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RACE, CLASS, AND SECOND CHANCES: THE IMPACT OF MULTIPLE IDENTITIES ON REENTRY AND REINTEGRATION

S. DAVID MITCHELL[†]

[Jimmy] lived in an economy of favors. With so many rules to follow and so much risk involved—one mistake could cost him his freedom—he needed favors from people he barely knew to meet his basic needs.¹

INTRODUCTION

Race, class, and other identities directly impact the process of reentry and the successful reintegration back into society for individuals who have had prior involvement in the criminal justice system.² Collectively, persons convicted of a crime face numerous

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¹ REUBEN JONATHAN MILLER, *HALFWAY HOME: RACE, PUNISHMENT, AND THE AFTERLIFE OF MASS INCARCERATION* 123 (2021) (discussing the situation of parolee, Jimmy, whom the author interviewed). For a fuller discussion of the concept of the economy of favors, see generally Reuben Jonathan Miller & Amanda Alexander, *The Price of Carceral Citizenship: Punishment, Surveillance, and Social Welfare Policy in an Age of Carceral Expansion*, 21 MICH. J. RACE & L. 291 (2015); Reuben Jonathan Miller & Forrest Stuart, *Carceral Citizenship: Race, Rights and Responsibility in the Age of Mass Supervision*, 21 THEORETICAL CRIMINOLOGY 532 (2017).

² See *Words Matter: Using Humanizing Language*, FORTUNE SOC'Y, <https://fortunesociety.org/wordsmatter/> [<https://perma.cc/MUR3-E5N4>] (last visited June 28, 2022) (In the past, the term ex-offender was used to describe a “[p]erson or individual with prior justice system involvement.”). More favorable terms for defining this population are: “[p]erson or individual previously incarcerated; [p]erson or individual with justice history.” *Id.*; Andrea Noble, *Justice Dep’t Program to No Longer Use Terms ‘Felon,’ ‘Convict’ to Refer to Criminals: ‘Disparaging’*, WASH. TIMES (May 4, 2016), <https://www.washingtontimes.com/news/2016/may/4/justice-dept-no-longer-use-terms-felon-convict/> (“The Office of Justice Programs plans to substitute terminology such as ‘person who committed a crime’ and ‘individual who was incarcerated’ in speeches and other communications as part of an effort to remove barriers that officials say hinder progress of those who reenter society after completing their prison sentences.”). Another phrase that describes this population is the “criminalized citizen.” Briana L. McGinnis, *Beyond Disenfranchisement: Collateral Consequences and Equal Citizenship*, 6 POL., GROUPS & IDENTITIES 59, 72 (2018). This phrase describes the status of the ex-offender or formerly incarcerated by placing an important status–citizenship–upfront. *Id.* The formerly convicted or incarcerated have neither surrendered nor been stripped of their citizenship but are

legal barriers that interfere with or prevent successful reentry and reintegration back into society, such as being prevented from securing housing and obtaining employment among other collateral consequences.³ For many, the process of reentry and reintegration is made even more difficult because of prior discriminatory policies and practices that were based solely on demographic factors, some of which are innate or immutable traits and others which are due solely because of circumstance.

Persons with prior criminal justice system involvement comprise a broad and diverse group of individuals.⁴ While all persons with prior criminal justice involvement face a host of formal legal barriers and challenges that impede the process of reentry thus hampering their successful reintegration back into society, all do not bear the same social stigma or face the same

effectively treated as felons forever without consideration of their status as citizens. See Ben Geiger, *The Case for Treating Ex-Offenders as a Suspect Class*, 94 CAL. L. REV. 1191, 1194–95 (2006). In other words, they are criminalized by virtue of the commission of a criminal act. The term “ex-offender” has a complex existence. It is one who has completed their sentence. See *id.* at 1219 (“Ex-offenders have by definition completed their sentences and should not be held responsible *ad infinitum* for their offenses.”); Reg. Sec. 502 Job Creation Tax Credit, Payroll Mgmt. Guide, 2015 WL 8897422 (CCH) (2018) (“*Ex-offender*. A person previously convicted of a felony, or who was incarcerated for any conviction, or who is currently on probation or parole for any conviction . . .”). For a more expansive denotation, see 2/20/2007 St. & Loc. Taxes Weekly Art. 6, February 20, 2007, Vol.18 (“In addition, the definition of ‘ex-offender’ is amended so that it includes (sic) a person who is currently in a work release program . . .”). For a more complex connotation that invokes legal status and identity, see Jamila Jefferson-Jones, *A Good Name: Applying Regulatory Takings Analysis to Reputational Damage Caused by Criminal History*, 116 W. VA. L. REV. 497, 510 (2013) (“By contrast, ex-offender status is, by definition, a legal status. Rather than evolving from identity into legal status, the evolutionary trajectory that it follows is from legal status to an aspect of identity.”); MERRICK T. ROSSEIN, 1 EMPLOYMENT LAW DESKBOOK FOR HUMAN RESOURCES PROFESSIONALS § 15:2(11) (2016) (“Ex-offender status” shall mean: “(1) the condition of having been arrested, detained, or accused of any violation of law which no conviction resulted, or (2) a final conviction for misdemeanors such as drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbing the peace, or (3) any conviction of a misdemeanor where the date of such conviction or completion of any period of incarceration resulting therefrom, whichever date is later, occurred a specified number of years prior to the date of the exercise of any right or privilege under the statute or ordinance.”).

³ Melissa Li, *From Prisons to Communities: Confronting Re-Entry Challenges and Social Inequality*, APA (Mar. 2018), <https://www.apa.org/pi/ses/resources/indicator/2018/03/prisons-to-communities> [<https://perma.cc/6EQT-U25P>].

⁴ Terry-Ann Craigie et al., *Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality*, BRENNAN CTR. JUST. (Sept. 15, 2020), <https://www.brennancenter.org/our-work/research-reports/conviction-imprisonment-and-lost-earnings-how-involvement-criminal> [<https://perma.cc/4FQT-KKAA>].

impact of multiple identities on their reintegration.⁵ As a group, individuals with prior criminal justice involvement are legally prevented from exercising the rights and privileges afforded to all citizens depending on where they are returning upon release.⁶

The deprivation or denial of the rights and privileges associated with citizenship is based solely upon the status of being a convicted person. Within the sub-group of persons with prior criminal justice involvement, however, race and socioeconomic status (or class) make the process of reentry and reintegration even more difficult.⁷ Individuals with prior criminal justice involvement that are either black, poor, or a combination thereof have to overcome challenges and obstacles that were systemically created and systematically enforced long before they entered the criminal justice system.⁸ The processes of reentry and reintegration are made even more difficult because of the historical and contemporary discrimination and marginalization of these multiple identities within the criminal justice system and in society writ large.⁹ Preexisting societal conditions that operated before persons entered the criminal justice system--that is, race-based and class-based policies that are beyond their control at a macro-level, which discriminate against people of color and poor people--are institutionalized and thus negatively impact the ability of these persons to reenter and reintegrate society successfully.

To understand the obstacles that persons with prior criminal justice system involvement encounter when seeking to reenter and reintegrate back into society, it is necessary to deconstruct the policies and practices along with their impact on individuals with multiple marginalized identities and their respective communities. The process of reentry and reintegration begins long before a convicted person is at the institutional exit door about to reenter society. While some would posit that the *process* of reentry

⁵ See *id.*

⁶ See RESTORATION RTS. PROJECT, <https://ccresourcecenter.org/restoration-2/> [<https://perma.cc/T6UG-5GV2>] (detailing the loss of rights that people with prior criminal convictions face by state).

⁷ See Craigie et al., *supra* note 4.

⁸ Susan Nembhard & Lily Robin, *Racial and Ethnic Disparities Throughout the Criminal Legal System*, URB. INST. (Aug. 2021), <https://www.urban.org/sites/default/files/publication/104687/racial-and-ethnic-disparities-throughout-the-criminal-legal-system.pdf> [<https://perma.cc/M47B-G87H>]. See also Craigie et al., *supra* note 4.

⁹ See Craigie et al., *supra* note 4.

and the *prospect* for successful reintegration begins on the day of incarceration,¹⁰ I would posit that it begins long before conviction and even prior to arrest. The challenges that individuals with prior criminal justice involvement face with successfully trying to reenter and reintegrate back into society often begins with securing basic needs, such as housing, which constitutes more than simply being a place of shelter but has individual and community importance. Historically, racialized housing policies have prevented or limited individual homeownership¹¹ for African-Americans thereby resulting in fewer families owning their own homes. Families with formerly incarcerated family members reentering society therefore do not have homes available for these to return to upon release. They are subjected to the policies and practices of a government controlled or private housing market that has erected barriers to housing access. Discriminatory housing policies, such as redlining, impacted not only where African-Americans could physically live but also the quality of the public education system that served these communities. These discriminatory housing policies contributed to the devaluation of properties in the communities thereby resulting in a depressed property tax base¹² which in turn resulted in the underfunding of

¹⁰ See *Reentry Programs*, CHARLES KOCH INST. (Sept. 5, 2018), <https://charleskochinstitute.org/stories/reentry-programs/> [<https://perma.cc/56Q9-HCST>] (“Years of research have revealed . . . that the process of reentry should begin at day one of incarceration.”).

¹¹ Kelly Elizabeth Orians, “*I’ll Say I’m Home, I Won’t Say I’m Free*”: *Persistent Barriers to Housing, Employment, and Financial Security for Formerly Incarcerated People in Low-Income Communities of Color*, 25 NAT’L BLACK L.J. 23, 32 (2016) (“Redlining refers to a practice used by the Federal Housing Administration (FHA) whereby mortgage insurance was denied on the basis of racial and ethnic composition of the neighborhood, without consideration of creditworthiness of individual applicants.”); See generally Michael H. Schill & Susan M. Wachter, *The Spatial Bias of Federal Housing Law and Policy: Concentrated Poverty in Urban America*, 143 U. PA. L. REV. 1285 (1995) (discussing the interplay between inner-city poverty and past discriminatory housing policies).

¹² ANDRE PERRY ET AL., THE DEVALUATION OF ASSETS IN BLACK NEIGHBORHOODS: *THE CASE OF RESIDENTIAL PROPERTY* 13 (Metropolitan Policy Program at Brookings ed., Nov. 2018) (“During the 20th century, segregation and Jim Crow forcibly lowered the quality of neighborhood conditions for Blacks and impeded their financial ability to move to better opportunities. This occurred through deed restrictions, redlining, and zoning, as well as other mechanisms. As a result of that dynamic and the continuation of housing policies that exclude working-class housing from non-Black neighborhoods, majority Black neighborhoods suffer from lower quality housing and limited access to good schools and neighborhood amenities.”).

locally accessible public schools.¹³ Along with redlining and the devaluation of property through a system of taxation, other forms of economic inequity were also imbedded in the federal and state tax code which prevented the ability to successfully create and transmit generational wealth. The obstacles that prevented the accumulation of wealth prevent families from providing financial support thus forcing those who have criminal justice involvement to rely upon a social welfare system whose rules either deny outright or make it extremely difficult for those returning to secure financial assistance.¹⁴

And so, to understand the impediments to the process of reentry and the challenges to successful reintegration, it is necessary to evaluate the systemic conditions that existed historically and their contemporary effect on an individual's release from supervision, conditional or otherwise. This Article examines how the intersectionality of multiple identities that have been marginalized in society, such as race, gender, socioeconomic status and others, with prior systemic discriminatory policies and practices, such as home ownership, disproportionately and negatively impacts the successful reentry and reintegration of individuals from these marginalized groups.

I. INTERSECTIONALITY OF RACE, CLASS, AND REENTRY

At its core, the process of reentry and reintegration is simple and formal. Persons with prior criminal justice system involvement are required to have an approved home plan¹⁵ and employment plan prior to release.¹⁶ If an individual has not

¹³ See generally Dylan Lukes & Christopher Cleveland, *The Lingering Legacy of Redlining on School Funding, Diversity, and Performance* (Annenberg Brown Univ., EdWorking Paper No. 21-363, 2021), <https://www.edworkingpapers.com/sites/default/files/ai21-363.pdf> [<https://perma.cc/ANL6-P6PJ>] (drawing a link between redlining and educational opportunity).

¹⁴ See generally DOROTHY A. BROWN, *THE WHITENESS OF WEALTH: HOW THE TAX SYSTEM IMPOVERISHES BLACK AMERICANS—AND HOW WE CAN FIX IT* (2021).

¹⁵ Missouri Department of Corrections, *Rules and Regulations Governing the Conditions of Probation, Parole, and Conditional Release*, DOC. MO. 1, 3 (2020), <https://doc.mo.gov/sites/doc/files/media/pdf/2020/12/Rules%20and%20Regulations%20Governing%20the%20Conditions%20of%20Probation%20Parole%20and%20Conditional%20Release%209-29-2020.pdf> [<https://perma.cc/7P43-FDR8>] (“Your Probation and Parole Officer has the authority to approve or disapprove your home plan. In the event of an emergency and you lose your place of residence, you must notify your Probation and Parole Officer within 48 hours.”). This book details the steps necessary to be completed prior to release. See *id.*

¹⁶ *Id.* at 4 (“[W]ill maintain employment unless engaged in a specific program approved by my Probation and Parole Officer. I will obtain advance permission from

completed their entire sentence, the Department of Probation and Parole conducts a home visit to examine the living arrangements and environment to which an individual will return and to confirm that the individual will be gainfully employed.¹⁷ The intent of the home visit is to make sure that the formerly convicted will not be homeless following their release.¹⁸ Unfortunately, even with these visits, that is not always the case. In addition to “houseless” or “unhoused,” the formerly incarcerated also struggle with joblessness.¹⁹

A. Contemporary Racialized Policing Policies and Reentry

A prevailing sentiment concerning reentry is that the process begins when an individual is sentenced.²⁰ It is at this point that

my Probation and Parole Officer before quitting my job or program. In the event I lose my job or am terminated from a program, I will notify my Probation and Parole Officer within 48 hours.”).

¹⁷ The rules will also differ dramatically if the offender has a conviction for a sexual offense. See Christie Thompson, *For Some Prisoners, Finishing Their Sentences Doesn't Mean They Get Out*, MARSHALL PROJECT (May 24, 2016), <https://www.themarshallproject.org/2016/05/24/for-some-prisoners-finishing-their-sentences-doesn-t-mean-they-get-out> [https://perma.cc/HFG7-SZJB].

¹⁸ Patricia McKernan, *Homelessness and Prisoner Reentry: Examining Barriers to Housing*, VOA, <https://www.voanews.com/homelessness-and-prisoner-reentry> (last visited June 22, 2022). See also Lucius Couloute, *Nowhere to Go: Homelessness Among Formerly Incarcerated People*, PRISON POLICY INITIATIVE (Aug. 2018), <https://www.prisonpolicy.org/reports/housing.html> [https://perma.cc/2GZD-ZR6A] (“People who have been to prison just once experience homelessness at a rate nearly 7 times higher than the general public. But people who have been incarcerated more than once have rates 13 times higher than the public. In other words, people who have been incarcerated multiple times are twice as likely to be homeless as those who are returning from their first prison term. Unfortunately, being homeless makes formerly incarcerated people more likely to be arrested and incarcerated again, thanks to policies that criminalize homelessness.”).

¹⁹ See generally Steve Horn, *With 27 Percent Unemployment, Jobs Crisis Hits Ex-prisoners the Hardest*, PRISON LEGAL NEWS (Sept. 4, 2018), <https://www.prisonlegalnews.org/news/2018/sep/4/27-percent-unemployment-jobs-crisis-hits-ex-prisoners-hardest/> [https://perma.cc/633D-BVUX]; Nicholas Slayton, *Time to Retire the World ‘Homeless’ and Opt for ‘Houseless’ or ‘Unhoused’ Instead?*, AD (May 21, 2021), <https://www.architecturaldigest.com/story/homeless-unhoused>.

²⁰ JEREMY TRAVIS, *BUT THEY ALL COME BACK: RETHINKING PRISONER REENTRY, SENTENCING & CORRECTIONS: ISSUES FOR THE 21ST CENTURY* 1, 2 (May 2000) (“[A] great deal must be done, for each individual offender, to ascertain the conditions that lead to relapse and to develop a plan to prevent it. This process should begin at sentencing and continue throughout the period of release.”). In recognizing that reentry is a difficult process, the Federal Bureau of Prisons states, “[a]lthough it is the Bureau’s philosophy that release preparation begins the first day of incarceration, focus on release preparation intensifies at least 18 months prior to release.” *Reentry Programs*, FED. BUREAU OF PRISONS, https://www.bop.gov/inmates/custody_and_care/reentry.jsp [https://perma.cc/THX8-25U9] (last visited June 29, 2022).

the focus is no longer on the conduct that resulted in the conviction but rather the length of time to be served until the individual is eligible for release. Hence, the efforts of the individual and the system are now directed towards the process of returning to the community. Other scholars, however, argue that the process of reentry and reintegration should begin at the point of arrest.²¹ In other words, if the goal is to have an individual reenter and successfully reintegrate back into society, there are at least six different points along the “criminal justice continuum that lend themselves to reentry planning.”²² If the criminal justice system, in conjunction with the individual who has recently been convicted, operate with the ultimate goal of reentry and reintegration in mind, then each action taken is geared towards making the process of reentry and reintegration not only easier but also more successful. Regardless of where the process begins—at arrest, sentencing, during incarceration, or even closer to the date of release—the prospect for successful reentry and reintegration, especially for people of color and from low socioeconomic backgrounds, has already been impacted long *before* sentencing and arrest. Preexisting race-based and class-based societal policies and practices, historical and contemporary, negatively impact the prospects of successful reentry and reintegration. An example of the systemic impact is as follows.

Once an offender has been sentenced and remanded to the Department of Corrections, they go through an intake process where they are evaluated and assigned to a facility for their risk level and any other programs deemed necessary to assist the offender in preparing for their eventual return home.²³ This initial assessment constitutes the first step towards the process of reentry and reintegration. In other words, the “formal” process of reentry and reintegration begins or at the very least, the long-term

²¹ See Alan Rosenthal et al., *Unlocking the Potential of Reentry Through Reintegrative Justice*, in *PATHWAYS FOR OFFENDER REENTRY: AN ACA READER* 225–26, 229–30, 233 (Russ Immarigeon & Larry M. Fehr eds., 2004) (discussing a new approach to reentry by arguing that the focus should be earlier in the criminal justice process).

²² *Id.* at 225 (describing the six points in the process where a new focus on reentry can occur are: “[d]ecision making regarding pretrial release; [p]lea and sentence negotiations; [s]entencing; [j]ail and prison programming and release decisions; [p]ost-release services; and [p]arole revocation decisions”).

²³ See generally PATRICIA L. HARDYMAN ET AL., U.S. DEP’T JUST., PRISONER INTAKE SYSTEMS: ASSESSING NEEDS AND CLASSIFYING PRISONERS (2004), <https://s3.amazonaws.com/static.nicic.gov/Library/019033.pdf> [<https://perma.cc/92JH-F2XX>] (provides a detailed guide of the intake process for convicted persons).

preparation for exiting the facility has commenced. While a convicted individual has now begun taking steps towards reentering society, race-based and class-based policies that existed prior to arrest and conviction have already impacted the reentry process, which include the initial risk assessment for placement in an institution.

Many convicted individuals have had numerous contacts with law enforcement as the norm often as a result of hyper-surveillance²⁴ policing policies that targeted communities of color under the guise of the War on Drugs, and keeping communities safe. Hence, a vicious cycle has begun, With more arrests, there is more surveillance and these additional contacts with the system impacts the assessment and where an individual will be placed. Moreover, this over-surveillance was not limited to the efforts of “crime control agents.”²⁵ It has also been “documented how schools, parents, and community members and organizations all police youth of color in a powerful, interconnected web along with police and probation officers, forming a ‘youth control complex.’”²⁶ For some individuals, their criminal histories began as juveniles with the adoption, implementation, and expansion of zero tolerance policies.²⁷ The impact of these policies have been documented to have a disproportionate impact on students of color.²⁸

With increased contacts as adults or referrals as juveniles, people of color are subsequently more prone to negative law enforcement interactions resulting in extensive criminal histories. Criminal histories that are a consequence of racialized policing policies have the practical effect of increasing the length of an individual’s sentence.²⁹ And with each additional day, month, or

²⁴ Brianna Remster & Rory Kramer, *Race, Space, and Surveillance: Understanding the Relationship Between Criminal Justice Contact and Institutional Involvement*, 4 SOCIUS 1, 1–2, 13–14 (2018).

²⁵ *Id.* at 1.

²⁶ *Id.*

²⁷ S. David Mitchell, *Zero Tolerance Policies: Criminalizing Childhood and Disenfranchising the Next Generation of Citizens*, 92 WASH. U. L. REV. 271, 278–83 (2014) (defining zero tolerance policies).

²⁸ *Id.* at 286. Zero tolerance policies also have a disproportionate impact on disabled students.

²⁹ The most notable example of a racialized policing policy is “Stop and Frisk” in New York. See Harold Stolper & Jeff Jones, *The Enduring Discriminatory Practice of Stop & Frisk: An Analysis of Stop-and-Frisk Policing in NYC*, CMTY. SERV. SOC’Y (Apr. 16, 2018), <https://www.cssny.org/news/entry/stop-and-frisk> [https://perma.cc/WL25-VX7P]. Also, the practice of economic policing came to light following the killing of

year of incarceration, there is both a measurable decline in future wages and a direct impact on the success of reentry and reintegration.³⁰ With the decline in wages earned over time, there is an inability to accumulate savings which further impacts reentry and reintegration success because individuals are forced to rely upon the benevolence of others. Furthermore, the time away from the labor market has an impact on the range of available employment options and long-term wealth accumulation. More offenses resulting in longer sentences means that, upon release, the formerly convicted will have longer gaps in their personal work history and thus have more to explain to a potential employer.³¹ With the hyper-surveillance of specific communities, the social network that would be used to assist with employment opportunities is also impacted. Research shows that communities of color have a disproportionate number of convicted individuals.³² With a significant number of formerly incarcerated individuals returning or in the community, individuals in these communities have a difficult time entering the labor market not only as a result

Mike Brown detailed and outlined in the DOJ's Investigation of the Ferguson Police Department.

The City's emphasis on revenue generation has a profound effect on FPD's [the Ferguson Police Department's] approach to law enforcement. Patrol assignments and schedules are geared toward aggressive enforcement of Ferguson's municipal code, with insufficient thought given to whether enforcement strategies promote public safety or unnecessarily undermine community trust and cooperation. Officer evaluations and promotions depend to an inordinate degree on "productivity," meaning the number of citations issued. Partly as a consequence of City and FPD priorities, many officers appear to see some residents, especially those who live in Ferguson's predominantly African American neighborhoods, less as constituents to be protected than as potential offenders and sources of revenue.

U.S. DEPT JUST. CIVIL RTS. DIV., INVESTIGATION OF THE FERGUSON POLICE DEPT 1, 2 (2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf [<https://perma.cc/5NW8-CSLR>].

³⁰ Bruce Western & Becky Pettit, *Incarceration & Social Inequality*, J. AM. ACAD. ARTS & SCI. 8, 13 (2010) ("Matching our population estimates of incarceration, one in five African American male respondents in the NLSY [the National Longitudinal Survey of Youth] has been interviewed at some point between 1979 and 2006 while incarcerated, compared to 5 percent of whites and 12 percent of Latino respondents. Analysis of the NLSY showed that serving time in prison was associated with a 40 percent reduction in earnings and with reduced job tenure, reduced hourly wages, and higher unemployment.").

³¹ See Li, *supra* note 3.

³² Jeffrey D. Morenoff & David J. Harding, *Incarceration, Prisoner Reentry, and Communities*, 40 ANN. REV. SOCIO. 411, 413–14 (2014) (citation omitted) ("[A]lthough almost all communities are touched to some degree by prisoner reentry, poor urban communities bear a disproportionate share of the burden, in terms of both prison admissions and releases.").

of the formal rules that bar access but also because of the lack of social networks³³ and social capital³⁴ available to communities with predominantly non-incarcerated individuals. The lack of these connections further impacts the prospects for successful reentry and reintegration of formerly convicted African American and lower socioeconomic individuals.

Another example of the impact of multiple marginalized identities on reentry and reintegration through racialized policing policies is in the—now admittedly failed—War on Drugs.³⁵ This policy and practice disproportionately targeted African Americans, among other racial minorities, from lower socioeconomic groups resulting in the criminalization of substance abuse³⁶ and the mass incarceration of African Americans. The impact of this mass incarceration is that many African American males from low socioeconomic groups face a host of collateral consequences upon release that impede reentry and reintegration such as being denied housing, being prevented from employment and occupational licensing opportunities, being blocked from higher educational loans, and more.³⁷ Unlike the more recent medicalized response to opioid addiction, the criminalized response to crack cocaine had a race-based and class-based impact on African Americans and poor people. The disproportionate policy response was readily apparent in the 100-to-1 powder to crack cocaine ratio disparity which resulted in longer sentences for African Americans, many of whom were also poor. The draconian sentencing policies meant that not only were these individuals removed from society for longer periods of time, but entire communities were impacted also through the loss and absence of fathers and sons, mothers and daughters. Social control policies and the disproportionate focus of law enforcement on African

³³ David S. Pedulla & Devah Pager, *Race and Networks in the Job Search Process*, 84 AM. SOCIO. REV. 983, 984 (2019) (“On its surface, the use of social networks appears race neutral, but patterns of social and economic segregation imply that their influence will consistently disadvantage members of historically marginalized groups.”).

³⁴ See Steve McDonald & Jacob C. Day, *Race, Gender, and the Invisible Hand of Social Capital*, SOC. COMPASS 532, 534–39 (2010) (discussing social capital and employment).

³⁵ For a general discussion of the War on Drugs, see generally ELLIOTT CURRIE, *RECKONING: DRUGS, THE CITIES, AND THE AMERICAN FUTURE* (1994).

³⁶ See Eric L. Jensen et al., *Social Consequences of the War on Drugs: The Legacy of Failed Policy*, 15 CRIM. JUST. POL'Y REV. 100, 101–02 (2004) (discussing the War on Drugs and the mass incarceration that followed).

³⁷ *Id.* at 106–08.

American and poor communities along with other contemporary race-based and class-based policies directly impacts whether reentry and reintegration will be successful. And yet, these are not the only policies and practices that impact the reentry and reintegration of the formerly incarcerated.

B. The Legacy of Race-Based and Class-Based Policies and Reentry

The legacy of historic systemic race-based and class-based policies, such as redlining, also has an impact on whether a convicted individual will successfully reenter and reintegrate back into society. Therefore, it is necessary to examine the effects of insitutionalized bias and discrimination on the prospects of reentry and reintegration. Long before an individual has even had contact with the criminal justice system or begun the formal process of reentry and reintegration, the effects of historic practices operate to undermine the success of individuals who will eventually return back to society following incarceration.

Prior to exiting an institution and returning home, the formerly convicted must provide a plan for the Department of Corrections to assess the suitability of the arrangements that have been made for the convicted person's return. This assessment varies based on a variety of factors, such as the nature of the offense or the jurisdiction to which the formerly incarcerated will return.³⁸ The differential treatment that the formerly incarcerated receive upon release is contingent upon a formal framework of statutes and ordinances known collectively as collateral consequences.³⁹ These consequences are triggered either at the time of conviction or at the time of release,⁴⁰ and their duration varies according to jurisdiction in which an individual was convicted and will return.⁴¹ In some instances, these consequences persist until the formerly incarcerated has navigated a costly and cumbersome civil rights restoration process.⁴² Hence, the mere fact that the scope and breadth of the

³⁸ See generally MARGARET COLGATE LOVE ET AL., *COLLATERAL CONSEQUENCES OF CRIMINAL CONVICTIONS: LAW, POLICY & PRACTICE* (2018).

³⁹ *Id.* § 1.2.

⁴⁰ *Id.*

⁴¹ *Id.* § 2.3.

⁴² *But see* Press Release, Off. of the Governor of Iowa, Gov. Reynolds Signs Executive Order to Restore Voting Rights of Felons Who Have Completed Their Sentence (Aug. 5, 2020), <https://governor.iowa.gov/press-release/gov-reynolds-signs-executive-order-to-restore-voting-rights-of-felons-who-have> [<https://perma.cc/N7D9->

collateral consequences that a formerly incarcerated person faces differs by offense and jurisdiction highlights the premise that not all formerly convicted individuals are treated alike and thus not all have the same opportunity to reenter and to reintegrate back into society seamlessly and successfully. Aside from the formal rules that make the transition from incarceration to conditional supervision and ultimately full citizenship challenging, the process of reentry and reintegration is further impacted by race-based and class-based policies that directly or indirectly impact the ability of many to reenter society successfully.⁴³ In other words, the process of reentry and reintegration will be difficult from the outset for the formerly convicted African American and poor because the legacy of longstanding race- and class-based policies impact the process in unforeseen and invisible ways for them.

1. SES, Housing, and Reentry

For individuals with prior criminal justice system involvement, one of the more difficult things to obtain is secure and stable housing.⁴⁴ Even with a valid home plan, reentry and successful reintegration are often not completed with the first housing arrangement which may be a temporary living arrangement. Individuals with a criminal record return to communities and are often excluded from or denied certain

24AP] (discussing gubernatorial executive orders that have circumvented these barriers around voting); David M. Reutter, *Kentucky Governor's Executive Order Restores Voting Rights for Felons*, PRISON LEGAL NEWS (May 1, 2020), <https://www.prisonlegalnews.org/news/2020/may/1/kentucky-governors-executive-order-restores-voting-rights-felons/> [https://perma.cc/GMF7-4UK6]. Unfortunately, the scope and breadth of the impact and the long-term impact is hampered with the change of political parties in the governor's office. See FLA. CONST. art VI, § 4; but see Anton Marino, *Amendment 4 is Back in Court as Florida Fights Our Victory Over its Modern-Day Poll Tax*, ACLU (Aug. 7, 2020), <https://www.aclu.org/news/voting-rights/amendment-4-is-back-in-court-as-florida-fights-our-victory-over-its-modern-day-poll-tax/> [https://perma.cc/XRC9-K77Z] (explaining that Florida prevented the implementation of Amendment 4 stating that ex-offenders needed to pay "all outstanding fines, fees, costs, and restitution").

⁴³ The most vivid example is the way sex offenders are treated with residency and registration restrictions. In a word, this class of ex-offenders is a pariah. And while sex offenders encounter the most onerous obstacles to reentry because of the nature of the offense, others face such obstacles because of the jurisdiction to which they return.

⁴⁴ Ann Cammett, *Confronting Race and Collateral Consequences in Public Housing*, 39 SEATTLE U. L. REV. 1123, 1124 (2016).

housing options, such as public housing.⁴⁵ With the “one-strike” housing policy, individuals returning from incarceration are prohibited from living in public housing.⁴⁶ Consequently, they are forced to either break the law and live with family members and friends who may reside public housing which not only puts the returning individual in jeopardy but also places family members and friends who live in public housing at risk of being evicted for taking in the formerly convicted⁴⁷ or be unhoused. Apart from being unhoused, individuals returning from incarceration can seek out temporary shelters, provided that the nature of their offense is not disqualifying, or they must rely on the “economy of favors” and stay with family and friends who live in private housing.

The importance of this resource to the success of reentry and reintegration and ultimately preventing recidivism is well founded.⁴⁸ Two-thirds of formerly convicted persons who experience housing instability are more likely to reoffend within the first year, while those with “either a permanent home or short-term supported housing” are only 43% more likely to reoffend the first year.⁴⁹ The reentry challenge that impedes successful reintegration for many formerly convicted persons from low socio-economic groups is that they are denied or prevented from living in a housing resource because of their criminal record even though the resource is designed to prevent the poor from being unhoused. In the absence of public housing, the formerly incarcerated individuals can turn to the private housing market. Yet, this

⁴⁵ Deborah N. Archer, *The New Housing Segregation: The Jim Crow Effects of Crime-Free Housing Ordinances*, 118 MICH. L. REV. 173, 175 (2019).

⁴⁶ Emily Ponder Williams, *Fair Housing’s Drug Problem: Combatting the Racialized Impact of Drug-Based Housing Exclusions Alongside Drug Law Reform*, 54 HARV. C.R.-C.L. L. REV. 769, 773 (2019).

⁴⁷ Dep’t of Hous. and Urban Dev. v. Rucker, 535 U.S. 125, 135 (2002); Williams, *supra* note 46, at 773 (“The Anti-Drug Abuse Act of 1988 labeled drug dealers as ‘imposing a reign of terror on public and other federally assisted low-income housing tenants.’ This characterization laid the groundwork for a collection of policies designed to exclude not only those posing a direct threat to other low-income tenants, but also anyone who is merely associated with drug activity regardless of their own culpability. Together, those policies are commonly called ‘one-strike’ policies, a term coined by President Bill Clinton when he declared during his State of the Union address six years later, ‘If you break the law, you no longer have a home in public housing—one strike and you’re out.’”).

⁴⁸ *See id.*

⁴⁹ Amy Walker, *Two-Thirds of Homeless Ex-Prisoners Reoffend Within a Year*, GUARDIAN (Aug. 12, 2019), <https://www.theguardian.com/society/2019/aug/12/two-thirds-of-homeless-ex-prisoners-reoffend-within-a-year> [<https://perma.cc/F662-L6GR>].

option is just as fraught with challenges as those associated with public housing.

While formerly incarcerated persons from low socio-economic groups are denied housing in the private market for many of the same reasons that the poor are denied in general, there is an added layer of marginalization due to the existence of a criminal record.⁵⁰ All potential renters are required not only to demonstrate a capacity to pay their rent but also to be gainfully employed and to have a credit history illustrating that they pay their bills on time. For the returning formerly convicted, they may struggle to secure long-term full-time employment⁵¹ which means that they do not satisfy the employment criteria and financial requirement. Moreover, because of their incarceration time, many do not have an established credit history to demonstrate the capability to maintain payments and that they are a good risk.⁵² Without either or both of these requirements, landlords are reluctant to rent to the formerly incarcerated thus further reducing the available housing options. While socio-economic status as a marginalized identity creates hardships and obstacles for reentry and reintegration, race is also salient in interfering with the successful second chances of the formerly incarcerated.

2. Race, Housing, and Reentry

Historic policies of racial discrimination with respect to housing impact the success or failure of reentry and reintegration.

⁵⁰ Halfway houses serve as a necessary placement that affords the formerly convicted the opportunity to secure gainful employment, establish a credit history, and find suitable residential housing. This is a temporary solution.

⁵¹ Justin Stabley, *People Leaving Prison Have a Hard Time Getting Jobs. The Pandemic Has Made Things Worse*, PBS NEWS HOUR (Mar. 31, 2021), <https://www.pbs.org/newshour/economy/people-leaving-prison-have-a-hard-time-getting-jobs-the-pandemic-has-made-things-worse> [<https://perma.cc/A644-DDRj>] (“In the best of economic times, formerly incarcerated people face an uphill battle to find full-time employment, facing administrative hurdles, social stigma and emotional health issues from their time in prison.”).

⁵² ALICIA BANNON ET AL., CRIMINAL JUSTICE DEPT: A BARRIER TO REENTRY, BRENNAN CTR. JUST., 4, 27–28 (2010), https://www.brennancenter.org/sites/default/files/2019-08/Report_Criminal-Justice-Debt-%20A-Barrier-Reentry.pdf [<https://perma.cc/TM3E-RFB3>]; see also Marlysa Thomas, *The Case for Helping Prisoners and Returning Citizens Build Good Credit*, PROSPERITY NOW (July 21, 2015), <https://prosperitynow.org/blog/case-helping-prisoners-and-returning-citizens-build-good-credit> [<https://perma.cc/8BRZ-EUUG>] (“Credit is the hidden elephant in the room that we seldom consider when we think about supporting returning citizens, yet it is a factor that we must address to help eliminate some of the immediate burdens that returning citizens face upon being released.”).

The challenges that people of color or those from marginalized populations face are heightened because of longstanding systemic and institutional policies and practices, many of which were created during the de jure and Jim Crow era of segregation and have now become entrenched and imbedded in those systems and institutions. As previously mentioned, housing is of the utmost importance to the success of convicted individuals returning to their communities. Many individuals are locked out of federal subsidized housing or denied entry into the private housing market because of their conviction status.⁵³ One remedy for these thwarted housing options would be to reside with family members who either own their own homes or own properties in which the returning convicted family member could reside.⁵⁴ Unfortunately, historical practices of racial discrimination in housing has created a lack of privately owned houses that could have served to provide housing stability for individuals returning home. One of the major policies that produced this racial disparity in homeownership was redlining.⁵⁵

The federal government's policy of redlining devalued property in African American neighborhoods and deemed them too risky for mortgage investments which in turn prevented African Americans from securing mortgages thus locking them out of homeownership. The most obvious legacy of this inability of African American families to own homes specifically for those families with relatives returning home from incarceration is that they are unable to provide stable housing for these returning individuals. Private familial homeownership, in short, would provide convicted individuals an option outside the scope of the federal subsidized housing and the unforgiving private housing

⁵³ Williams, *supra* note 46, at 788–89.

⁵⁴ See MILLER, *supra* note 1, at 123.

⁵⁵ Candace Jackson, *What Is Redlining?*, N.Y. TIMES (Aug. 17, 2021), <https://www.nytimes.com/2021/08/17/realestate/what-is-redlining.html> (“Neighborhoods were ranked from least risky to most risky—or from ‘A’ through ‘D.’ The federal government deemed ‘D’ areas as places where property values were most likely to go down and the areas were marked in red—a sign that these neighborhoods were not worthy of inclusion in homeownership and lending programs. Not coincidentally, most of the ‘D’ areas were neighborhoods where Black residents lived.”); Terry Gross, *A ‘Forgotten History’ Of How The U.S. Government Segregated America*, NPR (May 3, 2017), <https://www.npr.org/2017/05/03/526655831/a-forgotten-history-of-how-the-u-s-government-segregated-america> [<https://perma.cc/LR35-HFJA>] (“The government’s efforts were ‘primarily designed to provide housing to white, middle-class, lower-middle-class families,’ he says. African-Americans and other people of color were left out of the new suburban communities—and pushed instead into urban housing projects.”).

market thereby avoiding the statutory barriers and obstacles that deny those returning from being housed. The impact of redlining not only deprived generations of African Americans the opportunity to own homes which could serve as residences for the formerly incarcerated upon release but it also deprived communities of both individual and collective wealth.

The lack of property ownership and the subsequent devaluation neighborhoods and by extension communities through redlining had the following negative impacts. For individual families, there was a lack of equity which meant that wealth tied to property was neither created nor transmitted from one generation to the next. For the individuals returning, there was a lack of private homes to return as an option. For the community, the lack of private homeownership meant the community was not as highly valued, the property tax was lower and thus the local public education system suffered as a result. These historical race- and class-based policies that denied or prevented private homeownership created communities that were in many circumstances unable to provide for family and friends returning home after incarceration or to provide avenues that allowed individuals to successfully avoid incarceration. Contemporary, systemic policies along with historical practices both based on marginalized identities of race and low socio-economic status that directly interfere with the process of reentry and the prospect of successful reintegration.

CONCLUSION

Reentry and reintegration are impacted not only by formal legal rules that impede the rights and privileges of those with former criminal justice system involvement but also by demographic factors such as race and class. While the formerly convicted are denied full citizenship status and face innumerable challenges based upon their criminal conviction, not all formerly convicted face the same barriers upon return. Formerly convicted individuals from low socio-economic groups face a particular set of class-based challenges as they attempt to reenter and reintegrate back into society. Moreover, formerly convicted individuals who are African American face race-based challenges. Accordingly, formerly convicted individuals who are both African American and poor face even more hurdles in their efforts to return. Naturally, the intersectionality of race and class and their impact on reentry and reintegration also includes sex, sexual orientation, and gender

identity, to name a few. Individuals with marginalized identities and without criminal records face many of the same challenges that convicted individuals endure. When class and race are overlayed on top of criminal status, reentry and reintegration become even more of a challenge.