Political winds continue to shift in criminal justice policy. For the last few decades, law and policy have been guided by “tough on crime” and “zero tolerance” principles. These attitudes, however, are giving way to “smart on crime” policies grounded in “evidence-based” practices, all of which indicates a reorientation in thinking. In the correctional context, there is growing support for better reentry strategies and other means of lowering recidivism rates, including by bringing higher education back to prisons.

Among these efforts is growing advocacy to reinstate prisoner eligibility for the Pell Grant. Pell Grants are for undergraduate and vocational study; they are not loans and do not have to be repaid. Eligibility for the grant is need-based according to an individual’s financial qualifications. Previously, prisoners were eligible to receive Pell funding, but this experiment was short-lived. Two decades later, Congress reversed course and barred nearly all prisoners from eligibility.

Although the policy was rejected as costly and coddling, the decades that followed offered little indication that the ban made improvements. In terms of reducing recidivism rates, increasing public safety, or achieving fiscal savings, there has been a lackluster showing. The dismal results have reignited interest in the benefits of education in prison, and advocates are pushing for a comeback.

What follows tracks the motivating forces behind this movement and its arrival on the national stage. Advocates of restoring Pell funding to prisoners point to growing research that correlates education with reduced recidivism and reduced public spending. Their call grows louder by day, and by now has now caught the attention of federal lawmakers. If momentum continues, the Pell Grant may very well become a reality for a new generation of indigents.
behind bars. A successful comeback would represent a step in the right direction and for many an education that helps pave the way to a crime-free lifestyle.

LEGAL HISTORY OF THE PELL GRANT
In 1994, Congress passed the Violent Crime Control and Law Enforcement Act, a provision of which made prisoners ineligible for Pell Grant funding. (Pub. L. No. 103-322 (1994).) The ban was part of an omnibus crime bill that created new crimes, stiffened penalties, and funded greater law enforcement efforts. Among the massive bill’s provisions was an amendment to the Higher Education Act of 1965, which read: “No basic grant shall be awarded . . . to any individual who is incarcerated in any Federal or State Penal institution.” (Id. § 20411.)

Prisoners first became eligible for the grant in 1972. (Pub. L. No. 92-318 (1972).) At that time, higher education was believed to improve inmates, reduce recidivism, and contribute to a more orderly institution. Over the next 20 years, Pell funding would create a system of college and vocational training in prison that assisted the institution with additional programming and assisted prisoners with the opportunity for higher education.

It would not take long before criticism targeted the idea of prisoner programing with a more pessimistic view of rehabilitation. By the 1990s, the phrase “nothing works” was a centerpiece of the penal landscape, despite growing evidence that some programs indeed helped to support rehabilitation efforts. This slogan was eventually realized in law when Pell Grant funding was legally revoked. The move was inevitable under the uncanny logic that because prisoners were supported with funding that supported prisoners was but a crumb of the entire federal Pell budget. Prisoners were supported with a tiny fraction of the Pell funding budget serviced prisoners, hundred programs to about a dozen. Despite that only a slight amount, however, supported an infrastructure of prisoner programing with a more pessimistic view of vocational training in prison that assisted the institution with additional programing and assisted prisoners with the opportunity for higher education.

When the ban was enacted in 1994, the amount of federal funding that supported prisoners was but a crumb of the entire federal Pell budget. Prisoners were supported with less than 0.001 percent of the budget. (Daniel Karpowitz & Max Kenner, Education as Crime Prevention: The Case for Reinstating Pell Grant Eligibility for the Incarcerated 7 (2003), http://tinyurl.com/grrpl7z.) This slight amount, however, supported an infrastructure of postsecondary education in prison, which vanished in flash. The ban effectively dried up funding overnight and forced college programs to close their doors, reducing several hundred programs to about a dozen. Despite that only a tiny fraction of the Pell budget funded prisoners, opponents influenced congressional debates with factual inaccuracies about the costs. One senator even claimed that Pell Grants for prisoners shortchanged 100,000 students with no criminal record who were denied because of lack of funds. (Ian Buruma, Uncaptive Minds, N.Y. TIMES, Feb. 20, 2005, http://tinyurl.com/jzI6o3e.) The claim, however, was debunked by the General Accounting Office, which stated in a report, “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.” (Letter from Linda G. Morra, Dir. of Educ. & Emp’t Issues, Gen. Accounting Office, to Harris Wofford, U.S. Senate (Aug. 5, 1994), http://tinyurl.com/hlnhty8w.)

The ban was challenged in court almost immediately after its enactment. In 1995, in Nicholas v. Riley, the U.S. District Court for the District of Columbia held that denying Pell funding to state and federal prisoners did not violate equal protection, due process, or the Administrative Procedures Act. (874 F. Supp. 10 (D.D.C. 1995).) The very next year in Tremblay v. Riley, a federal district court rejected claims that the ban violated the ex post facto clause and the Eighth Amendment’s prohibition on cruel and unusual punishment. (917 F. Supp. 195 (1996).) Together, the cases signaled early on that litigation was a foreclosed avenue for challenging the ban.

TWO DECADES AND LITTLE TO SHOW
Determining what benefits derive from disqualifying prisoners is no easy task, but the available metrics indicate that they may be few. For example, one study found that from 1994 to 2007, recidivism rates among states stayed stagnant. (See generally Pew CTR. on the States, State of Recidivism: The Revolving Door of America’s Prisons (2011), http://tinyurl.com/zfqq5lk.) According to another study that focused on 30 states, 75 percent of released prisoners were rearrested within five years of their release. (Matthew R. Durose, Alexia D. Cooper & Howard N. Snyder, BUREAU of JUSTICE STATISTICS, U.S. DEP’T of JUSTICE, PUB. NO. NCJ 244205, Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010 (2014), http://tinyurl.com/nwthhj5.) A sober read of these figures suggests that society continues to bear the burden of high rates of new offenses and social harms, and that disqualifying prisoners may have little to no impact on helping inmates keep out of prison.

It is equally difficult to determine whether the ban makes fiscal sense. Weighing the savings that result from banning prisoners against the costs of forsaken college and vocational training is a herculean task. Advocates of Pell reform hold that education results in a net savings for taxpayers and cite broad consensus among public officials that postsecondary education is a successful and cost-effective method of preventing crime. (Karpowitz & Kenner, supra, at 8.) Accordingly, one government study found that every dollar spent on education returned more than two dollars to the citizens in reduced prison costs. (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).) Another concluded that for every dollar spent on prisoner education, five dollars are saved on reincarceration costs. (Press Release, RAND Corp.,
Education and Vocational Training in Prisons Reduces Recidivism, Improves Job Outlook (Aug. 22, 2013), http://tinyurl.com/mgp8egn.) The figures indicate that education may be a better fiscal benefit.

REVISITING HIGHER EDUCATION IN PRISON
Acquiring an education in prison correlates with a number of positive outcomes for prisoners, the institution, and society. Although at the time of the ban’s enactment there was limited knowledge about the relationship between education and recidivism, there is growing focus on education as a preventative to reincarceration.

An increasing number of studies underscore education as a critical factor. In 1997, one study on 3,200 prisoners in three states showed that simply attending school behind bars reduced the likelihood of reincarceration by 29 percent. (Stephen J. Steurer & Linda G. Smith, Education Reduces Crime: Three-State Recidivism Study 49 (2001), http://tinyurl.com/4ww38m7.) The Texas Department of Education conducted a longitudinal study in 2001 consisting of 883 men and women who earned college degrees while incarcerated, and found that recidivism rates were between 27.2 percent for associate’s degree holders and 7.8 percent for those possessing a bachelor’s, while 43 percent of the general population recidivated. (Tex. Legislative Budget Bd., Statewide Criminal Justice Recidivism and Revocation Rates 15 fig. 3 (2001).) In 2013, a Department of Justice–funded study from the RAND Corporation found that incarcerated individuals who participated in correctional education were 43 percent less likely to return to prison than prisoners who did not participate in such programs. (Press Release, RAND Corp., supra.) The research suggests that education has the potential to impact recidivism rates positively by lowering them. In this respect, perhaps the most valuable aspect of education is that it helps ex-prisoners find gainful employment after prison. As a job is the practical basis for all other requirements on the outside, including food and housing, holding a degree or certificate can be a great asset in the task of finding one. This view is supported by the above RAND study, which found that individuals who participated in vocational training programs had a 28 percent better chance of obtaining postrelease employment than individuals who did not. (Id.)

Pell funding also holds the added value of increasing opportunities for religious programing, study, and training. For inmates, the point is paramount because study and practice of religion is associated with lower recidivism rates, improved self-esteem, and movement away from gang subcultures. (See SpearIt, Religion as Rehabilitation? Reflections on Islam in the Correctional Setting, 34 Whittier L. Rev. 763, 769 (2012).) Increased opportunity for religious study is a unique aspect of education that can help transform the life of an inmate and the institution. As religion deals with ultimate issues, including existence, death, and one’s moral authority, religious education has great potential to converge with the institution’s interests in rehabilitation and maintaining a secure, orderly environment.

Of course, one of the critical challenges for assessing higher education in prison is the question of inmate self-selection. Self-selection occurs when better-dispositioned prisoners are the ones who seek prison education in the first place. As such, the phenomenon calls for methodological caution when interpreting data that tries to measure the success of prisoner programing. (See, e.g., Alexander Volokh, Do Faith-Based Prisons Work?, 63 Ala. L. Rev. 43 (2011).) Specifically, it cautions against crediting a program for reductions in recidivism rates because the credit may in fact be due the prisoner himself or herself, who was less likely to recidivate even before participating in a program. The critique posits that success in reducing recidivism may not reflect the program’s values as much as the prisoner’s.

For advocates of Pell funding, however, the problem may be of second order. This is so because whether the student was a do-gooder in the first place or was actually benefited by the program, in the end, both need help to survive outside—and education helps both. Thus, even if positive outcomes are also about prisoners and not simply programing, holding skills, a degree, or a certificate helps improve chances for survival, regardless of what led a prisoner to the classroom. Even the most angelic of ex-prisoners are forced to disclose their previous crimes to potential employers, which makes finding a job difficult, even for those who self-select into educational programs.

THE PUSH FOR PELL REFORM
It is no understatement to say that support for restoring Pell funding is at an all-time high. Criticism of the ban stretches all the way back to its origins, which included then attorney general Janet Reno, the North American Association of Wardens and Superintendents, the American Correctional Association, the Association of State Correctional Administrators, and the Federal Bureau of Prisons. One of the earliest critiques came from the U.S. Department of Education in a publication entitled “Pell Grants for Prisoners in 1995,” which lamented Congress’s decision to bar prisoners and propounded higher education’s benefits for prisons and society.

Support for reform comes from diverse quarters. Organizations like the NAACP, American Federation of Teachers, and Students for Sensible Drug Policy have adopted formal resolutions calling for the comeback of Pell funding for prisoners. Individuals like Senator Pell’s daughter have 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.” (Dallas Pell, To Restore Pell Grants in Prisons Is to Restore My Father’s Vision of Education Opportunities for All, in PELL INST., REFLECTIONS ON PELL 86, 87 (2013), http://tinyurl.com/q2mmwqu.)

More recent developments include a Department of Education announcement in 2014 clarifying that juvenile inmates indeed qualify for Pell funding. The clarification also reiterated that individuals in local or county jails, penitentiaries, and correctional facilities are eligible as well. Taken wholly, the clarification provided bright-line rules for determining Pell eligibility, which will likely have the effect of increasing the number of applicants for Pell funding.

Last year was a watershed year for the cause. Among developments was the Department of Education’s announcement of a project that would lift the ban for some prisoners. (Paul Fain, Bringing Back Pell for Prisoners, INSIDE HIGHER ED (May 20, 2015), available at http://tinyurl.com/kamsot9.) Dubbed the “Second Chance Pell Pilot,” the program would reverse the ban for some prisoners, who would be allowed to obtain funding for postsecondary education. The pilot’s goal is to track participants and collect data on recidivism.

Another development was the ABA’s passing of a formal resolution urging Congress to restore Pell Grants for prisoners. (See ABA, 2015 Annual Resolution 108B, http://tinyurl.com/gv5tgu4.) The report for the resolution stressed the strong correlation between education and the ability to find a job, and that the time is ripe for change.

Perhaps the greatest push of all came when members of the U.S. House of Representatives introduced a bill to restore prisoner eligibility. The proposed legislation, the Restoring Education and Learning (REAL) Act of 2015, effectively reverses the ban on prisoner eligibility. (H.R. 2521, 114th Cong.) Although still in its political infancy, advocates are watching to see how far the bill will make it along the legislative path.

LOOKING FORWARD
Support for restoring Pell funding to prisoners grows stronger by day. With the pending bill in Congress, lawmakers have the opportunity to change a law that has made seemingly little impact. In contrast, a growing picture is emerging that depicts education as convergent with both public and penal interests. Whereas the stigma of being a criminal by itself is enough to thwart success on the outside, education represents an opportunity to scale back this handicap and compete for a livelihood. With over 700,000 individuals exiting state and federal prisons each year, education may be more crucial now than ever.

Looking forward, as postsecondary education for prisoners continues to earn support from policymakers and lawmakers, it is essential to temper enthusiasm with realities on the ground. There must be no pretension that education is a cure-all for recidivism. Instead, education must be understood as one of several factors that contribute to successful reentry. Success is always the result of multiple factors that determine whether an individual succeeds on the outside. Likewise, there should be no pretension that the return of Pell funding is a cure-all for the question of higher education in prison. Although restoring Pell funding would represent a new beginning for college and vocational training behind bars, it is necessarily only a beginning. Funding efforts must be bolstered by support from charitable organizations, corporate sponsorship, universities, and other stakeholders in improving the quality of education and expanding educational opportunities.

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