Prison Abolition, Not Reform: Federal Habeas as a Scapegoat of Our Criminal Legal System

Rebekah Schwartz*

ABSTRACT

Only about .35 percent of federal habeas petitions for state, non-capital convictions are granted each year. That means, of the close to 17,000 habeas petitions for state convictions filed each year, only about 60 are granted. Scholars such as Joseph Hoffman and Nancy King suggest reforming habeas review in a way that would limit access to habeas while increasing funding for public defense. While concerning, this solution is not surprising: when part of a system fails, we tend to look at how to reform that part. But what if it is the whole system that is failing? This essay argues that the carceral system as a whole fails to protect people, and that systemic failure breeds federal habeas failure. By focusing on only one part of the failing system—here, habeas—we create a scapegoat for the underlying systemic issues. What comes from this analysis is not a new idea for habeas reform, but the idea that federal habeas failure is but a scapegoat of systemic failure. The systemic failure is illustrated by systemic racism, the inherent inadequacy of appointed counsel (as they cannot prevent injustices), the insufficiency of innocence as a basis for sentence vacation, and the robbing of years of people's lives while they await finality. Because the whole system fails, reforms to federal habeas will likely be futile. What, then, should scholars focus on when frustrated with the failures of federal habeas? Abolition—systemic, non-reformist, prison abolitionist reforms in the shape of decarceration and decriminalization. These solutions not only free up resources in federal

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* Rebekah Schwartz is a third-year law student at the University of Indiana, Maurer School of Law. Schwartz thanks India Thusi for inspiring this note in her Abolition Theory seminar at Maurer, as well as the team at the *Berkeley Journal of Criminal Law* for helping her strengthen her note.

criminal courts by reducing the number of people applying for habeas, but they also ensure that people are not being harmed by a system that fails to—or refuses to—correct constitutional violations. These reforms will prevent people from having to beg for federal habeas relief in the first place and ensure justice and constitutional protection for all criminal defendants.

INTRODUCTION

On March 5, 2009, Dentrell Brown, a fourteen-year-old Black boy from Indiana, was sentenced to fifty-five years in prison for a murder he did not commit.[1] Brown spent over a decade in prison appealing his conviction.[2] Then, on July 9, 2020, a federal district court found Brown's court-appointed trial counsel to be ineffective, and, therefore, granted Brown's habeas corpus petition.[3] However, Indiana attempted to retry

[1] Brown v. Brown, 471 F. Supp. 3d 866, 870 (S.D. Ind. 2020).

[2] *Id*. at 869 ("His conviction was upheld by the Indiana Court of Appeals. See D.B. v. State, 916 N.E.2d 750, 2009 WL 3806084 (Ind. Ct. App. 2009) ('Brown I'). The Indiana Supreme Court denied transfer. See D.B. v. State, 929 N.E.2d 781 (Ind. 2010). Mr. Brown then sought post-conviction relief in state court, the denial of which was affirmed by the Indiana Court of Appeals. See D.B. v. State, 976 N.E.2d 146, 2012 WL 4713965 (Ind. Ct. App. 2012) ('Brown II').") (footnote omitted). Brown then exhausted his final option for relief by filing for a federal writ of habeas corpus in December of 2013. *Id.* at 871.

[3] *Id*. at 876.

Brown for the same murder charge—resulting in Brown having to sit in jail and wait for another year.[4] In September 2021, before his new jury trial, the parties agreed to reinstate the initial murder conviction, but not the original sentence, pursuant to the habeas order.[5] Finally, at the end of 2021, Brown was released from the state's custody.[6]

There are a few things to note about the seemingly happily-ever-after story above: (1) Brown had to spend over a decade fighting the constitutionality of his conviction; (2) even after habeas relief was granted, he still had a murder conviction on his criminal record; and (3) he is currently (as of December 2023) being tried for another felony attempted murder charge.[7] I will return to the story of his new criminal charge later, but for now, I want to point out that this is not a success story. This story is full of systemic failures at every corner.

But in terms of habeas relief, Dentrell Brown would be considered a lucky one. In fact, for non-capital cases, only about .35 percent of federal habeas petitions for state convictions are granted each year.[8] That means, of the close to 17,000 habeas petitions for state convictions filed annually, only about 60 are granted.[9] Due to these jarring statistics, scholars Joseph Hoffman and Nancy King authored a book—*Habeas for the Twenty-First Century*: *Uses, Abuses, and the Future of the Great Writ*—discussing the failures of the habeas system.[10] The book suggests a surprising solution: limiting access to federal habeas relief.[11] Hoffman and King propose that

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[4] *Id.* The federal district court's writ of habeas corpus ordered "Mr. Brown's release from custody unless the State elects to retry him within 120 days of entry of Final Judgment in this action." *Id.* The State chose to retry him on October 22, 2020. Case Summary, State of Indiana v. Brown, No. 20C01-0806-MR-00002 (Elkhart Circuit Court) (October 23, 2020, docket entry).

[5] Case Summary, State of Indiana v. Brown, No. 20C01-0806-MR-00002 (Elkhart Circuit Court) (September 23, 2021, docket entry). This type of agreement is similar to a plea deal. Brown avoids the risk of being found guilty of murder again if he returns to trial, he is able to get out of jail earlier than if he were to continue to wait for trial, and the State saves itself from having to prepare a full murder trial. However, the habeas order would not allow further custody for the murder charge because the initial trial was deemed unconstitutional. *See supra* note 2.

[6] *Id.*

[7] State of Indiana v. Brown, No. 20C01-2204-F1-000006 (Elkhart Cnty. Ind. Cir. Ct. filed April 20, 2022).

[8] NANCY J. KING & JOSEPH L. HOFFMANN, HABEAS FOR THE TWENTY-FIRST CENTURY: USES, ABUSES, AND THE FUTURE OF THE GREAT WRIT 81 (2011).

[9] *Id.*

[10] *Id.*

[11] *Id.* at 91.

federal habeas relief should be saved for either (1) people with a death sentence, or (2) people who can bring a claim based on new, retroactive constitutional law or new evidence of innocence (though there must still be a constitutional violation attached; more on this requirement later).[12] This solution, they claim, will free up resources that are currently spent on judicial review of habeas, so they can instead go towards preventing constitutional violations in the first place.[13]

However, federal habeas reform that shifts resources from one part of the criminal legal system into another part of the system would be futile. In fact, federal habeas reform in general is a scapegoat for the underlying systemic failure. Therefore, because systemic failure breeds federal habeas failure, solutions must focus on systemic, non-reformist,[14] prison abolitionist reforms, such as decarceration and decriminalization. These reforms will prevent people from having to beg for federal habeas relief in the first place and ensure justice and constitutional protection for all criminal defendants.

In this essay, I will discuss Hoffman and King's argument and their proposed solution. I will then discuss why this approach would be a futile attempt at preventing criminal trial constitutional violations based on the inherent inadequacy of appointed counsel and illustrated by a case study of Florida's capital post-conviction relief reforms. I will then show that federal habeas failure is in fact a result of systemic failure, and that systemic issues cannot be solved by reforming habeas. Finally, I will argue that systemic, non-reformist, prison abolitionist reforms are the most effective solutions to ensuring fair outcomes for all people in the criminal legal system.

I. HOFFMAN AND KING'S ATTEMPT TO SOLVE SYSTEMIC FAILURE BY REFORMING FEDERAL HABEAS LAW

Habeas for the Twenty-First Century presents two claims relevant

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[12] *Id.* at 91-92.

[13] *Id.* at 101.

[14] André Gorz defines non-reformist reforms as "changes that are not tailored to accommodate the current system." Mark Engler & Paul Engler, *André Gorz's Non-Reformist Reforms Show How We Can Transform the World Today*, JACOBIN (July 22, 2021), https://jacobin.com/2021/07/andre-gorz-non-reformist-reforms-revolution-political-theory. Essentially, non-reformist reforms are those that aim to tear down the system, rather than put more resources into it. *See, e.g.*, *Reformist Reforms vs. Abolitionist Steps in Policing*, CRITICAL RESISTANCE (May 14, 2020), https://criticalresistance.org/resources/reformist-reforms-vs-abolitionist-steps-in-policing/.

to this essay: (1) "federal habeas courts cannot police constitutional error in individual state noncapital cases because too few defendants will ever have meaningful access to federal habeas review,"[15] and (2) "no matter how much money Congress and the states may sink into it, federal habeas will continue to be an inaccessible remedy that state law enforcement agents, prosecutors, judges, and legislatures can easily ignore."[16] Hoffman and King support these claims by pointing to the history of federal habeas corpus and the statistics of habeas today.

The dense history of habeas corpus is outside the scope of this essay,[17] but two major events are worth addressing. First, shifts in jurisdiction of federal constitutional claims led to large swings in the amount of habeas petitions in federal court, ultimately narrowing a prisoner's chance of having their case heard in federal court. The Court first allowed state prisoners to apply for federal habeas relief in the 1960s, which led to a tenfold increase in habeas petitions per 100,000 prisoners.[18] However, this increase was soon followed by an almost equally dramatic decrease in habeas petitions in the 1970s.[19] The decrease was in part due to state prisoners, for the first time, being afforded the opportunity to file state post-conviction relief petitions based on federal constitutional claims.[20] Not only did this change allow the state courts to assess—and maybe fix—the constitutional violations before they reached the federal courts, but it also kept prisoners busy with state post-conviction relief petitions until their release.[21] In fact, state prisoners cannot bring a successful federal habeas petition until all their claims have been exhausted and fairly presented in state court.[22] Hoffman and King highlight that in 2006 the mean sentence for state prisoners with felonies was less than five years, while they served only three on average.[23]

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[15] KING & HOFFMAN, *supra* note 8, at 69.

[16] *Id.* at 85.

[17] For a detailed history of habeas corpus, *see generally* AMANDA L. TYLER, HABEAS CORPUS IN WARTIME: FROM THE TOWER OF LONDON TO GUANTANAMO BAY (2017).

[18] KING & HOFFMAN, *supra* note 8, at 70.

[19] *Id.* at 71.

[20] *Id.* at 72.

[21] *See id.* at 73.

[22] 28 U.S.C. § 2254(b)-(c) (1996).

[23] KING & HOFFMAN, *supra* note 8, at 73. (citing Thomas P. Bonczar et al., Bureau of Justice Statistics, *National Corrections Reporting Program: Time Served in State Prison, by Offense, Release Type, Sex, and Race*, U.S. DEP'T OF JUST. (May 2011)). However, a more current Sentencing Project report shows that 56% of the state prison population is serving a sentence of 10 years or longer. Nazgol Ghandnoosh & Ashley Nellis, *How Many People are Spending Over a Decade in Prison?,* THE SENTENCING PROJECT (Sept.

Therefore, even if one's state post-conviction petition was unsuccessful, one may never have the opportunity to seek federal review of one's sentence[24]—their constitutional violation would go unanswered. As King and Hoffman wrote, "federal habeas courts cannot police constitutional error in individual state noncapital cases because too few defendants will ever have meaningful access to federal habeas review."[25]

Second, in 1996, Congress passed the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA).[26] AEDPA codified and strengthened two of the largest barriers for state prisoners seeking federal habeas relief: (1) the one-year statute of limitations[27] and (2) the doubly deferential standard toward the state court's decision.[28] The one-year statute of limitations is not only a very complicated deadline to calculate, with some cases having up to four potential deadlines depending on how one looks at the case, but also "extremely difficult or impossible" for pro se litigants to abide by.[29] If the state prisoners are able to beat the statute of limitations, they must prove that the state court either "based its decision on an unreasonable determination of the facts" or on law that was "contrary to, or involved an unreasonable application of, clearly established Federal law."[30] This means that even if the federal court were to agree that the petitioner's *Brady* claim[31] was valid, if the state court had reasonably applied the established *Brady* law, then the federal court's

8, 2022), www.sentencingproject.org/app/uploads/2022/10/How-Many-People-Are-Spending-Over-a-Decade-in-Prison.pdf.

[24] *Frequently Asked Questions*, PUBLIC DEFENDER OF INDIANA (last visited Nov. 8, 2022), https://www.in.gov/courts/defender/faq/. Even if their sentence is longer than five years, the state post-conviction public defenders may be too backlogged to get to the petitioner's case in time. The Indiana State Public Defenders state high demand and backlog, even while opening roughly 550 cases per year from 2005-2008. Accordingly, state prisoners must wait for an attorney in addition to the years they must wait to go through the state court system before they can even touch the federal courts.

[25] KING & HOFFMAN, *supra* note 8, at 69.

[26] *Id.* at 64.

[27] 28 U.S.C. § 2244(d)(1) (1996).

[28] *Id.* § 2254(d).

[29] Brandon Segal, *Habeas Corpus, Equitable Tolling, and AEDPA's Statute of Limitations: Why the Schlup v. Delo Gateway Standard for Claims of Actual Innocence Fails to Alleviate the Plight of Wrongfully Convicted Americans*, 31 U. HAW. L. REV. 225, 226, 234 (2008).

[30] *Id.* § 2254(d)(1).

[31] Brady v. Maryland, 373 U.S. 83, 87 (1963). A *Brady* claim is one where the prosecution has suppressed evidence favorable to an accused that "is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution," and therefore violates the defendant's due process rights. *Id*.

subsequent assessment is irrelevant.[32]

Between state post-conviction courts assessing constitutional claims and the enactment of AEDPA, state prisoners have a very difficult time accessing federal habeas review. And, even if they access the review, they face staggering odds of success. Hoffman and King partially attribute this lack of success to the overwhelmed nature of the courts, pointing out that about 7 percent of the federal civil dockets nationwide are habeas petitions, with some districts facing a docket of about 17 percent habeas petitions.[33] This results in only about .35 percent of the non-capital state cases being granted federal habeas relief.[34] According to Hoffman and King, "[t]hese petitions have become relentlessly, monotonously routine for the federal judges who are required to consider them."[35] They argue this monotony has led judges to search "in vain for the meritorious needle in the meritless haystack," or, on the contrary, if there are many meritorious claims, they are "forever submerged under an ocean of habeas procedure."[36]

In response, Hoffman and King recommend reallocating the resources spent on federal habeas litigation toward "the pursuit of more important social goals" which will prevent constitutional violations.[37] They propose, for example, a robust federal program funding adequate representation by state public defenders.[38] Although the American Bar Association has recommended this increased funding for thirty years, Hoffman and King claim that their proposal will be more politically viable because it is paired with the proposal to reduce prisoners' post-conviction remedies by taking away their access to federal habeas.[39]

Hoffman and King end their book by restating their main concern: "Habeas today is, in fact, utterly worthless to the vast majority of state

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[32] *See* Schmidt v. Foster, 911 F.3d 469, 477-78 (7th Cir. 2018) ("A state court decision can be a reasonable application [of law] even if the result is clearly erroneous.") (citing White v. Woodall, 572 U.S. 415, 419 (2014)).

[33] KING & HOFFMAN, *supra* note 8, at 84. However, the Administrative Office of the U.S. Courts published more recent data, showing that general habeas petitions made up only 4% of the total percentage of the federal docket in 2021. U.S. COURTS, *Table C-2A—U.S. District Courts—Civil Judicial Business*, (Sept. 30, 2021), https://www.uscourts.gov/statistics/table/c-2a/judicial-business/2021/09/30.

[34] KING & HOFFMAN, *supra* note 8, at 81.

[35] *Id.* at 84.

[36] *Id.*

[37] *Id.* at 100.

[38] *Id.* at 100-01.

[39] *Id.* at 101.

criminal defendants. . . . Habeas cannot correct errors in the vast majority of individual cases, nor can it prompt needed systematic changes in state defense representation systems."[40] In other words, with little access to federal courts, as well as the low rates of success, federal habeas relief is rarely an avenue to justice.

II. ATTEMPTING TO PREVENT CRIMINAL TRIAL CONSTITUTIONAL VIOLATIONS THROUGH COUNSEL WOULD BE INSUFFICIENT

While Hoffman and King's conclusion may seem compelling, the call for reallocation of resources within the criminal legal system is unlikely to result in more just outcomes. The proposed reform would put more money back into a system that is doing exactly what it is meant to do: keep people in prison. Specifically, shifting resources to appointed counsel would not guarantee constitutionally sound convictions, due to the racial bias inherent in the criminal legal system and the incredibly high *Strickland* standard for ineffective assistance of counsel claims (Part A). As an example, Florida's statutory guarantee of death row post-conviction relief counsel provides an illustration of how more resources do not automatically result in fewer constitutional violations, and how statutory protection of defendants provides a mirage of justice and fair play in the criminal legal system (Part B).

A. Shifting Resources to Appointed Counsel Would Not Prevent Constitutional Violations

Although guaranteed counsel for an original criminal conviction is a prized constitutional right in our system,[41] such counsel continues to prove inadequate.[42] Public defender agencies, in general, fail to ensure justice for their clients for two relevant reasons. First, the racial inequity that roots the criminal legal system results in unfair outcomes regardless of access to counsel or their effectiveness.[43] One scholar, Paul Butler, claims that *Gideon v. Wainwright*—the Supreme Court case that held

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[40] *Id.* at 169.

[41] *See, e.g.*, Donald A. Dripps, *Up From* Gideon, 45 TEX. TECH. L. REV. 113, 115 (2012) ("Scholars regularly characterize *Gideon* as 'iconic.'") (quoting William P. Marshall, *Progressive Constitutionalism, Originalism, and the Significance of Landmark Decision in Evaluating Constitutional Theory*, 72 OHIO ST. L.J. 1251, 1276 (2011)).

[42] *See, e.g.*, Alexis Hoag, *The Color of Justice, Free Justice: A History of the Public Defender in Twentieth-Century America*, 120 MICH. L. REV. 977 (2022) (reviewing SARA MAYEUX, FREE JUSTICE: A HISTORY OF THE PUBLIC DEFENDER IN TWENTIETH CENTURY AMERICA (2020)).

[43] *Id.* at 991-92.

counsel for criminal defendants was constitutionally required—may have made things worse for indigent defendants because "having defense counsel provided the appearance of due process in the face of a system designed to 'overpunish [B]lack and poor people.'"[44] In addition, another scholar, Sara Mayeux, recognized that *Gideon* allowed defense counsel to stand "in as both scapegoat and absolution for all of the obvious problems" in the criminal legal system.[45] Further, racial bias within criminal charging, convicting, and sentencing does not stand alone: implicit racial bias also negatively impacts the way that attorneys represent their clients.[46] Alexis Hoag points out that these larger structural forces at play "impact the delivery of indigent defense" and, as a result, "increasing indigent-defense funding would not necessarily" ensure justice to criminal defendants.[47]

Second, the guarantee for effective assistance of counsel not only fails to protect against systemic racism, but it is also rarely enforced in a way that protects defendants from constitutional violations. When counsel is ineffective, proving ineffectiveness within post-conviction or habeas proceedings is an uphill battle In *Strickland v. Washington*, the Supreme Court explained that the Sixth Amendment right to counsel "is the right to the effective assistance of counsel" and laid out a standard for proving ineffectiveness.[48] In order to succeed on an ineffective assistance of counsel claim, the *Strickland* standard requires the defendant to prove "both that the trial attorney performed unreasonably given prevailing norms of practice and that the trial attorney's deficient performance prejudiced the defense."[49] However, courts generally defer to the attorney's actions as strategic and very rarely find that the performance actually caused "outcome-determinative prejudice."[50] As a result, *Strickland* claims are "nearly impossible to win."[51] *Strickland*'s

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[44] *Id.* at 989 (quoting Paul D. Butler, Essay, *Poor People Lose:* Gideon *and the Critique of Rights*, 122 YALE L.J. 2176, 2191 (2013)).

[45] *Id.* (quoting SARA MAYEUX, FREE JUSTICE: A HISTORY OF THE PUBLIC DEFENDER IN TWENTIETH CENTURY AMERICA 184 (2020)) (internal quotations omitted).

[46] *Id.* at 993 (citing L. Song Richardson & Phillip Atiba Goff, Essay, *Implicit Bias in Public Defender Triage*, 122 YALE L.J. 2626, 2634-41 (2013)).

[47] *Id.*

[48] Strickland v. Washington, 466 U.S. 668, 686, 688, 692 (1984) (internal quotations omitted).

[49] Eve Brensike Primus, *Disaggregating Ineffective Assistance of Counsel Doctrine: Four Forms of Constitutional Ineffectiveness*, 72 STAN. L. REV. 1581, 1584 (2020).

[50] *Id.*

[51] *Id.* (citing Richard Klein, *The Constitutionalization of* In*effective Assistance of*

ineffectiveness standard, therefore, "simultaneously restrict[s] the rights of indigent defendants and shield[s] the legal profession from allegations of inadequate representation."[52] Compounding the issue, courts also fail to take into consideration the cultural incompetence or racism of the attorney when addressing *Strickland*'s first prong.[53] Defendants may then witness the affirmation of racial bias within their ineffective assistance of counsel claim—including within federal habeas petitions. The Constitution, therefore, guarantees counsel, without guaranteeing the absence of racism and error. As a result, increasing funding for public defense would not necessarily guarantee the absence of racism nor justice to criminal defendants.

B. Case Study: Florida's Statutory Guarantee of Death Row Post-Conviction Relief Counsel

Florida provides a strong illustration of what it means to provide the image of constitutional protection for criminal defendants, but not actually ensure such protection—despite additional resources. In 1985, Florida pioneered the state statutory requirement to provide post-conviction counsel to people on death row.[54] Florida responded to its new statutory obligation by creating the singular Office of Capital Collateral Representative (CCR).[55] In addition to its promise to provide counsel, Florida also made it a statutory obligation for courts to monitor collateral counsel's performance.[56] Florida's then Chief Justice, Harry Lee Anstead, flaunted to the legislature, "Florida is without any doubt the No. 1 state in this country for its post-conviction proceedings in death penalty cases."[57] Soon after, however, a Commission study found that fourteen people on death row lacked collateral representation from CCR.[58] To resolve the issue, the Florida legislature decided, in 1997, to expand and create three

Counsel, 58 MD. L. REV. 1433, 1445 (1999)).

[52] Hoag, *supra* note 42, at 989.

[53] *Id.* at 994.

[54] Celestine Richards McConville, *Yikes! Was I Wrong? A Second Look at the Viability of Monitoring Capital Post-Conviction Counsel*, 64 ME. L. REV. 485, 493 (2012).

[55] *Id.*

[56] Fla. Stat. § 27.711(12) (2011).

[57] Jan Pudlow, *The Pros and Cons of Privatizing Death Penalty Appeals*, FLA. BAR NEWS (March 1, 2003), https://www.floridabar.org/the-florida-bar-news/the-pros-and-cons-of-privatizing-death-penalty-appeals/ (quoting Chief Justice Harry Lee Anstead).

[58] McConville, *supra* note 54, at 494. The Commission was created after complaints regarding delays and other tactics allegedly practiced by CCR attorneys began to surface. *Id*. at 493-94. The Commission was tasked with studying the representation provided to capital post-conviction petitioners in the State of Florida. *Id*.

regional offices called the Capital Collateral Regional Counsel (CCRC).[59] Only a few years later, Florida decided to cut their budget and dissolve one of the CCRC offices and instead appoint only private registry attorneys for that region.[60] Then came *Holland v. Florida* in 2010.[61]

Albert Holland, a Black man suffering from schizophrenia and psychosis from a prison-related brain injury,[62] was convicted of murder and sentenced to death in 1997.[63] Florida, as promised, appointed a private registry attorney to Holland for his collateral review.[64] The attorney-client relationship between Holland and his attorney began to deteriorate, and Holland filed two separate pro se motions to remove counsel.[65] The Florida Supreme Court denied both, even with the statutory obligation to monitor the effectiveness of the collateral counsel.[66] After the Florida Supreme Court denied Holland's post-conviction relief petition, Holland's attorney failed to let him know that his conviction had been finalized.[67] As a result, Holland missed his federal habeas deadline, which was only twelve days after the Florida Supreme Court's decision.[68] When Holland discovered the Florida Supreme Court had indeed made their final decision, he decided to file a pro se habeas petition despite his missed deadline.[69] The federal district court denied his habeas petition as untimely.[70] The Supreme Court of the United States, however, granted certiorari and found that Holland's post-conviction counsel's ineffectiveness may qualify for equitable tolling (essentially a pardon for the statute of limitations), but only because Holland could prove his own diligence in attempting to get information from his attorney.[71] The Court remanded the case to the lower courts to decide whether he qualified for such equitable tolling.[72]

It is worth noting that the District Court granted equitable tolling

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[59] *Id.*
[60] *Id.* at 494-95.
[61] *Id.* at 497.
[62] Holland v. Florida, 775 F.3d 1294, 1298-99 (11th Cir. 2014).
[63] Holland v. Florida, 560 U.S. 631, 635 (2010).
[64] McConville, *supra* note 54, at 498.
[65] *Id.* at 498-99 (citing *Holland*, 560 U.S. at 636-37).
[66] *Id.*
[67] *Id.* at 499.
[68] *Holland*, 560 U.S. at 638.
[69] *Id.* at 639.
[70] *Id.* at 643.
[71] *Id.* at 653-54.
[72] *Id.* at 654.

and granted Holland's habeas petition (in part), but the Eleventh Circuit reversed and reinstated his conviction.[73] Holland never won habeas relief. He still, over twenty-five years later, awaits his execution.[74] Florida's "pioneer," "No. 1" organization for state collateral counsel failed Holland: the counsel was not sufficient, and the courts did not monitor their performance. And even though Holland eventually got his shot at federal habeas—no thanks to the renowned resources Florida provided him—the courts still denied him relief. Even with additional resources allocated to Florida's collateral counsel in order to protect death row defendants from constitutional violations, Holland still suffered an unjust trial and never regained his freedom.

Soon after *Holland*, Florida decided to reinstate the CCRC office that had been dissolved previously due to budget cuts,[75] seemingly reinstating the funding once lost. Still, CCRC has proved inadequate. In 2020, Stephen Booker, an elderly Black man on death row, requested state collateral counsel in order to file a successive state post-conviction relief petition.[76] Even with the reinstated CCRC office, Booker waited eight months for appointed counsel, which he never received.[77] As a result, his past attorney from the Capital Habeas Unit (CHU) of the Northern District of Florida Federal Public Defenders entered an appearance in the state courts, and the state court approved.[78] However, the Attorney General objected to the appointment of federal counsel, noting that Booker had a

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[73] *Holland*, 775 F.3d at 1306. The District Court had granted habeas relief regarding a Sixth Amendment violation for not allowing Holland to represent himself at trial, reasoning that because Florida found him competent to stand trial, he should have been allowed to represent himself when he requested to do so. *Id.* at 1309-11. However, the Eleventh Circuit found that Florida had not misapplied Supreme Court precedent: "We do not read state court opinions as if we were 'grading papers.'" *Id.* at 1311. The court found there was no "conspicuous misapplication of Supreme Court precedent." *Id.* (internal quotations omitted).

[74] *Offender Information Search*, FLA. DEP'T OF CORRS. (last visited Dec. 25, 2023), http://www.dc.state.fl.us/OffenderSearch/Search.aspx.

[75] *Capital Collateral Attorney Registry*, JUST. ADMIN. COMM'N (last visited Nov. 16, 2022) https://www.justiceadmin.org/registry/mregistry.aspx?show_div=2 ("Effective July 1, 2013, the Legislature repealed the Capital Collateral Registry Attorney Pilot Project for the Northern Region and reinstated the Northern office of [CCRC]").

[76] Oral Argument at 25:26, Booker v. Sec'y, Fla. Dep't of Corrs., 22 F.4th 954 (11th Cir. 2022) (No. 20-14539), https://www.ca11.uscourts.gov/oral-argument-recordings?title=&field_oar_case_name_value=Booker&field_oral_argument_date_value%5Bvalue%5D%5Byear%5D=&field_oral_argument_date_value%5Bvalue%5D%5Bmonth%5D=.

[77] *Id.*

[78] *Id.* at 25:50.

right to counsel through the CCRC.[79] That same day, the CCRC filed a notice of appearance—eight months after Booker's first request for counsel.[80] The state court subsequently appointed the CCRC attorney as post-conviction counsel.[81]

In response, Florida's Attorney General brought a suit against Booker, claiming a violation of the federal statute 18 U.S.C § 3599.[82] Section 3599 requires that the courts appoint a federally funded attorney in "any postconviction proceeding under section 2254 [federal habeas relief] . . . seeking to vacate or set aside a death sentence, any defendant who is . . . unable to obtain *adequate* representation."[83] In addition, "[u]nless replaced by *similarly qualified counsel* . . . [the] attorney so appointed shall represent the defendant throughout every subsequent stage of available judicial proceedings."[84] The question before the Eleventh Circuit, then, was whether the CCRC provided "adequate" counsel, which would prevent the appointment of federal counsel in state proceedings.[85]

At oral argument, Booker's federal attorney argued that the CCRC attorney was inadequate due to their delay in filing an appearance and their lack of knowledge regarding this decades-long case.[86] Therefore, she argued, she should be allowed the opportunity, as a federal public defender, to represent him in state collateral proceedings.[87] Despite the evidence of inadequacy, Judge Lagoa strongly pushed back: she argued that the CCRC should be presumed adequate because of the statutory scheme in place to appoint adequate attorneys.[88] Booker's federal attorney argued that CCRC had failed "over and over and over again," which is why the federal CHU exists: to represent clients when the state collateral counsel is inadequate.[89] The Eleventh Circuit ultimately ruled that the Attorney General did not have standing, but Judge Lagoa made sure to include in her concurrence that, if the state did have standing, she would have ruled against appointing the federal public defender because the

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[79] *Booker*, 22 F.4th at 957.
[80] *Id.*
[81] Oral argument, *supra* note 76, at 26:10; *Booker*, 22 F.4th at 954.
[82] 18 U.S.C § 3599 (2008).
[83] *Id.* at § 3599(a)(2) (emphasis added).
[84] *Id.* at § 3599(e) (emphasis added).
[85] *Booker*, 22 F.4th at 961 (Lagoa, J., concurring).
[86] Oral argument, *supra* note 76, at 26:05.
[87] *Id*. at 26:30.
[88] *Id.* at 28:10, 32:03.
[89] *Id.* at 35:00.

defendant failed to prove that the CCRC was inadequate, especially given its explicit statutory scheme.[90] In other words, the concurrence suggests that neither the federal attorney being more adequate nor state counsel's delay or lack of knowledge was sufficient to find that representation was inadequate. Because of the statute, the courts presume adequacy of counsel.

Florida provides an example of the futility of shifting resources toward defense counsel to prevent (or correct) constitutional violations. Despite Florida's efforts to ensure that people on death row had an adequate shot at post-conviction relief—an adequate shot of proving any constitutional violations within their case—in practice the added counsel was insufficient. Even more, the court monitoring requirement to ensure that the CCRC was adequate also failed. Still, the federal courts presume the adequacy of state post-conviction counsel, which leaves federal habeas justice almost out of reach for Floridians on death row. And of course, the CCRC only serves people who will be executed; the majority of the 80,000 people incarcerated in Florida are not on death row.[91] Therefore, this majority remains even more susceptible to systemic abuses while they lack state-funded collateral counsel. Whether the program's insufficiency is due to racism in the court system, the stringent nature of *Strickland*, the volatility of state funding to support criminal defendants, or something else, the shifted funding suggested by Hoffman and King could not guarantee justice.

III. SYSTEMIC FAILURE BREEDS FEDERAL HABEAS FAILURE: PROBLEMS WITH THE SYSTEM CANNOT BE SOLVED BY REFORMING HABEAS

The startling reality of federal habeas for state prisoners begs for reform. However, whoever answers the call for reform should be cautious: how can we truly ensure justice for people who are in the criminal legal system? As described in Part II, putting more money into the criminal defense system as an attempt to prevent constitutional violations is a

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[90] *Booker*, 22 F.4th at 962 (Lagoa, J., concurring).

[91] *About the Florida Department of Corrections*, FLA. DEP'T OF CORRS. (last visited Nov. 13, 2022), http://www.dc.state.fl.us/about.html#:~:text=About%20the%20Florida%20Department%20of,active%20community%20supervision%20(probation). 318 of the 80,000 people incarcerated in Florida are on death row. *Florida: Additional Information*, DEATH PENALTY INFO. CENTER (last visited Oct. 11, 2023), https://deathpenaltyinfo.org/state-and-federal-info/state-by-state/florida.

wonderful idea in theory; but, that is only in theory. In practice, it has proven to be an insufficient attempt to protect people within our criminal legal system. This insufficiency highlights the true issue at stake: systemic failure. Federal habeas failure is just one result of total systemic failure, which is illustrated not only by the inadequacy of appointed counsel, addressed above, but also by the Supreme Court's "fetish of finality."[92] A fetish that wastes years of people's lives while they fight for justice.

The Supreme Court's lack of concern with fairness—with justice—regarding individuals is apparent in many Supreme Court habeas opinions. In short, the Supreme Court does not view federal habeas as a tool to correct every single constitutional violation. Justice Harlan once wrote, "the Court never has defined the scope of the writ simply by reference to a perceived need to assure that an individual accused of crime is afforded a trial free of constitutional error."[93] Justice O'Connor quoted Justice Harlan in an influential habeas case, *Teague v. Lane*, emphasizing that the Court must also consider "comity and finality" when deciding a habeas case, which are "essential to the operation of our criminal justice system."[94] She wrote, "[t]he fact that life and liberty are at stake in criminal prosecutions 'shows only that "conventional notions of finality" should not have *as much* place in criminal as in civil litigation, not that they should have *none*.'"[95] The Supreme Court, in the same breath, expressed their *strong* concern for finality and their *lack* of concern for strict constitutional protections.

This "fetish of finality," as coined by Allegra McLeod, a notable criminal law scholar at Georgetown,[96] is clearly apparent in *Herrera v. Collins*, where the Court held that claims of actual innocence "do not state an independent ground for federal habeas relief," unless paired with an independent constitutional violation.[97] Justice Rehnquist wrote that because of the "very disruptive effect that entertaining claims of actual innocence would have on the need for finality," the principle of finality must trump.[98] A few years later, AEDPA "codified this fetish of finality"[99]

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[92] Allegra M. McLeod, *Prison Abolition and Grounded Justice*, 62 UCLA L. REV. 1156, 1211 (2015).

[93] Kuhlmann v. Wilson, 477 U.S. 436, 447 (1986) (plurality opinion).

[94] Teague v. Lane, 489 U.S. 288, 308 (1989).

[95] *Id.* at 309 (quoting Henry J. Friendly, *Is Innocence Irrelevant? Collateral Attack on Criminal Judgments*, 38 U. CHI. L. REV. 142, 150 (1970)).

[96] McLeod, *supra* note 92.

[97] *Id.* at 1212-13 (citing Herrera v. Collins, 506 U.S. 390, 400 (1993)).

[98] *Herrera*, 506 U.S. at 417.

[99] McLeod, *supra* note 92, at 1214 (citing 28 U.S.C. § 2244(b)(2)(B)(ii) (2012)).

by restricting the rights of the federal courts to review new innocence evidence for a state case, unless there was a constitutional violation attached. In other words, even if more resources in the system prevented constitutional violations at the time of trial, newly discovered evidence after a conviction would not ensure a prisoner's freedom.

As a result, the system's "fetish of finality" trumps its interest in justice and fairness. And, even if statutory change to AEDPA allowed for someone with an actual innocence claim to file for federal habeas relief without a constitutional violation, there is a chance that common law and federalism would still get in the way.[100] The criminal system favors finality, and that is another reason federal habeas fails.

Additionally, American society's measurement of success—our measurement of justice, rather—requires a shift in mindset. Stephen Booker spent forty years on death row filing multiple meritorious post-conviction and habeas petitions with the help of counsel,[101] just to die on death row, awaiting execution.[102] Albert Holland got his chance at a federal habeas petition despite procedural default, but his petition was ultimately denied.[103] He remains on death row today.[104] Dentrell Brown, after a decade appealing his conviction, achieved the rare granting of a habeas petition and his conviction was vacated.[105] However, he now sits in a cage, yet again, awaiting trial for another crime he allegedly committed after his release.[106]

Was Dentrell Brown's case really a success when he was forced to endure the traumas of incarceration, starting as a child, for over a decade? Perhaps it was Brown's state-inflicted childhood and adult trauma that led to the alleged subsequent crime. Or perhaps it was the collateral consequences attached to his felony murder conviction, such as

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[100] *Herrera* took place before AEDPA was codified.
[101] *Booker*, 22 F.4th at 957.
[102] Tony Marrero, *Florida death row inmate died of fentanyl overdose, report shows*, TAMPA BAY TIMES, (Sept. 15, 2023), https://www.tampabay.com/news/florida/2023/09/15/florida-death-row-inmate-stephen-booker-fentanyl-overdose-prison/#:~:text=An%20autopsy%20shows%20Stephen%20Booker,died%20of%20acute%20fentanyl%20toxicity.&text=A%20man%20awaiting%20execution%20on,a%20fentanyl%20overdose%2C%20records%20show.
[103] *Holland*, 775 F.3d at 1322.
[104] *Offender Information Search*, *supra* note 74.
[105] *Brown*, 471 F. Supp. 3d at 876.
[106] *Brown*, No. 20C01-2204-F1-000006.

restrictions on employment and housing,[107] that placed him in a desperate position. The system clearly failed Dentrell Brown—but not only him. The system's failure in this case extends beyond Brown and into society as a whole. Even after all his incarceration, he is yet again charged with another violent crime. How did Dentrell Brown's incarceration serve society?

The real habeas stories above illustrate the failures of the system. The system does not and cannot protect defendants from injustices. Therefore, federal habeas reform—be it Hoffman and King's suggestion or AEDPA reform—would not protect defendants either. Guaranteed counsel cannot overcome the racial bias and inequities that are rooted in the criminal legal system and often cannot meet a just standard of effective counsel.[108] Actual innocence claims cannot overcome the courts' "fetish of finality." And the years—sometimes decades—of incarceration cannot be given back to those people who eventually do defy the odds and achieve habeas relief. The system has failed.

IV. NOW WHAT? DECARCERATION, DECRIMINALIZATION, AND PRISON ABOLITION

In *Habeas for the Twenty-First Century*, King and Hoffman set out to analyze and provide a solution for two major issues within habeas: (1) overburdened courts and (2) the near impossibility of winning a federal habeas case.[109] Both issues are bad for society and incarcerated people. They not only withhold resources that could be used in other, more beneficial ways, but also fail to protect people from constitutional violations. If the issue is how to unburden courts, then, of course, a solution is exactly what Hoffman and King propose: take away the right to file for federal habeas for most state-incarcerated people. If the issue is how to ensure more success for habeas petitioners, then statutory reform eliminating the statute of limitations or the strong deference to the state courts would help. However, both solutions would miss the point. If we

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[107] *Collateral Consequences Inventory*, NAT'L INVENTORY OF COLLATERAL CONSEQUENCES OF CONVICTION (last visited Dec. 26, 2023), https://niccc.nationalreentryresourcecenter.org/consequences; *see also Criminal History*, FAIR HOUS. CENTER OF CENTRAL IND. (last visited Dec. 26, 2023), https://www.fhcci.org/programs/education/criminal-history/ ("Under current federal and state law, housing discrimination due to criminal history is a lawful form of housing discrimination.").

[108] *See generally* Shaun Ossei-Owusu, *The Sixth Amendment Façade: the Racial Evolution of the Right to Counsel*, 167 U. PA. L. REV. 1161, 1221 (2019).

[109] KING & HOFFMAN, *supra* note 8, at 91.

unburden the courts by limiting habeas review, we fail to protect people. If we attempt to protect more people by making habeas filing easier, then we continue to overburden the courts,[110] which, in turn, would protect fewer people. Both solutions would fail to ensure actual justice and fairness for criminal-system-involved people.

Perhaps the solution lies in putting more money towards the criminal federal court system while simultaneously easing the restrictions on federal habeas relief. But, as Hoffman and King stated, "no matter how much money Congress and the states may sink into it, federal habeas will continue to be an inaccessible remedy that state law enforcement agents, prosecutors, judges, and legislatures can easily ignore."[111] Therefore, this solution begs the question, again, of what actually constitutes justice. Is there really justice when we still have a racially charged criminal legal system that intentionally oppresses people of color?[112] In addition, most people in state prison who may have valid constitutional claims would never have an opportunity to file for federal habeas relief because of the years-long backlog in state post-conviction proceedings.[113] And, for those who are incarcerated long enough to have the opportunity to file, years—sometimes decades—of their lives have already been spent in prison awaiting a final judgment from federal court. Not to mention, this would mean that even more resources are being spent on a criminal legal system that is doing exactly what it is supposed to do: keep people in prison. We have seen the above examples of the futility of this attempt.

With an abolitionist ethic in mind,[114] none of these solutions genuinely solve the systemic failure at issue. In fact, the systemic issue cannot be solved by federal habeas reform. As Hoffman and King stated, habeas reform "cannot . . . prompt needed systematic changes."[115] Instead, the best solutions to ensure constitutional protections and to unburden the courts, are abolitionist methods, such as decriminalization and decarceration. After all, less people in prison means less habeas petitions, and therefore less burdened courts.

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[110] *Id.* at 84.
[111] *Id.* at 85.
[112] Hoag, *supra* note 42, at 992.
[113] *See Frequently Asked Questions*, *supra* note 24.
[114] McLeod, *supra* note 92, at 1161-62. McLeod defines "prison abolitionist ethic" as a "moral orientation . . . committed to ending the practice of confining people in cages and eliminating the control of human beings through imminently threatened police use of violent force." She further argues, "an abolitionist ethic decenters the primacy of finality and the smooth operations of the criminal process." *Id.* at 1212.
[115] KING & HOFFMAN, *supra* note 8, at 169.

By focusing on decarceration, we can ensure fewer years taken from people while reducing the number of habeas petitions filed. Scholar Alexis Hoag made a similar argument: rather than focus on indigent defense to protect people, movements should focus on "the root of the problem by advocating against mass criminalization."[116] Beginning with the War on Crime and the War on Drugs, the United States prison population increased a staggering 700 percent between 1972 and 2009.[117] From 2009 to 2021, the prison population declined by 11 percent, while some individual states have decreased their incarcerated populations by more than 30 percent.[118] The states with the highest rates of decarceration (Connecticut, Michigan, Mississippi, Rhode Island, and South Carolina) achieved prison population reduction by using a number of strategies, including a few abolitionist, non-reformist reforms: (1) "elimination of various mandatory minimum sentences"; (2) "imposition of shorter terms of community supervision"; (3) "modifications to sentence enhancements for aggravating factors"; and (4) "reductions in time served prior to eligibility for repeat paroles after revocation."[119] These methods have protected people and lessened the burden on federal habeas courts (because fewer people served long sentences), while refraining from putting money back into the criminal legal system. Although those states did implement additional strategies that increased criminal legal system budgets—such as the implementation of specialty courts—those strategies were not necessary to reduce the prison population, and many of the services that were part of those strategies could have been handled by non-criminal legal system organizations instead, such as voluntary rehabilitation facilities.[120]

States can also practice decarceration by reclassifying certain felonies as misdemeanors. For example, California passed Proposition 47, which reclassified roughly six property and drug offenses as

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[116] Hoag, *supra* note 42, at 991.

[117] Nazgol Ghandnoosh, *Can We Wait 60 Years to Cut the Prison Population in Half*?, THE SENTENCING PROJECT (last visited Nov. 13, 2022) https://www.sentencingproject.org/policy-brief/can-we-wait-60-years-to-cut-the-prison-population-in-half.

[118] *Id.*

[119] Dennis Schrantz, Stephen DeBor, & Marc Mauer, *Decarceration Strategies: How 5 States Achieved Substantial Prison Population Reductions*, THE SENTENCING PROJECT, 6 (September 2018), https://www.sentencingproject.org/publications/decarceration-strategies-how-5-states-achieved-substantial-prison-population-reductions/.

[120] *Id.* at 6-7.

misdemeanors, rather than felonies, and applied the act retroactively.[121] This led to the release of 4,700 people from prison.[122] Although those people may still be on probation, this act was a small step closer to releasing people from state captivity and curbing the need for federal habeas relief.

In addition to decarceration, decriminalization of certain crimes would prevent people from facing criminal courts and prisons in the first place. For example, Marilyn Mosby, Baltimore's state attorney in 2020, announced that the city would "no longer prosecute drug possession, prostitution, trespassing, and other low-level offenses" when the coronavirus pandemic first hit.[123] As a result, "39 percent fewer people entered the city's criminal justice system in [a] one-year period, and 20 percent fewer people landed in jail."[124] In fact, "there were 80 percent fewer arrests for drug possession in Baltimore" from March of 2020 to March of 2021.[125] In addition, violent crime decreased by 20 percent, property crime decreased by 36 percent, and there were thirteen fewer homicides "compared to the previous year"—even while homicides in other major cities increased.[126] After noticing the positive effects of decriminalizing these behaviors during the pandemic, Mosby announced that she would continue this "experiment."[127] In a 2021 press conference, Mosby said, "What we learned in that year, and it's so incredibly exciting, is there's no public safety value in prosecuting these low-level offenses. These low-level offenses were being, and have been, discriminately enforced against Black and Brown people."[128] Baltimore continued decriminalization, while shifting its focus on partnering with "a local behavioral health service to aggressively reach out" to people engaging in the previously criminalized behaviors,[129] rather than partnering with

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[121] Marc Mauer, *Long-Term Sentences: Time to Reconsider the Scale of Punishment*, UMKC L. REV. 113, 125-26 (2018).
[122] *Id.* at 126.
[123] Hoag, *supra* note 42, at 996.
[124] Tom Jackman, *After Crime Plummeted in 2020, Baltimore Will Stop Drug, Sex Prosecutions*, WASH. POST (Mar. 26, 2021), https://www.washingtonpost.com/dc-md-va/2021/03/26/baltimore-reducing-prosecutions/.
[125] *Id.*
[126] *Id.* (citing Tom Jackman, *Homicides Rose 30 Percent in 2020, Survey of 34 U.S. Cities Finds*, WASH. POST (Feb. 3, 2021), https://www.washingtonpost.com/crime-law/2021/02/03/homicides-rose-2020/).
[127] *Id.*
[128] *Id.*
[129] *Id.*

criminal legal system organizations.

Like Baltimore, Oregon also took a step towards decriminalization. In November of 2020, Oregon decriminalized possession of small amounts of most illicit drugs.[130] Oregon's Drug Addiction Treatment and Recovery Act reduced penalties for small amount drug possession and funded drug addiction treatment.[131] Rather than arresting 8,000 people per year, costing the state $15,000 per case, Oregon decided to shift its focus and money towards recovery services.[132] The long-term impacts of Oregon's pioneer legislation are still unclear, but the Oregon Criminal Justice Commission (CJC) projected that the Act would decrease the number of convictions for possession nearly 91 percent[133] as well as reduce racial and ethnic disparities in criminal convictions.[134] Importantly, the Act will decrease the amount of money "pumped" into a failed criminal legal system.[135]

Although the unprosecuted crimes in Baltimore and Oregon were all misdemeanor charges, the pile-up of misdemeanors, warrants, or probation violations for misdemeanors can lead to a multitude of collateral consequences.[136] These consequences can deprive people of state assistance for food or housing and inhibit people from achieving job certification or going to school.[137] Therefore, misdemeanors create a permanent underclass and increase recidivism.[138] As a result,

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[130] Drug Addiction Treatment and Recovery Act, 2021 Or. Laws ch. 2, *amended by* 2021 Or. Laws ch. 591.

[131] Cailin Harrington, *After Fifty Years of the War on Drugs, the Nation Looks West: Why Oregon Required the Drug Addiction Treatment and Recovery Act and What We Can Learn From It*, 53 SETON HALL L. REV. 1005, 1006 (2023).

[132] *Id.*

[133] *Id.* at 1026 (citing OR. CRIM. JUST. COMM'N, IP 44 RACIAL AND ETHNIC IMPACT STATEMENT 3 (2020), https://maps.org/wp-content/uploads/2020/12/IP44-Racial-and-Ethnic-Impact-Analysis.pdf).

[134] *Id.* (citing OR. CRIM. JUST. COMM'N, IP 44 RACIAL AND ETHNIC IMPACT STATEMENT SUPPLEMENTAL DOCUMENT 3 (August 5, 2020), https://www.opb.org/pdf/IP44%20-%20REI%20Statement%20Supplement_1602708982790.pdf).

[135] *Id.* at 1026-27.

[136] *Collateral Consequences Inventory*, *supra* note 107.

[137] *Id.*

[138] *See, e.g.*, AM. BAR ASS'N, *Collateral Consequences of Criminal Convictions: Judicial Bench Book*, OFF. OF JUST. PROGRAMS 1, 4 (Mar. 2018) https://www.ojp.gov/pdffiles1/nij/grants/251583.pdf ("The negative impact of collateral consequences on a returning citizen's chances of successful re-entry into his or her community are clear and well documented."); Victor J. Pinedo, *Let's Keep it Civil: An Evaluation of Civil Disabilities, a Call for Reform, and Recommendations to Reduce Recidivism*, 102 CORNELL L. REV. 513, 545 (2017) ("When viewing the current statistics

misdemeanor decriminalization can undoubtedly have a positive impact on federal habeas: less recidivism leads to fewer people in prison for long sentences, leading to fewer people applying for federal habeas.

This essay does not intend to ignore harm reduction methods while our criminal system still exists. For example, this essay is not suggesting that federal habeas should necessarily stay the same or become more restrictive than it is now in order to save resources, as King and Hoffman suggest. Instead, federal habeas should continue to be accessible to those who are and will be incarcerated, and perhaps even reformed to ease access to habeas relief. However, as this essay has demonstrated, shifting resources from one part of the criminal system to another would still not guarantee justice in a system rooted in historical, racialized oppression. Even if decarceration and decriminalization free up resources both in federal and state courts, it would not benefit our society to reinvest those resources into a failed system. Instead, an abolitionist ethic requires that those resources be reinvested into the community, to actually benefit our society and to prevent harm from ever occurring.

Overall, abolitionist methods that attack mass incarceration head-on will lead to fewer people in prison and shorter sentences. This not only prevents people from coming into contact with the system and facing constitutional violations, but it also prevents them from ever reaching the point of filing for federal habeas reform. Essentially, prison abolition non-reformist reforms present a win-win solution: federal courts are no longer overwhelmed with federal habeas petitions, and fewer criminal-system-involved people beg to be protected from the state. With resources unshackled from the criminal system, the state can then reinvest those dollars into communities in a more effective and just way.

CONCLUSION: AN ABOLITIONIST HORIZON

Federal habeas is meant to protect people. It remains a federal remedy available to ensure that state courts do not violate defendants' federal constitutional rights. However, this protection is nearly toothless, as habeas petitions have a devastatingly low success rate due to overwhelmed federal courts, state deference, and the courts' fetish of finality. AEDPA further codified these issues and reinforced barriers to bringing a successful habeas claim.

Scholars have, and continue to, grapple with the failures of

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on both incarceration and recidivism rates, as well as the lingering social ostracization that ex-offenders face, it is clear that now is the time for that long-desired change.").

habeas. Hoffman and King proposed a solution: further restrict access to federal habeas and reinvest those court dollars into preventing constitutional violations at the trial level. However, as this essay illustrates, reallocation from one part of the criminal legal system to another has proven to be a futile attempt at increasing constitutional protection for defendants. In fact, it has created programs that provide a mirage of justice for the state: if theoretical protections are in place, then we need not have further oversight.

What comes from this analysis is not a new idea for habeas reform, but the idea that federal habeas failure is but a scapegoat of systemic failure. The systemic failure is illustrated by systemic racism, the inherent inadequacy of appointed counsel, the insufficiency of innocence as a basis for sentence vacation, and the robbing of years of people's lives while they await finality. What, then, should scholars focus on when frustrated with the failures of federal habeas? Abolition. The most promising protection for criminal-system-involved people is either not criminalizing their acts in the first place or decarcerating people. These solutions not only free up resources in federal criminal courts by reducing the number of people applying for habeas, but they also ensure that people are not being harmed by a system that fails to—or refuses to—correct constitutional violations.

The state robbed Dentrell Brown of his formative years. And even though his habeas petition was granted, the state now cages him in the same system again. His public defender could not protect him. State post-conviction courts and counsel could not protect him. And federal habeas could not protect him. Only with abolitionist non-reformist reforms can we truly protect people from the harm Dentrell Brown endured. Only with an abolitionist ethic can we guarantee constitutional protections and, most importantly, justice for all people.