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STUDENT'S NAME: Laura Smith

SUPERVISORS'S NAME: Andrew Fagan

DISSERTATION TITLE: Collateral Consequences and the Failure of International Human Rights Law: How States are Legally allowed to Marginalize Those with Criminal Backgrounds

COMMENTS: (PLEASE WRITE BELOW YOUR COMMENTS)

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**Collateral Consequences and the Failure of International Human Rights Law:
How States are Legally allowed to Marginalize Those with Criminal
Backgrounds**

Laura Smith

MA Human Rights and Cultural Diversity

Supervisor: Andrew Fagan
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Table of Contents

Introduction	5
Collateral Consequences of Criminal Convictions: an International Perspective	6
Legal Disabilities as a Result of a Criminal Conviction	7
Employment	8
Public Benefits	9
Housing	10
Political Rights	11
Movement and Liberty	12
Privacy	13
Family and Marriage	13
Discussions	14
The Social Contract Theory: A Justification for Stripping Rights	14
Social Contract Theory: A Summary	15
SCT and Criminology: Punishment, Civil Death and Citizenship	17
The Moral Standing for Punishment	18
The Historical Use of Civil Death	20
Citizenship as a Political Tool	21
SCT and IHRL: State Sovereignty v. Universality	22
Natural Law Theory and the Universality of Human Rights	22
The Protection of State Sovereignty in IHRL	24
The Overarching Framework	25
Political and Civil Rights in International Law	26
Right to Participate in Public Affairs	26
Reasonable Grounds	27
Right to Liberty of Movement	28
Necessity and Proportionality	28
Freedom from Cruel and Unusual Punishment	29
Kind, Purpose, and Severity	30
Freedom from Discrimination	31
Prohibition of Discrimination (Art 2)	31
Equality (Art 26)	32
Right to be Treated with Humanity and Respect	32
Liberty Deprivation	33
Final Findings	33

Case Analysis: United States- A Nation in the Era of Mass Incarceration	34
Racial Disproportionality in Voting Rights	36
Racial Disparities in the Criminal Justice System	36
Felon Disenfranchisement	38
Final Analysis: Is the US complying to Human Right Obligations?	39
Recommendations	41
Obligate States to collect and publish their collateral consequences	41
Suggest States to incorporate such consequences when deciding sentences	41
Clarify proportionality when relieving a person of these consequences.	42
Suggest States to use a case-by-case analysis.	42
Set the Standard to who should be included in Art. 10.	43
Conclusion	43
Bibliography	45

1. Introduction

Today's penal systems are in place for the purpose of punishing, rehabilitating and reintegrating offenders.¹ However, due to the codes of regulations spread around the local, regional and national levels, these offenders are unable to reintegrate and are forced to live undignified lives. This can include the denial of participation in public affairs, access to national benefits, freedom of movement or advancing professional employment. There is a growing amount of literature which explains how these restrictions are closely associated with a State's recidivism rate.² However, when exploring the justification for the use of such restrictions, I argue that due to the lack of support in International Human Rights Law (hereafter IHRL), States are legally allowed to marginalize and discriminate against individuals with criminal backgrounds by infringing on their human rights.

For the purpose of this paper, I define individuals with criminal backgrounds as anyone who is present in the social community and with a criminal conviction that is still present on their personal background. This term can accommodate any person(s) who has successfully served their sentence or are publicly serving their sentence and haven't been pardoned of their criminal convictions. For example, persons on parole or probation will be incorporated into this definition because these particular individuals are active in the present community, thus having the most trouble when trying to reintegrate back into society. However, those who have been convicted and expunged (or spent) their conviction(s) would not be included in this definition, to an extent.³ Due to the lack of clarification when defining the rights involving this specific

¹ Esther F. J. C. van Ginneken 'The pain and purpose of punishment: A subjective perspective' (2016) The Howard League for Penal Reform p. 3

² Megan C. Kurlycek, Robert Brame, and Shawn D. Bushway 'Scarlet Letters and Recidivism: Does and old criminal record predict future offending?' (2006) *Criminology & Public Policy*; Amanda Sheely 'The effects of collateral consequences of criminal involvement on employment, use of Temporary Assistance for Needy Families and health' (2015) *Women Health* 55 (5) 548 <[10.1080/03630242.2015.1022814](https://doi.org/10.1080/03630242.2015.1022814)> accessed 4 September 2019; Margaret Colgate Love, Jenny Roberts and Cecelia M. Klingele 'Collateral Consequences of Criminal Convictions: Law, Policy and Practice' (2013) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2512920> accessed 9 September 2019

³ The United Kingdom practices a form of rehabilitation which allows for criminal conviction to be spent. However, some individuals are still scrutinized on these spent convictions. This differs from an expungement since the conviction is permanently pardoned. *West's Encyclopedia of American Law (2nd edn, 2008)* S.v. "expunge." <<https://legal-dictionary.thefreedictionary.com/expunge>> accessed 4 September 2019

population and IHRL inability to examine the codes associated with these individuals, IHRL fails to provide a suitable platform when protecting the rights of individuals with criminal backgrounds.

Through an evaluation of the various forms of penal, regulatory, and case law, I will be able to collect and organize the collateral consequences associated with a criminal conviction. As a completion of this, I aim to list the forms of rights that are restricted to those with criminal convictions and their legal justifications. With support from social contract theory, the history of civil death, its involvement in today's penal and political system, and a special analysis of the United States, I will be able to define the theoretical justification for the use of a persistent punishment and its order when stripping those with criminal convictions of their equal and non-discrimination rights. With this knowledge, it will become evident how these stigmatizations against people who have offended are institutionalized into the social norms of States and IHRL.

By comparing these collateral consequences to their associated rights in IHRL, I aim to support my argument on how IHRL has failed to protect the dignified rights of individuals with criminal convictions. However, by reviewing the decisions and evidence of human right-based court decisions in regards to the collateral consequences of this specific population, I will recommend how IHRL can be build its support for those with criminal convictions by elaborating on what is lacking in the ICCPR and publishing guidelines that set standards on how States should deal with these specific individuals.

2. Collateral Consequences of Criminal Convictions: an International Perspective

Collateral consequences are best defined as the additional legal side effects that can limit and restrict a person's ability to live a dignified or free life as a result of their criminal conviction.⁴ As mentioned before, I will incorporate individuals with various levels of offenses and those on probation or parole. Doing so will give an equal level of respect for every individual who may fall into this category. Additionally, those

⁴ Gabriel J. Chin 'Collateral Consequences of Criminal Convictions' (2017) 18 (3) Criminology, Criminal Justice, Law & Society: American Bar Association (ABA), ' Collateral Consequences of Criminal Convictions: Judicial Bench Book' (2018) National Criminal Justice Reference Service <<https://www.ncjrs.gov/pdffiles1/nij/grants/251583.pdf>> accessed 27 August 2019 p. 4, 6

individuals who are serving parole and probation are often not considered as having completed their sentence and have the hardest time integrating into society because of this stigmatization.⁵ Furthermore, the majority of those offenders whether having served a jail/prison sentence or not, fall into this category and widening the scope of focused population can feedback more information on the struggles these individuals may face.⁶

Although there is a variation in every State, collateral consequence can hurdle one's ability to benefit from civil status, funds offered by the government, employment, housing, and family relationships. Typically, these consequences are made by federal, state, and local governments and given a status as a regulation instead of a penal policy, making them very difficult to locate.⁷ Through the evaluation of a series of research, it becomes evident that collateral consequences are a conflict of interest between those individuals with criminal background and the public's safety.

2.1. Legal Disabilities as a Result of a Criminal Conviction

Out of the public's interest, collateral consequences are made to regulate the public's environment. They allow for those with criminal convictions to remain under government supervision and ensure that the individual cannot harm the public again.⁸ Despite variation in length, collateral consequences can affect an individual for a long enough time to lead the individual to recidivate.⁹ To clarify, recidivism doesn't directly equate to the harming of another individual, but may be a breach of the offender's parole or probation contract landing him or her back into prison.¹⁰ For example, those with drug offenses are often

⁵ Sadhbh Walshe 'Probation and parole: a study in criminal justice dysfunction' The Guardian (New York 26 April 2012) <<https://www.theguardian.com/commentisfree/cifamerica/2012/apr/26/probation-parole-study-dysfunction>> accessed 4 September 2019

⁶ Chin (n. 4) p. 374- 375; Timothy Hughes and Doris James Wilson 'Reentry Trends in the US: Inmates returning to the community after serving time in prison' (Bureau of Justice Statistics) <<https://www.bjs.gov/content/reentry/reentry.cfm>> accessed 31 August 2019:

⁷ Sarah B. Berson 'Beyond the Sentence: Understanding Collateral Consequences' (2013) Issue 272 National Institute of Justice <<https://www.ncjrs.gov/pdffiles1/nij/241927.pdf>> accessed 31 August 2019 p.26

⁸ U.S. Commission on Civil Rights 'Collateral Consequences: The Crossroads of Punishment, Redemption and the Effects on Communities' (2019) USCCC Briefing Report p.90

⁹ Tanya N. White 'Felony Collateral Sanctions Effects on Recidivism: A Literature Review' (2018) 29 (5) Criminal Justice Policy Review 505 p. 508

¹⁰Ministry of Justice 'Multi-Agency Public Protection Arrangements Annual Report 2012/13' (2013) Ministry of Justice Statistics Bulletin

denied welfare benefits and typically have trouble securing employment. Naturally, if a person within this category decides to steal as a method of getting food and maintaining survival, he or she will be sent back to prison if caught.

Collateral consequences can become problematic because they maintain the stigmatization and discrimination against **all** individuals of criminal convictions. Additionally, because these consequences are sometimes seen as regulatory instead of punitive, they are not considered when sentencing an individual, resulting in harsher punishments on the offenders that can be seen as silently degrading.¹¹ Some limitations imposed by collateral consequences can lead to the restriction of one's:

2.1.1. Employment

Depending on the nature of one's conviction, a person can be barred from certain fields of employment, restricted on the professional licenses they are able to complete, and can be discriminated against by employers. For example, South African regulations pertaining to certain careers, such as police or security officers, will prohibit the allowance of an individual with a criminal background that is 10 years or younger.¹²

Furthermore, studies have found that individuals with a criminal background are most likely not to be picked for employment.¹³ This is justifiable in State's where tort law prevails. Since employers are obligated under regulation codes to provide for a safe environment, they are able to be sued for negligence.¹⁴ To

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/253983/mappa-annual-report-2012-13.pdf> accessed 31 August p. 25

¹¹ Chin (n. 4) p. ; John G. Malcolm 'The Problem with the Proliferation of Collateral Consequences' (2018) 19 The Federalist Society Review 36 p. 37

¹² South Africa Private Security Industry Regulation Act, 2001 s. 23(1)(d); South African Police Service Employment Regulation, 2017 s. 11(1)(a)(xii)

¹³ Megan C. Kurlycek, Robert Brame, and Shawn D. Bushway 'Scarlet Letters and Recidivism: Does and old criminal record predict future offending?' (2006) Criminology & Public Policy 5 (3) 483 p.485; Society for Human Resource Management (SHRM), 'Background Checking—The Use of Criminal Background Checks in Hiring Decisions' (2012) <<http://www.shrm.org/research/surveyfindings/articles/pages/criminalbackgroundcheck.aspx>> accessed 31 August 2019 slide 7-8

¹⁴ Benjamin Levin 'Criminal Employment Law' (2018) 39 (6) Cardozo Law Review 2265 <<http://cardozolawreview.com/wp-content/uploads/2018/08/LEVIN.39.6.6-1.pdf>> accessed 31 August 2019 p. 2269-70, 2278; Restatement (second) Agency s. 229; Restatement (third) agency s. 7.03 (2)

meet their requirements, employers are allowed to subject their candidate to criminal background checks prior to employment and, in an informal fashion, legally able to discriminate.¹⁵ Due to these direct restrictions, individuals with a criminal background are unable to pursue high paying careers and must remain marginalized because of their low income and social status.

2.1.2. Public Benefits

Majority of released convicts will need federal assistance due to their inability to find jobs.¹⁶ However for serious offenses or drug convictions, some States ban their use of welfare or food stamps.¹⁷ For example, Canada does not allow for individuals on parole or on 'long-term supervision' (also could be known as probation) to benefit from social welfare because they view these particular individuals are "considered to be under the auspice of the correctional system".¹⁸

Alongside this, these offenders can be found ineligible to financial aid used for higher education.¹⁹ In the united states those individuals with a drug or sexual offence denied to benefit from federal student aid, especially Federal Pell Grant which doesn't require the individual to repay the loaned amount.²⁰ Alongside this, scholars have hinted that certain States will discriminate against students with criminal backgrounds and bar their access to certain courses in Higher Education.²¹ As a result, individuals with a criminal background are hindered of their education and unable to pursue professional careers.

¹⁵ SHMR (13), slide 6

¹⁶ Lucius Couloute and Daniel Kopf 'Out of Prison & Out of Work: Unemployment among formerly incarcerated people' Prison Policy Initiative (July 2018) <<https://www.prisonpolicy.org/reports/outofwork.html>> accessed 9 September 2019

¹⁷ 42 U.S.C.A. s. 608(a)(7)- United State doesn't allow for those with drug or violent offences to be eligible for a grant. 21 U.S.C. § 862. (a)- United States denies federal benefits to drug traffickers and possessors.

¹⁸ Micheal Pinard, 'Collateral Consequences of Criminal Convictions: Confronting Issues of Race and Dignity' (2010) New York University Law Review 85 457, p. 498

¹⁹ Ibid p.

²⁰ Federal Student Aid 'Students with criminal convictions have limited eligibility for federal student aid' <<https://studentaid.ed.gov/sa/eligibility/criminal-convictions#incarcerated>> accessed 1 September 2019

²¹ Taabo Mugume 'Higher education access in South African for Students with Criminal Records' (2017) 21 Law Democracy & Development <https://www.academia.edu/34244335/Higher_education_access_in_South_Africa_for_students_with_criminal_records?auto=download> accessed 1 September p. 31-32; Iolo Madoc-Jones, John Bates, Barbara Facer and Karen Roscoe 'Students with Criminal Convictions: Policies and Practices in Social Work Education' (2007) 37 (8) The British Journal of Social Work 1387 p. 1389

2.1.3. Housing

In various countries a criminal conviction can affect one's benefit to standardize or public housing or housing in general. For example, in Canada landlords are legally able to find those with convictions ineligible to rent their property.²² Although the Canadian constitution is notable for protecting their citizens from discrimination, there residential laws lacks this principle and are allowed to disqualify or evict anyone who has a criminal background.²³ Since Landlords are legally allowed to conduct background checks on prospective tenants, they, very much like employers, prefer to pick a person without a criminal background.

Additionally, some countries force those on parole, probation, or other form of extended supervision to ask permission to live in certain areas. The sex offenders register is a prime example of this. Under the various forms of sex offender acts in multiple countries, those with a sex offense background must register their location of their residence.²⁴ Included in this, in America, those with a sexual offense must ask permission to reside in a neighborhood before moving.²⁵ Correspondingly, in some cases those on parole or probation must register their location, while those with drug or fraud offense are ineligible for federal housing.²⁶ This type discrimination in regards with housing have forced various individuals to live in unsafe situations and can be linked to the high percentage of homelessness.²⁷

²²Canada Mortgage and Housing Corporation, 'Housing option upon discharge from correctional facilities' (2007) Socio-economic series 07 (1) <<http://publications.gc.ca/site/eng/312066/publication.html>> accessed 31 August 2019, p. 2

²³ David Burke, 'Criminal record checks on prospective tenants 'discriminatory,' says Halifax lawyer' CBC News (Nova Scotia 15 January 2018) <<https://www.cbc.ca/news/canada/nova-scotia/criminal-records-housing-renting-crime-1.4485932>> accessed 31 August 2019; Residential Tenancies Act, 2006 ss 61, 64-66

²⁴Jacqueline Beard 'Registration and Management of Sex Offenders' (2017) House Of Commons-Briefing Paper No. 5267 p.14; Sexual Offences Act 2003 (UK) 103G; H.R. 4472 Adam Walsh Child Protection and Safety Act of 2006 (US) s 103 (A); Sex Offender Information Registration Act 2004 (Canada) s 4(1)

²⁵ Penal Reform Trust 'Information booklet for people on licence for a sex offence' (2015) <<http://www.prisonreformtrust.org.uk/Portals/0/Documents/sex%20offender%20information%20booklet.pdf>> accessed 1 September 2019 p. 3

²⁶37 Pa. Code s. 63.4 (2) (US, explaining that need for those on parole to live at a residence approved by the Board);24 Code of Federal Regulation s. 966.4(1)(5)(i)(A)- pertaining to those with a drug offense ineligible for public housing.

²⁷ Kim Williams, Jennifer Poyser, and Kathryn Hopkins 'Accommodation, homelessness and reoffending of prisoners: Results from the Surveying Prisoner Crime Reduction (SPCR) survey' (2012) Ministry of Justice p. 5;

2.1.4. Political Rights

Disenfranchising offenders is a very popular topic which continues to be debated today. Unlike the majority of the other consequences, this topic is the most well-known collateral consequences because of its controversy pertaining to the racial disproportionality of incarcerated individuals.²⁸ Dependent on the nature of the crime, some States consider those who are on parole or probation are seen as socially incompetent and disqualified them from voting in local, state, and federal level elections.²⁹ For instance, an act passed in India bars those with criminal convictions to vote in public elections.³⁰ This formal discrimination of those with criminal convictions can directly influence the outcome of elections since not every person is given an voice in the polls. I will evaluate this issue specifically, in regards to racial disparities and political powers, in my analysis of the United States further in this paper.

Some states will not allow persons with a criminal background to run for office or hold positions in governmental administration.³¹ For example, regulation codes in South African disqualify those with criminal backgrounds to serve in regulatory agencies.³² This is a big issue because individuals who have criminal backgrounds should be influential in the governmental institutions, immediately disqualifying them can maintain the institutional codes that marginalize this specific population.³³

Furthermore, some States ban persons with a criminal background from serving in the military. In the US, federal codes disqualify any person convicted of a felony from enlisting into the military.³⁴ This banishment is another hurdle that an individual could face when searching for employment. Alongside

²⁸ Erin Kelly 'Racism & Felony Disenfranchisement: An Intertwined History' (2017) Brennan Center for Justice <<https://www.brennancenter.org/publication/racism-felony-disenfranchisement-intertwined-history>> accessed 1 September 2019 p. 3; Jennifer Rae Taylor 'Jim Crow's Lasting Legacy at the Ballot Box: Denying voting rights to people with felony convictions has roots in racist laws.' (2018) The Marshall Project <<https://www.themarshallproject.org/2018/08/20/jim-crow-s-lasting-legacy-at-the-ballot-box>> ; Sarah (no. 7) p. 25

²⁹ 'The disenfranchisement of Ex-Felons: Citizenship, Criminality, and "The Purity of the Ballot Box"' 102 (6) *Havard Law Review* 1300 <<https://www.jstor.org/stable/1341296> > accessed 1 Septemeber 2019 p. 1308; Afi S. Johnson-Parris 'Felon Disenfranchisement: The Unconscionable Social Contract Breached' (2003) 89 (1) *Virginia Law Review* 109 p. 133

³⁰ Representation of the People's Act, 1951 s 8 (1)

³¹ *Ibid.* s. 11A (1); ; 18 U.S.C. § 201(b)

³² Social Housing Act 16 of 2008 s. 9(7)(d)

³³ *Ibid*

³⁴ U.S. Code 10 s 504 (a)

this, banishing a person from serving in the military can affect their can pose an image that those with criminal convictions are not patriotic enough for their country, resulting in national and social identity issues.³⁵

2.1.5. Movement and Liberty

Some States will restrict the freedom of movement and liberty for those with criminal backgrounds. Those on probation or parole are not allowed to travel outside of a specified jurisdictions or barred access to other countries.³⁶ This can influence the individual's access to better rehabilitation programs, job opportunities, or mental leisure. Specifically, those with sex offenses are restricted to move anywhere near children or certain environments. If caught near these specific locations can result in incarceration and extension of their sentence.³⁷

After being prosecuted for a crime, those individuals who lawfully reside in State are subjected to be deported.³⁸ In extreme cases, such as those in the US and UK, these individuals will be forced back to a place they have rarely lived in and can face life threatening circumstances.³⁹ Even more concerning, is that these individuals will lose ties with nuclear family members or medical necessities. For example, Jimmy Aldaoud was deported to Iraq because of his extensive criminal history, a country he legally immigrated from at six months old, and died shortly after because of the lack of insulin offered in that country.⁴⁰

³⁵ Ronald R. Krebs 'A School for the Nation? How Military Service Does Not Build Nations, and How It Might' (2004) 28 (4) International Security 85 < <https://www.jstor.org/stable/4137450>> accessed 1 September 2019 p. 89

³⁶ 'The Rules you have to follow when you are on Licence' p. 8; Code of Ala. s 15-22-29 (1)

³⁷ Sandra Norman-Eady 'Sex Offenders' Residency Restrictions' (2007) <<https://www.cga.ct.gov/2007/rpt/2007-r-0380.htm>> accessed 9 Septmeber 2019

³⁸ Immigration Act 2009 (New Zealand) s. 161 (1); Migration Act 1958 (Australia) ss 201-203

³⁹ Diane Taylor 'Revealed: five men killed in past year after being deported from UK to Jamaica' The Guardian (London, 9 May 2019) <<https://www.theguardian.com/uk-news/2019/may/09/revealed-five-men-killed-since-being-deported-uk-jamaica-home-office>> accessed 2 September 2019; Sarah Stillman 'When Deportation is a Death Sentence' The New Yorker (New York, 8 January 2018) <<https://www.newyorker.com/magazine/2018/01/15/when-deportation-is-a-death-sentence>> accessed 2 September 2019

⁴⁰ Scottie Andrew and Laura Ly 'The body of an Iraqi man who died shortly after ICE deported him has returned to the US for burial' CNN (1 September 2019)

2.1.6. Privacy

Almost all States force offenders to wear their conviction on their sleeve. To explain, criminal records are able to be viewed by the public; regardless of a criminal background check is necessary. Because of these allowances, those with criminal background are subjected to public humiliation, harassment, and vigilante violence.⁴¹ Additionally, those on probation and parole, and some other cases of individuals with drug offences, are subjected to unwarranted searches and drug testing.⁴² This lack of privacy can pose a huge threat to an individual's security. For example, during the Philippine 'drug war', about 22,983 (although this number may be higher than reported) individuals were victims of extrajudicial killings because of their prior drug offenses.⁴³

2.1.7. Family and Marriage

Concerning the nature of the crime, some individuals with a criminal background are unable to marry, adopt, denied access to their children, and can be forced to divorce. A series of legislations from different countries consent that due to the period spouses are separated consults as reasonable grounds for a divorce.⁴⁴ Typically the length for this ground to be legally valid is 2-5 years. Additionally, these legislatures do not need the consent from both partners. Meaning if a person is convicted and confined for more than the years stated within this legislature, then their spouse is legally able to divorce them. Of course, the defendant would not be complete enough for the judicial dispute of property and is most likely to lose most of their property and finances.

<<https://edition.cnn.com/2019/09/01/us/deported-iraqi-national-body-return-us-trnd/index.html>> accessed 2 September 2019

⁴¹ Human Rights Watch 'No Easy Answer: Sex Offender Laws in the USA' (New York 11 Septemeber 2007) <<https://www.hrw.org/report/2007/09/11/no-easy-answers/sex-offender-laws-us>> accessed 2 September 2019

para 4

⁴² Rolando V. del Carmen and Jonathan R. Sorensen, 'Legal Issues in Drug Testing Probation and Parole Clients and Employees' (1989) National Institute of Justice p. 2

⁴³ Human Rights Watch 'Philippines: Events of 2018 (Extrajudicial Killings)' <<https://www.hrw.org/world-report/2019/country-chapters/philippines#1ff4dc>> accessed 2 September 2019

⁴⁴ Divorce Act 1985 (Canda) s 8 (2) (a); Family Law Act 1975 (Australia) s 48 (2); Jeremy Travis 'Invisible Punishment: An Instrument of Social Exclusion' in March Mauer and Meda Chesney-Lind (eds) '*Invisible Punishment: The Collateral Consequences of Mass Imprisonment*' (New York Press, New York) p. 17-18

Additional to this, some offense will have an effect on the rights of their child or future children. For instance, those convicted of certain offenses, such as violence and drug offense or continues to criminal convictions, will be deemed unqualified to support the family and have their children taken away.⁴⁵ Alongside this, based on their conviction they may not be able to visit or be restricted to a certain amount of visitation hours offered. In other areas, some individuals with criminal background will often be rejected to foster children.⁴⁶

2.2. Discussions

After evaluating the lengthy list of collateral consequences imposed onto those who have criminal backgrounds, it becomes evidently easier to understand how these individuals can be legally be discriminated against. Because of the locations of these rules and regulations, it becomes very difficult to locate and keep a track of which laws may affect certain individuals. For example, as I have mentioned before, some of these collateral consequences pertain to individuals on parole or probation, while some pertain only to those with violent or drug offences.

However, even though there is established boundaries between regulations and their corresponding offenses, individuals with criminal convictions are still blanketed as one, *criminals*. This can be exhibited through the lack of clarification on how severe an offense may be for its interrelated consequence to be applied. Yet, why do States focus on the rights of these individuals as a form of punishment? To understand why this may occur, I will evaluate the political, and somewhat moral, philosophy of the penal system.

3. **The Social Contract Theory: A Justification for Stripping Rights**

When exploring the idea of punishment, social contract theory is a relevant concept relating to the subject. The idea of a social contract between States and its citizens has been a concept from the

⁴⁵ 'Criminal Convictions Impact on Child Custody Cases' FreeAdvice Legal <https://family-law.freeadvice.com/family-law/child_custody/criminal-convictions-and-child-custody.htm> accessed 9 September

⁴⁶ The Children Act 1989: Guidance and Regulations for Fostering Services s. 3.87; The Child Abuse Prevention and Treatment Act s 106 (b)(2)(xxii)

beginning of philosophy, which has developed over time by major political and moral philosophers such as Thomas Hobbes, John Locke, Jean-Jacques Rousseau and David Gauthier. Social contract theory is used as a central argument for the justification of national authority, and explains how the origins of a State provides the moral foundation for their interpretation of a 'just' society. By exploring this abstract relationship between individuals and their State, it will become apparently clear how this theory has deeply rooted itself in criminology, advocates for the use of punishment as an ideal tool for controlling the public's behavior and social perception while promoting the State's own narcissistic interests, and falls short in power within IHRL.

3.1. Social Contract Theory: A Summary

The conception of social contract theory (SCT) is an idea that can be found throughout history. For instance, there are ancient Greek works that highlight Socrates explanation for the necessity of laws. Within his argument Socrates thanks Athenian laws for allowing him to receive education and live a just life, and explains that one's willingness to live in this society theoretically consents to the regulations of that city.⁴⁷ Yet, in light of the enlightenment era, more modernized ideas on political powers and the contract of society came to rise. The first of this, was Thomas Hobbes who built up a theory on a natural society and psychological egoism, or the belief that men are narcissistically motivated and in return naturally competitive on the limited resources in the world.⁴⁸ Hobbes believed that this "State of Nature", is disastrous for mankind because it leads to infinite war and competition. As a reaction, the rationality of humanity motivates us to work as a community, eliminating individual freedoms and submitting to an overarching sovereign power.⁴⁹

⁴⁷Celeste Friend, 'Social Contract Theory | Internet Encyclopedia Of Philosophy' (iep.utm.edu, 2019) <<https://www.iep.utm.edu/soc-cont/#H1>> accessed 6 September 2019.; Shahram Arshadnejad 'The Social Contract Theory According to Socrates' (2018 ResearchGate) <<https://www.researchgate.net/publication/328268944> The social contract theory according to Socrates> accessed 6 September 2019 p. 5-6; Claire Oakes Finkelstien, 'Punishment as Contract' (2011) 8 Ohio State Journal of Criminal Law 319, p. 320-321

⁴⁸ Jean Hampton 'Hobbes and the Social Contract Tradition' (Cambridge University Press 1986) p. 25

⁴⁹ Robert P. Kraynak 'Thomas Hobbes: From Classical Natural Law to Modern Natural Rights' (2011) Natural Law, Natural Rights, and American Constitutionalism <file:///M:/pc/downloads/site-name_-_title_-_mod-yyyy-mod-mm-mod-dd.pdf> accessed 2 September 2019 p. 1

Locke conflicts with this theory and writes about the rights of nature that are given to humankind, a theory followed more so by human rights ideals and practices.⁵⁰ Locke's trust in the social units (or the property value) of family within the natural world, diverges from Hobbes belief in the individual as a motive.⁵¹ Instead of egotistical motivations, Locke argues that humankind are focused on protecting property and families. Thus, Locke's theory of the social contract is built upon the human nature for the protection of its property (which includes a man's wife and children) which push people out of the state of Nature and compact with others to make an authoritative government.⁵² Locke's theory furthers Hobbes' in the sense that it argues that the government has a contract with its citizens as much as the citizens have with the government. If the government is unable to fulfill its obligations or work against the interest of the people, then the citizens have a right to resist.⁵³

Rousseau bridges these two theories by explaining that humans have moved from the natural state to civil society because of an increase in population, so much that isolation is not self-sufficiency as it use to be.⁵⁴ Rousseau explains that as populations increased, social classes began to develop. For this reason, Rousseau argues that the theory on the protection of private property is deeply narcissistic, political, and against morality.⁵⁵ To explain, Rousseau elaborates that because social classes came through the haves and the have-nots, government (or sovereign civil state) was birthed to protect the haves from the competitive nature of the have-nots.⁵⁶ In this light, the government is not a mere representation of the public's interest but instead a representation of those in the higher class.

⁵⁰ Jeremy Waldron, *Nonsense upon Stilts* (Methuen & Co. 1987) p. 10- 12; Peter C. Myers "From Natural Rights to Human Rights- and Beyond' (2017) Issue No. 197 The Heritage Foundation <https://www.heritage.org/sites/default/files/2017-12/SR-197_0.pdf> accessed 2 September 2019 p. 7

⁵¹ Jacqueline L. Pfeffer 'The Family in John Locke's Political Thought' (2001) 33(4) The University of Chicago Press Journals 593, p. 598

⁵² Manzoor Elahi Laskar 'Summary of Social Contract Theory by Hobbes, Locke and Rousseau' (2013) Symbiosis International University < <http://dx.doi.org/10.2139/ssrn.2410525>> accessed 2 September 2019 p. 4

⁵³ Ibid

⁵⁴ Peter McCormick 'Social Contract: Interpretation and Misinterpretation' (1976) 9(1) Canadian Journal of Political Science 63 p. 69

⁵⁵ Jean-Jacques Rousseau 'The Social Contract' (2017) p. 4-5

⁵⁶ Ibid,p. 11; 36

Finally, Gauthier modernizes Hobbe's theory in the social contract by adding theories evolving crime and justice. Gauthier pushes the Leviathan idea that our rationality (or morality as he terms it) forces us to cooperate, but also takes the theory a step forward by explaining that this rationality also keeps us to follow through our agreements.⁵⁷ To support this idea, Gauthier is able to argue that in situations where the actions of others can affect one's own outcome, then one's own interest is best achieved through cooperation.⁵⁸

Although, each philosopher may argue the strength of their theories, they have come to conclusions on how the social contract works. To explain, in an aim to achieve whatever personal interest of their own, citizens are willing to limit their rights and freedoms in order to live within a civil society, resulting in a list of rules and regulations to ensure a "just" society.⁵⁹ In this perspective, those who break those rules are criminals and become ineligible to prosper from the commonwealth.

3.2. SCT and Criminology: Punishment, Civil Death and Citizenship

As mentioned before, the social contract explains that a set of laws and rules are in place to ideally push the interests of all in certain situations.⁶⁰ Under these rules, everyone is entitled to moral rights, such as the right to life, liberty, and property; however, those who violate the terms of the contract are consenting to forfeit these rights, justifying the use of punishment.⁶¹ To evaluate how punishment has influenced the public's perceptions of those with criminal backgrounds, I will evaluate the moral philosophy of punishment, its relationship with civil or social death, and the political power of citizenship.

⁵⁷ David Gauthier 'Why contractarianism' in Peter Vallentyne (ed) '*Contractarianism and Rational Choice*' (Cambridge University Press 1991) p. 23

⁵⁸ David Gauthier 'Compliance: Maximization' in his work 'Morals by Agreement' (Oxford University Press 1987) p. 9

⁵⁹ In Rawl's work, *Justice as Fairness*, he explains for everyone one within a society to live with dignity, individuals are entitled to liberty, right to life, and property. 'Justice as Fairness: Justice within a Liberal Society', Stanford Encyclopedia of Philosophy (2017) <<https://plato.stanford.edu/entries/rawls/#JusFaiJusWitLibSoc>> accessed 2 September 2019

⁶⁰ Richard Dagger, 'Social Contract, Fair Play, and the Justification of Punishment' (2011) 8 *Ohio State Journal of Criminal Law* p. 346

⁶¹ Morris "Punishment and loss of moral standing"

3.2.1. The Moral Standing for Punishment

There are four principles to define the functions of punishment: deterrence, retribution, incapacitation, and rehabilitation.⁶² The principle of deterrence is used to influence citizens from offending by using punishment as a warning.⁶³ For example, those who offend are often displayed on the news with a photo with their *alleged* charges listed. This may not be a direct warning from the government to its audience, but the public is able to comprehend what could happen if they committed the same crimes. The principle of retribution incorporates the 'just deserts' theory. Meaning that the punishment for an offense should be as equal as the harm done by the offender.⁶⁴ Based on the incapacitation principle, incarcerating an offender is an ideal tool. This principle supports the use of prisons and holding cells as an aim to protect the public's interest in maintaining safety.⁶⁵ Rehabilitation is a modernized principle that pushed for a series of treatments or punishments intended to motivate the individuals in his or her decision making process and, thus, reforming the individual.⁶⁶ Although, each principle can be justified by a series of theories (utilitarian, deontological, and virtue theory for example) they are all based on the belief that people are rational beings, in the field of criminology this idea can also be known as Rational choice theory.⁶⁷

Rational choice theory, I argue, is the "social contract theory" of Criminology. This theory argues that humans are capable of understanding the rules and regulations of society, and rationally chooses to

⁶² Katrina L. Sifferd, 'Virtue Ethics and Criminal Punishment' in Alberto Masala and Johathan Webber (eds) *From Personality to Virtue: Essays on the Philosophy of Character* (Oxford Scholarship, London 2016) p. 1; Anthony Walsh and Ilhong Yun 'The Philosophical and Ideological Underpinnings of Corrections' in Mary Maguire and Dan Okada (eds) "*Critical Issues in crime and justice: though, policy, and practice*" (2011 Sage) p. 300-305

⁶³ Ronald L. Akers 'Rational Choice, Deterrence, and Social Learning Theory in Criminology; The Path Not Taken' (1990) 81 (3) *The Journal of Criminal Law & Criminology* 653, p.657- 659

⁶⁴ Hugo Adam Bedau 'Retribution and the Theory of Punishment' (1978) 75 (11) *The Journal of Philosophy* 601, 601-602

⁶⁵ Christina Stahlkopf, Mike Males, and Daniel Macallair 'Testing Incapacitation Theory Youth Crime and Incarceration in California' (2010) 56 (2) *Crime & Delinquency* <<https://journals.sagepub.com/doi/pdf/10.1177/0011128707307227>> accessed Septmber 3 2019, p.255-256

⁶⁶ McNeill, Fergus (2014) Punishment as rehabilitation. In: Bruinsma, Gerben and Weisburd, David (eds.) *Encyclopedia of Criminology and Criminal Justice*. Springer, New York, 4195 p 4196-97

⁶⁷ Katrina (n. 62) p.2

break them.⁶⁸ Under rational choice theory, individuals will 'rationally' calculate the cost (the punishment if caught completing the crime) and benefits (the ultimate prize of successfully completing the crime) before deciding to act.⁶⁹ Unlike other criminology theories (deterrence, biosociology, or social bond theory), rational choice theory relies on the utilitarian belief that people are rational beings and understand the social contract within their communities.⁷⁰ However because of this cost/benefit analysis, certain people decide to commit crimes or abide by the laws. Under this theory it is justifiable to understand that 'criminals' are rationally or morally wrong, and for that reason stripped of their liberties.

When exploring the theory of punishment, David Hume justifies the use of punishment by explaining that

"When any man, even in political society, renders himself by his crimes obnoxious to the public, he is punished by the laws in his goods and person; that is, the ordinary rules of justice are, with regard to him, suspended for a moment, and it becomes equitable to inflict on him, for the benefit of society, what otherwise he could not suffer without wrong or injury"⁷¹

It is evident through Hume and the works of other moral justification for punishment, the interest of the offender is not of any concern.⁷² Actually, the idea of punishment being a violation of an offender's rights is out of the picture because offenders, and their criminal acts, are seen as immoral and thus their opinions become irrelevant.⁷³

⁶⁸ Jr. James F. Short, 'The Place of Rational Choice in Criminology and Risk Analysis' (1997) 28 (2) The American Sociologist 61, p.63

⁶⁹ Ronald (n. 63) p. 654-655

⁷⁰ Milan Zafirovski 'What is Really Rational Choice? Beyond the Utilitarian Concept of Rationality' (1999) 47 (1) Sage Current Sociology 47 p. 48- 56

⁷¹ David Hume 'An Enquiry into the Sources of Morals' (Johnathan Bennet 2017) <<https://www.earlymoderntexts.com/assets/pdfs/hume1751.pdf>>accessed 3 September 2019 p.11; Christopher W. Morris 'Punishment and Loss of Moral Standing' (1991) 21 (1) Canadian Journal of Philosophy 53, p. 53; Paul Russel 'Hume on Responsibility and Punishment' (1990) 20 (4) Canadian Journal of Philosophy 539 p.

⁷² Claire Oakes Finkelstien 'Punishment as Contract' (2011) 8 Ohio State Journal of Criminal Law 319 p. 331-332; Christopher (n. 72) p. 54

⁷³ Christopher (n. 72) p. 58

3.2.2. The Historical Use of Civil Death

The motives for Socrates to address the idea of a social contract between himself and Athenian laws, was a way for him to justify the need to accept the death penalty.⁷⁴ This setting for Plato's work is an ideal example of how civil death was used throughout history. Due to the change in morals over time, civil death has evolved to the punishments we see in today's penal system, including the collateral consequences of a criminal conviction.⁷⁵

Civil death is the forfeiture of rights and privileges of a person due to a conviction.⁷⁶ Under this rule, individuals are pushed out of the protection of law and, historically, were the justification for the death penalty.⁷⁷ Punishments associated with civil death include formal executions, civil expulsion, shunning, or the loss of property rights, which in some cases led to one's inability to participate in public affairs. This sort of punishment was often used by multiple forms of ancient society, and can be found in ancient writings such as the Code of Hammurabi or the laws in Greek and Roman societies.⁷⁸ Typically, a person convicted of civil death led to his or her actual death because, in this idea, the offender is not given any legal protection. However, because the use of the death penalty has slowed been stamped out (to an extent) by today's moral laws, civil death has evolved to civil disabilities, or the legal disabilities that force a convicted offender to be stripped of his or her civil rights.⁷⁹ In the aftermath, one's civil death can correlate to one's social death.

Social death, I argue, interplays with civil death because of its distinctive characteristics. First, social death is usually defined by a series of losses: social identity, the ability to take part in daily activities, and social relationships.⁸⁰ All of these characteristics are equivalent to the aftermath of punishment and civil

⁷⁴ Shahram (n. 47) p. 13

⁷⁵Gabriel J. Chin 'The New Civil Death: Rethinking Punishment in the Era of Mass Conviction' (2012) 160 (6) University of Pennsylvania Law Review 1789 p. 1790

⁷⁶*West's Encyclopedia of American Law (2nd edn, 2008)* S.v. 'civil death' <<https://legal-dictionary.thefreedictionary.com/civil+death>> accessed 3 September 2019

⁷⁷ Chin 'The New Civil Death' (n. 75) p. 1789

⁷⁸FindLaw 'History of Death Penalty Law' <<https://criminal.findlaw.com/criminal-procedure/history-of-death-penalty-laws.html>> accessed 3 September 2019

⁷⁹ Chin 'The New Civil Death' (n. 75) p. 1

⁸⁰ E. Borgstrom 'Social Death' (2017) OJM: An International Journal of Medicine 110 (1) p. 6

death. Social death is a typical concept used by sociologists to examine the process of segregation (governmental or social) and the social perception of individuals who are stripped of their rights.⁸¹ Under this evaluation, social death can be equated to the after effects of civil death because of the rights legally stripped away implies that this person should not be accepted as fully human. Thus, this stigmatization of the offenders evolves into a view of these individuals being lesser human beings just by association with a criminal conviction.

3.2.3. Citizenship as a Political Tool

This slippery slope between the moral justification of punishment, social contract theory, and civil death begs the question: Why would government focus on the citizenship rights of “criminals”? As an answer, I argue, that the political power citizenship holds within a democratic society makes the government vulnerable in regards of maintaining the interest and security of a State. For example let's resort back to Socrates situation when he was addressing social contract. In that moment, Socrates was charged with the conspiracy of corrupting the youth because of his preaching about philosophy and the power of foreign gods.⁸² This prime example demonstrates the fact that State will legally strip the dignity of their citizens in a purpose to safeguard their own interests.

In democratic states, citizenship holds an infinite value. It allows for a person's views and interest to be incorporated into the formulation of political structures and, in return, gains the protection and benefits given within that State.⁸³ However, because of its powers, governments will be skeptical on who they may grant citizenship to. For example, although it is not blatantly mentioned, slaves and women were not given property or the right to vote because it would entail that these ‘liberties’ allowed for their voice to be

⁸¹ Jaap W. Ouwkerk and et al. 'Avoiding the social death penalty: Ostracism and cooperation in social dilemmas' in K. D. Williams, J. P. Forgas, & W. von Hippel (Eds.), *Sydney Symposium of Social Psychology series. The social outcast: Ostracism, social exclusion, rejection, and bullying* (Psychology Press, New York 2005) p. 327; Regina Austin "The Shame of It All": Stigma and the Political Disenfranchisement of Formerly Convicted and Incarcerated Persons' (2004) 36 *Columbia Human Rights Law Review*
<https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1614&context=faculty_scholarship>
accessed 3 September 2019 p. 175

⁸² Shahram (n. 47) p. 2

⁸³ 'Dimensions of Citizenship' Stratford Encyclopedia of Philosophy (2017)
<<https://plato.stanford.edu/entries/citizenship/#DimeCiti>> accessed 3 September 2019

used in government.⁸⁴ Although it may be justified as a concern for public safety, this idea can be similarly used in punishment. As mentioned before, criminal acts are seen as immoral and a window of the offender's rationale. In this view, an offender's involvement in society can be seen as a virus which infects the *purity* of social and State institutions.⁸⁵

Withal, modern day societies operate with the view that anyone convicted of a crime is a lesser person, and that their actions are breaching the social contract. Thus, these people are ineligible for the protection of the law, including IHRL. Due to the conflicting theories that provide the foundation for Human Rights, when interplayed with social contract theory, areas of weakness can be highlighted.

3.3. SCT and IHRL: State Sovereignty v. Universality

In theory, human rights are a set of moral principles that can be claimed by any person(s), based on the mere fact that this individual is a human being.⁸⁶ When exploring the universality of human rights theory, advocates tend to follow the principles of national law theory,⁸⁷ a concept that can conflict with social contract theory. Yet when in practice, IHRL becomes less universal and more morally relative to the governance of States. When this occurs, IHRL begins to lose its strength in protecting those individuals with criminal backgrounds.

3.3.1. Natural Law Theory and the Universality of Human Rights

Similarly to social contract theory, John Locke and his work on the State of nature has a strong influence on human rights theory. Lockean philosophy was built upon the divine belief in God's creation of humanity and proposed that humans are individually equal.⁸⁸ In retrospect, this theory led to the creation of natural

⁸⁴ Humberto Llavador 'Suffrage Rights', Oxford Research Encyclopedia (2017) <10.1093/acrefore/9780190228637.013.5> accessed 3 September 2019 para 2

⁸⁵ "The Purity of the Ballot Box" (n. 29) ; Jaap W. Ouwerkerk and et al (n. 81) p. 323

⁸⁶ Jack Donnelly, *Universal Human Rights in Theory and Practice*, (3rd edn, Cornell University Press 2013) p.7-11

⁸⁷ *Ibid* p. 10.;

⁸⁸ Jeremy (n. 50) p. 10- 12

law, or the belief that under some sort of supernatural or natural rule, governments are obligated by law to respect a person's rights, thus forming the basis of human rights philosophy.⁸⁹

However, in comparison to the social contract, the clarification on the abstract idea of what constitutes as fundamental rights is relatively new. For example, the first teachings of 'valuable goods to humanity' appear in the works of John Finnis in 1980,⁹⁰ almost three centuries after Hobbes' teachings of the social contract theory in 1651. Furthermore, because of the differences in the period of time that human rights theory emerged, its arguments completely conflict with the values and ideas witnessed in social contract theory.⁹¹

In contrast to the collectivist beliefs that appear in social contract theory, human rights theory argues that the individual should hold the power in governing the State.⁹² Although, Gauthier's and Lockean influence in social contract theory does consider that individuals should revolt against an unjust government who doesn't take in the considerations of their civilians, yet, under social contract theory those individuals still consent to trade away their power for State security and benefits.

Incorporated with the belief of natural law and natural rights, human rights are often argued as universal since they are given to anyone who falls into the human race.⁹³ Political and moral philosopher, Immanuel Kant, builds on this idea by arguing that since all human beings are moral and rational beings, they are driven by the same egotistical energy mentioned in Hobbes works.⁹⁴ Despite these correlations, Kant's theory of universality can conflict with social contract theory because it argues that in this type of society,

⁸⁹ Ibid p. 12- 13

⁹⁰ John Finnis, *Natural Law and Natural Rights* (Oxford University Press 1980) p. 85-89

⁹¹ Jeremy (n. 50)

⁹² Amartya Sen 'Elements of a Theory of Human Rights' (2004) 32 (4) *Philosophy & Public Affairs* 315 <<https://onlinelibrary.wiley.com/doi/epdf/10.1111/j.1088-4963.2004.00017.x>> accessed 8 September 2019 p. 319

⁹³ Andrew Fagan, *Human Rights: Confronting myths and misunderstandings* (Edward Elgar 2009) p. 7, 11

⁹⁴ Luigi Caranti "Kant's theory of human rights" in Thomas Cushman (ed), *Handbook of Human Rights*. (Routledge 2014) p.39

justice and global governance is in support of all human beings and their rights rather than the power be given to only those who own property or liberties.⁹⁵

Considering the difference between the two and their crucial values in beliefs, the theory of human rights rarely incorporates the theoretical view of the social contract and its politics. Thus, everyone is treated equal regardless of their social status or the harm they may have done. In this idea, those who are associated with criminal behavior will have the same rights as law abiding citizens. Yet, when human rights is practiced at the international level, this is obviously not the case.

3.3.2. The Protection of State Sovereignty in IHRL

Human rights institutions rely on the creation of declarations, multilateral treaties and monitoring bodies at the local, regional, and international level as a way to codify the rights of humanity and ensure State's compliance to their obligations.⁹⁶ When examining these sources pertaining to those with criminal backgrounds, I will focus on the International Covenant on Civil and Political Rights (ICCPR) and its monitoring body (CCPR) because the rights expressed within this treaty precisely correspond to the ones being restricted by the collateral consequences of their criminal convictions.

The purpose of the monitoring body (also known as a treaty body) is to interpret the laws expressed within their corresponding treaties and monitor those States signed onto its corresponding treaties as they fulfil their obligations.⁹⁷ To be more specific, these treaty bodies measure a State's performance by using the multilateral agreement to respect, protect, and fulfil individual rights as a framework. From there these treaty bodies will call upon a state and ask for proof of these mechanisms, and after assessment, will provide recommendations.⁹⁸

⁹⁵ Robert Fine, "Cosmopolitanism and Human Rights" in Thomas Cushman (ed), *Handbook of Human Rights* (Routledge 2014) p. 100

⁹⁶ Michael Ignatieff, *Human Rights as Politics and Idolatry* (Princeton University Press 2001) p. 5-6

⁹⁷ 'HUMAN RIGHTS IN THE ADMINISTRATION OF JUSTICE: A Manual On Human Rights For Judges, Prosecutors And Lawyers' (2003) 9 PROFESSIONAL TRAINING SERIES <<https://www.ohchr.org/Documents/Publications/training9Titleen.pdf>> accessed 9 September 2019. p. 72

⁹⁸ Illias Bantekas & Lutz Oette, *International Human Rights Law and Practice* (Cambridge University Press 2013) p. 132-133

Through its practice, Human Right International Law will acknowledge the social contract between a State and its citizens. Therefore, as elaborated in the UN Charter,⁹⁹ the institutions will respect the sovereignty of a State, or the state's supreme authority and independence, when governing its citizens. Instead, States are allowed to self-interpret and tailor their obligations in accordance to human rights treaties leading to its largest weakness as an International form of law.

3.4. The Overarching Framework

As mentioned before, under social contract theory and human rights theory individuals are rational beings. However, because of its order in emergence, social contract theory holds priority over human rights theory. Even more so, since social contract theory is profoundly involved in the theory of punishment and criminology, offenders are seen as irrational beings. As a result, any individual associated with criminal convictions or other offenders are seen as immoral.

This ostracizing image of offenders institutionalized social norms through the use of punishment. Punishment, which is historically focused on limiting an individual's' political power by taking their citizenship rights, forces these individuals to lose its standing in society resulting in social death. Overall, because of the protection in State sovereignty in international human rights law, States are legally allowed to continue their marginalization of those with criminal backgrounds. Furthermore, because State's are allowed to self-interpret human rights treaties, these social norms are reflected back into International Human Rights Law.

As evidence to this theory, I will highlight the rights that are fully expressed in the ICCPR and typically infringed by States on those who have criminal backgrounds. With the use of interpretations made by its monitoring body, the Human Rights Committee (also known as the CCPR or The Committee on Civil and Political Rights), it will become evident how IHRL is weakened because of its allowance of State self-interpretation. Correspondingly, with an analysis of the United States, my theory on how IHRL lacks the support to defend the rights of those with criminal convictions should be proven.

⁹⁹ *Charter of the United Nations*, (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, available at: <https://www.refworld.org/docid/3ae6b3930.html> [accessed 21 August 2019] Art. 2 (7)

4. Political and Civil Rights in International Law

As mentioned before, in International Human Rights Law, the ICCPR deals with majority of the rights restricted by collateral consequences of a criminal conviction. When being institutionalized at a State level, this treaty should provide the standards when constituting a person to human dignity and equal justice.¹⁰⁰ However, the outstanding amount of scholarly work mentioned above reflects in relationship to those with a criminal conviction that this is not the case. When addressing the major political and civil rights that involve this particular population, these rights can be identified as the following:

4.1. Right to Participate in Public Affairs

Under Article 25 of the ICCPR, every citizen is entitled to take part in the conduct of public affairs, such as voting or running for office, and is allowed access to public services established in their country.¹⁰¹ The Committee on Civil and Political Rights (CCPR, known as the Committee hereafter) expands this definition by interpreting Article 25 as “[the recognition and protection of] the right of *every citizen* to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service.”¹⁰² Alongside this, guidelines drafted by the Office of the United Nations High Commissioner for Human Rights (OHCHR) includes one’s ability to participate within public positions as another right enshrined within this article.¹⁰³ To ensure States participate in compliance with this Article in the ICCPR, the Committee explains that they are obligated to adopt such legislative measure to ensure this capability.¹⁰⁴

¹⁰⁰ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Preamble

¹⁰¹ ICCPR, art. 25

¹⁰² Human Rights Committee (CCPR) ‘*General Comment No. 25*’ in ‘*Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies*’ (1996). CCPR/C/21/Rev.1/Add.7, (General Comment 25) para 1

¹⁰³ UN Commission on Human Rights (UNHCR) ‘Guidelines for States on the effective implementation of the right to participate in public affairs’ <https://www.ohchr.org/Documents/Issues/PublicAffairs/GuidelinesRightParticipatePublicAffairs_web.pdf> accessed 9 September 2019 p. 5

¹⁰⁴ General Comments 25 para 1

In the light of this right being entitled only to citizens, States should outline the definition of a legal citizen on the basis that is not discriminatory under Art. 2.¹⁰⁵ Furthermore, States are obligated to report the legislative provisions which would deprive citizens this right, on the basis of **reasonable grounds**.¹⁰⁶ Finally, the Committee highlights that those deprived of their right to vote under the reasoning of a conviction, should allow a **suspension** that is “*proportionate* to the offence and the sentence”¹⁰⁷

4.1.1. Reasonable Grounds

Due to the lack of clarification on what can consult as reasonable grounds, the Committee is willing to allow States to interpret such criteria as their own, as long as it is not on the basis of discrimination. Instead, the Committee can be found as consulting terms of or reasonable or unreasonable grounds in cases such as *Bwalya v. Zambia* and *Mi'kmaq Society v. Canada*.¹⁰⁸

In *Mi'kmaq Society v. Canada* (1986), a complaint was made by high representatives of the Native American Mi'Kmaq tribe against Canada in violation of Article 25, because the Prime Minister refused to allow for them to participate at a constitutional conference on identifying and clarifying aboriginal rights. The Committee concluded these conferences as public affairs by definition under Article 25, but Canadian's interference was reasonable. This opened the criteria of reasonable grounds to be based on the “modalities” of the “[State's] legal and constitutional system”.¹⁰⁹

In contrast, Peter Chiiko Bwalya (1988) attempted to run for parliamentary seat in the Constituency of Chifubu, Zambia. However, under African one party system laws expressed in Zambia's constitution, he was prevented from participating through a series of oral and physical threats, forced into exile, and

¹⁰⁵ Ibid 25 para 2

¹⁰⁶ Ibid 25 para 14

¹⁰⁷ Ibid 25; para 14

¹⁰⁸ Manfred Nowak ‘*U.N.Covenant on Civil and Political Rights: CCPR Commentary*’ (2nd edn, N. P. Engel 2005) p. 572

¹⁰⁹ *Mi'kmaq Society v. Canada* [30 January 1986] Communication No. 205/1986 CCPR/C/43/D/205/1986 para 5.4

arbitrarily imprisoned. As a response to his complaint, the Committee found Zambia violated Article 25 and more due to discrimination of political association.¹¹⁰

4.2. Right to Liberty of Movement

Under Article 12 of the ICCPR, every citizen shall be granted the liberty to move and have a freedom in choosing his or her residence.¹¹¹ Under interpretation, movement of “aliens” should be dealt with by domestic law, but citizens are able to move freely within the whole territory of a State and shouldn’t be limited even in countries with federal systems.¹¹² Furthermore, States should change the legal and bureaucratic barriers unnecessarily affecting the full enjoyment of this right.¹¹³ For example, forcing citizens to request permission when changing their residence or seek approval of a destination by local authorities.

However, these rights are subjected to restrictions in favor of national security, public order and health.¹¹⁴ These restrictions must be provided by law and establish the conditions for which they are limited,¹¹⁵ should not impair the essence of the right of movement,¹¹⁶ and when being restricted should report on how these restrictions have passed the **test of necessity** and match the **requirements of proportionality**.¹¹⁷ In other words, the restriction on one’s right to movement must be appropriate to achieve their protective function and the least intrusive instrument.

4.2.1. Necessity and Proportionality

In this particular article, the test of necessity is fluid and not dependent on a democratic state.¹¹⁸ Instead the test of necessity relies on the requirements of proportionality to deem if State interference is necessary in order to achieve one or more of the listed purposes in Art 12 (3). When assessing such

¹¹⁰ Bwalya v. Zambia [30 March 1988] Communications No. 314/1988 CCPR/C/48/D/314/1988

¹¹¹ ICCPR art. 12 (1)

¹¹² ICCPR ‘General Comment No. 27’ in ‘Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies ’ (1999). CCPR/C/21/Rev.1/Add.9 (General Comment 27) para 4-5

¹¹³ Ibid, para 17

¹¹⁴ ICCPR art. 12 (3)

¹¹⁵ General Comment 27, para 11-12

¹¹⁶ Ibid, para 13

¹¹⁷ Ibid, para 14

¹¹⁸ Manfred (n. 106) p. 274

criteria, the Committee must take into account the public's interest and the person's right in that particular case.¹¹⁹ The principle of proportionality must naturally appropriate to achieve their protective function, be the least intrusive instrument which can achieve the desired result, and must be proportional to the interest being protected.¹²⁰

For example, the European Union (EU) is well known for its fundamental freedom of movement. Governing this, citizens of any EU State are able to move, reside, study and work within another EU State.¹²¹ However, in the case between *ZZ v Secretary of State (UK)*, ZZ, a French and Algerian dual-citizen residing in the United Kingdom, was denied access to the UK after returning from a trip in Algeria, based on the grounds of national security. However, since the Secretary of State did not disclose to him the entirety of evidence, ZZ's appeal was overturned and eventually allowed access into the UK.¹²² Although this case was not brought up to the ECHR, it still provides evidence on how a state is able to restrict one's movement to protect the safety of the State.

4.3. Freedom from Cruel and Unusual Punishment

Under Article 7 of the ICCPR, no one shall be subjected to inhuman or degrading treatment or punishment. Obligations expressed within this article advocates for States to adopt legislative measures to protect individuals from the acts prohibited within this article.¹²³ Furthermore, General Comment 20 formulates that those inflicting the acts prohibited in this article, should be stopped in any situation: whether official, unofficial, or private.¹²⁴

¹¹⁹ Supra p. 275

¹²⁰ Supra p. 275

¹²¹ 2004/38/EC

¹²² *ZZ v Secretary of State for the Home Department* [2013] C-300/11 <<https://curia.europa.eu/jcms/upload/docs/application/pdf/2013-06/cp130070en.pdf>> accessed 5 September 2019

¹²³ UN Human Rights Committee (HRC), *CCPR General Comment No. 7: Article 7 (Prohibition of Torture or Cruel, Inhuman or Degrading Treatment or Punishment)*, 30 May 1982, available at: <https://www.refworld.org/docid/4538840021.html> [accessed 5 September 2019] (General Comment 7), para 1

¹²⁴ UN Human Rights Committee (HRC), *CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, 10 March 1992, available at: <https://www.refworld.org/docid/453883fb0.html> [accessed 5 September 2019] (General Comment 20), para 2

Despite this, neither this article nor the committee monitoring its implementation goes into the details of defining which acts do and do not constitute as inhuman or degrading.¹²⁵ However, the aim of this article is to “protect both the dignity and the physical and mental integrity of the individual.”¹²⁶ In spite of its open interpretation, the acts prohibited within this article should be distinctive on the **kind, purpose, and severity** of its treatment.¹²⁷

4.3.1. Kind, Purpose, and Severity

Since the Committee is unable to list what can constitute as inhuman or degrading, it is left up to the States to interpret what can be classified as inhuman or degrading. However, Manfred interprets ‘inhumane and degrading’ as any form of punishment that is unable to be qualified as torture.¹²⁸ When addressing this interpretation, States must assess the kind of punishment being used, its purpose, and its severity when inflicting pain onto the individual. However, acts that have been accepted by the Committee as inhumane and degrading correspond with cases seen against Uruguay or Jamaica.

In *Conteris v. Uruguay*, certain prisons practices such as solitary confinement, persistent relocation of an inmate, or subjecting the individual to cold environments, were found by the Committee as degrading.¹²⁹ Additionally to this, practices such as urine dumping over prisoners, throwing food and water on the floor, removal of the mattress from an inmate’s cell, beatings, the wetting of beds were considered by the Committee as degrading.¹³⁰ Since punishment is meant to be ‘humiliating’ in principle, they can easily infringe on their human rights. However, it is left to the test of proportionality when assessing its criteria on qualifying as a violation of Article 7.¹³¹

¹²⁵ General Comment 20, para 4

¹²⁶ *Ibid*, para 2

¹²⁷ General Comment 7, para 2

¹²⁸ Manfred (n. 106), p. 163

¹²⁹ *Hiber Conteris v. Uruguay*, (17 July 1985) Communication No. 139/1983

¹³⁰ *Francis v. Jamaica*, No. 320/1988 s. 12.4; *Thomas v. Jamaica*, No. 321/1988 s. 9.2; *Young v. Jamaica*, No. 615/1995 s. 5.2

¹³¹ Manfred (n. 106), p. 167

4.4. Freedom from Discrimination

Under Articles 2 and 26 of the ICCPR, everyone is entitled to the rights expressed within this treaty without being discriminated against on any grounds and represented in equality.¹³² To explain, this article is the core principle to the protection of human rights. This article obligates its signatories to respect and ensure, under law, the prohibition of discrimination of any kind, such as race, colour, sex, national or social original, property, or any other status.¹³³ Specifically, the Committee in their General Comment No. 18, explains that those with any criminal charge is equally entitled to participate in the public life of all citizens without discrimination.¹³⁴

In order to define discrimination, the Committee uses the criteria from other United Nation committees, such as CEDAW and CERD, to define discrimination pertaining to race and sex. Discrimination as defined by the Committee is the

“distinction, exclusion, and restriction or preference based on race, colour, descent or ethnic origin, [and sex] which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”¹³⁵

Building on this, the Committee defines discrimination in the same matter but on the grounds expressed within these articles.¹³⁶

4.4.1. Prohibition of Discrimination (Art 2)

In contrast to Art. 26, art. 2 prohibit every distinction on the basis of the criteria mentioned above.¹³⁷ In this particular article, I will focus on social status since this has the most influence on those with criminal

¹³² ICCPR art 2. (1); art. 26

¹³³ ICCPR art 2. (2)

¹³⁴ UN Human Rights Committee (HRC), *CCPR General Comment No. 18: Non-discrimination*, 10 November 1989, available at: <https://www.refworld.org/docid/453883fa8.html> [accessed 5 September 2019] (General Comment 18), para 3

¹³⁵ *Ibid*, para 6

¹³⁶ *Ibid*, para 7

convictions. Since the Committee has failed to interpret the area of focus, instead I will rely on the interpretations made from the Committee on Economic, Social, and Cultural Rights in its General Comments 20. Under their interpretation “social origin’ refers to a person’s inherited social status...”¹³⁸ and “property status, as a prohibited ground of discrimination, is a broad concept and includes real property (e.g. land ownership or tenure) and personal property (e.g. intellectual property, goods and chattels, and income), or the lack of it.”¹³⁹

Furthermore, in regards to implementing ‘domestic measures’ that prohibit discriminations. It is up to States on how they shall, follow through with these obligations. When a State fails to follow through with these obligations, the Committee is only allowed to identify how and where a State lacks such mechanism, and recommend how to fix it.

4.4.2. Equality (Art 26)

Similar to its counterpart expressed in Art. 2, Art 26 ensures equal protection of the law, thus forming an obligation upon States parties to ensure substantive equality by legislation.¹⁴⁰ However, when assessing the fulfillment of this obligations, States are left to interpretation what is meant by discrimination. For example, in *Lovelace v. Canada*, Sandra Lovelace after marrying a non-Indian, was stripped of her Indians status and rights under the Canadian Indian Act. Due to the fact that this law was only had an impact on women, the Committee found it in violation of Art. 26, 2, and 3.¹⁴¹

4.5. Right to be Treated with Humanity and Respect

Under Article 10 of the ICCPR, every person “**deprived of their liberty** shall be treated with humanity and with respect for the inherent dignity of the human person”.¹⁴² Under this definition, this right is applicable to those accused, those convicted, and any person deprived of their liberty under the laws and

¹³⁷ Manfred (n. 106) p. 45

¹³⁸ UN Committee on Economic, Social and Cultural Rights (CESCR), *General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, 2 July 2009, E/C.12/GC/20, available at: <https://www.refworld.org/docid/4a60961f2.html> [accessed 5 September 2019], para 24

¹³⁹ *Ibid*, para 25

¹⁴⁰ Manfred (n. 106) p. 608

¹⁴¹ *Sandra Lovelace v. Canada*, (1970) Communication No. 24/1977

¹⁴² ICCPR art 10 (1)

authority of the State, including ex-offenders.¹⁴³ The Committee elaborates on this principle by highlighting State's positive obligation to ensure that these persons, as explained within this Article, are free from cruel, inhumane, and degrading treatment contained in art 7 of the ICCPR.¹⁴⁴

Furthermore, this article persuades its signatories to rehabilitate their offenders,¹⁴⁵ and pushes States to ensure "the re-education of convicted persons."¹⁴⁶ However, because it is not entirely expressed as formal obligations, it is up to States to determine if they should focus on rehabilitating an offender, rather than punishing them.

4.5.1. Liberty Deprivation

While conducting research on this specific article and its interpretation, it is noted that this article may be interpreted for those individuals who are confined. This can pose a huge issue because those with criminal convictions are deprived of their liberties by my definition, but not by legal definition.¹⁴⁷ Additional to this, I would like to note that in both General Comments, those who are on probation or parole are not considered at all.

4.6. Final Findings

In order to completely digest the large amount of information, I will summarize the key findings that lack legal support when addressing the rights of those with criminal backgrounds. Therefore, according to the ICCPR States are allowed to:

¹⁴³ UN Human Rights Committee (HRC), *CCPR General Comment No. 9: Article 10 (Humane Treatment of Persons Deprived of Their Liberty)*, 30 July 1982, available at: <https://www.refworld.org/docid/45388402c.html> [accessed 5 September 2019] (General Comment 9), para 1; UN Human Rights Committee (HRC), *CCPR General Comment No. 21: Article 10 (Humane Treatment of Persons Deprived of Their Liberty)*, 10 April 1992, available at: <https://www.refworld.org/docid/453883fb11.html> [accessed 5 September 2019](General Comment 21), para 2

¹⁴⁴ General Comment 21, para 3

¹⁴⁵ Ibid, para 10

¹⁴⁶ Ibid, para 11

¹⁴⁷ This can be evidenced by the mere fact that this article and its interpretations only mentions those in detention camps, hospitals, prisons, or correctional institutions. General Comment 21, para 2; ICCPR art 10 s 2-3

- 1) Interpret the reasonable grounds for denying one's right to participate in public affairs. Furthermore, these States must have 'modalities' addressed within their legal and constitutional systems for the allowance of this participation.
- 2) Restrict one's movement as long as doing so is proportional to its necessity, and the mode of doing so is in the least intrusive fashion.
- 3) Interpret what constitutes as degrading and inhuman by accessing its proportionality to the kind of treatment, the purpose of it, and its severity when inflicting pain.
- 4) Must adopt legal instruments that allow for the prohibition of discrimination and apply these statutes equally to every individual.
- 5) Treat those who are deprived of their liberty with respect and dignity, and exclude those with criminal convictions who are participating 'freely' in society.

After dissecting the ICCPR and its interpretation by the General Committees as addressed in their General Comments, it becomes increasingly evident on how IHRL can lack the support needed to defend the rights of those individuals with criminal convictions. To explain, because of the protection of State sovereignty, the allowance for States to self-interpret the ICCPR, and the ambiguous terminology used when interpreted by the Committee, IHRL provides for major loopholes which legally allow for States to continue their marginalization of those with criminal convictions. As an example of this, I will use the framework constructed above and reflect it against the policies used in the United States.

5. Case Analysis: United States- A Nation in the Era of Mass Incarceration

"It is not open to doubt that the commission of crime-the violation of the penal laws of a state-has some relation to the question of character. It is not, as a rule, the good people who commit crime. When the legislature declares that whoever has violated the criminal laws of the state shall be deemed lacking in good moral character, it is not laying down an arbitrary or fanciful rule, one having no relation to the subject matter, but is only appealing to a well-recognized fact of human experience."¹⁴⁸

¹⁴⁸ (Hawker v. New York, 1898); Chin (n.4) p. 17

Today, there are about 2.2 million people being held at a prison or jail within the United States,¹⁴⁹ earning the title of the highest incarceration rate in the world both per population rate and raw numbers.¹⁵⁰ Persistently in this comparison, the United States has topped the charts for the past 17 years.¹⁵¹ It is without a doubt that the United States is in an era of mass incarceration. However, when pertaining to those who are not currently held in confinement, scholars will refer to this as the era of mass *conviction*. Gabriel J. Chin, a well-established advocate for the United States criminal justice reformation, typically use this term in his works¹⁵² because it “obscures the reality that prison is not the default tool of the criminal justice system.”¹⁵³ This is an ideal perception when addressing the collateral consequences of criminal convictions because of the huge increase in population between those being held in confinement to those serving probation or parole and then to those with criminal convictions in general. When assessed in this fashion, the ratio follows as such: 2.2 million in a correctional institution:¹⁵⁴ 4.5 million serving probation or parole:¹⁵⁵ 73 million with a criminal background.¹⁵⁶

The dilemma with the United States is the severity and amount of collateral consequences that have been collected to date. For instance, the American Bar Association has developed the National Inventory of

¹⁴⁹ Sentencing Project ‘Criminal Justice Fact’ <<https://www.sentencingproject.org/criminal-justice-facts/>> accessed 7 September 2019

¹⁵⁰ World Prison Brief ‘Highest to Lowest - Prison Population Total’ <https://www.prisonstudies.org/highest-to-lowest/prison-population-total?field_region_taxonomy_tid=All> accessed 7 September 2019

¹⁵¹ Tyjen Tsai and Paola Scommegna ‘U.S. Has World’s Highest Incarceration Rate’ Population Reference Bureau, <<https://www.prb.org/us-incarceration/>>

¹⁵² Chin (n. 4) p. 2; (n. 75) p. 1791

¹⁵³ Gabriel J. Chin ‘Collateral Consequences and Criminal Justice: Future Policy and Constitutional Directions’ (2018) 102 (1) Marquette Law Review 233, p. 237

¹⁵⁴ Zhen Zeng ‘Jail Inmates in 2017’ (April 2019) U.S. Department of Justice <<https://www.bjs.gov/content/pub/pdf/ji17.pdf>> ; Jennifer Bronson and Ann Carson ‘Prisoners in 2017’ (April 2019) U.S. Department of Justice <<https://www.bjs.gov/content/pub/pdf/p17.pdf>>; These reports account for 745,200 inmates held in jailed and 1,508,129 inmates held in prison. In total 2,234,600 inmates are held in correctional institutions.

¹⁵⁵ Danielle Kaebler ‘Probation and Parole in the United States, 2016’ <<https://www.bjs.gov/content/pub/pdf/ppus16.pdf>>

¹⁵⁶ Dan Clark ‘How many U.S. adults have a criminal record? Depends on how you define it’ (New York 18 August 2017) PolitiFact <<https://www.politifact.com/new-york/statements/2017/aug/18/andrew-cuomo/yes-one-three-us-adults-have-criminal-record/>> accessed 7 September 2019; However, I must note that this number is skewed since it doesn’t account for all individuals with misdemeanors and considers those who were **arrested** for a felony regardless if it lead to a conviction.

Collateral Consequences of Conviction (NICCC), an online database that has identified 45,000 collateral consequences in 2015.¹⁵⁷ Since these regulations can be codified in federal, state, and local statutory and regulatory schemes, it can be difficult to generalize the nature of these consequences.¹⁵⁸ However, many of them can affect an individual with a criminal conviction for the entirety of their life.¹⁵⁹ Furthermore, the biggest issue for the United States is the fact that the racial disproportionality reflected on who is convicted of a criminal charge, directly correlate to who is and isn't given citizenship rights.

5.1. Racial Disproportionality in Voting Rights

The idea of systematic racial discrimination prevailing in the United States is not new. For years, human and civil rights advocates have provided an increasing amount of research regarding how people of color- especially African Americans and Latinos- are typically dealt with in the criminal justice.¹⁶⁰ By addressing the scholarly work that provides historical evidence regarding the racial disparities in the criminal justice system and its correlation with the Supreme court decision for the permissibility of disenfranchising offenders, it will be easier to understand how the United States uses voting rights to protect the racist interest of the State.

5.1.1. Racial Disparities in the Criminal Justice System

In their report to the UN Special Rapporteur, The Sentencing Project (TSP), noted "as of 2001, one of every three black boys born in that year could expect to go to prison in his lifetime, as could one of every

¹⁵⁷ ABA (n.4) p. 2

¹⁵⁸ Micheal (n.18) p. 490

¹⁵⁹ Ibid; Jermey (n. 50) p. 19

¹⁶⁰ Micheal (n.18), p. 463; Ronald Weitzer and Steven A. Tuch 'Race, Class, and Perceptions of Discrimination by the Police' (1999) 45 (4) *Crime & Delinquency* Sage 494; Alfred Blumstein, 'Racial Disproportionality of U.S. Prison Populations Revisited' (1993) 64 (3) *University of Colorado Law Review* 743; Ronald Weitzer 'Racial discrimination in criminal justice system: Findings and problems in the literature' (1996) 24 (4) *Journal of Criminal Justice* 309; Jon Hurwitz and Mark Peffley 'Explaining the Great Racial Divide: Perceptions of Fairness in the U.S. Criminal Justice System' (2005) 67 (3) *The Journal of Politics* 762; Gary Kleck 'Racial Discrimination in Criminal Sentencing: A Critical Evaluation of the Evidence with Additional Evidence on the Death Penalty' (1981) 46 (6) *American Sociological Review* 783; Robert J. Sampson and Janet L. Lauritsen 'Racial and Ethnic Disparities in Crime and Criminal Justice in the United States' (1997) 21 *University of Chicago Crime and Justice* 311; Armando Morales 'Institutional Racism in Mental Health and Criminal Justice' (1978) *Families in Society: The Journal of Contemporary Social Services*; Robert Staples 'White Racism, Black Crime, and American Justice: An Application of the Colonial Model to Explain Crime and Race' (1975) 36 (1) *Phylon* 14

six Latinos—compared to one of every seventeen white boys.”¹⁶¹ This statistic, which derives from their extensive research, provided by governmental census, questions why those of color should be *expected* to commit crimes. However, it isn’t the fact that those of color are more likely to commit crimes, but instead is a reaction to the racial roots in American policing and sentencing tactics. To explain, before abolishment of slavery, lynching was a common penal practice used for African American, especial in Southern states.¹⁶² After the abolishment, statistics found that criminal courts in 1975 disproportionately sentenced those of colors to death, even for lesser offences such as robbery or burglary.¹⁶³

Today, in light of the civil rights movement and adoption of legislatures prohibiting discrimination, these penal policies are not practiced as much. However, because of the stereotypes that have come forth through these historical proceedings, discrimination is re-institutionalized into the surveillance methods used by police. For example, because of the lack of resources and funding given to police stations in metropolitan cities such as New York or Detroit, police officers rely on hot spotting to evenly distribute the workload.¹⁶⁴ Hot spotting is a type of machine learning which uses already established crime and field data as an algorithm to predict where crime can occur.¹⁶⁵ However, this can pose a sticky predicament when the information provided to produce a ‘hotspot’ map is disproportionately focused on race or social class.¹⁶⁶ Naturally, areas where those of color reside will be discriminated against because the computer supports it.

¹⁶¹ The Sentencing Project ‘Report of The Sentencing Project to the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance’ (2018) <<https://www.sentencingproject.org/wp-content/uploads/2018/04/UN-Report-on-Racial-Disparities.pdf>> accessed 9 September 2019

¹⁶²ASA ‘Race, Ethnicity, and the Criminal Justice System’ (2007) <<https://www.asanet.org/sites/default/files/savvy/images/press/docs/pdf/ASARaceCrime.pdf>> accessed 9 September 2019

¹⁶³Joseph C Howard, ‘Racial Discrimination in Sentencing’ (1975) 59 *Judicature* 121, p. 123

¹⁶⁴ Anthony A. Braga, Andrew V. Papachristos and David M. Hureau, ‘The Effects Of Hot Spots Policing On Crime: An Updated Systematic Review And Meta-Analysis’ (2012) 31 (4) *Justice Quarterly* 633 . p 658

¹⁶⁵ Lizzie Dearden ‘How Technology is allowing police to predict where and when crime will happen’ *Independent* (London 7 October 2017) <<https://www.independent.co.uk/news/uk/home-news/police-big-data-technology-predict-crime-hotspot-mapping-rusi-report-research-minority-report-a7963706.html>> accessed 9 Septemeber 2019; The Law Society ‘Algorithms in the Criminal Justice System’ (2019) <<file:///M:/pc/downloads/algorithms-in-criminal-justice-system-report-2019.pdf>> accessed September 9 2019 p. 33

¹⁶⁶ The Law Society, *Ibid* p. 36; David Weisburd ‘Does Hot Spots Policing Inevitably Lead to Unfair and Abusive Police Practices, or Can We Maximize Both Fairness and Effectiveness in the New Proactive Policing?’ (2016) article 16 *The University of Chicago Legal Forum* 661,p. 673

5.1.2. Felon Disenfranchisement

Felon disenfranchisement has deep roots in the United States. Since colonial times, felon disenfranchisement was used to ensure that prisoners were kept from infecting the ballot box.¹⁶⁷ During the post-reconstruction era, a series of statutes were made in the Southern states to deliberately prevent African American citizens from registering to vote.¹⁶⁸ Today, disenfranchisement of felons is considered permissible after U.S. Supreme court decision in *Richardson v. Ramirez* (1974). Supreme court was able to justify disenfranchisement based on section 2 of the Fourteenth Amendment, which states "...the right to vote at any election...is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state."¹⁶⁹

Furthermore, the allowance of States to use federal rulings at their own discretion resulted in a variation of states disenfranchising just incarcerated felons, some including parolees or probationer under this statute, and some included anyone with a felony on their background within this statute.¹⁷⁰ Today, only two states, Maine and Vermont, allow for their inmates, probationers, and parolees to vote.¹⁷¹ Due to this law, 6.1 million Americans are unable to vote¹⁷², due to the disproportional amount of them in prison 2.2 million of those unable to vote are African Americans.¹⁷³

¹⁶⁷ Micheal (n.18) p. 494

¹⁶⁸ Ibid p. 470

¹⁶⁹ *United States of America: Constitution* (United States Constitution), 17 September 1787, available at: <https://www.refworld.org/docid/3ae6b54d1c.html> [accessed 10 September 2019], amendment XIV s. 2; *Richardson V. Ramirez* (1974) s. 2 <<https://supreme.justia.com/cases/federal/us/418/24/>> accessed 9 September 2019

¹⁷⁰ Micheal (n.18) p. 494

¹⁷¹ The Marshall Project 'In Just Two States, All Prisoners Can Vote. Here's Why Few do.' (2019) <<https://www.themarshallproject.org/2019/06/11/in-just-two-states-all-prisoners-can-vote-here-s-why-few-do>> accessed 9 September 2019

¹⁷² Ibid

¹⁷³ The Marshall Project (n. 28)

When it comes to the prison population, African American and Latinos are disproportionately represented. Together, African American and Latinos take up about 31.7 percent of the population.¹⁷⁴ However, in prison populations, African American and Latinos, makeup 57% of the prison population.¹⁷⁵ When juxtaposed to White, who take up 76% of the United State population¹⁷⁶, the minorities compromise 9 times the rate of the majority. ¹⁷⁷ When it comes to those with criminal convictions, 33% of individuals are African American and. ¹⁷⁸ Since, individuals are disenfranchised by their criminal convictions, this disproportionality instinctively reflects on those who denied the right to vote, thus limiting who is allowed a voice and representation during election.

5.2. Final Analysis: Is the US complying to Human Right Obligations?

Using the same framework as provided above, I will assess how the United States and its disenfranchisement policy stands against IHRL. Since, this case doesn't restrict one's freedom of movement I will not acknowledge question 2 of the framework.

1) Does the United States provide reasonable grounds to deny one's right to participate? How so?

According to its Constitution, the United States is able to provide reasonable grounds to deny felons and those with criminal convictions the right to vote and participate in other public affairs. Since it is addressed by law that states are allowed to govern themselves, then states have a justified reason to interpret and adopt federal regulations as so.¹⁷⁹ For this reason, the United States (as an entity) and its states do not provide a legal or constitutional modalities which permit the protection of such right in IHRL.

2) Can the United States justify by using the test of proportionality that restricting one's right to vote is not degrading or inhumane?

¹⁷⁴United States Census Bureau (USCB), 'QuickFacts: Population' (2018) <<https://www.census.gov/quickfacts/fact/table/US/IPE120218>> accessed 9 September 2019; To be exact, African American take up about 13.4% of the United States population, while Latinos take up 18.3%.

¹⁷⁵ The Sentencing Project (n. 161) p. 6

¹⁷⁶ USCB (n. 174)

¹⁷⁷ The Sentencing Project (n. 161) p. 6

¹⁷⁸ Ibid, p. 9

¹⁷⁹ United States Constitution (n. 169) Art 5.(1)

By far most, denying the right to vote does not inflict pain, promote insecurity, or cause mental illness of any sort. On the contrary, this kind of treatment does serve its purpose of preventing laws that affect the government in harmful ways, and protect the purity of the ballot box. Furthermore, denying one's right to vote is established in customary and regulatory law, therefore it should not be viewed as a form of punishment at all.

- 3) Have the United States adopt legislations that prohibit discrimination and applied such laws to every individual equally?

According to its Constitution, the fourteenth, fifteenth and nineteenth amendment has established a federal regulation that prohibits the discrimination against person on the basis of sex, social class, and race.¹⁸⁰ This can be exhibited in *Hunter v. Underwood* (1985) where the Supreme court found Alabama to violate the Equal Protection Clause established within the Fourteenth Amendment because it disenfranchisement laws were found to '[be] enacted with the intent of disenfranchising blacks'.¹⁸¹ Nevertheless, since felon disenfranchisement is triggered by the mere conviction of a felony, regardless of race or sex, than this law would not constitute as discriminatory.

- 4) Does felony disenfranchisement laws considered to keep the dignity and respect of those individuals deprived of their liberty?

For those who are presently incarcerated, it is questionable if disenfranchisement respects the dignity of the individual. However, for those with criminal convictions - which this law can extend to in certain states- this principle does not apply to them since they are perceived as privileged with liberty under IHRL.

When perceived as such, IHRL is constructed with so many loopholes that it cannot be sufficient enough to support and protect the rights of those with criminal convictions. Therefore, with the use of scholarly

¹⁸⁰ United States Constitution (n. 169) Amendment 14 (1); Amendment 15; Amendment 19

¹⁸¹ *Hunter v. Underwood*, 471 US 222, para 229

literature and case law, I will identify these loopholes and recommend to the Committee on how to patch them up. If followed through in such a manner, I believe IHRL can become strengthened when protecting the rights of those with criminal convictions.

6. Recommendations

6.1. Obligate States to collect and publish their collateral consequences

As I have pointed out numerous times in this article, the legal status of collateral consequences is typically spread out amongst various local, state, and federal legislation. It is obvious that when making these consequences, there is no communication between the various institutions that create them. For example, since the employers are responsible of the environment they provide to their employees, they can be accused of negligence. When federal law, allows for those employers to use their own discretion in picking employees, it is obvious to see that these employers are allowed to discriminate against those with criminal charges. Since various institutions can use their own discretion when making statutes that discriminate against those with criminal convictions, then it is easy for collateral consequences to pile up and bar those individuals from re-integrating into society.

To avoid this and keep the State including its various institutions accountable, The Committee should obligate States to collect and publish all of their collateral consequences. When doing so, the Committee can rely on the methodology of the American Bar Association and their NCCC. For example, after collecting, the ABA published all of the collateral consequences onto a website for the public's viewing. There, they have categorized the consequences based on the right or benefit restricted, its manner or impositions, duration of the consequence, the offense that trigger its corresponding consequences, or the jurisdiction that the consequence can pertain to.¹⁸²

6.2. Suggest States to incorporate such consequences when deciding sentences

Since collateral consequences are set within regulatory statutes, they are often dismissed as another form of punishment.¹⁸³ As a reaction to this, offenders are not advised on the effects of their convictions

¹⁸² ABA (n.4) p. 2-3

¹⁸³ Sarah Berson (n. 7) p. 26

thus influencing their decisions if given a plea deal. For example, in *Padilla v. Kentucky* (2010) Padilla was under the influence that he would be safe from deportation when pleading guilty to a federal drug related offense. To explain, Jose Padilla was a lawful permanent resident of the United States and respected because of his service during the Vietnam War. However, following an arrest in 2001, Padilla contested to a plea bargain because his lawyer advised him not to worry about being deported. In light of his deportation, Padilla repealed the decision to the Supreme Court on the grounds of being given bad advice.

When providing support of this, the Committee could reply on the supreme court interpretation in their judgement regarding *Padilla v. Kentucky* and *R v. Hoang Anh Pham* (2013). Both of these cases, consider the fact that deportation is severe collateral consequence of a criminal conviction. In *Padilla v. Kentucky*, the Supreme court ruled that criminal defense laws are obligated to inform their clients of their risk of deportation; while in *R. v Hoang Anh Pham*, the Supreme court ruled that collateral consequences should be taken into account when sentencing an individual in general.

6.3. Clarify proportionality when reliving a person of these consequences.

As mentioned during the assessment of rights expressed in the ICCPR, the committee allows for States to assess proportionality when restricting one's freedom of movement, gauging its severity in regards to punishment, and reliving a person of these consequences. However, if the Committee is able to clarify the rules of proportionality, then it will limit State's discretion and set a standard as reference.

6.4. Suggest States to use a case-by-case analysis.

Alongside the recommendation to clarifying proportionality, the Committee should suggest to their States that collateral consequences be given on a case-by-case analysis. It is understood that in some States, such as the United States, the generalization of an offense can trigger a series of collateral consequences. For example, drug offenders, regardless of their severity, are denied access to federal welfare and financial aid. In this case, a person who first time marijuana smoker would be classified under the same title as a person who distributes cocaine. Although they will serve different sentences depending on the statute, both individuals will be denied access to public benefits.

6.5. Set the Standard to who should be included in Art. 10.

As I've mentioned before, Article 10 lacks to interpret those with criminal convictions as persons deprived of their liberties. In spite of this Article only being relevant to those currently incarcerated, it allows room for States to treat individuals with criminal convictions without respect or dignity. In my case analysis, I have provided proof that people who fall into this category can take up a large, and usually unaccountable, amount of the general population. Furthermore, the entity of my paper is proof that these individuals are deprived of their liberties because regulations existing in law. Therefore, by acknowledging these individuals under Article 10 can justify links to the rest of the rights addressed in this treaty.

7. Conclusion

In conclusion, it is well established that today penal systems are placed for the purpose of punishing, rehabilitating, and reintegrating offenders. However, when a person leaves penitentiaries, they are often confronted with a variety of issues that can be correlated with the latent effects of their criminal record. These effects are defined as the collateral consequences of criminal conviction, and seldomly acknowledges until a person is confronted by one. Collateral consequences are codified into various laws at the local, state, and federal level. Due to their variations in amount and scope, they are very difficult to collect, define, and kept accountable. However, any individual who has a criminal conviction is subjected to be restricted of multiple benefits: such as employment, licenses, movement, privacy, political and civil rights, housing, public benefits, governmental funding, and even family and marriage. Such restrictions, have an adverse effect on an individual who is attempting to reintegrate back into society, leading to an increase in recidivism rates, unemployment, and homelessness. Although there is a well-established amount of literature advocating for States to recognize and reform these consequences, it is often perceived as the State's fault for publishing such disabilities. In contrast, I argue that it is the lack of support and clarification addressed in International Human Rights Law, that allows for States to continue these restrictions.

As explained by liberal political philosophy, punishment is a social construct established by rational citizens addressed in a civil society. Additionally, punishment, defined by criminology, is purposed to

deter and rehabilitate delinquent behavior by incapacitating the offender and reattributing the offender for the acts they have committed. For this reason, punishment is perceived as an angelic tool, while the offender is perceived as irrational, immoral, and of lesser standing in humankind. Since punishment has historical roots as depriving someone of their civil rights and social status, this norm is continuous institutionalized by the criminal justice system. However, since human rights theory conflicts with the idea of theory of punishment, it seldom acknowledges its' power when governing a State. Yet, through its practices, international human rights law allows for punishment and its degrading values to manifest because of the respect of State sovereignty. Thus reflecting its weight back onto International Human Rights Law, and exposing it of its loopholes and weaknesses.

As evidence to prove this theory, I have extensively dissected the International Covenant on Civil and Political Rights, and its interpretation given by the Human Rights Committee, its monitoring treaty bodies, in their General Comments. I strategically choose the International Covenant on Civil and Political Rights (ICCPR) because of its relevance to the legal disabilities which restrict the rights of those with criminal convictions. Of the rights assessed, I've focused on the right to participate in public affairs, the right to liberty of movement, the right to have freedom from cruel and unusual punishment, the right to have freedom from discrimination, and the right to be treated with humanity and respect. Through my assessment, I have found that the ICCPR and its General Comments lacks an adequate clarification, provide full discretion for States to interpret the law to their liking, and rarely acknowledges those with criminal convictions as persons deprived of their liberty. In light of these findings, I theorize that international human rights law is weak when protecting the individual rights of those with criminal convictions.

To support my theory, I have constructed a framework provided by the United Nation's interpretations of the ICCPR and analyzed felony disenfranchisement in the United States. The United States was a focus of interest because of the monumental amount of collateral consequences, their severity in scope, and its reported correlation with racial disparity. Through my evaluations, I was able to find that even though this treatment of those individuals with criminal convictions were not of human rights stands, they still were

legally allowed by IHRL. In light of my findings, I recommend that the Committee could strength IHRL by requiring States to collect and openly publish their collateral consequences, suggest States to incorporate such consequences when deciding sentences, elaborating on what constitutes as proportion in regards to relief, severity, and freedom; suggest the use of a case-by-case analysis when emitting these restrictions, and formally acknowledge this particular group of individuals in regards to art. 10.

8. Bibliography

International Treaties and Instruments

Charter of the United Nations, (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, available at: <https://www.refworld.org/docid/3ae6b3930.html> [accessed 21 August 2019]

International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

Other International and Governmental Documents

Bwalya v. Zambia [30 March 1988] Communications No. 314/1988 CCPR/C/48/D/314/1988

Canada Mortgage and Housing Corporation, 'Housing option upon discharge from correctional facilities' (2007) Socio-economic series 07 (1) <<http://publications.gc.ca/site/eng/312066/publication.html>>

Francis v. Jamaica, No. 320/1988 s. 12.4; Thomas v. Jamaica, No. 321/1988 s. 9.2; Young v. Jamaica, No. 615/1995 s. 5.2

Hiber Conteris v. Uruguay, (17 July 1985) Communication No. 139/1983

Human Rights Committee (CCPR) '*General Comment No. 25*' in '*Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies*' (1996). CCPR/C/21/Rev.1/Add.7, (General Comment 25) para 1

'HUMAN RIGHTS IN THE ADMINISTRATION OF JUSTICE: A Manual On Human Rights For Judges, Prosecutors And Lawyers' (2003) 9 PROFESSIONAL TRAINING SERIES
<<https://www.ohchr.org/Documents/Publications/training9Titleen.pdf>>
Manfred Nowak '*U.N. Covenant on Civil and Political Rights: CCPR Commentary*' (2nd edn, N. P. Engel 2005

ICCPR '*General Comment No. 27*' in '*Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies*' (1999). CCPR/C/21/Rev.1/Add.9 (General Comment 27) para 4-5

Mi'kmaq Society v. Canada [30 January 1986] Communication No. 205/1986 CCPR/C/43/D/205/1986 para 5.4

Ministry of Justice 'Multi-Agency Public Protection Arrangements Annual Report 2012/13' (2013) Ministry of Justice Statistics Bulletin

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/253983/mappa-annual-report-2012-13.pdf

Jacqueline Beard 'Registration and Management of Sex Offenders' (2017) House Of Commons- Briefing Paper No. 5267

Kim Williams, Jennifer Poyser, and Kathryn Hopkins 'Accommodation, homelessness and reoffending of prisoners: Results from the Surveying Prisoner Crime Reduction (SPCR) survey' (2012) Ministry of Justice

Penal Reform Trust 'Information booklet for people on licence for a sex offence'

UN Commission on Human Rights (UNHCR) 'Guidelines for States on the effective implementation of the right to participate in public affairs'

https://www.ohchr.org/Documents/Issues/PublicAffairs/GuidelinesRightParticipatePublicAffairs_web.pdf
> accessed 9 September 2019

UN Committee on Economic, Social and Cultural Rights (CESCR), *General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, 2 July 2009, E/C.12/GC/20, available at: <https://www.refworld.org/docid/4a60961f2.html>

UN Human Rights Committee (HRC), *CCPR General Comment No. 7: Article 7 (Prohibition of Torture or Cruel, Inhuman or Degrading Treatment or Punishment)*, 30 May 1982, available at: <https://www.refworld.org/docid/4538840021.html> [accessed 5 September 2019] (General Comment 7),

UN Human Rights Committee (HRC), *CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, 10 March 1992, available at: <https://www.refworld.org/docid/453883fb0.html> [accessed 5 September 2019] (General Comment 20),

UN Human Rights Committee (HRC), *CCPR General Comment No. 18: Non-discrimination*, 10 November 1989, available at: <https://www.refworld.org/docid/453883fa8.html> [accessed 5 September 2019] (General Comment 18),

U.S. Commission on Civil Rights 'Collateral Consequences: The Crossroads of Punishment, Redemption and the Effects on Communities' (2019) USCCC Briefing Report

ZZ v Secretary of State for the Home Department [2013] C-300/11
<<https://curia.europa.eu/jcms/upload/docs/application/pdf/2013-06/cp130070en.pdf>> accessed 5 September 2019 accessed

Governmental Laws and Acts

18 U.S.C. § 2381

21 U.S.C. § 862.

42 U.S.C.A. s. 608(a)(7)

24 Code of Federal Regulation s. 966.4(1)(5)(i)(A)

The Child Abuse Prevention and Treatment Act

The Children Act 1989

Guidance and Regulations for Fostering Services s. 3.87

H.R. 4472 Adam Walsh Child Protection and Safety Act of 2006 (US) s 103
Immigration Act 2009 (New Zealand)

Migration Act 1958 (Australia)

Representation of the People's Act, 1951 s 8

Sex Offender Information Registration Act 2004 (Canada) s 4(1)
Sexual Offences Act 2003 (UK) 103G
Social Housing Act 16 of 2008 s. 9

South African Police Service Employment Regulation, 2017

South Africa Private Security Industry Regulation Act, 2001

Books

Andrew Fagan, *Human Rights: Confronting myths and misunderstandings* (Edward Elgar 2009)

Anthony Walsh and Ilhong Yun '*The Philosophical and Ideological Underpinnings of Corrections*' in Mary Maguire and Dan Okada (eds) "*Critical Issues in crime and justice: though, policy, and practice*" (2011 Sage)

David Gauthier 'Compliance: Maximization' in his work '*Morals by Agreement*' (Oxford University Press 1987)

David Gauthier 'Why contractarianism' in Peter Vallentyne (ed) '*Contractarianism and Rational Choice*' (Cambridge University Press 1991)

David Hume '*An Enquiry into the Sources of Morals*' (Johnathan Bennet 2017)
<<https://www.earlymoderntexts.com/assets/pdfs/hume1751.pdf>>

Illias Bantekas & Lutz Oette, *International Human Rights Law and Practice* (Cambridge University Press 2013) p. 132-133

Jaap W. Ouwkerk and et al. 'Avoiding the social death penalty: Ostracism and cooperation in social dilemmas' in K. D. Williams, J. P. Forgas, & W. von Hippel (Eds.), *Sydney Symposium of Social Psychology series. The social outcast: Ostracism, social exclusion, rejection, and bullying* (Psychology Press, New York 2005)

Jean Hampton '*Hobbes and the Social Contract Tradition*' (Cambridge University Press 1986)

Jeremy Travis 'Invisible Punishment: An Instrument of Social Exclusion' in March Mauer and Meda Chesney-Lind (eds) '*Invisible Punishment: The Collateral Consequences of Mass Imprisonment*' (New York Press, New York)

Jeremy Waldron, *Nonsense upon Stilts* (Methuen & Co. 1987)

Katrina L. Sifferd, 'Virtue Ethics and Criminal Punishment' in Alberto Masala and Johathan Webber (eds) *From Personality to Virtue: Essays on the Philosophy of Character* (Oxford Scholarship, London 2016)

Luigi Caranti "Kant's theory of human rights" in Thomas Cushman (ed), *Handbook of Human Rights*. (Routledge 2014)

Michael Ignatieff, *Human Rights as Politics and Idolatry* (Princeton University Press 2001)

McNeill, Fergus (2014) Punishment as rehabilitation. In: Bruinsma, Gerben and Weisburd, David (eds.) Encyclopedia of Criminology and Criminal Justice. Springer, New York,

Robert Fine, "Cosmopolitanism and Human Rights" in Thomas Cushman (ed), *Handbook of Human Rights* (Routledge 2014)

Published Articles

Afi S. Johnson-Parris 'Felon Disenfranchisement: The Unconscionable Social Contract Breached' (2003) 89 (1) Virginia Law Review 109

Benjamin Levin 'Criminal Employment Law' (2018) 39 (6) Cardozo Law Review 2265 <<http://cardozolawreview.com/wp-content/uploads/2018/08/LEVIN.39.6.6-1.pdf>>

Christina Stahlkopf, Mike Males, and Daniel Macallair 'Testing Incapacitation Theory Youth Crime and Incarceration in California' (2010) 56 (2) Crime & Delinquency <<https://journals.sagepub.com/doi/pdf/10.1177/0011128707307227>>

Christopher W. Morris '*Punishment and Loss of Moral Standing*' (1991) 21 (1) Canadian Journal of Philosophy

Claire Oakes Finkelstien, '*Punishment as Contract*' (2011) 8 Ohio State Journal of Criminal Law 319,

Gabriel J. Chin 'Collateral Consequences of Criminal Convictions' (2017) 18 (3) Criminology, Criminal Justice, Law & Society

Gabriel J. Chin 'Collateral Consequences and Criminal Justice: Future Policy and Constitutional Directions' (2018) 102 (1) Marquette Law Review 233, p. 237

Hugo Adam Bedau 'Retribution and the Theory of Punishment' (1978) 75 (11) The Journal of Philosophy

Iolo Madoc-Jones, John Bates, Barbara Facer and Karen Roscoe 'Students with Criminal Convictions: Policies and Practices in Social Work Education' (2007) 37 (8) The British Journal of Social Work 1387

Jacqueline L. Pfeffer 'The Family in John Locke's Political Thought' (2001) 33(4) The University of Chicago Press Journals 593

Jr. James F. Short, '*The Place of Rational Choice in Criminology and Risk Analysis*' (1997) 28 (2) The American Sociologist 61

John G. Malcolm 'The Problem with the Proliferation of Collateral Consequences' (2018) 19 The Federalist Society Review

Manzoor Elahi Laskar 'Summary of Social Contract Theory by Hobbes, Locke and Rousseau' (2013) Symbiosis International University <<http://dx.doi.org/10.2139/ssrn.2410525>>

Megan C. Kurlycek, Robert Brame, and Shawn D. Bushway 'Scarlet Letters and Recidivism: Does and old criminal record predict future offending?' (2006) Criminology & Public Policy 5 (3) 483

Micheal Pinard, 'Collateral Consequences of Criminal Convictions: Confronting Issues of Race and Dignity' (2010) New York University Law Review 85 457

Milan Zafirovski 'What is Really Rational Choice? Beyond the Utilitarian Concept of Rationality' (1999) 47 (1) Sage Current Sociology 47

Paul Russel 'Hume on Responsibility and Punishment' (1990) 20 (4) Canadian Journal of Philosophy 539

Peter McCormick 'Social Contract: Interpretation and Misinterpretation' (1976) 9(1) Canadian Journal of Political Science

Peter C. Myers "'From Natural Rights to Human Rights- and Beyond' (2017) Issue No. 197 The Heritage Foundation <https://www.heritage.org/sites/default/files/2017-12/SR-197_0.pdf>

Regina Austin "'The Shame of It All": Stigma and the Political Disenfranchisement of Formerly Convicted and Incarcerated Persons' (2004) 36 Columbia Human Rights Law Review <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1614&context=faculty_scholarship>

Richard Dagger, 'Social Contract, Fair Play, and the Justification of Punishment' (2011) 8 Ohio State Journal of Criminal Law

Ronald L. Akers 'Rational Choice, Deterrence, and Social Learning Theory in Criminology; The Path Not Taken' (1990) 81 (3) The Journal of Criminal Law & Criminology 653

Robert P. Kraynak 'Thomas Hobbes: From Classical Natural Law to Modern Natural Rights' (2011) Natural Law, Natural Rights, and American Constitutionalism <file:///M:/pc/downloads/site-name_-_title_-_mod-yyyy-mod-mm-mod-dd.pdf>

Ronald R. Krebs 'A School for the Nation? How Military Service Does Not Build Nations, and How It Might' (2004) 28 (4) International Security 85 < <https://www.jstor.org/stable/4137450>> accessed 1 September 2019

Rolando V. del Carmen and Jonathan R. Sorensen, 'Legal Issues in Drug Testing Probation and Parole Clients and Employees' (1989) National Institute of Justice

Sarah B. Berson 'Beyond the Sentence: Understanding Collateral Consequences' (2013) Issue 272 National Institute of Justice <<https://www.ncjrs.gov/pdffiles1/nij/241927.pdf>>

Shahram Arshadnejad 'The Social Contract Theory According to Socrates' (2018 ResearchGate) <https://www.researchgate.net/publication/328268944_The_social_contract_theory_according_to_Socrates>

Taabo Mugume 'Higher education access in South African for Students with Criminal Records' (2017) 21 Law Democracy & Development <https://www.academia.edu/34244335/Higher_education_access_in_South_Africa_for_students_with_criminal_records?auto=download>

Tanya N. White 'Felony Collateral Sanctions Effects on Recidivism: A Literature Review' (2018) 29 (5) Criminal Justice Policy Review

'The disenfranchisement of Ex-Felons: Citizenship, Criminality, and "The Purity of the Ballot Box"' 102 (6) Harvard Law Review 1300

Websites

'Criminal Convictions Impact on Child Custody Cases' FreeAdvice Legal <https://family-law.freeadvice.com/family-law/child_custody/criminal-convictions-and-child-custody.htm>

Federal Student Aid 'Students with criminal convictions have limited eligibility for federal student aid' <<https://studentaid.ed.gov/sa/eligibility/criminal-convictions#incarcerated>>

Sandra Norman-Eady 'Sex Offenders' Residency Restrictions' (2007)
<<https://www.cga.ct.gov/2007/rpt/2007-r-0380.htm>>

Miscellaneous, NGO Documents, News, and Other Organisations

American Bar Association (ABA), 'Collateral Consequences of Criminal Convictions: Judicial Bench Book' (2018) National Criminal Justice Reference Service
<<https://www.ncjrs.gov/pdffiles1/nij/grants/251583.pdf>>

ASA 'Race, Ethnicity, and the Criminal Justice System' (2007)
<<https://www.asanet.org/sites/default/files/savvy/images/press/docs/pdf/ASARaceCrime.pdf>>

Celeste Friend, '*Social Contract Theory* | *Internet Encyclopedia Of Philosophy*' (iep.utm.edu, 2019)
<<https://www.iep.utm.edu/soc-cont/#H1>>

Dan Clark 'How many U.S. adults have a criminal record? Depends on how you define it' (New York 18 August 2017) PolitiFact <<https://www.politifact.com/new-york/statements/2017/aug/18/andrew-cuomo/yes-one-three-us-adults-have-criminal-record/>>

Danielle Kaebler 'Probation and Parole in the United States, 2016'
<<https://www.bjs.gov/content/pub/pdf/ppus16.pdf>>

David Burke, 'Criminal record checks on prospective tenants 'discriminatory,' says Halifax lawyer' CBC News (Nova Scotia 15 January 2018) <<https://www.cbc.ca/news/canada/nova-scotia/criminal-records-housing-renting-crime-1.4485932>>

Diane Taylor 'Revealed: five men killed in past year after being deported from UK to Jamaica' The Guardian (London, 9 May 2019) <<https://www.theguardian.com/uk-news/2019/may/09/revealed-five-men-killed-since-being-deported-uk-jamaica-home-office>>

Erin Kelly 'Racism & Felony Disenfranchisement: An Intertwined History' (2017) Brennan Center for Justice <<https://www.brennancenter.org/publication/racism-felony-disenfranchisement-intertwined-history>>

Esther F. J. C. van Ginneken 'The pain and purpose of punishment: A subjective perspective' (2016) The Howard League for Penal Reform

Human Rights Watch 'No Easy Answer: Sex Offender Laws in the USA' (New York 11 September 2007)
<<https://www.hrw.org/report/2007/09/11/no-easy-answers/sex-offender-laws-us>>

Human Rights Watch 'Philippines: Events of 2018 (Extrajudicial Killings)' <<https://www.hrw.org/world-report/2019/country-chapters/philippines#1ff4dc>>

Jennifer Rae Taylor 'Jim Crow's Lasting Legacy at the Ballot Box: Denying voting rights to people with felony convictions has roots in racist laws.' (2018) The Marshall Project

'Justice as Fairness: Justice within a Liberal Society', Stanford Encyclopedia of Philosophy (2017)
<<https://plato.stanford.edu/entries/rawls/#JusFaiJusWitLibSoc>>

Lucius Couloute and Daniel Kopf 'Out of Prison & Out of Work: Unemployment among formerly incarcerated people' Prison Policy Initiative (July 2018)
<<https://www.prisonpolicy.org/reports/outofwork.html>>

Lizzie Dearden 'How Technology is allowing police to predict where and when crime will happen' Independent (London 7 October 2017) <<https://www.independent.co.uk/news/uk/home-news/police-big-data-technology-predict-crime-hotspot-mapping-rusi-report-research-minority-report-a7963706.html>> accessed 9 September 2019; The Law Society 'Algorithms in the Criminal Justice System' (2019) <<file:///M:/pc/downloads/algorithms-in-criminal-justice-system-report-2019.pdf>>

Sadhbh Walshe 'Probation and parole: a study in criminal justice dysfunction' The Guardian (New York 26 April 2012) <<https://www.theguardian.com/commentisfree/cifamerica/2012/apr/26/probation-parole-study-dysfunction>>

Sarah Stillman 'When Deportation is a Death Sentence' The New Yorker (New York, 8 January 2018) <<https://www.newyorker.com/magazine/2018/01/15/when-deportation-is-a-death-sentence>>

Scottie Andrew and Laura Ly 'The body of an Iraqi man who died shortly after ICE deported him has returned to the US for burial' CNN

Sentencing Project 'Criminal Justice Fact' <<https://www.sentencingproject.org/criminal-justice-facts/>>
Society for Human Resource Management (SHRM), 'Background Checking—The Use of Criminal Background Checks in Hiring Decisions'

The Sentencing Project 'Report of The Sentencing Project to the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance' (2018) <<https://www.sentencingproject.org/wp-content/uploads/2018/04/UN-Report-on-Racial-Disparities.pdf>> accessed 9 September 2019

The Marshall Project 'In Just Two States, All Prisoners Can Vote. Here's Why Few do.' (2019) <<https://www.themarshallproject.org/2019/06/11/in-just-two-states-all-prisoners-can-vote-here-s-why-few-do>> accessed 9 September 2019

Timothy Hughes and Doris James Wilson 'Reentry Trends in the US: Inmates returning to the community after serving time in prison' (Bureau of Justice Statistics) <<https://www.bjs.gov/content/reentry/reentry.cfm>>

West's Encyclopedia of American Law (2nd edn, 2008) S.v. "expunge." <<https://legal-dictionary.thefreedictionary.com/expunge>>

World Prison Brief 'Highest to Lowest - Prison Population Total' <https://www.prisonstudies.org/highest-to-lowest/prison-population-total?field_region_taxonomy_tid=All>

Zhen Zeng 'Jail Inmates in 2017' (April 2019) U.S. Department of Justice <<https://www.bjs.gov/content/pub/pdf/ji17.pdf>> ; Jennifer Bronson and Ann Carson 'Prisoners in 2017' (April 2019) U.S. Department of Justice <<https://www.bjs.gov/content/pub/pdf/p17.pdf>>; These reports account for 745,200 inmates held in jailed and 1,508,129 inmates held in prison. In total 2,234,600 inmates are held in correctional institutions.