

13 Ezekiel and Criminal Justice Reform

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But if the wicked turn away from all their sins that they have committed and keep all my statutes and do what is lawful and right, they shall surely live; they shall not die. None of the transgressions that they have committed shall be remembered against them; for the righteousness that they have done they shall live. (Ezek 18:21–22)

Few Americans are aware that someone convicted of a crime in the United States emerges from the courtroom condemned to a lifetime of discrimination. Individuals with a criminal record are required to declare their conviction to prospective employers, who are overwhelmingly averse to hiring them, and to prospective landlords, who are averse to housing them.¹ They are prohibited from practicing a wide range of professions, many of which bear no relation whatsoever to the crime they may have committed. They are barred from public housing and limited in their recourse to food stamps and other forms of government assistance, if not outright prohibited from it. These and other forms of systemic, legalized discrimination against individuals with criminal records means that the end of a prison sentence marks not the end of punishment, but only a transition to its next stage.

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¹ For documentation and analysis, see M. Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, rev. ed (New York: New Press, 2012); E. Hinton, *From the War on Poverty to the War on Crime: The Making of Mass Incarceration in America* (Cambridge: Harvard University Press, 2016); D. Pager, *Marked: Race, Crime, and Finding Work in an Era of Mass Incarceration* (Chicago: University of Chicago Press, 2007); R. Perkinson, *Texas Tough: The Rise of America's Prison Empire* (New York: Picador, 2010). T. Coates, "The Black Family in the Age of Incarceration," in *We Were Eight Years in Power: An American Tragedy* (New York: One World, 2017), 223–81 provides an accessible overview.

The system of perpetual punishment is not limited to violent criminals or drug kingpins. Even petty drug offenders may be sentenced to a term of probation, community service, and court costs.

Unbeknownst to such offenders, and perhaps any other actors in the sentencing process, as a result of their conviction they may be ineligible for many federally funded health and welfare benefits, food stamps, public housing, and federal educational assistance. Their driver's license may be automatically suspended, and they may no longer qualify for certain employment and professional licenses. If they are convicted of another crime they may be subject to imprisonment as repeat offenders. They will not be permitted to enlist in the military, or possess a firearm, or obtain a federal security clearance. If citizens, they may lose the right to vote; if not, they become immediately deportable.²

An extensive study of the employment prospects of ex-offenders rightly concluded that "the punishing effects of prison do not end upon an inmate's release"; rather, the civil penalties levied upon the formerly incarcerated result "in the exclusion of ex-offenders from valuable social and economic opportunities."³ The nature and the extent of such penalties, "although not considered punishment by our courts, often make it virtually impossible for ex-offenders to integrate into the mainstream society and economy upon release."⁴ In some cases the obstacles reach the level of the absurd: Prisoners trained and deployed as firefighters against the frequent wildfires in California, for example, are disqualified by their criminal conviction from employment in any civilian fire department.⁵ As a result of such limitations,

people who have been convicted of felonies almost never truly reenter the society they inhabited prior to their conviction. Instead, they enter a separate society, a world hidden from public view, governed by a set of oppressive and discriminatory rules and laws that do not apply to everyone else.⁶

² Alexander, *New Jim Crow*, 143, citing American Bar Association, Task Force on Collateral Sanctions, *Introduction, Proposed Standards on Collateral Sanctions and Administrative Disqualification of Convicted Persons*, Jan. 18, 2002.

³ Pager, *Marked*, 58.

⁴ Alexander, *New Jim Crow*, 143.

⁵ J. Raphling, "California's Prisoner Firefighters Deserve a Chance at a New Life," *The San Francisco Chronicle*, November 5, 2019. www.sfchronicle.com/opinion/openforum/article/Inmate-firefighters-deserve-a-chance-at-a-new-life-14806236.php.

⁶ Alexander, *New Jim Crow*, 186–7.

Even for an ex-offender desperately desirous of a full – and fully legal – reintegration, the legal and social environment into which he or she is released make this all but unattainable.

It is no surprise that those who face such substantial obstacles to gainful employment often land back in prison – and that those who do not are ten times more likely to be homeless than the general public.⁷ In Ta-nehisi Coates's powerful prose: "Incarceration pushes you out of the job market. Incarceration disqualifies you from feeding your family with food stamps. Incarceration allows for housing discrimination based on a criminal background check. Incarceration increases your risk of homelessness" – and "incarceration increases your chances of being incarcerated again."⁸

The racialized character of this system is impossible to ignore. Though explicit forms of discrimination are illegal, militarized policing tactics focused on poor and minority neighborhoods, combined with sentencing laws dictating harsher penalties for certain crimes, have overwhelmingly and disproportionately increased the rates of incarceration among persons of color. Combined with the number and extent of policies permitting employers, landlords, and government agencies to discriminate against the formerly incarcerated, the consequences have been disastrous. A series of government "wars" on crime and on drugs have effectively relegated persons of color – especially though not exclusively African American men – to a new second-class status, akin to that formally encoded in the pre-civil rights era Jim Crow laws.⁹

Moreover, as Coates observes,

the chasm in incarceration rates is deeply tied to the socioeconomic chasm between black and white America. The two are self-reinforcing – impoverished black people are more likely to end up in prison, and that experience breeds impoverishment. An array of laws, differing across the country but all emanating from our tendency toward punitive criminal justice – limiting or banning food stamps for drug felons; prohibiting ex-offenders from obtaining public housing – ensure this. So does the rampant discrimination against ex-offenders and black men in general. This, too, is self-reinforcing. The American population most discriminated against is also its most incarcerated – and the

⁷ L. Couloute, "Nowhere to Go: Homeless among Formerly Incarcerated People," *Prison Policy Initiative*, August 2018. www.prisonpolicy.org/reports/housing.html.

⁸ Coates, "Age of Incarceration," 271.

⁹ Hinton, *War on Poverty*; Alexander, *New Jim Crow*.

incarceration of so many African Americans, the mark of criminality, justifies everything they endure after.¹⁰

Discrimination on the basis of race may be illegal, but discrimination on the basis of criminal record is not only legal but widespread. Though few of its practitioners would acknowledge it, the latter masks an ongoing epidemic of the former. Those with a criminal record immediately “become members of an undercaste – an enormous population of predominately black and brown people who, because of the drug war, are denied basic rights and privileges of American citizenship and are permanently relegated to an inferior status.”¹¹

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What has the book of Ezekiel to do with this systemic miscarriage of justice? The book seems hardly the most likely source of relief – it is the epitome of prophetic moral severity. Indeed, it is off-putting to many readers precisely because of its insistence on the sinfulness of the people and the justice of YHWH’s punishment. Unlike the more hopeful message of Second Isaiah, with its emphasis on YHWH’s ongoing care for the people (43:4; 48:14; 54:8, 10; 55:3), or even the doom-laden judgment oracles of Hosea, which nevertheless affirm YHWH’s perpetual love for the people (2:19; 3:1; 11:1, 4; 14:4), the book of Ezekiel never draws attention to YHWH’s positive emotional attachment to the Israelites. The deity’s relationship with the people is driven not by affection but by concern for YHWH’s own reputation: When YHWH acts on the people’s behalf, he does it “for the sake of my (holy) name” (20:9, 14, 22; 36:22; cf. 20:44; 36:20–23; 39:7; 43:7–8).

Even the book’s promises of restoration are dwarfed by the focus on sin and judgment. Unlike other prophetic figures, Ezekiel is given no intercessory function; his role is not to plead with YHWH on the Israelites’ behalf – to “forgive, I beg you!” (Amos 7:2, cf. 7:5). Rather, he is to proclaim to the Israelites their punishment and to ensure that they understand that it arises directly from their own sinfulness. Indeed, the need for the people to acknowledge the relationship between their sins and their punishment is so central to the book’s agenda that Ezekiel is repeatedly warned that any failure to convey this point clearly will

¹⁰ Coates, “Age of Incarceration,” 279.

¹¹ Alexander, *New Jim Crow*, 186–7.

bring down punishment on his own head, rather than on the people (3:19–21; 33:2–9).

The judgment Ezekiel is compelled to communicate calls for the destruction of Jerusalem and the death or deportation of the city's inhabitants (chs 4–5; 9; 11; 14; 15; 17; 20; 23; 24; 33). Immediately following the prophet's commission in chapter 3, he is instructed to illustrate this point using his own body, in a series of symbolic prophetic actions (chs 4–5). First, he is to enact a siege against the city, so that he may lay before it and "bear [the house of Israel's] iniquities" (4:4). Famine, exile, and death follow, all under the banner of punishment for Israel's various crimes.

These crimes themselves are enumerated in the following chapters. In one form or another, they all constitute a variation on failure to follow YHWH's "ordinances and statutes" (5:6–7; cf. 11:12). The worship of other gods is prominent (chs 6; 8; 14; 16; 20; 23), as one might expect, but so are less overtly theological offenses: love of violence and its execution (chs 7; 11; 19; 20; 22), perversion of justice (chs 11; 18; 22; 33), and failures of leadership (chs 11; 12; 13; 17; 19; 21; 23; 34). The commissioning of the unnamed figure to kill the inhabitants of Jerusalem follows on from a description of religious apostasy (ch. 8) and is explained as a consequence of the bloody injustices of town and country (9:9). Violent slaughter awaits those who committed it against others (11:6–8, cf. 12:19).

The moral and theological outlook engendered by this material is unremittingly "tough on crime." Indeed, it exhibits what we might describe as a "law and order" mentality: Israel's punishment is expressly articulated as a consequence of its failure to follow the "statutes and ordinances" laid down by YHWH for Israel's well-being. Already in the opening series of prophetic sign-acts, YHWH explains that the siege, famine, exile, and death that Ezekiel's actions anticipate are the consequences for this failure to obey the law:

But [Jerusalem] has rebelled against my ordinances and my statutes, becoming more wicked than the nations and the countries all around her, rejecting my ordinances and not following my statutes. Therefore thus says the LORD God: Because you are more turbulent than the nations that are all around you, and have not followed my statutes or kept my ordinances, but have acted according to the ordinances of the nations that are all around you; therefore thus says the LORD God: I, I myself, am coming against you; I will execute judgements among you in the sight of the nations. (5:6–8)

This point is repeated multiple times. The climactic accusation against the elders at the temple, for example, culminates with a declaration of their failure to obey the law: "Then you shall know that I am YHWH, whose statutes you have not followed and whose ordinances you have not kept" (11:12). The subsequent promise of restoration identifies obedience to the law as a critical component of any future relationship between the people and YHWH (11:20). Indeed, though the book imagines a variety of possible futures, these visions consistently prioritize law and order (37:24; 43:11; 44:24). In the exploration of individual and generational punishment in chapter 18, (non-)obedience to YHWH's "statutes and ordinances" is likewise determinative of a person's wickedness or righteousness (18:9, 17, 19, 21). The litany of chapter 20 recalls how YHWH provided these statutes and ordinances to the people as the key to life (20:11) and makes explicit the connection between the people's failure to obey these laws and their current punishment (20:13, 16, 18–20, 24).¹² That punishment has been repeatedly delayed only underscores the strength of the expectation that disobedience normally results in punishment.

At this point, punishment is guaranteed. This is, in part, because YHWH's earlier attempts at leniency have been a complete and utter failure. Chapter 20 elaborates how generation after generation were given an opportunity to repent, as YHWH repeatedly forestalled the punishment appropriate to their extensive sins. But these attempts at leniency proved futile; instead of making better choices and obeying the law, the Israelites compounded their disobedience: sin upon sin, generation upon generation. YHWH's patience has now worn out: The divine judge gave the Israelites multiple chances, but the Israelites refused to change. YHWH has therefore concluded that only an unmistakable act of punishment will bring home the severity of condemnation of the Israelites' behavior and perhaps effect the hoped-for change. The Israelites must bear their punishment, recognize the consequences of their choices, and make better ones in future. Responsibility for the catastrophe is laid at the feet of a morally impenetrable people.

YHWH's change in tactics is motivated by the threat to the divine reputation posed by Israel's failures. International onlookers have begun to view YHWH's willingness to forestall punishment as a reflection of a

¹² Ezekiel 20:25 (in)famously inverts the connection between law and life; for attempts to understand this verse, see, e.g., D. E. Callender, Jr., "'I Gave Them Laws That Were Not Good' (Ezek 20:25): A Biblical Model of Complex Subjectivity and the Prospects of Multi-Ethic Contextual Reading," *In Die Skriflig* 48 (2014): 3–10, and below.

flaw in YHWH's character – either he is impotent, and incapable of acting, or he lacks a true commitment to justice, and cannot be bothered. With its long-lensed perspective, chapter 20 emphasizes that divine justice concerning Israel's sin is the engine behind the book's message of judgment: YHWH must bring down the gavel, lest the justice system he has sworn upon his own life to uphold be called into question ("as I live"; 5:11; 14:16, 18, 20; 18:3; 20:3, 31, 33).

Though severe, the book's litany of Israel's sins against the divine moral order serves a juridico-theological purpose: It depicts the people's fate as justified punishment for offenses against the divine law – not random chance, neglect (or malevolence) on the part of the deity, or the greater power of enemy gods. The prophet's job is to ensure that the people recognize the justice of the punishment inflicted upon them. YHWH is neither capricious nor cruel, but a God whose punitive actions against Israel are proportionate to the crimes they have committed. The people must acknowledge their responsibility for the suffering that they now experience.

Comparative social-scientific research suggests that the book's focus on the people's failures represents a typical response to the traumatic experience of involuntary migration.¹³ Ezekiel's community at the River Chebar is such a community: involuntary migrants for whom the world has descended into unremitting chaos. The state of existential disorientation in which the community now finds itself demands an explanation: Why did this happen?

One route through this wilderness of dispossession is to identify specific past behaviors as the source of a community's current suffering. This enables the community to re-assert the existence of a causally ordered universe, reconstructing a coherent narrative of the community and its fate in a way that reestablishes meaning and order.¹⁴ Though terrible, the situation is explicable. Such moral reckonings serve to assert migrants' agency: Their present distress is not random, but the

¹³ L. Malkki, *Purity and Exile: Violence, Memory, and National Cosmology among Hutu Refugees in Tanzania* (London: University of Chicago, 1995).

¹⁴ C. Caruth, *Unclaimed Experience: Trauma, Narrative, and History* (Baltimore: Johns Hopkins University Press, 1996); J. Fentress and C. Wickham, *Social Memory* (Oxford: Blackwell, 1992); N. King, *Memory, Narrative, Identity: Remembering the Self* (Edinburgh: Edinburgh University Press, 2000). For the use of such work to interpret Jeremiah see K. M. O'Connor, *Jeremiah: Pain and Promise* (Minneapolis: Fortress, 2011).

result of previous offenses. The people are complicit in the circumstances in which they find themselves.

Significantly, these assertions also constitute a claim to the people's moral autonomy over the future: If their current circumstances are the result of bad choices in the past, changing their behavior in the present may stave off similar disasters in the future. Though the Israelites' lives may appear to be wildly beyond their control, in fact their choices and behaviors have value. Changed behavior – careful avoidance of the problematic activities that brought about the disaster – will prevent the recurrence of punishment and thereby ensure their future well-being.

Echoing the psychological literature on coping mechanisms in response to trauma, Smith-Christopher describes this as a kind of "our fault" theology. Although strange to the modern ear – and especially disconcerting to audiences sensitive to the psychological pitfalls of victim-blaming – Smith-Christopher argues that such an approach "ironically empowers . . . by offering the hope of cultural recovery. *Our own mistakes offer hopeful possibilities in ways that outside imperial conquest does not.*"¹⁵ Emphasizing the community's guilt is a way of emphasizing its capacity to affect the future; if the people acknowledge responsibility, they will be able to change their behavior and avoid future punishment. Ezekiel's recitation of Israel's past misdeeds thus represents an assertion of Israel's ability to achieve a better future for itself. Although discomfiting to readers accustomed to the late twentieth century's attention to the deity's more gracious aspects, in a community of traumatized migrants this makes perfect sense.

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In the midst of such unrelenting emphasis on Israel's sinfulness, it is especially startling to read the declaration that forms the epigraph to this essay:

But if the wicked turn away from all their sins that they have committed and keep all my statutes and do what is lawful and right, they shall surely live; they shall not die. None of the transgressions that they have committed shall be remembered

¹⁵ D. L. Smith-Christopher, "Reading Jeremiah as Frantz Fanon," in *Jeremiah (Dis) Placed: New Directions in Writing/ Reading Jeremiah*, ed. A. R. P. Diamond and L. Stulman (London: T&T Clark, 2011), 116–17 (italics original).

against them; for the righteousness that they have done they shall live. (18:21–22)

How can this be? That the wicked will suffer the consequences of their wickedness is one of the most fundamental tenets of the book's moral logic: Chapter after chapter is dedicated to drawing an explicit and irrefutable connection between the crimes that the people have committed and the punishment that they now experience.

Even the chapter in which this remarkable statement is found is designed to emphasize that none of Ezekiel's audience who are now suffering do so in innocence. They may wish to blame the misdeeds of their parents, claiming that the consequences of their sin have fallen upon them: "The parents have eaten sour grapes, and the children's teeth are set on edge" (18:2). But the chapter denies this disavowal of responsibility. If the people are suffering YHWH's judgment, it is because they have sinned.

Such a strict system of retribution and reward has its problems; in the contemporary context, this type of logic underpins the prosperity gospel's simplistic claims that rewards will come to the righteous and that material suffering signifies moral depravity. An idealized schema in which a good life follows upon good deeds and evil follows upon evil deeds surfaces in parts of Proverbs, as it encourages young men in their pursuit of wisdom – but reality gives rise to the other biblical voices that contest this schema. Job is declared unfailingly righteous, yet suffers great loss and prolonged physical and mental pain. Ecclesiastes wonders at the irregularity with which the pursuit of wisdom produces predictable results. Psalms lament. In the context of the sixth century BCE, Ezekiel's extreme emphasis on the correlation between sin and punishment represents a reaction to the refusal of the people to acknowledge the depravity of their actions and accept responsibility for their consequences.

Yet, despite the urgency with which the book presses this point, Ezekiel allows room for the possibility that even the most inveterate sinner might turn aside from his wickedness and sin no more. In such a case, the chapter avows, "none of the transgressions that they have committed shall be remembered against them."

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This injunction to reckon the sins of the past as though they were nothing constitutes a powerful condemnation of the widespread and entirely legal forms of discrimination currently practiced against the

formerly incarcerated. Rather than offering ex-offenders a genuine chance to turn their lives around – to “turn away from all their sins that they have committed and keep all my statutes and do what is lawful and right” – ex-offenders are turned out into a system that could hardly be more effectively designed to ensure recidivism.¹⁶ Limited access to gainful employment is a critical link in this chain; because they are denied the ability to support themselves legally, it is hardly surprising to find ex-offenders resorting to illegal forms of employment or theft.

The specific limitations arising from the criminal record are compounded by the fact that many ex-offenders had few employable skills to begin with. Robert Perkinson estimates that “roughly half of today’s prison inmates are functionally illiterate.”¹⁷ The prison system as it stands does little to rectify this; over the last fifty years, prisons and jails have all but abandoned the efforts to reform those condemned to them.¹⁸ The criminal justice system has become little more than a vast warehousing system for America’s most marginalized citizens. The exponential increase in the prison population over the last several decades is the result of a schools-to-prison pipeline fed by economic impoverishment, failing schools, and poor health care – abetted by private companies’ profit margins and characterized by a callous disregard for the vulnerable individuals caught in its net.

Ezekiel condemns this. Israel’s punishment is depicted as a consequence of its past failure to obey the law, but it is not conceived as punishment for its own sake or as an end in itself. Rather, Israel’s punishment is meant, first, to draw the people’s attention to the detrimental consequences of their current behavior – for the well-being of a community devastated by violence, as well as for themselves personally. Second, it is meant to provide a route to future obedience. After Israel’s punishment has come to an end, the people will be able to “follow my statutes and keep my ordinances and obey them” (11:20). Punishment is exacted in order to bring about a change in the people’s behavior – specifically, change that leads to law-abiding membership in the community. Warehousing human beings without seeking to transform them is antithetical to Ezekiel’s theology. If criminal justice proceeds through incarceration, prison must include routes to rehabilitation that enable ex-offenders to enter fully into society upon their release.

¹⁶ Alexander, *New Jim Crow*, 176.

¹⁷ Quoted in Coates, “Age of Incarceration,” 241.

¹⁸ Pager, *Marked*, 15–22.

With this in mind, Ezekiel's depiction of the change Israel undergoes during the term of its punishment merits close attention. Perhaps surprisingly, the book envisions Israel's reformed future arising not out of some spontaneous transformation on the part of the people, but from changes in their circumstances, brought about by YHWH specifically in order to facilitate obedience to the divine law: YHWH promises to give the people "one heart" and a "new spirit" (11:19; 36:26; cf. 18:31). The goal of YHWH's dramatic intervention in Israel's history, these passages emphasize, is not merely a temporary disruption, undertaken in resigned expectation of the Israelites' eventual return to their previous circumstances. Rather, YHWH recognizes the magnitude of the obstacles that obstruct the Israelites' path to obedience and grants the people the resources they need to overcome them. Punishment is envisioned as a radical break from the past, effected by YHWH through the gift of "one heart" and a "new spirit." On the other side of punishment, the Israelites will be able to live lives in accord with the divine will, fully resourced by the divine judge who sentenced them. This one heart and this new spirit will enable the Israelites to live the kind of law-abiding lives they previously found impossible. These passages recognize that, without a change in circumstances, the Israelites will remain trapped in an endless cycle of crime and punishment. Indeed, chapter 20 makes clear that YHWH's repeated injunctions to obedience were not, on their own, enough to bring about the change YHWH desired; the Israelites kept falling into sin. After reporting Israel's multiple failures, the chapter finally acknowledges that the law, on its own, could bring only death (20:25). Something more was required for life.

To twenty-first-century America, Ezekiel issues a summons: Transform the death-dealing circumstances that feed and facilitate the prison-industrial complex. It is well established and widely acknowledged that a number of material risk factors dramatically increase one's chances of incarceration, including poverty, illiteracy, mental illness, and addiction.¹⁹ The long shadow of racial discrimination – housing restrictions, bars to employment, inadequate medical care, underfunded schools, and so on – link these risk factors disproportionately to individuals and communities of color. Once swept into the system, the exclusion of ex-offenders from housing, employment, and other basic benefits establishes significant obstacles to successful reentry into mainstream society. These legal forms of discrimination add their compounding effect to

¹⁹ Coates, "Age of Incarceration," 241.

the risk factors associated with initial incarceration – and so incarceration breeds more incarceration. Nearly two-thirds of those recently released from prison are charged with new crimes; more than 40 percent will return to prison within three years.²⁰ Unless we address the circumstances at the root of mass incarceration, this cycle – what Loïc Wacquant describes as a “closed circuit of perpetual marginality” – will continue.²¹ Moreover, we must recognize that these circumstances are fundamentally material, rather than moral: “Mass incarceration,” Coates writes, “is, ultimately, a problem of troublesome entanglements. To war seriously against the disparity in unfreedom requires a war against a disparity in resources.”²² In one of the wealthiest countries in the world, there is no question that these resources exist; what we require is the will to use them.

Ezekiel’s promises of divine intervention, we should note, do not constitute a simple *carte blanche*; the people must do more than sit back and wait passively for divine transformation. In chapter 18, the “new heart and a new spirit” are promised in the imperative: “Cast away from you all the transgressions that you have committed against me, and get yourselves a new heart and a new spirit!” (18:31). As in the book’s depiction of the people’s earlier offences, the passage emphasizes the Israelites’ own moral agency: Change requires them to act, as well. Although YHWH’s gifts are meant to facilitate obedience, they do not guarantee it; further recidivism will still bring consequences (11:21). Nevertheless, both the first and the last iterations of YHWH’s promise to change the Israelites’ circumstances recognize that this individual will to change is not, on its own, enough (11:19; 36:26) – the turn away from wickedness and toward righteousness is not a simple matter of resolve. Not only the resolve of the individual to pursue a life of righteousness and obedience to the divine law must change; the circumstances in which the individual finds him- or herself must also be transformed.

This attention to both the divine and the human responsibility for change is significant. A similar balancing act is appropriate also to our conversation about criminal justice reform. Of the system in its present state, Alexander concludes that “it is difficult to imagine a system better

²⁰ Pager, *Marked*, 2. Alexander cites a Bureau of Justice Statistics study that reports a 30 percent re-arrest rate in the first six months and a 68 percent rate within three years (*New Jim Crow*, 94).

²¹ Alexander, *New Jim Crow*, 95.

²² Coates, “Age of Incarceration,” 279. On ethics of the marginalized, see the essay by Strine in this volume.

designed to create – rather than prevent – crime.”²³ Ezekiel (like Augustine) might conceive of this in terms of the all-but-universal propensity toward sin – the Israelites seem hardly able *not* to sin, immersed as they are in a pervasively sinful society. Alexander, in the contemporary context, points to widespread discrimination against those with a criminal record as propelling many ex-offenders (back) into criminal activity.²⁴ Yet, while Alexander weighs very highly the significance of these circumstantial obstacles to righteousness – full participation in the mainstream society and economy, in her terms – she denies that it is the *sole* determining factor of recidivism:

None of this is to suggest that those who break the law bear no responsibility for their conduct or exist merely as “products of their environment.” To deny the individual agency of those caught up in the system – their capacity to overcome seemingly impossible odds – would be to deny an essential element of their humanity. We, as human beings, are not simply organisms or animals responding to stimuli. We have a higher self, a capacity for transcendence.²⁵

Although the responsibility of the individual ex-offender to successfully pursue a form of life that does not lead back to prison is not Alexander’s primary interest, like Ezekiel she recognizes that individual will is relevant to the equation. Ezekiel’s imperative to the Israelites to “get yourself a new heart and a new spirit” reminds us that a change in circumstances alone – even a radical one – is not of itself enough to guarantee a future free of recidivism. The individual must also choose. At the same time, as Alexander argues,

our ability to exercise free will and transcend the most extraordinary obstacles does not make the conditions of our life irrelevant. Most of us struggle and often fail to meet the biggest challenges of our lives... As a society, our decision to heap shame and contempt

²³ Alexander, *New Jim Crow*, 176.

²⁴ Alexander observes significant data regarding the number of wrongly convicted or unconvicted individuals (that is, those who pled guilty rather than face trial) currently incarcerated; not all those who bear the stigma of a criminal record have previously engaged in criminal activity (*New Jim Crow*, 84–9). There is likewise extensive evidence concerning the cultural construction of the “criminal” as black (or brown) and male, with systemic and detrimental effects on black (and brown) men who have no criminal record at all (Pager, *Marked*, 5; Coates, “Age of Incarceration,” 239–40, 279).

²⁵ Alexander, *New Jim Crow*, 176.

upon those who struggle and fail in a system designed to keep them locked up and locked out says far more about ourselves than it does about them.²⁶

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As noted already, Ezekiel depicts YHWH's actions on behalf of the Israelites as actions "for the sake of my name." YHWH provides for the Israelites one heart and a new spirit and restores the people to a life-giving land where they will dwell in safety forever – lest the nations look upon the Israelites' suffering and conclude that YHWH is powerless to protect his people. Rather than focusing on YHWH's concern for the people's well-being, these passages emphasize that YHWH acts out of concern for YHWH's reputation, especially as it concerns the nations.

In secularized society, claim to the deity's position of sovereign power is made by the nation-state. In this modeling of the locus of ultimate power, the source of the legislation that authorizes discriminatory practices and the gatekeepers of the resources needed to support the formerly incarcerated in their efforts to (re)enter mainstream society is the state. In its combined federal and state forms, the American criminal justice system incarcerates more people, and at higher rates, than any nation on earth. The nations rightly look upon us in horror. As YHWH acted on Israel's behalf for the sake of his reputation, the United States must likewise act – dismantling systems of criminal injustice for the sake of its reputation. If the state arrogates the sovereignty of God, it inherits its obligations as well.

Although the moral logic of *imitatio Dei* is dangerous when it leads to abuses of power by the powerful, its invocation in this instance recognizes that action on behalf of the formerly incarcerated, together with the radical reformation of a system that puts so many of society's most marginalized members behind bars, may legitimately be motivated by a concern for national reputation. Many of the Hebrew Bible's most powerful invocations to care for the marginalized are similarly predicated on right behavior as a form of *imitatio Dei*. Deuteronomy declares that

YHWH your God is God of gods and Lord of lords, the great God, mighty and awesome, who is not partial and takes no bribe, who executes justice for the orphan and the widow, and *who loves the*

²⁶ Alexander, *New Jim Crow*, 176.

strangers, providing them with food and clothing. You shall also love the stranger, for you were strangers in the land of Egypt. (Deut 10:18–19)

Imperatives and adjurations reflecting this principle appear frequently, including within Ezekiel. YHWH's holiness requires holiness on the part of the people; it is because the Israelites failed so comprehensively to live lives of holiness that the Holy One of Israel was obliged to abandon Jerusalem (Ezek 8–11; cf. Leviticus and Isaiah). Elsewhere, prophetic exhortations to justice and righteousness are implicitly or explicitly based on the attribution of these characteristics to YHWH (Amos 5, Isaiah 56, and so on). Because human beings are made in the image of God (Gen 1:26–27), ideas about what God is like may serve as a guide to what human beings should be like.

Ezekiel unabashedly acknowledges that it is part of the divine character to care whether human beings comprehend YHWH's character. It is not, to be clear, that Ezekiel's YHWH is an arrogant God concerned only with being the object of international praise. Rather, it is YHWH's commitment to *justice* that is at stake – this is what prompts YHWH's punishment of the people for their wrongdoings, as well as YHWH's recognition that punishment, once wrought, must ultimately come to an end.²⁷

The United States of America is a nation that promises “liberty and justice for all.” This promise is countermanded by a system that abuses its sovereignty to deny astonishing numbers of persons – overwhelmingly black and brown persons – their freedom, first by locking them up in jails and prisons, then by condemning them to a shadow existence, barred from the means by which they might become functioning members of the community. The nations round about look upon these actions and doubt the American character. Ezekiel summons us, like YHWH, to bring about a society that reflects a genuine commitment to liberty and justice for all.

FURTHER READING

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²⁷ See C. L. Crouch, “Ezekiel and the Foreign Nations,” in *Oxford Handbook to Ezekiel*, ed. C. L. Carvalho (Oxford: Oxford University Press, 2020), forthcoming.

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