

Maine Law Review

Volume 64
Number 2 *Symposium:*
Balancing Fairness With Finality:
An Examination of Post-Conviction Review

Article 2

June 2012

Introduction

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Recommended Citation

Jon D. Levy, *Introduction*, 64 Me. L. Rev. 377 (2012).

Available at: <https://digitalcommons.mainerlaw.maine.edu/mlr/vol64/iss2/2>

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INTRODUCTION

*Justice Jon D. Levy**

Post-conviction review, often considered a tangential area of criminal law, is progressing to the forefront in our criminal justice system. The growth in our nation's prison population, the expansion of collateral consequences flowing from criminal convictions, and advances in forensic science, among other factors, make the law of post-conviction review increasingly relevant and compelling. For these reasons, this Symposium issue of the *Maine Law Review*, "Balancing Fairness with Finality: An Examination of Post-Conviction Review," is both timely and important.

Of the approximately ten million people incarcerated worldwide, nearly 25% are in the United States. Our nation's per capita rate of incarceration of 756 per 100,000 persons is the highest in the world—more than seven times the worldwide average.¹ In less than two generations, the number of people incarcerated or otherwise under correctional supervision in the United States has grown exponentially, from 1.8 million in 1980 to 7.3 million in 2009.² A function of simple math, the connection between our high incarceration rate and the rise of post-conviction review as a topic of substantial public interest is self-evident.

In addition, collateral consequences of criminal convictions abound. Although sex-offender registries are now well known, they are a recent phenomenon, as most registration laws were enacted in the 1990s and the federal registration law was not passed until 1994, fewer than twenty years ago.³ A criminal conviction can also result in an offender being disqualified from receiving student loans, participating in other government-sponsored programs, or being prohibited from living in public housing or certain designated areas of a community. Repeat offenders will find with growing frequency that a prior conviction automatically enhances the seriousness of a new crime or the penalty associated with a new conviction. And it was only with the stepped-up enforcement of our nation's immigration laws, particularly after September 11, 2001, that criminal defense attorneys began to fully appreciate the central role that immigration status must play in the representation of non-U.S. citizens. Today, the collateral immigration consequences of a criminal conviction must be routinely considered when guilty

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1. ROY WALMSLEY, INTERNATIONAL CENTRE FOR PRISON STUDIES, KING'S COLLEGE SCHOOL OF LAW, WORLD PRISON POPULATION LIST (8th ed. 2009), available at http://www.prisonstudies.org/info/downloads/wpl-8th_41.pdf.

2. Bureau of Justice Statistics, *Correctional Populations*, U.S. DEP'T OF JUSTICE (2009), <http://bjs.ojp.usdoj.gov/content/glance/tables/corr2tab.cfm> (last accessed May 13, 2012).

3. See Corey Rayburn Yung, *One of These Laws Is Not Like the Others: Why the Federal Sex Offender Registration and Notification Act Raises New Constitutional Questions*, 46 HARV. J. ON LEGIS. 369, 372 n.24 (2009).

pleas are entered.⁴

Science and television also factor in the growing interest in post-conviction review. Due to major advances in forensic science, the federal and state governments have invested substantially in establishing and expanding crime laboratories. DNA evidence increases the likelihood of conviction for many criminal defendants, but it is also fertile ground for generating post-conviction review petitions because it offers the possibility of exoneration to offenders who claim to have been wrongfully convicted. The transformation of criminal law by modern forensic science has not been lost on those who produce our popular entertainment. Forensic science has become fodder for a variety of movies and prime time television shows, giving rise to the “CSI Effect”—the assumption among some jurors that the only reliable evidence is scientific evidence, and that the absence of scientific evidence may itself be grounds for acquittal.⁵

While it is clear that the post-conviction review process is essential to ensure the vindication of constitutional rights, the process is not without great social costs. Post-conviction review introduces uncertainty to the finality of criminal convictions and calls into question the integrity of the criminal process. As the United States Supreme Court has observed: “Inroads on the concept of finality tend to undermine confidence in the integrity of our procedures and inevitably delay and impair the orderly administration of justice.”⁶ For the individuals and communities victimized by crimes, post-conviction review can reopen painful wounds. This unavoidable truth underscores the need for all who administer post-conviction review to exercise great care. The availability of the remedy must account for the imperative that victims of crime should never be called upon to recall and relive the horror of their experience absent a truly compelling justification.

Attorneys, judges, and legislators must proceed thoughtfully as our nation seeks to strike the necessary “balance” suggested by this Symposium issue. The articles offer a wide-ranging journey through the relevant legal landscape. Although the balance we seek is an elusive destination, this comprehensive collection of scholarly work provides a fitting point of departure.

4. See *Padilla v. Kentucky*, 130 S. Ct. 1473, 1486 (2010).

5. See, e.g., Michael Mann, Comment, *The “CSI Effect”: Better Jurors Through Television and Science?*, 24 *Buff. Pub. Interest L.J.* 211, 213-14 (2005).

6. *Custis v. United States*, 511 U.S. 485, 487 (1994) (quotation marks omitted).