educational opportunities to the economic underclass. Being incarcerated only increases indigence and seemingly situates prisoners squarely within the Grant’s intent. The argument also misses the point because the criteria for Pell eligibility is need-based, which means that only individuals who have the greatest financial need qualify. Complainants of this sort would do well to recognize that they are at liberty to continue pursuing Pell funding. Should they not qualify, perhaps they should count their blessings.

Notwithstanding the aforementioned arguments, Pell funding fills a great void of education in prison in general. Already noted are the low levels of education among prisoners, but there are other causes of reductions in the allocation of educational resources. According to one influential study comparing the number of correctional and educational staff in American prisons from 1979 to 1995, the prison population tripled while the numbers of educational staff remained the same, resulting in a sixty percent cut in educational staff per inmate.⁴⁸

⁴⁵ Karpowitz & Kenner, *supra* note 30, at 8 (advocating for reinstating Pell funding for prisoners and reporting “overwhelming consensus among public officials that postsecondary education is the most successful and cost-effective method of preventing crime”).

⁴⁶ Ubah & Robinson, *supra* note 33.

⁴⁷ Rand, *supra* note 20, at xviii; *see also* Rand, *supra* note 20, at 1 (author of study claiming “with a \$1 investment in prison education reducing incarceration costs by \$4 to \$5 during the first three years post-release.”).

⁴⁸ Bruce Western, *Punishment and Inequality in America* 175 (2006).

Pell funding assuages the situation by providing more individuals the chance to acquire much needed social, critical, and vocational skills. Educational opportunity also helps mold individuals into confident citizens who are willing and able to participate in communities. Whether administered within a prison or on a traditional college campus, higher education involves self-discovery, the development of critical thinking skills, and the acquisition of the social and intellectual competencies necessary to navigate the world beyond the campus or prison. Furthermore, religious study may be a strong impetus to character change as it involves issues of morality, discipline, and theological reflection of one's own incarceration.⁴⁹

Although it might go without saying, restoring prisoner eligibility also advances racial justice. As African Americans and Latinos are disproportionately represented in prison, the elimination of Pell funding has equated to greater loss for these specific groups.⁵⁰ The effect is magnified when viewed in the greater context of these groups already lagging in educational achievement.⁵¹ The point was not lost on the NAACP when it urged Congress in 2007, through a formal resolution, to restore prisoner Pell Grant eligibility.⁵²

Finally, restoring Pell eligibility will restore the vision of Senator Pell himself, who championed the cause of educational opportunity for all—not just those who can pay for it. Pell's daughter, Dallas Pell, has also urged Congress to honor her father's legacy by restoring Pell funding to prisoners, which, she writes, “strengthens underserved communities as formerly incarcerated people are most often released into communities that lack the capacity to provide them with employment or reentry assistance.”⁵³

⁴⁹ SpearIt, *supra* note 16, at 31-33.

⁵⁰ See Robert Bruce Slater, *Locket in but Locked Out: Death Sentence for the Higher Education of Black Prison Inmates?*, 6 THE J. OF BLACKS IN HIGHER EDUC. 102 (1994-95) (Citing ten states in which Blacks make up two-thirds or more of all inmates and stated that cuts in Education grants “will have a hugely disproportionate impact on Blacks”).

⁵¹ Michael Muskal, *Blacks, Latinos lag behind whites; 'leaving so many behind,' report says*, L.A. TIMES (March 19, 2015), <http://www.latimes.com/nation/la-na-urban-league-report-20150319-story.html>.

⁵² NAACP, 2007 Resolutions, 13 (2007), http://naacp.3cdn.net/e1d563e1232bbe4a0_hbm6id5u7.pdf.

⁵³ Dallas Pell, *To Restore Pell Grants in Prisons is to Restore My Father's Vision of Education Opportunities for All*, THE PELL INST., Reflections on Pell 86, 87

Like these voices, this essay urges Congress to reinstate Pell funding to all prisoners who qualify under existing need-based criteria. The stigma of being a criminal alone is enough to thwart success on the outside, regardless of one's intellectual skills or abilities. Education, at the very least, gives one a fighting chance to take the straight and narrow. By taking action, Congress can work to rehabilitate its own mistakes and publicly exorcise a skeleton that has hung around the congressional closet far too long. The time is now to honor the Grant's namesake and embrace educational opportunity as convergent with both penal and public interests.