SOCIAL INNOVATIONS Journal

Volume 7: 29 June, 2021

https://socialinnovationsjournal.com/index.php/sij/issue/view/79

Pardons as Neighborhood Economic Investment: It is Time to Focus On Financial Stability, Not Moral Redemption

By Hon. Karen Yvette Simmons and Carl Oxholm III

Abstract

In February 2021, Philadelphia Lawyers for Social Equity received the Greater Philadelphia 2021 Innovation Award in the category—not of law or criminal justice—but economic development and social services. This article explains why.

The United States is the most heavily incarcerated country in the world. Black Pennsylvanians are 8.9 times more likely, and Latinx Pennsylvanians 3.3 times more likely, to be incarcerated than white Pennsylvanians. In 2016, 1 of every 35 Philadelphians was on probation or parole, and there were more people under supervision in Pennsylvania than there were residents of Pittsburgh. Long after they have fully served their sentences and "repaid their debts to society," those with criminal records suffer a long list of "post-punishment punishments" that keep them, their families, and whole neighborhoods in poverty for generations. The only way to erase that record is through a pardon from the Governor—and Governor Wolf has signed 1,559 pardons, more than any other governor in history. In less than a decade, pardons brought $16.7 million into local economies across the state, and they cost (and risk) next to nothing. Society stands to enjoy massive benefits from issuing more pardons as a community development strategy, and historically under-resourced, over-policed communities can achieve a social justice outcome by utilizing a powerful administrative mechanism that is already in place.

Introduction: The Promise

I dreamed of making a positive impact on the world for as long as I can remember. I never imagined that impact would come in the form of becoming a judge until I walked into a courtroom for the first time in 1990 and realized our criminal justice system was not the just and fair system I had thought. This started my passionate sixteen-year journey to the bench. I have now been a judge for just as long. I have presided over thousands of cases and interacted with tens of thousands of individuals in the process. What I have come to know, for certain, is this: true justice means that once an individual has fully served their sentence, we must not allow the stigma and circumstances of their past to follow and haunt them for the rest of their lives. As a judge, I am proud to bear the reputation of being "tough, but fair." When I impose a sentence, it is meant to be the full punishment for their crime; and once the defendant serves the time and pays the fine, they are free to start over, on a new path to a new future. That has always been my intent—but that is not the justice system I have come to know.

The Problem

It is a core tenet of the United States' social compact that those who commit crimes must be punished and that judges decide what punishment fits the crime. Once the sentence has been served, the offender is commonly understood to have "repaid his debt to society."[1]

Nothing could be further from the truth. Thanks to technology and the laudable goal of transparency, a person's criminal record is available 24/7/365 in just three clicks.[2] This makes it simple (even if illegal[3]) to disqualify applicants for a wide range of opportunities. Indeed, after undertaking a national study, the national professional association of lawyers, the American Bar Association (ABA), confirmed that "nationwide, a past conviction history raises well over 40,000 barriers to employment, education, housing, loan borrowing, professional licensing, and voting, among numerous other post-punishment punishments."[4] Three years later, the ABA adopted a resolution calling on the federal government to greatly expand record-clearing opportunities:

> More permissive expungement laws allow people to obtain jobs and housing that can lift them out of poverty. Securing meaningful employment has been shown to be one of the most predictive factors of criminal recidivism. For individuals with criminal convictions who have previously served time in prison, the employment prospects are grim. Studies conducted on the topic of record clearing suggest that record clearing increases both employment rates and earnings [...] Expungement of criminal records can lead to better housing outcomes, and thus, more stability and likelihood for economic success.[5]

The adverse consequences of criminal records on the lives of people and their families are so pervasive and severe that they are now recognized as a determinant of public health.[6] And in some of Philadelphia's low-income, high-arrest, and typically heavily minority neighborhoods, the percentage of people with criminal records rises close to 60%."[7]

The Solution

Clearing criminal records does not require challenging or revisiting laws that were passed, policing strategies, or decisions that prosecutors or judges have made. It does not require determining whether sentences were fair, either to individuals or to segments of our society. It does not require political analysis or consensus. It is a power that already exists, requires that only four of six people agree, and can serve as a unifying and powerful mechanism of racial, social, and restorative justice.

Since the earliest days of our country, society's chief executive officer has had the ability to forgive someone for having committed a crime. The pardon power arrived in Pennsylvania with William Penn, whose charter from King Charles II on March 4th, 1681, gave him the authority to "remit, release, pardon and abolish, whether before Judgement or after, all crimes and offenses, whatsoever committed within the said Country, against the said Laws, treason and willful and malicious murder only excepted…."[8]

The pardon power has been passed down through the ages to the present day in the various iterations of government structure. The effect of a pardon varies a bit from state to state, but in Pennsylvania, the result is clear:

> It [a pardon] completely frees the offender from the control of the state. It not only exempts him from further punishment but relieves him from all the legal disabilities resulting from his conviction. It blots out the very existence of his guilt, so that, in the eye of the law, he is thereafter as innocent as if he had never committed the offense.[9]

In other words, once a governor issues a pardon, the conviction must be expunged (erased) from all official records, and the individual can forever thereafter answer "no" to the question "Have you ever been convicted?"

And to get to the Governor of Pennsylvania, all an applicant has to do is receive the support of three of the five members of the Pennsylvania Board of Pardons.

The Criteria

In most states (as in the federal system), there is no test for who should receive a pardon. That is because pardons derive from religious traditions where the individual must be penitent, demonstrating both remorse and reform, before being forgiven. This has always required a case-by-case assessment. "A pardon is the exercise of the sovereign's prerogative of mercy," says Pennsylvania's Supreme Court,[10] and an "act of grace." It cannot be reviewed, reversed, regulated, directed, or even limited by the legislature or the courts. Historically, pardons have been viewed as an "extraordinary remedy" to be used only when it is clear that the individual has demonstrated "successful rehabilitation."[11] Governors around the country continue to reject applicants whom they believe have not been "redeemed enough."[12]

This test may have made sense when religious leaders or tenets regulated civic society, when violating the law was also a sin, and when society (or at least white people) fully trusted the police, prosecutors, and judges to exercise their discretion fairly. But that era is gone.

Today, we are living the legacy of the War on Crime, the War on Drugs, and the resulting mass incarceration, where 1 in 3 Pennsylvanians has a criminal record; where a Black Pennsylvanian is 8.9 times more likely, and a Latinx Pennsylvanian 3.3 times more likely, to be imprisoned than a white Pennsylvanian;[13] when roughly 1 out of every 35 people in Philadelphia is under state supervision of some kind;[14] and when reasonable doubts about objective fairness in the criminal justice system are being raised by a seemingly endless floodtide of cell phone videos and press stories.

Assume for the moment that, among the hundreds of thousands of Pennsylvanians who have been convicted of a crime, there are tens of thousands who have turned their lives around since their involvement in the criminal justice system. Would it not make sense to allow them to try to reach their potentials? Put another way, after they have "paid their debt to society," why not allow them to get back in the game and compete on a level playing field? Why is it worth anyone's time (or taxpayers' money) to investigate pardon applicants with the depth and breadth necessary to determine whether they are "redeemed enough"? Why is it not enough simply to look at what they have done after they completed their sentence?

Offering hope of a second chance will inspire good conduct; and there is no real risk to public safety. A 2020 study of the 1,461 Pennsylvanians who did not receive a hearing on their pardon applications over a ten-year period found that 96.9% of them (1,415) did not thereafter commit a crime that resulted in incarceration, and only one person (0.051%) committed a crime of violence.[15]

To the extent that the Pennsylvania Board of Pardons is trying to predict who poses a risk to public safety when making its decisions, it is doing a terrible job, and is keeping an enormously high number of people (and their families) chained to their pasts, unable to reach their potentials.

And that hurts us all.

Economic Development, Not Moral Failing

In April 2020, The Economy League issued a path-breaking report on the impact that pardons have on the economies of neighborhoods.[16] Examining those who applied for a pardon in Pennsylvania between 2008-2018, the League found that just signing the pardon for 1,082 people resulted in $16.8 million in additional revenues flowing into the communities across the state where they lived and worked. Here are four other key findings:

- While the average annual impact of receiving a pardon by an individual in high-income communities is far higher than that of the low-income community resident ($8,494 vs. $2,557), the aggregate impact of all pardon recipients is higher—by 50%—in low-income communities than high-income communities ($1,253,956 vs. $823,918). "This demonstrates that pardons can be a powerful economic tool in the areas of the state most in need of growth."
- If residents of low-income, high-arrest communities had received pardons at the state-wide rate, those communities would have received additional revenues of $440,433.57.
- "Especially in the case of low-income communities, a focus on increasing the rate at which pardons are granted to be equal with or exceed the state average has the potential to generate economic stability in communities that need it the most."
- On average, the length of time between application filed and application granted was 3.68 years. If the pardon processing time was reduced by 25%, those receiving over the past 10 years could have generated $6.9 million in additional income for themselves, their families, and their communities, bringing the total return to almost $24 million.
- It's no wonder that the Economy League concluded that pardons should be understood as "no-cost workforce development and neighborhood investment tools." Its call to make more pardons available to more people more quickly was quickly endorsed by Pennsylvania's Lt. Governor, Attorney General, Auditor General, Secretary of Labor and Industry, and Workforce Development Board, among others.

The mechanism is there. It just needs to be appreciated for its power and used to its potential.

Conclusion

What would happen if a pardon was not thought of in moral terms but economic? Not as an extraordinary remedy, but as the presumed last step in the criminal justice system, denied only to those who had proven they could not function in society? What would happen if communities came together to "own" the problem of criminal records and started helping their neighbors apply for pardons? This is the cultural revolution our Pardon Project is trying to foment in Philadelphia and across the state.

Increased wages and benefits aside, it is easy to imagine the effect that a realistic hope for a better life would have—how that hope would keep people from falling back into bad ways, help grow social capital, and bring new talents and diversity into a needy workforce. The cost? A few more staff to process the thousands of applications. The benefit? A criminal justice system that offers a real pathway to restoring full citizenship and social justice.

After all, we all are—and need to be—more than the worst thing we have ever done.

End Notes

[1] Meriam-Webster defines the idiom "pay your debt to society" to refer to being punished for committing a crime" and gives as an example: "After 10 years in prison, he has *paid his debt to society* and is a free man." Rarely has the dictionary been so wrong.; Merriam-Webster.com Dictionary, s.v. "debt to society," accessed June 17, 2021, www.merriam-webster.com/dictionary/debt%20to%20society.

[2] The Unified Judicial System of Pennsylvania Web Portal, 2021, https://ujsportal.pacourts.us/CaseSearch.

[3] Philadelphia's "Ban the Box" ordinance makes it illegal for an employer to check an applicant's criminal record before the person is offered a job; and the record can only be used against the applicant if the conviction is less than seven years old and relates to an essential duty of the position being filled. Of course, if someone does check the online database, who is going to know?; City of Philadelphia, "Ban The Box," accessed June 18, 2021, www.phila.gov/HumanRelations/DiscriminationAndEnforcement/Pages/BanTheBox.aspx.

[4] American Bar Association, "National Inventory of Collateral Consequences of Conviction," 2016, https://nij.ojp.gov/topics/articles/national-inventory-collateral-consequences-conviction.

[5] The report continues: "In addition to poor employment prospects, individuals with a criminal record experience discrimination in housing. This type of discrimination is not limited to simply denying individuals housing who have a criminal record. Poor credit histories and a lack of rental history also contribute negatively to housing prospects. .... Family unification is also a major concern. In many cases, public housing regulations prohibit those with criminal records to live in public housing. This causes the breakup of family units, and unfairly penalizes primary caregivers by removing their partners from the household and prevents them from meaningfully sharing household responsibilities. The societal and economic benefits of a federal expungement or sealing law are numerous, and on a human level, securing meaningful employment leads to lower incidences of drug and alcohol abuse, lower levels of depression, and more healthy family relationships."; American Bar Association, "Report in Support of ABA Resolution 109B," Adopted by the ABA House of Delegates January 28, 2019.

[6] "Today in America, criminal records exclude millions of people from engaging fully in community and social life. They keep financial stability out of the reach of individuals and their families, for generations. That's why I believe criminal records are a key determinant of public health, and one that the health profession can and must help address."; Philadelphia Lawyers For Social Equity. "Two Health Care Experts Join PLSE Board, Emphasizing Criminal Records as a Public Health Crisis." Ana Pujols McKee. August 7, 2020. https://www.plsephilly.org/wp-content/uploads/2020/08/Press-Release-PLSE-Adds-Health-Care-Experts-to-Board-of-DirectorsvF.pdf.

[7] Marcel Pratt, "Remarks of the Hon. Marcel Pratt in Support of the Philadelphia Bar Association Resolution Calling on the Pennsylvania Board of Pardons to Refrain from Requesting, Investigating or Considering Expunged, ARD and Juvenile Court Records in Pardon Proceedings Involving Non-Incarcerated Applicants," 2019, https://www.plsephilly.org/wp-content/uploads/2020/08/Marcel-Pratt-remarks-re-pardon-reform-Jan-2019.pdf.

[8] "Pennsylvania Charter," March 4, 1681, http://www.phmc.state.pa.us/portal/communities/documents/1681-1776/pennsylvania-charter.html.

[9] *Commonwealth ex rel. Banks v. Cain*, 28 A.2d 897, 899 (Pa. 1942)

[10] *Commonwealth v. Sutley,* 378 A.2d 780, 789 (Pa. 1977).

[11] Board of Pardons, "Factors Considered [by the Pennsylvania Board of Pardons]: Factor #3," 2021, https://www.bop.pa.gov/application-process/Pages/Factors-Considered.aspx#2.

[12] Dara Kam, "Pardon Request Rejected for Voting-Rights Leader," *News Service of Florida*, March 10, 2021, https://cbs12.com/news/local/pardon-request-rejected-for-voting-rights-leader.

[13] Smart Justice PA, "Winning Smart Justice in Pennsylvania," *ACLU,* 2021, https://www.aclupa.org/en/campaigns/smart-justice-pa.

[14] Eugene A. DePasquale, "Criminal Justice: Reforms to Improve Lives and Save Money," 20-21, June 9, 2020, https://www.paauditor.gov/Media/Default/Reports/RPT_CJR_060920_FINAL.pdf

[15] Philadelphia Lawyers for Social Equity, "Pardons and Public Safety: Examining A Decade of Recidivism Data in Pennsylvania," August 2020, https://www.plsephilly.org/pardon-recidivism-study.

[16] The Economy League, "Pardons as an Economic Investment Strategy: Evaluating a Decade of Data in Pennsylvania," April 2020, http://economyleague.org/pardonimpact.

Bibliography

American Bar Association. "National Inventory of Collateral Consequences of Conviction." 2016. https://nij.ojp.gov/topics/articles/national-inventory-collateral-consequences-conviction.

American Bar Association. "Report in Support of ABA Resolution 109B." Adopted by the ABA House of Delegates on January 28, 2019.

Board of Pardons. "Factors Considered [by the Pennsylvania Board of Pardons]: Factor #3." Accessed June 18, 2021. https://www.bop.pa.gov/application-process/Pages/Factors-Considered.aspx#2.

City of Philadelphia. "Ban The Box." 2021. www.phila.gov/HumanRelations/DiscriminationAndEnforcement/Pages/BanTheBox.aspx.

DePasquale, Eugene A. "Criminal Justice: Reforms to Improve Lives and Save Money." 20-21. June 9, 2020. https://www.paauditor.gov/Media/Default/Reports/RPT_CJR_060920_FINAL.pdf

Kam, Dara. "Pardon Request Rejected for Voting-Rights Leader." *News Service of Florida*. March 10, 2021. https://cbs12.com/news/local/pardon-request-rejected-for-voting-rights-leader.

Merriam-Webster.com Dictionary. s.v. "debt to society." 2021. https://www.merriam-webster.com/dictionary/debt%20to%20society.

"Pennsylvania Charter." March 4, 1681. http://www.phmc.state.pa.us/portal/communities/documents/1681-1776/pennsylvania-charter.html.

Philadelphia Lawyers for Social Equity. "Pardons and Public Safety: Examining A Decade of Recidivism Data in Pennsylvania." August 2020. https://www.plsephilly.org/pardon-recidivism-study.

Philadelphia Lawyers For Social Equity. "Two Health Care Experts Join PLSE Board, Emphasizing Criminal Records as a Public Health Crisis." Ana Pujols McKee. August 7, 2020. https://www.plsephilly.org/wp-content/uploads/2020/08/Press-Release-PLSE-Adds-Health-Care-Experts-to-Board-of-DirectorsvF.pdf.

Pratt, Marcel. "Remarks of the Hon. Marcel Pratt in Support of the Philadelphia Bar Association Resolution Calling on the Pennsylvania Board of Pardons to Refrain from Requesting, Investigating or Considering Expunged, ARD and Juvenile Court Records in Pardon

Proceedings Involving Non-Incarcerated Applicants." 2019. https://www.plsephilly.org/wp-content/uploads/2020/08/Marcel-Pratt-remarks-re-pardon-reform-Jan-2019.pdf.

Smart Justice PA. "Winning Smart Justice in Pennsylvania." *ACLU*. 2021. https://www.aclupa.org/en/campaigns/smart-justice-pa.

The Economy League. "Pardons as an Economic Investment Strategy: Evaluating a Decade of Data in Pennsylvania." April 2020. http://economyleague.org/pardonimpact.

The Unified Judicial System of Pennsylvania Web Portal. 2021. https://ujsportal.pacourts.us/CaseSearch.

***

About the Authors

The Honorable Karen Yvette Simmons, Vice Chair of the Board of Directors of Philadelphia Lawyers for Social Equity, has been a Judge of the Philadelphia Municipal Court since January 2006, and is currently serving her third term. She began her legal career in the office of the Defenders' Association of Philadelphia; served as an Assistant City Solicitor for the City of Philadelphia in the areas of labor and employment law; and was Chief Legal Counsel to the Philadelphia Police Department and Police Commissioners before being elected to the bench.

Carl (Tobey) Oxholm III is PLSE's Executive Director and the founder of the Pardon Project. Among other recognitions, he was named "Most Innovative General Counsel" by Corporate Counsel Magazine in 2006 when he was General Counsel of Drexel University for having created its law school, and was one of just five attorneys in the country to receive the American Bar Association's Pro Bono Publico Award for exemplary public service in 1989.