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**Restoring Human Capabilities After Punishment:  
Our Political Responsibilities Toward Incarcerated Americans**

By

Kony Kim

A dissertation submitted in partial satisfaction of the

requirements for the degree of

Doctor of Philosophy

in

Jurisprudence and Social Policy

in the

Graduate Division

of the

University of California, Berkeley

Committee in charge:

Professor Sarah Song, Chair  
Professor Malcolm M. Feeley  
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Professor Na'ilah Suad Nasir

Spring 2016

Restoring Human Capabilities After Punishment:  
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Abstract

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Professor Sarah Song, Chair

Why should non-incarcerated Americans invest in the wellbeing of incarcerated Americans? To date, our public discourse about penal reform has avoided this question, focusing on pragmatic reasons for facilitating “prisoner reentry” and “reintegration” while shelving unresolved, and deeply contested, philosophical questions about criminal justice and punishment. As a result, we as a society have engaged in much data-driven policy talk about the economic *costs and benefits* of reducing recidivism, but little normative reflection about the *rights and responsibilities* held by incarcerated adults who are at once human beings, members of society, persons convicted of crimes, victims of inhumane punishment – and, often, survivors of poverty.

Thus, my first task is to clarify the individual and collective obligations that apply within our context of mass incarceration: the moral responsibilities that are held by and toward incarcerated Americans, non-incarcerated Americans, and our shared public institutions. My second task is to draw out implications for policy and discourse: to explain not only what reform measures we should prioritize, but how we should frame and assess them. In particular, I call for systemic changes that would provide all incarcerated Americans with opportunities to pursue higher education and to develop redemptive self-narratives; and I argue that we should frame and assess such measures not primarily as cost-saving devices, but as ethically significant efforts to secure capabilities that are essential to human flourishing and required by justice.

In setting forth these arguments, my purpose is to spark deeper ethical reflection about correctional reform, and specifically to invite meaningful engagement with one key normative question: What do we, as a civilized society with a history of social and penal injustice, owe incarcerated Americans? Ultimately, I wish to underscore that the people confined in our prisons have legitimate moral claims upon us – insofar as they remain human beings and members of society and, as such, bearers of rights as well as responsibilities. Equally, I wish to establish that, in our collective efforts to repair the harms of mass incarceration, we can and should empower those Americans most directly harmed by our penal system to lead the way in transforming it.

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# 1 Introduction

## 1.1 Key normative questions

It's common knowledge that American prisons contain some of society's worst-off adults. Most of these adults are highly disadvantaged when they enter the system – in terms of physical and mental health, educational attainment, family support, and employment prospects – and the harsh experience of incarceration inflicts further disadvantages that they carry with them upon release. This state of affairs, while not new, is attracting heightened public attention as our federal and state governments begin to revisit rehabilitative approaches to incarceration, marking an end to the “tough on crime” era of American crime policy. The notion that prisons should be expected to *improve* the life prospects of those they confine, however, is still far from universal.

Indeed, why should we, non-incarcerated citizens, be expected to invest in the wellbeing of incarcerated Americans? After all, haven't they ended up behind bars because they have broken laws and wronged others? And isn't the point of prison to *punish* wrongdoing? And shouldn't punishment, by definition, be unpleasant and restrictive? Even for those who would say yes to all these questions, there are compelling reasons to improve our prison system so that it better supports certain forms of freedom. Given that our current system tends to impair individuals' capacities to remedy their wrongs and to participate constructively in society, we have both pragmatic and philosophical reasons to invest in measures that would instead empower individuals to take responsibility for past, present, and future conduct.

Our pragmatic reasons for investing in correctional programs have been well documented and need little, if any, further defense. Clearly, we all stand to lose when people exit prison without having addressed the underlying causes of their criminal conduct and with elevated risks of re-offense: the new offenses they commit harm innocent parties and incur public costs. Likewise, we all stand to gain when people exit prison after having acquired the tools to become law-abiding citizens: once they've been adequately equipped to work and live in society, they're more likely to become assets to their families and local communities. It makes good policy sense to equip prisons with programs that boost people's odds of rehabilitation and reintegration.

Our philosophical reasons for investing in correctional programs are more controversial and less obvious than the pragmatic reasons. This is partly because members of our society hold diverse philosophical views about crime and punishment. This being so, our public discourse about prison reform has focused on the pragmatic objectives that unite us, glossing over the moral issues that deeply divide us. We've engaged in much data-driven policy talk about the societal *benefits* of facilitating post-prison “reentry” into society and reducing recidivism, but little normative reflection about *responsibilities* in the context of criminal punishment. There's been little public discourse, that is, about whether we as a society have moral responsibilities regarding the life prospects of people in prison; whether those individuals, in turn, have moral responsibilities to remedy their wrongs as well as to rebuild their lives in society; and, if so, whether public institutions, including prisons, should enable fulfillment of these responsibilities.

I believe the answer to these normative questions is *yes*. Yes, we as a society do have responsibilities toward incarcerated Americans; yes, incarcerated Americans do have responsibilities toward themselves and to others; and yes, we as a society can and should reform our institutions so that they facilitate the fulfillment of both sets of responsibilities.

## 1.2 Purpose of this project

My first task in this dissertation is to explore *why* we should accept these three claims: to clarify the nature of collective and individual obligations that apply in the context of penal injustice and correctional reform. My second task is to draw out practical implications: to explain not only what reforms we should pursue, but how we should frame, assess, and talk about them. In achieving these tasks, my overarching purpose is to encourage deeper ethical reflection about correctional reform, in light of the various moral justifications we typically give for punishing criminals as well as the moral commitments that place principled limits on the way we punish.

In particular, I'd like to invite engagement with one normative question that has yet to surface in public discourse: *What do we, as a society, owe incarcerated Americans?* These individuals are at once human beings, members of society, persons convicted of crimes, and victims of penal injustice – and, often, survivors of debilitating poverty as well. A commonly held belief is that, due to their crimes, these individuals owe debts of restitution to direct victims and to society at large. But given the debilitating harms many of them have endured – as a result of social inequality, inhumane punishment, illegal discrimination, or all of the above – do we as a society first owe them debts of redress, if not as a matter of basic decency, then at least to enable them to work meaningfully toward paying down their own moral debts?

In this dissertation I consider a range of contemporary approaches and offer my own views in response to this question, including proposals as to how we as a society should begin securing redress for incarcerated Americans. While I believe my proposals have merit and would be glad to see them enacted, my primary purpose here is to draw attention to the larger moral question – the question of our society's collective debt for penal injustice – that undergirds these proposals. Ultimately, in grappling with this question, I wish to underscore that the adults confined in our prisons have legitimate moral claims upon us – insofar as they remain human beings and members of society and, as such, bear rights as well as responsibilities. Equally, I wish to establish that, in our efforts to repair the harms of mass incarceration, we can and should empower those most directly harmed by our penal system to lead the way in transforming it.

## 1.3 Roadmap of chapters

In **Chapter 2**, I develop an account of responsibility that can help us reason about moral obligations we all share as members of society, as well as those specifically borne by individuals who have committed crimes. In light of this account, I establish three sets of normative claims – one regarding our shared responsibilities toward Americans who have committed crimes, another regarding these Americans' individual responsibilities toward themselves and others, and a third regarding the role of public institutions in enabling fulfillment of both sets of responsibilities. I argue that these claims cohere with broadly accepted philosophical premises and principles.

In **Chapter 3**, building on my normative claims about shared and individual responsibilities in the context of penal injustice, I introduce the Capabilities Approach (“CA”) and establish its suitability as a framework to guide correctional reforms that support fulfillment of key responsibilities. I argue that, in reforming correctional practices to promote reintegration, we should use Martha Nussbaum's list of central capabilities as a normative blueprint, and the notion of fertile capabilities – freedoms that support the development of many other freedoms – to identify strategic intervention points.



In **Chapter 4**, I examine the role of correctional education, particularly higher education, as a fertile capability that has a pivotal role to play in fulfilling the key responsibilities outlined in Chapter 1. I argue that human capital arguments in favor of such programs, while helpful, should not serve as an overarching framework for public discourse and policy decisions on this issue. Applying the CA, I show that higher education is best framed as a form of freedom, one that both holds intrinsic value and plays instrumental roles in expanding capabilities and developing agency. I argue that, by securing access to higher education in prison, we as a society would take a significant step toward fulfilling our collective responsibilities toward incarcerated Americans, as well as empowering them as responsibility-bearers.

In **Chapter 5**, I examine the role of self-narrative, particularly redemptive self-narrative, as another fertile capability for incarcerated Americans. In light of evidence from two key studies as well as recent developments in correctional practice, I establish that the freedom to construct a self-narrative is essential to rehabilitation, and, further, that self-narratives based on a redemption script hold special potential to promote reintegration and long-term flourishing. Ultimately, I argue that we as a society bear a responsibility to secure self-narrative capabilities for incarcerated Americans – not only to secure their wellbeing, but further to empower them as citizens and advocates in collective efforts to transform our public discourse and penal practices.

## 1.4 Overview of the argument

Through the chapters of this dissertation, I build an overarching argument that consists in the following claims:

1. As members of society, we share the *political responsibility* of upholding public institutions that protect everyone's rights and sustain just conditions; and, equally, of reforming public institutions that grossly malfunction, as our penal system has.
2. More specifically, as Americans who live in an era of mass incarceration, we share the responsibility of pursuing *correctional reforms* that – in addition to reducing crime and its associated costs – affirmatively enable incarcerated Americans to flourish in society. This requires supporting and developing programs that enable incarcerated Americans to recognize and remedy their past wrongs, and to join with the rest of us in bearing political responsibilities.
3. In pursuing correctional reforms, particularly in promoting a reintegration-oriented agenda, we'd do well to adopt the *Capabilities Approach (CA)* as an overarching framework for public discourse and policy – insofar as it combines a pragmatic concern for societal wellbeing with an ethical commitment to respecting each individual's dignity, and can thus establish a normative consensus across our philosophical disagreements about punishment.
4. Guided by the CA, we as a society should prioritize correctional reforms that enable incarcerated Americans to develop the *fertile capabilities* and remedy their *corrosive disadvantages*; that is, we should focus our resources on measures that tend to expand multiple central capabilities and/or address multiple capability deficits in one stroke.
5. In particular, we should prioritize correctional reform measures that (1) expand access to *quality education*, particularly higher education; and (2) provide opportunities to construct *adaptive self-narratives*, particularly those based on a redemption script; insofar as the fertile capabilities of higher education and redemptive self-narrative hold distinctive potential to facilitate the reintegration of incarcerated Americans as responsibility-bearing members of society.

## 2 Responsibility and Collective Action: Normative Foundations of Penal Reform

Despite our diverse philosophical views about punishment, we've reached a public consensus on the need for penal reform in America. We still disagree about what moral purposes prisons should serve (if any), and about what kind of punitive or remedial treatment we as a society should afford the people we incarcerate (if any) – but, to date, we've mostly come to agree that our current penal practices are not sustainable, and that incarcerated Americans should not be kept in conditions that destroy their chances of living as law-abiding citizens.

How has this broad agreement come about? As of the early twenty-first century, the size, cost, inefficiency, and racial bias of our penal institutions have reached a crisis point such that no publicly defensible political, fiscal, or philosophical position could justify sustaining it intact. Thus the call for prison reform has become a bipartisan cause, a policy position on which divergent ideological imperatives (and economic interests) have converged in practice. To use John Rawls's language, amidst our moral and political pluralism regarding punishment, we've found an overlapping consensus on the practical need to reform our correctional practices.

But this consensus is a shallow one. Though we've reached a surface-level *pragmatic* consensus on the need for reform, we've yet to reach a *philosophical* consensus on the normative purpose and significance of such reforms. In this chapter, I argue that we can and should forge this philosophical consensus by clarifying the relevant normative commitments we share as a society. Our philosophical consensus should consist, in part, of two interrelated notions:

1. As members of a society marked by penal injustice, we all share a *collective responsibility* to support correctional system reforms that facilitate post-prison reintegration.
2. The reforms we pursue should enable incarcerated Americans not merely to avoid re-offense, but affirmatively to take *individual responsibility* for their past, present, and future actions – that is, to recognize the nature of their misconduct; to repair any harm they have caused, insofar as possible; and to rebuild their lives as law-abiding members of society.

To flesh out the details of this proposed consensus, I offer an account of responsibility that can help us reason about our obligations as citizens generally, as well as about the particular needs and obligations of citizens who have committed crimes. I present this account as one that coheres with broadly shared intuitions about civic life in our society, and that can therefore anchor broad agreement about why certain legal and policy changes merit our collective support.

I begin in **Section 2.1** by outlining major penal philosophies that have shaped our public discourse. Next, in **Section 2.2**, I examine our pragmatic consensus on the need for penal reform, considering the distinctive logic in each penal philosophy that supports pro-reintegration policies. In **Section 2.3**, drawing on contemporary thinkers, I present an account of responsibility that can allow us to build a philosophical consensus across differing beliefs about punishment. In **Section 2.4**, I specify the content of our potential philosophical consensus on the purpose and import of reforms that facilitate reintegration – that is, the notion that we all share the responsibility of securing such reforms, and that such reforms should empower incarcerated Americans to bear their responsibilities in turn. Finally in **Section 2.5** I pave the way for Chapter 3, which sets forth the Capabilities Approach as a framework for developing and assessing the policies we need.

## 2.1 Major competing penal philosophies

What follows is an overview of the major penal philosophies that, in the past century, have influenced our public discourse about criminal justice. While each has been invoked to rationalize various aspects of our penal practices, each also offers tools for criticizing the harsh and unequally distributed effects of incarceration in our society, as well as for justifying efforts to improve the wellbeing of incarcerated Americans.<sup>1</sup>

First I introduce the classic rationales for punishment – “pure” retributivism and “pure” utilitarianism – each of which, in recent history, has had its era of dominance and then decline. Currently, neither theory in its pure form has a monopoly on public opinion, but each appeals to common deep-seated intuitions and continues to shape the contours of our policy debates. The derivative theories of punishment, in turn, are more nuanced approaches that attempt to refine and/or modify key claims set forth by the classic theories. Unlike the pure versions of retributivism and utilitarianism, which purport to define *the* justification for punishment, each derivative theory offers a possible justification that can be compatible with acceptance of others.<sup>2</sup>

### 2.1.1 Classic punishment theories

*Retributivism: Punishment as proportional payback.* In its pure form, retributive theory treats punishment as a non-negotiable matter of moral desert. People who have committed crimes are guilty of wrongdoing, and this guilt is a necessary and sufficient reason to punish them. For an act of punishment to be just, its severity must be proportionate to the gravity of the conduct punished. In short, punishment is justified *and* required to the extent that it’s morally deserved.<sup>3</sup>

*Utilitarianism: Punishment as a social instrument.* Utilitarians view punishment not as a moral imperative, but as a means of social control. Punishment is justified *solely* by its tangible functions: its ability to reduce crime cost-efficiently as well as to promote perceptions of public safety and of just treatment. According to traditional utilitarian theory, punishment promotes these goals through methods of specific deterrence, general deterrence, and/or incapacitation.<sup>4</sup>

*Rehabilitation: Punishment replaced by treatment.* The call for a rehabilitative approach to corrections, propounded by social scientists in the 1960s, doesn’t present a novel rationale for punishment. Rather, it’s a *utilitarian* attempt to supplant, or at least supplement, punishment with treatment. The most radical proponents condemn all penal practices for failing to produce socially beneficial consequences, and call instead for therapeutic responses to crime that better promote public safety. Retributivists reject the rehabilitative approach to the extent that, like utilitarian theory generally, it disregards the moral notions of agency, guilt, desert, and justice.<sup>5</sup>

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<sup>1</sup> For background on mass incarceration and its consequences for human wellbeing, see Appendices A, B, and C.

<sup>2</sup> M. Davis, “Punishment Theory’s Golden Half Century,” 92.

<sup>3</sup> M. Davis, “Punishment Theory,” 79; Ezorsky, “Ethics of Punishment”; Feinberg and Gross, “Introduction”; Pincoffs, *Rationale of Legal Punishment*.

<sup>4</sup> Methods of specific deterrence seek to reform those punished through education and/or rehabilitation; methods of general deterrence seek to send a preventive message to the public; methods of incapacitation seek to restrain and quarantine those punished. M. Davis, “Punishment Theory,” 80–89; Bentham, “Rationale of Punishment.”

<sup>5</sup> Menninger, *Crime of Punishment*; Morris, “Persons and Punishment”; Lewis, “Humanitarian Theory”; American Friends Service Committee, *Struggle for Justice*.

### 2.1.2 Derivative punishment theories

*Paternalism: Punishment as correction or teaching.* Paternalists view punishment as a corrective response to a teachable wrongdoer. Thus, punishment is justified to the extent that it addresses the wrongdoer as a moral agent and communicates a meaningful lesson that, judging by the nature of the crime, the wrongdoer apparently needs to learn.<sup>6</sup>

*Defense theory: Punishment as protection.* Defense theorists view punishment as a form of collective self-defense and/or defense of innocent third parties. Punishment, then, is justified to the extent that it exercises society's right to defend itself against harm; it's justified *and* required to the extent that it fulfills society's duty to protect its innocent members from harm.<sup>7</sup>

*Expressivism: Punishment as message or gesture.* Expressivists view punishment as an expressive act that conveys a moral message in response to criminal wrongdoing. Punishment is justified, then, to the extent that it serves to communicate what's "appropriate and true" in the wake of a crime, including moral judgments regarding the act and the actor.<sup>8</sup>

*Restorative justice: Punishment replaced by dialogue and restitution.* Proponents of restorative justice (RJ) would pre-empt or replace punishment as a response to crime. They would instead invite the parties affected by a crime, chiefly the wrongdoers and direct victims, to dialogue about the harm done and find mutually satisfactory ways to address it, ideally giving wrongdoers active roles in remedying the harm. Proponents of RJ criticize formal penal practices for failing to prevent crime, failing to hold wrongdoers responsible, and failing to secure a subjective sense of justice for victims; they tout RJ practices as more humane and effective.<sup>9</sup>

### 2.1.3 Distinguishing the rationales

Each derivative theory calls for policies that, in practice, may end up producing social benefits that utilitarians value. In other words, a policy that is *morally* motivated by a paternalistic, defense-oriented, expressivist, or restorative rationale may also be *practically* effective in reducing social costs. Where this is true, utilitarians will endorse such a policy and, in advocating for it, may borrow the derivative theory's logic. Indeed, to garner broad support, utilitarians may strategically draw on the rhetoric of multiple penal theories. But utilitarian support for any policy is ultimately contingent on its ability to maximize social benefits.

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<sup>6</sup> In practice, some paternalists call for some of the same methods that some utilitarians endorse, e.g. education and rehabilitation. But for true paternalists, the moral imperative of such treatment doesn't hinge on consequences; a well-intentioned corrective response is called for regardless of whether the wrongdoer chooses to heed it. See M. Davis, "Punishment Theory," 90–91. See also Duff, *Trials and Punishments*; Hampton, "Moral Education Theory."

<sup>7</sup> In practice, defense theorists call for the same forms of incapacitation, such as incarceration, which some utilitarians endorse. But for true defense theorists, the justness of punishment doesn't hinge on consequences; it hinges on the intent to exercise the right and duty to protect against harm. See M. Davis, "Punishment Theory," 91.

<sup>8</sup> Certain expressivists are ultimately utilitarians who hold that punishment should effectively communicate a moral message so as to promote objectives of specific and/or general deterrence. But other non-utilitarian expressivists hold that there's inherent moral value in the expressive function of punishment, regardless of whether the message effectively gets across. See M. Davis, "Punishment Theory," 90–91. See also Feinberg, "Expressive Function of Punishment"; Skillen, "How to Say Things with Walls"; Primoratz, "Punishment as Language."

<sup>9</sup> While public justifications for RJ often mirror the utilitarian logic of deterrence and rehabilitation, RJ proponents reflect a diverse array of cultural and philosophical backgrounds, and hence a diversity of moral premises. Many argue that RJ practices are both more ethically sound *and* more socially beneficial alternatives to legal processes. See Zehr, *Changing Lenses*; Braithwaite, *Restorative Justice and Responsive Regulation*.

In contrast, “pure” derivative theorists will call for a certain response to crime *regardless of its consequences*, based solely or primarily on the non-utilitarian reasons inhering in their deep normative beliefs about punishment. For example, many RJ proponents are committed to restorative practices as a matter of principle. While utilitarians may simply reject an RJ program that fails to maximize cost savings, committed RJ proponents will instead work to improve the program on the premise that it upholds core values that other penal responses don’t.

It’s vital to distinguish between utilitarian and non-utilitarian rationales for penal reform, even where these fortuitously converge on similar practical prescriptions, in part because the normative reasons we use to justify a given reform tend to determine the depth of our support for it. In particular, when we rely solely on *utilitarian* logic to justify certain changes, we thereby limit the scope, sustainability, and quality of our commitment to those changes: our support is then contingent on whether the reforms yield cost savings and other quantifiable benefits.<sup>10</sup>

Thus I seek to illuminate the vital non-utilitarian reasons we have for supporting such reforms in the face of shifting economic incentives. An understanding of such reasons will not only enrich our discourse; it will enable a more enduring and broad-based commitment to reform, such that our first impulse when certain initiatives fail will be not to abandon our efforts, but to rethink and refine them in light of shared principles that cross-cut our philosophical divergences.

## 2.2 Our pragmatic consensus on reintegration

As exemplified by the Second Chance Act of 2007 (Public Law 110-199), under which the federal government continues to fund “reentry” programming across the country, boosting reintegration rates among formerly incarcerated Americans has become a national policy goal. This goal rests on a shared understanding that, prior to release, incarcerated individuals should be equipped to pursue safe, healthy, productive lives in society.<sup>11</sup> Accordingly, policy makers and researchers have begun to reassess and reshape correctional practices with an eye to supporting social, psychological, and material aspects of prisoners’ wellbeing that facilitate reintegration.<sup>12</sup> Our pragmatic consensus on reintegration, as I explain below, is possible because this goal appeals to core values in each of the major penal philosophies informing our public discourse.

### 2.2.1 Classic penal perspectives on reintegration

The *utilitarian* case for supporting reintegration, which parallels and extends the utilitarian case for supporting rehabilitation, is straightforward. If our prisons could more effectively equip individuals for reintegration, these individuals would not only avoid re-offense and thereby avert public spending on law enforcement and corrections; they would also be more likely to turn into responsible parents, tax-paying employees, and active participants in lawful

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<sup>10</sup> As I argue in Chapter 3, the most promising penal reforms on the table – those expanding access to college – have been defended mainly on utilitarian grounds, fostering a shallow form of support that’s prone to falter when budgets grow tighter. See *New York Times*, “College Education for Prisoners,” <http://nyti.ms/loIMU0P>.

<sup>11</sup> On this premise, the task of a prison is not just to confine people for specified periods, but to reduce their odds of re-arrest by preparing them to maintain health, secure gainful employment, build pro-social relationships, and partake in civic life. See Travis, “Introduction: Reentry and Reintegration,” in *But They All Come Back*, xvii–xxvii.

<sup>12</sup> See O’Hear, “Second Chance Act”; Travis, “Reflections on the Reentry Movement.”

market economies. All of society stands to benefit from the prevention of crime, the saving of tax dollars, the training of productive citizens, and the stabilization of families and neighborhoods.

The *retributivist* case for supporting reintegration is more complex, stemming from critiques of the status quo that are rooted in respect for individuals' moral agency. The gist of almost any retributivist critique of penal practices is that, at least in practice, they fail to carry out the proportional punishment that justice requires.

Retributivists have strong grounds for rejecting mandatory minimum sentencing policies such as Three Strikes, as well as penal provisions that criminalize non-violent drug offenses. Such laws authorize draconian prison terms for relatively mild and even harmless acts – and, as a result, a significant proportion of incarcerated Americans are serving extremely long sentences for such acts. Such disproportionate sentences fail to honor the moral agency of those punished.

Even if prison terms were not disproportionately long, retributivists would still have grounds to condemn conditions of confinement. It's well documented that, in most American prisons, incarceration results in many forms of suffering and exclusion whose debilitating effects can endure for a lifetime – long after a sentence has been served – and tend to impair individuals' abilities to plan and conduct their lives responsibly. Thus, our penal system is not only unduly harsh; it constricts opportunities to develop and exercise the capacity for moral agency.

Further, given the high percentage of incarcerated Americans who enter prison with chronic addictions and mental illnesses, it's arguable that many were not operating as moral agents when they committed their crimes, and thus do not deserve to be punished. To the extent this is true, their incarceration can't be justified as retribution.

Granting these arguments from a retributive standpoint, it seems compatible with justice to support the reintegration of individuals who have been confined in unduly harsh conditions, namely by providing health care and enabling them to marshal the skills and resources they need to rebuild their lives upon release. Even for those retributivists who reject the above arguments, and for those who deem American prison conditions duly harsh, no aspect of retributivism forbids providing such assistance during or following imprisonment – especially if such assistance is designed to restore and develop the capacities to act as responsible moral agents.

### **2.2.2 Derivative penal perspectives on reintegration**

Meanwhile, just as each derivative theory offers a distinct set of moral purposes for punishment (or a preferred replacement for punishment such as restorative practices), each offers corresponding moral reasons to support reintegration. As noted above, each calls for certain responses to crime as a matter of *principle*, even if that response doesn't maximize social utility.

*Paternalists* have strong reasons to support programs that facilitate reintegration through education – that is, by enabling individuals to identify the roots of their misconduct, to grasp why their conduct was unhealthy or socially unacceptable, and to choose a more acceptable path. Programs focused on addiction recovery, non-violent communication, and other social-emotional skills fall into this category, insofar as they teach individuals to “unlearn” or correct prior habits.

*Defense theorists* have strong reasons to support *any* program that facilitates reintegration by striving to prevent re-offense. Insofar as correctional practices enable individuals to become emotionally stable law-abiding citizens who don't harm others, defense theorists should embrace these practices as good-faith efforts to protect society and its innocent members against crime.

*Expressivists* have strong reasons to support programs that facilitate reintegration by clearly communicating to individuals the ways in which their criminal conduct was wrong, harmful, and/or socially unacceptable. They have even stronger reasons to support such programs that broadly publicize their work, so that the wider community sees that this message is imparted. Many programs designed to address paternalistic concerns, described above, could address expressivist concerns in the same stroke.

Proponents of *restorative justice*, who seek to replace or at least soften punishment with therapeutic dialogue and restitution, have strong reasons to support programs that facilitate reintegration by engaging individuals in restorative practices. Generally, RJ programs encourage wrongdoers to reflect on their criminal conduct and its impact, accept responsibility for it, and make reparations if possible. Indeed, RJ programs in prisons across the globe have been touted as effective means to reduce re-offense. Although systematic empirical evidence is yet sparse, the key point is that RJ proponents are philosophically disposed to support programs that equip individuals socially, emotionally, and materially to repair harm they have caused.<sup>13</sup>

### 2.2.3 Summary and implications

The goal of facilitating reintegration reflects a pragmatic overlapping consensus among different understandings of punishment. Among the penal philosophies that have influenced our public discourse, each includes strong reasons to critique our penal practices, and equally strong reasons to support reforms that facilitate reintegration. Collective efforts to promote reintegration, commonly dubbed “the reentry movement,” have succeeded because officials and advocates have been able to appeal to diverse philosophical starting points across the political spectrum.<sup>14</sup>

While our pragmatic consensus on reintegration as a goal has led to productive initiatives, we can and should deepen our commitment to this goal – namely, by establishing a philosophical consensus on the normative purpose and significance of such initiatives. To date, our public discourse has skirted the issue of *responsibility*, largely due to worries that moral disagreements will upset our pragmatic consensus. Indeed, disputes about the boundaries of collective versus personal responsibility have been at the heart of thorny policy disputes in previous decades.<sup>15</sup>

In spite of these unresolved disagreements, I argue, reform-minded citizens can converge on a conception of responsibility that coheres with shared intuitions, explains our penal practices, and offers guidance for reform. Below I piece together an account of responsibility that can help us reason about the rights and obligations of all citizens – including those convicted of crimes – and thus anchor a philosophical consensus that can sustain our commitment to reintegration.

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<sup>13</sup> For RJ proponents who deem our prisons inherently unjust or unduly harmful, there’s another reason to support reintegration: justice *requires* that we remedy harms inflicted by our penal practices. See, e.g., Levad, *Redeeming a Prison Society*; Levad, *Restorative Justice*; F. Davis, “This Country Needs a Truth and Reconciliation Process.”

<sup>14</sup> Ekow Yankah has made a similar argument regarding recent political efforts to decriminalize marijuana possession in the United States. See Yankah, “Paradox in Overcriminalization.”

<sup>15</sup> See Tonry, *Thinking About Crime*, 40–41; Bobo, “Social Responsibility,” 71–92.

## 2.3 A provisional account of responsibility

The moral idea of responsibility pervades our day-to-day practices and institutions, yet it remains conceptually problematic. In academic, public, and ordinary discourse, responsibility has many faces: we use the idea in shifting and inconsistent ways, and there's no broad agreement as to the necessary and sufficient moral conditions for holding a person responsible.<sup>16</sup>

Instead of treating the idea as an abstract theoretical problem, philosopher Bernard Williams argues, we should step back and ask *why* we need an account of responsibility, then work to construct the account we need. Starting from the premise that there isn't *one* correct conception of responsibility, we should give content to our account based on how we seek to use it:<sup>17</sup> in this case, as a normative foundation for our pragmatic consensus on penal reform and reintegration. We need an account of responsibility that can be endorsed by Americans of diverse worldviews; accordingly, in addition to being generally acceptable to adherents of the penal philosophies discussed above,<sup>18</sup> this account should also resonate with fundamental political values and constitutional principles to which our society is un-controversially committed.

### 2.3.1 Method of wide reflective equilibrium

In the spirit of Williams's principled pragmatism, political philosopher Matt Matravers suggests, we as a society should engage in a process of *wide reflective equilibrium*: a critical dialogue between our *practices* of holding persons responsible, on one hand, and the *conceptions* of responsibility embedded in those practices, on the other hand. This entails "moving between" our conceptions and our practices, looking critically "at both ends" and revising them in light of each other. The process of wide reflective equilibrium is, in principle, a collective long-term endeavor that should involve open public discourse across all sectors of society.<sup>19</sup>

My task here, then, is to provide a blueprint of the conceptions, practices, and critical considerations that this public discourse should cover, and to offer a generally acceptable account of responsibility that such discourse might yield. With this aim in mind, below I set forth "non-negotiable" premises that should form the backdrop of our critical dialogue; then, drawing on these premises, I sketch out a provisional understanding of responsibility, starting with the foundations of criminal responsibility and then broadening the lens to political responsibility.

### 2.3.2 Non-negotiable background premises

Our non-negotiable normative premises should include those foregrounded in our founding documents and constitutional case law, particularly those commonly invoked by Americans across the political spectrum in contemporary public discourse.<sup>20</sup> These include the proposition that all persons have equal moral status, the notion of society as a fair system of social cooperation over time, and the constitutional principle of equal protection under the law.

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<sup>16</sup> Matravers, *Responsibility and Justice*, 5, 10–11.

<sup>17</sup> Williams, *Shame and Necessity*, 55–56; see also Matravers, *Responsibility and Justice*, 51, 60–64.

<sup>18</sup> That is, reasonable adherents of each major penal philosophy should find that this account of responsibility can help justify measures that serve what they believe to be the central purposes of a legitimate criminal justice system.

<sup>19</sup> Matravers, *Responsibility and Justice*, 62–65.

<sup>20</sup> Some of these premises have been distilled by Rawls in *Theory of Justice*, so I'll be borrowing his terminology. Although Rawls constructed a framework for social justice that has proved controversial, he anchored his framework in core ideas that have intuitive appeal and reflect widely accepted premises in our political culture. Here I claim that those core ideas, not Rawls's overall framework, should constitute our background normative premises.



The premise of *equal moral status* among all persons is deeply embedded in our political culture and generally undisputed in principle, even if often infringed in practice. It's explicitly spelled out in our Declaration of Independence and in our federal Constitution's Preamble, and it shows up in virtually every state constitution as well as in prominent international legal instruments we've officially endorsed as a nation.

The notion of *society as a fair system of social cooperation over time*, in turn, rests on the assumption that all members of society accept the foregoing premise: that is, they all regard each other as moral equals and consider themselves mutually bound by norms of reciprocity. Each person is expected to do his fair share to uphold the cooperative system, and is entitled in turn to receive his fair share as a participant. For the system to be deemed fair, society's *basic structure* – its social, political, and economic institutions – must properly apportion the benefits and burdens of cooperation. Since these institutions influence each person's life prospects in ways he can't control, fairness requires that, while individual starting points and outcomes can never be totally equalized, institutions should be arranged to give everyone a decent chance to flourish.

The principle of *equal protection under law*, as embodied in our federal Constitution's Fifth and Fourteenth Amendments, flows from the notion of society as a fair cooperative scheme. This principle holds that each person is entitled to fair and impartial application of the society's legitimate laws to his circumstances. He's entitled to be apportioned his fair share of the benefits and burdens of cooperation, without regard to irrelevant characteristics or circumstances beyond his control. In order for society's basic structure to apportion benefits and burdens fairly, accountability mechanisms must be in place to prevent arbitrary or systematic discrimination.

These normative premises, as presented in their most general form, are essential elements of our public political culture and not currently subject to controversy.<sup>21</sup> It's useful to keep them in mind as we engage in wide reflective equilibrium to specify a shared account of responsibility.

### **2.3.3 Foundations of criminal responsibility**

With our normative backdrop in place, our next task is to engage our *conceptions* and *practices* of responsibility in critical dialogue, evaluating them in light of each other. In other words, we must look at our ideal conceptions of responsibility, compare them to the actual practices we use to hold people (and other entities) responsible, examine discrepancies between our conceptions and our practices, and critically reflect on how we might achieve greater ethical integrity by making both our conceptions and our practices more just and mutually consistent.

Among the penal philosophies that have shaped American conceptions of criminal responsibility, perhaps the two most influential are utilitarianism and retributivism. Each of these philosophies provides an approach to responsibility that, to date, profoundly influences both our public discourse and our penal practices, and thus merits critical examination. As I explain below, each of these philosophies also suffers from normative weaknesses that prevent it from providing the broadly acceptable account of responsibility we need: utilitarianism doesn't take individual rights seriously enough, and retributivism doesn't take social contexts seriously enough.

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<sup>21</sup> Our cultural heritage does include a darker line of political thought, wherein the provision of very broad liberties corresponds to very harsh and even degrading punishment for the abuse of such liberties. See Dumm, *Democracy and Punishment*. But today, it's no longer politically tenable to endorse acts of degradation explicitly. Contemporary public figures who defend harsh practices tend to rely on claims that such practices fall short of the "cruel, inhumane and degrading treatment" prohibited by international human rights standards. See Cohen, "Torture Memos."

Given the particular inadequacies of these two dominant philosophies, I follow political philosopher Ekow Yankah in proposing that, for purposes of constructing an account of responsibility, we look instead to republicanism: a philosophical framework that, while less prominent in our current discourse, better coheres with widely shared intuitions about civic life and, as such, can better guide us toward ethical integrity in our conceptions and practices of criminal justice. Unlike the other two philosophical approaches, I argue, republican theory can help us not only make sense of the misguided moral impulses underlying our most problematic penal practices, but also understand why and how we must critique and change these practices.<sup>22</sup>

*Utilitarianism: Social benefits at the expense of individual rights*

Pure utilitarianism, as noted earlier, is concerned with quantifiable social consequences, holding that the ultimate moral imperative is to maximize net benefits for society as a whole. In the criminal justice context, this means penal practices are justified insofar as they efficiently reduce social costs associated with crime and punishment – whether by making individual offenders less likely to reoffend, by preventing many would-be offenders from offending, by promoting citizens’ perceptions of public safety and confidence in law enforcement, or all of the above. So for utilitarians, penal practices, like all social practices, are essentially instruments for promoting the greatest good for the greatest number of citizens. As for individual rights and responsibilities, these too are essentially instruments: social and legal concepts to be defined and interpreted in whichever ways are most likely to maximize net benefits for society as a whole.

Thus, a pure utilitarian approach cannot fully and unconditionally honor the equal moral status of all persons, including incarcerated persons; nor can it fully and unconditionally honor the principle of equal protection under law. From their outcome-driven standpoint, utilitarians can and do argue – often compellingly – that a public institution is most likely to promote net benefits for society when it’s designed to respect broadly recognized rights and to follow seemingly fair procedures. But they cannot accept the notion that public institutions should be held accountable for upholding these norms unconditionally, even when doing so may prove politically unpopular or fiscally costly. In other words, pure utilitarianism would call for respecting individual rights and responsibilities of citizens – including those incarcerated – only if, when, and to the extent that doing so is likely to produce quantifiable net benefits for society.

As such, in our endeavor to construct a broadly acceptable account of responsibility, one that can anchor a robust political commitment to promoting the reintegration of incarcerated Americans, we cannot find the normative foundation we need in utilitarianism. At the same time, since utilitarian logic has come to dominate our public discourse, and since concerned citizens of most philosophical persuasions prefer policies that, all things equal, benefit society as a whole, we must keep utilitarianism in view as an influential element of our political culture. Even if utilitarianism can’t ground the deep philosophical consensus we need, as a practical matter it will continue to act as a political check on any proposed policy.

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<sup>22</sup> Following Yankah, here I argue specifically for Aristotle’s “Athenian” approach to republicanism, which is premised on the notion that human beings are fundamentally social and political animals. Yankah contrasts this approach with Quentin Skinner’s and Philip Pettit’s “Machiavellian” or “Roman” approach to republicanism, which is more closely aligned with liberal retributivism in that its core value is the individual’s right to non-interference. See Yankah, “Republican Responsibility,” 462. See also Duff, “Responsibility, Citizenship, and Criminal Law.”

*Liberal retributivism: Individual rights at the expense of social context*

In contrast to utilitarianism, retributivism is concerned with upholding moral rights and obligations unconditionally: without regard for consequences. In particular, liberal retributivism – a strand of retributive theory that justifies state punishment in proportion to blameworthiness for violating another’s individual rights – provides an account of responsibility that’s helpful to consider as a foil for the more broadly acceptable account we need to construct.

According to liberal retributivism, legal authority is premised not on the promotion of societal benefits, but on the preservation of *individual rights*: the state’s task is limited to protecting citizens against undue interference with their persons or property. Thus, the state is justified in punishing a citizen if, and in proportion to the extent that, he has intentionally interfered with another’s individual rights to security of person or property. Criminal law, then, defines those intentional acts that will be treated as violations of individual rights; and criminal liability attaches to offending citizens for the purpose of punishing their intentional violations of individual rights.<sup>23</sup>

This approach is attractive in that, unlike utilitarianism, it clearly defines the scope of just punishment with reference to individual rights and responsibilities, providing a straightforward grant of penal power (based on a person’s guilt for violating someone else’s rights) as well as a definite limit on it (based on the severity of the violation committed). Since crimes are defined as acts that interfere materially with others’ rights, the state can punish a person only for violations he *actually* committed, not merely for perceived characteristics. Further, since crimes are defined as *intentional* acts, the state can’t punish a person for actions beyond his reasonable control.<sup>24</sup>

The critical downside to this approach is that it abstracts offenders and victims from their social contexts, namely by defining criminal acts as discrete instances of “isolated individuals crashing into each other.”<sup>25</sup> As such, liberal retributivism is missing the key normative dimension of co-citizenship among members of a political community. It offers an account of responsibility that, because it lacks reference to the broader community, is orthogonal to the shared normative premises above – particularly the notion of society as a fair system of social cooperation, and the commitment to social arrangements that uphold moral equality and reciprocity between citizens.

To the same extent that utilitarianism can’t unconditionally uphold each citizen’s equal moral status, then, liberal retributivism can’t adequately appreciate the social context in which each citizen’s individual rights must find moral meaning. Further, because liberal retributivism premises legal authority on individual rights alone, it can’t explain or justify those penal practices in which penalties don’t clearly correspond, in kind or degree, with individual rights violations.<sup>26</sup> For this reason, while we must recognize that liberal retributivism is an influential element of our political culture, we can’t derive from it the account of responsibility we need: a broadly acceptable account that will anchor a robust collective commitment to investing in reintegration.

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<sup>23</sup> See Yankah, “Republican Responsibility,” 461–462; citing Fletcher and Moore.

<sup>24</sup> Yankah, “Republican Responsibility,” 458–459.

<sup>25</sup> Yankah, “Republican Responsibility,” 461.

<sup>26</sup> Yankah, “Republican Responsibility,” 467–469.

## *Republican theory and civic reciprocity*

Given that utilitarianism and liberal retributivism are subject to the opposing pitfalls described above, I propose republicanism as a promising “third way”: a philosophical framework that fully respects each citizen’s equal moral status without losing sight of the common good, and that indeed treats individual and collective wellbeing as fundamentally intertwined.

From a republican perspective, legal authority is premised not on individually held rights, but on *reciprocal civic bonds* that connect individuals to each other as citizens and to the political community as a whole. The core premise is that humans are social animals as well as moral agents. As *social animals*, we survive and flourish only in the context of communities, particularly those that secure our needs for material, social, and emotional support. As *moral agents*, we choose and pursue various goals throughout our lives; it’s through the acts of choosing and pursuing goals, individual and shared, that we thrive. It’s because we can’t easily flourish alone that we form political communities; thus, public institutions exist not just to enforce rules against violations of individuals’ rights, but to secure their shared interest in leading safe, healthy lives in society.<sup>27</sup>

On this view, legal power, including the power to punish, is embedded in civic bonds that hold society together. These civic bonds – mutual rights and obligations – entitle each citizen to be treated with civic respect by other citizens and by public institutions. Crimes, then, are collectively defined as acts that make shared civic life impossible, and that deny victims the civic respect citizens owe each other. As such, criminal law represents shared standards by which citizens hold accountable each other’s acts through the power of the state.<sup>28</sup>

Criminal law thus embodies *reciprocal obligations* that link each citizen to the political community. Each citizen, as a beneficiary of the community’s provisions and protections, has an *individual duty* to uphold its laws: to behave in ways that duly respect his co-citizens and the parameters set by the community. The political community, in turn, has a *collective duty* to promote the common good through public institutions by securing the basic conditions necessary for citizens to flourish, and by treating all citizens with due regard for their wellbeing.<sup>29</sup>

When a citizen commits a crime, then, he’s not only violating a fellow citizen’s rights, but also breaching his civic duty to uphold the political community’s foundational norms. His criminal liability is based on demonstrated hostility to the reciprocity that makes life in society possible. In turn, when the community enforces the law by punishing him, it’s duty-bound to punish in a way that treats him with due regard for his wellbeing and makes possible his eventual full reincorporation into civic life. The community violates this duty if it uses penal methods that are unduly harsh, intrusive, or stigmatizing: methods that destroy civic bonds by leaving the punished citizen less capable, socially and/or materially, of living well as a member of society.<sup>30</sup>

The key point is that, by committing a crime, a citizen may disregard or even damage civic bonds that link him to the community, but he doesn’t thereby *sever* these bonds and the obligations they entail. He’s still bound by individual obligations to act with regard for the law and for co-citizens; and the community is still bound by its collective obligation to treat him with

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<sup>27</sup> Yankah “Republican Responsibility,” 462–463.

<sup>28</sup> Yankah “Republican Responsibility,” 463–465.

<sup>29</sup> Yankah “Republican Responsibility,” 472–473.

<sup>30</sup> Yankah “Republican Responsibility,” 466–467.

the respect it owes all citizens. The law may require that the offender be held accountable for misconduct through punishment; at the same time, the norm of civic reciprocity requires that public institutions be held accountable for any misconduct in their manner of punishing.<sup>31</sup>

As set forth above, republican theory offers an account of criminal law and responsibility that honors both the liberal retributivist's concern for individual rights and the utilitarian's concern for the common good, treating these concerns as vitally entwined and necessary checks on each other. Further, by premising legal authority on *relationships* between persons who make up a community together, this framework allows for an account of responsibility that resonates with our shared normative premises: the attribution of equal moral status to each citizen, the understanding of society as a fair system of social cooperation over time, and the commitment to ensuring equal protection under law for all citizens – including those convicted of crimes.

### *Civic reciprocity as a guiding norm*

In addition to avoiding the pitfalls of utilitarianism and liberal retributivism, the republican account of criminal law and responsibility is helpful to this project for several reasons. (i) First, unlike pure utilitarianism and liberal retributivism, it helps explain the moral impulses behind some of our most problematic penal practices. (ii) Second, it clearly justifies and requires efforts to curb these practices and redirect resources toward reintegration. (iii) Finally, it resonates powerfully with key normative premises that undergird our political culture, as well as with key intuitions at the heart of penal philosophies that have shaped our public discourse.

*(i) Explaining the moral impulses behind our problematic practices.* Our most influential penal philosophies are unable to justify or explain our prevailing approaches to repeat offenses, hate crimes, and civil disabilities. Given that these policies have wrought enormous social costs on balance, they make little sense from a utilitarian viewpoint; and given that they punish out of proportion to any alleged rights violations, they make equally little sense from a retributivist viewpoint.<sup>32</sup> But by applying a republican lens, we can clarify the moral impulses behind them.

Under a republican approach, *recidivism* warrants special concern because it represents “a dedicated refusal to value the commitment to civic equality” embodied in law. A repeat offender is one who has repeatedly demonstrated unwillingness to uphold the civic bonds that undergird the political community. Thus, enhanced penalties may be warranted to repudiate willful, persistent misconduct with special emphasis.<sup>33</sup>

*Hate crimes*, in turn, warrant special concern because the point of such crimes – often threats or acts of violence – is to deny another's equal standing as a community member. One who commits a hate crime has, through this act, repudiated the core norms of civic respect and reciprocity that make society possible. Thus, enhanced penalties serve not only to repudiate the socially destructive message imparted by the offender, but also to emphasize the community's commitment to equal civic respect for all, particularly members of vulnerable groups.<sup>34</sup>

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<sup>31</sup> That is, our civic bonds with the individual “do not evaporate upon punishment.” Yankah “Republican Responsibility,” 467.

<sup>32</sup> Yankah, “Republican Responsibility,” 467–469.

<sup>33</sup> Yankah, “Republican Responsibility,” 469–470.

<sup>34</sup> See Yankah, “Republican Responsibility,” 470.

As for policies that impose enduring *civil disabilities* on offenders, the primary effect is to bar reincorporation into civic life – and thus these are difficult to justify on a republican view. Still, a republican lens helps us grasp these policies as reflecting a communitarian impulse taken to extremes. Civil disabilities, like policies enhancing penalties for recidivism, are premised on the notion that the community should forcefully repudiate a citizen’s demonstrated refusal to uphold civic norms. But while anti-recidivism policies impose long prison terms for second or third offenses, civil disabilities apply even to one-time offenders, constrict freedom in numerous spheres of life, and in some cases endure indefinitely – regardless of whether a person has served his sentence or otherwise remedied the causes and effects of his criminal behavior. Thus, civil disabilities embody an extremely harsh brand of communitarianism holding that any crime, however minor, warrants permanent loss of standing as an equal member of society.<sup>35</sup>

(ii) *Justifying efforts to critique and curb our problematic practices.* Applying a republican lens, i.e. placing special normative importance on civic bonds and civic membership, helps us understand why these policies are pervasive but also why they are problematic. As such, this account offers grounds to reassess, reshape, and even reverse some of our penal policies so that they better uphold the core values of civic reciprocity and equal standing for all citizens.

Since the republican account of responsibility is based on *reciprocal* civic bonds, a crucial question is: What might it take to sever those bonds? That is, what counts as a fatal violation of reciprocity – an unforgivably heinous crime or intolerably inhumane penal practice – so extreme as to release the other side from upholding the bond?<sup>36</sup> This question highlights that civic reciprocity is subject to conditions and limits – the details of which I’ll discuss below. For now, it’s sufficient to affirm that civic reciprocity can’t be contingent on perfect fulfillment of civic obligations on all sides; since perfection is an impossible standard, it follows that there will be many cases in which the political community falls short in its obligations to citizens, yet citizens remain obligated to uphold its laws; and, likewise, many cases in which a citizen violates his civic duties, yet other citizens and public institutions remain obligated to treat him with civic respect. Therefore, as long as a citizen hasn’t wholly nullified his membership in the community by his conduct, his civic rights and obligations still apply, and his basic needs as a member of society should still matter to his fellow citizens.

So in most non-extreme cases where a citizen has committed a *repeat offense or hate crime*, the community remains obligated to treat him with due regard for his wellbeing and his prospects for living well in society. And by the same logic that warrants elevating penalties where a criminal act signifies exceeding damage to or fragility of civic bonds, the community may be required to elevate its efforts to repair those civic bonds. That is, a citizen who has committed multiple offenses or hate crimes may have greater social or material needs to be met before he can rejoin the community as a member in good standing. These may be needs he can’t readily meet on his own. As such, while we as a community *may* justly enhance penalties for repeat offenses and hate crimes, we *must* do so in a way that upholds our collective civic duties. Further, we have strong moral reasons, rooted in the same civic duties, to invest in efforts that may reverse, diminish, or at least temper offenders’ hostility to shared civic norms.

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<sup>35</sup> See Yankah, “Republican Responsibility,” 460, 466–467, 473.

<sup>36</sup> See Yankah, “Republican Responsibility,” 465–466.

Based on this reasoning, policies imposing *civil disabilities* are deeply problematic. Such policies, rather than reaffirming or repairing civic bonds damaged by crime, have the effect of declaring those bonds permanently compromised if not severed. Civil disabilities prevent former offenders from participating in civic life on an equal footing with others; by barring them from civic duties (such as voting and jury service) as well as social goods (such as various forms of employment and housing), they explicitly mark them as second-class citizens. Thus, by imposing civil disabilities as enduring “collateral consequences” of criminal convictions, we as a community violate our civic obligations toward currently and formerly incarcerated Americans.

In sum, the political community owes all its members, including those who have committed crimes, civic obligations of respect and reciprocity. Unless and until civic bonds are somehow completely severed through exceptional circumstances, the community must preserve each citizen’s right to due regard for his wellbeing and to equal standing as a member of society. These conclusions, grounded in republican logic, provide a robust normative basis for reducing the harshness of our penal practices and redirecting resources toward reintegration.

(iii) *Cohering with our normative premises and penal theories.* As discussed above, our pragmatic consensus on facilitating reintegration is possible because, under current circumstances, such efforts address problems that each penal philosophy has reasons to be concerned about. But since this consensus doesn’t reflect a collective commitment to any shared moral foundation, it’s unlikely to survive major shifts in economic or social circumstances.

A republican account of responsibility, insofar as it coheres with moral premises that are broadly accepted as part of our political culture, can anchor a truly collective philosophical consensus in support of reintegration as a policy goal – while allowing proponents of different penal philosophies to remain committed to the specific moral concerns of their preferred philosophies. Such an account can help us draw stronger normative links between reintegration as a policy goal and the key normative concerns of each major penal philosophy; further, since this account coheres with our shared normative premises, it can help us ground reintegration efforts more explicitly in the foundational values and principles of our political culture. Thus, fleshing out this republican account of responsibility and incorporating it into our discourse can allow us to build a more stable and robust ethical consensus in support of reintegration.

On a republican view, the grounds and limits of punishment are defined in terms of civic obligations and intentional violations thereof. For a utilitarian, this account is acceptable as long as the policy agenda associated with it yields net social benefits. For a liberal retributivist, in turn, it’s attractive insofar as it emphasizes breach of duty as the basis and measure of punishment, spotlights the importance of respecting individuals’ capacities to exercise moral agency, and insists on apportioning to them the benefits and burdens associated with such exercise.

The republican account of responsibility can also speak to derivative theorists’ concerns. It’s compatible with the paternalist’s view of offenders as teachable wrongdoers whom the political community should, through its penal institutions, educate to make socially acceptable choices. It’s also compatible with the defense theorist’s view that the political community should, through its penal institutions, protect itself and its members against acts that undermine public safety and civic life. It comports with the expressivist’s view that penal institutions should condemn and disavow such acts. And it resonates with restorative justice theory in holding that crime is a matter not merely of violated laws but of damaged relationships, that in many cases the proper response calls for repairing relationships, and that the community is a key stakeholder, not only as a collective “victim” of crime but often also as a perpetrator of excessive punishment.

Thus, republican theory offers an account of responsibility that can undergird a genuine philosophical consensus among proponents of the different major penal philosophies. Below I discuss ideas that can help refine this account, link it to other powerful frameworks, and clarify implications for us as members of a political community marked by social and penal injustice.

### 2.3.4 Conditions and limits of civic reciprocity

As noted above, since no individual or institution can be expected to render perfect fulfillment of moral obligations, we must identify the *conditions and limits of civic reciprocity* – that is, when (if ever) a citizen’s misconduct is serious enough to suspend or nullify his civic entitlements; and, likewise, when (if ever) a citizen’s mistreatment by the political community is serious enough to mitigate or excuse his civic obligations. In addressing these issues, two conceptual tools are helpful: first, John Rawls’s distinction between civic obligations and natural duties; and second, R.A. Duff’s notion of moral standing to hold individuals responsible.

#### *Civic obligations and natural duties*

An account of the distinction between civic obligations and natural duties can be found in Rawls’s discussion of the normative backdrop for his arguments in *A Theory of Justice*. Both civic obligations and natural duties denote *moral* requirements, but they derive from different normative bases: whereas civic obligations are based on citizenship status in a political community, natural duties are based on human personhood.<sup>37</sup>

(i) *Civic obligations and the threshold of intolerable injustice.* As explained in the discussion of republican theory, *civic obligations* between individuals are defined by the political principles that undergird the society they inhabit together. Rooted in the value of civic reciprocity, these obligations arise from *contingent* associational ties between citizens: formal or informal bonds that define a set of persons as a political community. Thus each citizen, as a beneficiary of the cooperative system made possible by his society, has civic obligations to fulfill the requirements of its institutions so long as these institutions are just overall. He has no such obligations when these institutions perpetrate intolerable injustice.

The critical question, which Rawls doesn’t answer, is how to delimit conditions of *intolerable* injustice – those egregious enough to negate civic obligations – versus those of tolerable injustice. As suggested by Tommie Shelby, a contemporary interpreter of Rawls, we might reasonably draw this line with reference to the “constitutional essentials” of a liberal democratic regime. We might broadly agree that citizens are expected to live with some degree of unfair material inequality so long as minimum conditions for social stability and political

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<sup>37</sup> Rawls used the term “social obligations” to capture the notion I call “civic obligations” here. Tommie Shelby, also preferring the term “civic obligations,” has drawn on the same distinction to address the issue of whether and how the “ghetto poor” merit moral criticism by other members of society. See Shelby, “Dark Ghetto,” 144–145.

Notably, Rawls’s conception of civic obligation, set forth in his now-canonical work on distributive justice as a general background premise (rather than as a debatable idea), mirrors the republican account presented in this chapter. This congruity supports my argument that the account of responsibility proposed here consists of normative ideas that are accepted by diverse viewpoints within our political culture.



legitimacy are secure: the basic civil rights and political processes that ensure democratic rule, and the basic social freedoms and resources required to meet citizens' essential material needs.<sup>38</sup>

(ii) *Natural duties, including duties of humanity and justice.* Natural duties are *unconditional* obligations rooted in the premise that dignity is inherent in human personhood, binding among persons even in the absence of shared political or institutional affiliation. Thus, even when a person is excused from civic obligations due to a complete failure of reciprocity among fellow citizens or public institutions – for example, because social structures mediating their cooperative system are intolerably unjust – he's still bound by natural duties to others.

The key question, then, is what moral requirements count as *unconditional* natural duties versus contingent civic obligations. Without getting mired in metaphysics, we can reasonably posit that these unconditional duties include general obligations to treat others with respect for the dignity inherent in their human personhood. We might broadly agree that these entail *duties of humanity*: not to be cruel, not to cause needless suffering, and to afford some level of aid to the needy and vulnerable (at least where such aid isn't unduly risky or costly).<sup>39</sup> In Rawls's view, these obligations also include *duties of justice*: to support and comply with just institutions, and to help bring about just institutions where they don't exist. This subset of obligations gives all individuals, simply in virtue of their human personhood, moral reasons to protest or resist unjust practices, to take proactive steps to end injustice, and to help reform unjust institutions.<sup>40</sup>

(iii) *Implications for the rights and obligations of incarcerated Americans.* The foregoing account of civic obligations versus natural duties allows us to be clear and nuanced in articulating responsibilities that we as a political community owe incarcerated Americans, as well as vice-versa. It spotlights three key points.

First: Many incarcerated Americans, insofar as they've been deprived of constitutional essentials – not only by harsh penal practices, but often also by flawed social institutions that have profoundly shaped their life prospects since birth – may be excused of civic obligations. This implies that we as a political community may not be justified in criticizing them, let alone punishing them, for noncompliance with certain requirements of public institutions that have subjected them to intolerable injustice.

Second: Incarcerated Americans, regardless of any intolerable injustice they've suffered, remain bound by natural duties. Even if their civic obligations are excused, their natural duties of humanity and of justice remain in force, obligating them to treat others with respect for their human dignity, to recognize and remedy their own failures to do so, and to help mitigate or reverse conditions of injustice insofar as possible. Presumptively, then, there's an unconditional moral basis for holding them responsible for criminal conduct that violates these natural duties.

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<sup>38</sup> We might posit that these “basic civil rights and political processes” include First Amendment liberties, the rights to vote and to run for public office, and the rights to due process and judicial fairness; and that these “basic social freedoms and resources” include freedom of movement, choice of occupation, and a guaranteed minimum standard of living. For reasons that resonate with arguments I'll set forth in Chapter 3, Shelby ultimately concludes that these “constitutional essentials” are not enough unless the most disadvantaged citizens have “real opportunities” for upward mobility and success in society. See Shelby, “Dark Ghetto,” 145, 148–149.

<sup>39</sup> See Shelby, “Dark Ghetto,” 151–152.

<sup>40</sup> See Shelby, “Dark Ghetto,” 152–153; citing Rawls, *A Theory of Justice*, 99.

Third: Just as incarcerated Americans are unconditionally bound by natural duties, so are all members of the political community. *Duties of humanity* require that, even if a citizen has committed crimes that are extremely serious, persistent, and destructive – and thus justify suspension of his standing as a citizen – others must treat him with respect for the dignity inherent in his personhood. Thus, the political community and its institutions may curtail his privileges as citizen, but may not treat him as subhuman. Meanwhile, *duties of justice* require all citizens to help mitigate or reverse unjust socioeconomic inequalities, in the penal system and in social institutions generally, even if the brunt of injustice is borne by Americans who have breached natural duties. Thus, while the political community is tasked with holding individuals responsible for criminal conduct through its penal institutions, all citizens are in turn responsible for creating and maintaining institutions that respond to such misconduct fairly and humanely.<sup>41</sup>

(iv) *Residual questions of legitimacy and standing.* The above discussion suggests that both incarcerated Americans (as individuals) and other members of the political community (as a collective body) may be in breach of mutual obligations. It raises the possibility that all of the following are true about incarcerated Americans: many have been subjected to intolerable injustice by social institutions even prior to their crimes; many have violated natural duties of humanity or justice by committing the crimes for which they are serving penal sentences; and many are subjected to intolerable injustice by unduly harsh and discriminatory treatment during and after incarceration. These circumstances leave us with two sets of questions to consider.

First, we must consider questions regarding our collective standing, under conditions of intolerable social and penal injustice, to hold certain citizens responsible for past and potential crimes. Have we as a society, having breached conditions of reciprocity toward certain disadvantaged citizens, lost standing to hold them responsible for breaching civic obligations? Further: Have we as a society, having violated duties of humanity in our manner of punishing such citizens, lost standing to hold them responsible for breaching related natural duties?

Second, we must consider questions regarding incarcerated Americans' supposed natural duties, given the intolerably unjust conditions to which many have been subjected, to help bring about more just conditions. Is it fair or realistic to expect these individuals, despite the numerous disadvantages they bear, to lead the way in reforming the very institutions that have constricted their opportunities? Aren't non-incarcerated Americans more morally responsible and better materially equipped for the tasks of remedying and reversing the effects of mass incarceration?

The answer to both sets of questions, I argue, is a qualified yes. I now draw on penal philosopher R. A. Duff to address the issue of collective standing to punish individuals, rounding out our discussion of the conditions and limits of civic reciprocity. Then in the next section, I'll draw on legal and political theorist Iris Marion Young to address the issue of individuals' responsibility for addressing conditions of intolerable injustice.

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<sup>41</sup> It's worth noting that Shelby deployed this distinction in order to unpack the moral obligations and entitlements held by residents of America's "dark ghettos": a population that overlaps with and mirrors the population of concern here. Like Shelby's "ghetto poor," incarcerated Americans constitute a stigmatized and marginalized class, mostly hailing from poor backgrounds and facing many barriers to upward mobility. Also like the "ghetto poor," incarcerated Americans are described in public discourse as "deviant" and thus less deserving of civic respect. And due in part to policies enabled by these characterizations, incarcerated Americans, like the "ghetto poor," may have moral grounds for not complying with certain civic obligations that bind others, as well as moral duties to bring about more just practices.

### *Moral standing and unjust disadvantage*

The question of collective standing concerns the problem of “doing penal justice in conditions of [distributive as well as penal] injustice.”<sup>42</sup> The salient issue here is whether we as a society can legitimately condemn and penalize disadvantaged Americans for violating values we’ve collectively failed to uphold with respect to them. For the sake of argument, let’s grant two of Duff’s premises about crime and punishment: first, that one proper function of the penal system is to hold people responsible for crimes; and second, that to be held responsible for conduct is to be called to account for it, i.e. made to explain and/or bear a penalty for it.<sup>43</sup> I hold that both premises, as stated generally here, are broadly acceptable and compatible with the major penal philosophies discussed above.

Duff claims that, for punishment to be just, those who call an alleged criminal to account must have moral standing to do so. In his view, a political community and its institutions may lose standing to punish certain persons and/or crimes even while retaining overall legitimacy, i.e. even while not breaching the limits of intolerable injustice. Specifically, if the community has systematically excluded a person from the rights and benefits of civic membership, failing to treat him as a citizen, it thereby loses standing to call him to account as a citizen. This conclusion dovetails with the republican notion that where civic reciprocity has failed, the mistreated citizen is relieved of civic obligations. Duff further argues that if a community has pervasively violated certain values in its treatment of certain citizens, it may lose standing to call them to account for crimes implicating those values (though it may retain standing to punish for other crimes).<sup>44</sup>

Given the vicious cycles of poverty and incarceration that disproportionately plague urban minority neighborhoods across our nation, and given the persistent lack of political will to improve their conditions, we might reasonably conclude that our political community has lost standing to hold many disadvantaged Americans accountable for breaching civic obligations. And given the racially unequal and destructive nature of our penal institutions, we might also reasonably conclude that our political community has lost standing to hold many incarcerated Americans accountable for future breaches of natural duties of humanity toward others.

Importantly, since natural duties are unconditionally binding, our collective loss of standing to punish doesn’t excuse these Americans from upholding their duties of humanity. These disadvantaged Americans remain morally obligated to treat others with respect for their human dignity. However, this loss of standing does make our collective efforts to condemn and punish these disadvantaged Americans – especially in the absence of collective efforts to remedy and reverse our own breaches of humanity toward them – morally illegitimate.

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<sup>42</sup> As characterized by Matravers, “Who’s Still Standing? A Comment on Antony Duff,” 320–330.

<sup>43</sup> As set forth in Duff, *Trials and Punishments*; Duff, *Punishment, Communication, and Community*.

<sup>44</sup> For example, in Duff’s view, if a person is impoverished as a result of distributive injustice that the state has done nothing to correct, the state lacks standing to call her to account for stealing in order to meet basic material needs. But the state could and should still call this person to account for rape or assault, if the community has done nothing to threaten her bodily integrity. Duff, *Punishment, Communication, and Community*, 182–188.

As noted above, Shelby uses similar reasoning – albeit invoking Rawlsian rather than communitarian theory – to argue that the “ghetto poor” do not merit moral criticism for certain forms of social deviance, such as engagement in illegal markets and property crimes, that enable individuals to meet survival needs without harming others.

So, in our search for an account of responsibility that can anchor a sustainable philosophical consensus on reintegration, where does the above analysis leave us? Our consideration of moral standing has highlighted two points of ethical tension:

1. First, in the cases of many disadvantaged Americans, there will be moral grounds for *someone* to hold them responsible for breaching natural duties of humanity (though perhaps not for breaching certain civic obligations). However, *we* as a political community may have lost standing to undertake this task, having perpetrated breaches of humanity through our penal institutions. Who, then, is to hold these Americans responsible for their criminal breaches of humanity?
2. Second, given that our penal practices disproportionately harm the most disadvantaged members of society, we have a social arrangement in which those Americans with the greatest stake in reforming the system are the most materially and legally debilitated by it. Who, then, is to hold us as a political community responsible – for our breaches of civic reciprocity toward Americans who grow up in high-incarceration neighborhoods, as well as our breaches of humanity toward currently and formerly incarcerated Americans?

Duff provides scant guidance on these points, though he asserts that remedying social and political injustice is a necessary (if insufficient) step in legitimating our penal system.<sup>45</sup> Thus, to address the question of whose responsibility it is to hold individuals and institutions responsible – whose job it is to call offenders to account, and whose job it is to critique and change unjust penal practices – we must look elsewhere. To tackle these issues, I will turn below to Young’s framework. First, however, I briefly revisit the individual rights-based perspective discussed earlier, in order to single out the distinct moral concerns that her model will resolve.

### *Rights-based objection revisited*

So far, we’ve assumed that key premises of republican theory resonate with commonly held intuitions. In our pluralistic democracy, however, not every American will agree that our society is a *community* in which all inhabitants are mutually bound by civic reciprocity; most libertarian and some liberal critics will insist that individual rights must trump any collectively defined interest.<sup>46</sup> For reasons explained above, individual rights-based views, despite the valid and important moral insights they offer, can’t do the work of anchoring the philosophical consensus we seek. But since rights-based objections have been and continue to be influential in our political culture and public discourse, we need to clarify and understand their nuances.

As a preliminary point, we must distinguish two prominent rationales for the rights-based objection to public investment in the wellbeing of incarcerated Americans. This objection, broadly, states that law-abiding Americans have *no* responsibility to provide assistance to

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<sup>45</sup> “We cannot hope to do adequate penal justice, penal justice to both victims and offenders, until we come closer to achieving political and social justice. Meanwhile, and in a properly humble and cautious spirit which recognizes how far from clean our collective hands and consciences are in this context, we must seek to develop more nuanced and complex legal procedures that could at least recognize, even if they cannot do adequate justice to, the claims and complaints of both victims and offenders.” Duff, “I Might Be Guilty, But You Can’t Try Me,” 259.

<sup>46</sup> Libertarians generally hold that a citizen owes fellow citizens nothing more than non-interference with each one’s person and property; and they reject the notion that public institutions should dispense anything other than basic law enforcement services. Many liberals, in turn, hold that while public institutions should go beyond law enforcement and secure individual rights to welfare, such rights are contingent: they can be forfeited or curtailed when they conflict with others’ rights.

incarcerated Americans – even in view of the suffering and disadvantage unequally imposed by penal practices. Liberals and libertarians set forth two distinct versions of this objection.

The liberal version holds that, while individual citizens may owe basic material assistance to disadvantaged members of society, incarcerated Americans have compromised or even forfeited their rights to such assistance by committing crimes. This position recognizes that individuals generally have *some* responsibility for the wellbeing of fellow citizens who are innocent victims of bad luck or injustice, but it excludes criminal wrongdoers from that category. Such a stance, as discussed above, reflects the harsh notion that any criminal violation, however minor, should absolutely and permanently strip a person of equal standing as a citizen. Although many American jurisdictions have instituted such policies in the recent past (e.g., lifetime disqualification from public benefits based on drug-related offenses), such policies are falling out of favor, and in *today's* political climate few Americans would defend a strict application of the underlying notion as a tenable position. Thus, for purposes of advancing the arguments at hand, it's sufficient to acknowledge this version of the objection briefly and then set it aside.

The libertarian version of this position holds that individual citizens owe each other only mutual respect for the right of non-interference with person or property, not any affirmative material assistance. Acts of charity to the needy may be laudable, but aren't morally required and can't legitimately be compelled by law. This position denies that individuals have any moral responsibility for the wellbeing of fellow citizens, including but not limited to those incarcerated; the absence of such responsibility is presumed regardless of the cause or degree of disadvantage suffered. At the heart of this libertarian position is an individualist worldview, one that rejects communitarian notions of civic reciprocity, as well as liberal notions of shared political commitments to secure basic rights of social welfare. It's this individualistic position that Iris Marion Young sought to rebut through the core claims of her political responsibility framework.

### 2.3.4 Political responsibility for penal injustice

Young developed the political responsibility framework as a resource for reasoning about *structural injustices*:<sup>47</sup> harmful outcomes that we recognize as wrong and needing rectification, but for which we can't pinpoint a clear culprit to be blamed and held liable. Young offered this framework as a way to clarify how people in "free and affluent countries" might be responsible to improve the plights of low-wage workers in "far-off parts of the world," but she intended for it to apply "to relations between strangers in the same country or city as much as transnationally."<sup>48</sup>

Clearly, mass incarceration in America doesn't boil down to a discrete set of acts taken by any one actor: it's a constellation of rules and institutions that most Americans have supported, enabled, or passively taken for granted in some way. Thus, Young's framework

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<sup>47</sup> For Young, "structure" denotes "a confluence of institutional rules and interactive routines, mobilization of resources, and physical structures; these constitute the historical givens in relation to which individuals act, and which are relatively stable over time." She also used the term to refer to "wider social outcomes that result from the confluence of many individual actions within given institutional relations," and that don't directly reflect any one party's intention. Young, *Inclusion and Democracy*, Chapter 3; *Political Responsibility and Structural Injustice*.

<sup>48</sup> Young initially presented this framework as a way to make sense of anti-sweatshop activists' arguments; she later elaborated the framework as a way to think about local and domestic instances of structural injustice, such as homelessness and concentrated unemployment. See generally Young, "Responsibility and Global Labor Justice"; and Young, *Responsibility for Justice*.

properly applies to relations between incarcerated and non-incarcerated Americans who, despite being fellow citizens, are “strangers” in that they inhabit very different social, physical, and geographical spaces and have little or no occasion for interaction. At the same time, they’re *connected* through the social structures that have produced large-scale penal injustices in this country – and this social connectedness, for Young, is ultimately what makes them responsible to and for each other, in a manner that our traditional framework of responsibility fails to capture.

### *The virtues and limits of liability*

Under the traditional *liability model* of responsibility, which “derives from legal reasoning to find guilt or fault for harm,” we assign responsibility only to those particular agents whose voluntary acts have caused the harm, and we thereby absolve all other agents from liability. This model is “backward-looking”: it requires that we review past events to identify *the* liable parties for purposes of punishing or exacting compensation. In turn, this model forbids that we hold parties responsible for any harm not causally linked to their voluntary acts.<sup>49</sup> As such, the liability model resonates with the libertarian position, rendering illegitimate any attempt to hold citizens responsible for the plights of “strangers” with whom they have never interacted.

The liability model, Young notes, is “indispensable” to our legal system, as well as to our moral commitment to respect and protect individual rights. It requires that we use clear rules of evidence for establishing causal links and for assessing intentions, motives, and consequences. As such, it’s proved useful for assigning responsibility in cases where one party’s deliberate and/or culpable act has caused a discrete injury to another party (i.e. a typical criminal assault).<sup>50</sup>

But the same features that make the liability model appropriate for such cases make it far less useful for reasoning about responsibility in relation to structural injustices: harms caused by complex and far-reaching social structures in which many people are contributors, but none is the sole or primary cause. Conceptually, the liability model doesn’t apply to structural injustice since social structures are the product of many people acting in line with normally accepted rules and practices, and the effects of structural processes usually aren’t traceable to any particular participants. Pragmatically, the liability model is unhelpful in political discussions, as the notion of fault and the specter of punishment tend to provoke defensiveness and “blame switching.”<sup>51</sup>

The problem, then, is that the liability model can’t provide a sensible and effective means to assign responsibility for structural injustices. So if we want to affirm that some people nevertheless bear responsibility for addressing these kinds of harm, we need a different model of responsibility: one that isn’t fixated on individual action and linear causation. To fill this gap, Young developed what she called a *social connection model* of responsibility – not in order to reject or replace the liability model, which remains appropriate in certain contexts, but in order to cover a growing category of complex harms for which the liability model is inappropriate.<sup>52</sup>

Young’s approach can thus help us reason about responsibility for penal reform as a matter of structural justice, without requiring that we reject any particular penal philosophies for

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<sup>49</sup> Young, *Responsibility for Justice*, 97–98; “Global Labor Justice,” 368.

<sup>50</sup> Young, *Responsibility for Justice*, 98–99.

<sup>51</sup> Young, *Responsibility for Justice*, 100.

<sup>52</sup> Young, *Responsibility for Justice*, 96, 100.

purposes of assigning criminal liability. I propose that we look to her model of responsibility, then, not as an independent and superior theory of punishment, but as a normative resource for resolving issues raised by our discussion of moral standing: who should hold incarcerated Americans responsible for their crimes (given the political community's loss of standing), who should hold the political community responsible for penal injustices (given that incarcerated Americans are arguably the direct victims and relatively disadvantaged), and how individual and shared responsibilities should be enforced or otherwise made meaningful in this context.

### *A social connection model*

According to Young's *social connection model*, we bear responsibility for structural injustice insofar as our actions contribute to processes that produce unjust outcomes:

“Our responsibility derives from belonging together with others in a system of interdependent processes of cooperation and competition through which we seek benefits and aim to realize projects. Within these processes, each of us expects justice toward ourselves, and others can legitimately make claims of justice on us. All who dwell within the structures must take responsibility for remedying injustices [the structures] cause, though none is specifically liable for the harm in a legal sense.”<sup>53</sup>

That is, our responsibility with respect to structural injustice derives not from laws, nor from shared political affiliations, but from our participation in social institutions – such as labor markets, law enforcement, and generally any tax-funded system – that create the injustice.

In its approach to assigning responsibility for harms such as those caused by penal injustice, a social connection model departs from the liability model in five respects: (i) it doesn't isolate perpetrators; (ii) it calls for critique of baseline conditions; (iii) it's primarily forward-looking; (iv) it views responsibility as essentially shared; and (v) it requires collective action.

(i) *Not isolating perpetrators.* First, whereas the liability model focuses on isolating particular agents as singularly liable for harm caused by culpable acts, a social connection model recognizes that many parties may bear responsibility for unjust outcomes to which they've collectively contributed, even if some aren't directly culpable. In other words, even if some Americans haven't directly designed, voted for, or implemented harsh penal policies, as voters and taxpayers we all still bear responsibility to address the suffering caused by such policies.<sup>54</sup>

(ii) *Judging baseline conditions.* Second, whereas the liability model imposes penalties that restore harmed parties to prior conditions on the assumption that those conditions are normal, a social connection model allows us to critique baseline conditions. To be deemed worthy of redress, harm needn't be a “discrete, bounded event” in the past; it may be a systemic defect with ongoing effects. Thus, Americans are responsible not simply for redressing specific cases of penal injustice – e.g. a wrongful conviction – but, more broadly, for critiquing our entire penal system as a set of unjust institutions that will continue to produce harm until we change it.<sup>55</sup>

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<sup>53</sup> Young, *Responsibility for Justice*, 105.

<sup>54</sup> Young, *Responsibility for Justice*, 105–106.

<sup>55</sup> Young, *Responsibility for Justice*, 106–108.

(iii) *Forward-looking*. Third, whereas the liability model focuses on assigning penalties for prior acts in a backward-looking manner, a social connection model directs attention to future acts and desired outcomes in a forward-looking manner. Young’s approach “seeks not to reckon debts” but “to bring about results” through the actions of all responsible parties who are capable of contributing their efforts.<sup>56</sup> Americans shouldn’t be categorically blamed, then, for participating in political and economic systems that have contributed to penal injustice, as avoiding participation can be virtually impossible; but they *should* be encouraged to recognize the collective effects of their participation in these systems, and to take on the task of redressing those effects. Thus there’s a limited but important role for backward-looking analysis of events that have led to ongoing penal injustice: namely, to inform the tasks of redress and reform.

(iv) *Envisioning responsibility as shared*. Fourth, whereas the liability model singles out culpable actors to shoulder full liability for harm caused, a social connection model sets aside questions of fault and holds that responsibility for redress is *shared* among all participants in unjust structures. Thus, every American is personally responsible “in a partial way” for addressing penal injustice: while no individual or agency can overhaul the prison system alone, each is responsible for participating in collective efforts to bring about redress and reform.<sup>57</sup>

(v) *Requiring collective action*. Fifth and relatedly, whereas the liability model imposes specific penalties on liable parties, a social connection model expects that differently situated individuals take different approaches to bearing responsibility for structural injustice – and, ultimately, that this responsibility be discharged through *collective action* geared toward reform. As noted above, our shared responsibility for penal injustice consists in changing complex structures, and none of us can achieve this alone: many actors from diverse positions within these structures must work together, each in ways appropriate to his or her circumstances – in some cases working through or within public institutions, but in other cases outside of them.

Essential to this framework, then, are civic and human relationships among diversely situated individuals, who must work together in order to bear their shared responsibility for redress. Responsibility for structural injustice is therefore *political*, rather than privately moral or juridical, in that it entails organizing our relationships, coordinating our efforts, and endeavoring to transform social structures and institutions that affect all of us.<sup>58</sup> In sum:

“*Taking political responsibility* means acknowledging that one participates in social processes that have some unjust outcomes, and [that] one participates with many others. *Discharging the responsibility* entails enjoining collective action with at least some of these others. *My responsibility* becomes to enjoin others to reflect on and acknowledge their participation in the structural processes, and to listen to their account of how they work and our role in them. *We share responsibility* to fashion organized means of changing how the processes work so they will issue in less injustice.”<sup>59</sup>

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<sup>56</sup> Young, *Responsibility for Justice*, 108–109; “Global Labor Justice,” 379.

<sup>57</sup> Young, *Responsibility for Justice*, 109–110; “Global Labor Justice,” 380.

<sup>58</sup> In Young’s words, it’s “political” in the sense that it entails “public communicative engagement with others” for the sake of coordinating reform efforts. *Responsibility for Justice*, 111–112.

<sup>59</sup> Young, “Global Labor Justice,” 388 (emphases mine).



Bearing political responsibility for our unjust penal system, then, requires acts of recognition, communication, and collective action. First, *recognition*: I, a politically responsible American, should acknowledge the fact of my participation in social structures that unjustly harm incarcerated Americans (as well as their families and communities). Next, *communication*: I should explicitly reflect on this fact along with fellow citizens who are co-participants in these structures, educating myself and others about how and why the system is unjust, and about how the injustices might be rectified. Finally, *collective action*: I should join with fellow citizens in concerted attempts to rectify these injustices through social, legal, and/or institutional change.

*Allocating tasks: Who bears responsibility for justice?*

Returning to the issues raised by our discussion of standing, Young's framework yields three points regarding political responsibility for social and penal injustice: (i) all Americans bear responsibility for securing penal reform; (ii) all Americans bear responsibility for maintaining public safety; and (iii) incarcerated Americans share the same responsibilities.

(i) *All Americans bear political responsibility for penal reform.* As members of society, we're all responsible for working to rectify injustices caused by our penal system, even if some of us aren't to blame for those injustices. Our responsibility derives from our *participation* in the system that has caused unjust harm. Many of us have supported or enabled the system – at the very least, we have funded it with our tax dollars – without knowing of its nature or of our roles in it. But once we know, we can and should take up responsibility to bring about redress and reform. Allocation of individual blame is neither a precondition nor a necessary consequence of affirming and bearing our shared political responsibility in this sense.

Conversely, our political responsibility is left intact by any collective blame we bear for breached obligations to incarcerated Americans. Due to collective breaches of civic reciprocity, we as a community may have lost standing to hold many of these Americans responsible for certain forms of noncompliance with public institutions. And due to collective breaches of humanity, we may have lost standing to hold them responsible for certain kinds of crimes. But even if we no longer have standing to punish certain people for certain crimes, we remain bound by our shared responsibility to bring about redress and reform for harm caused by our breaches.

(ii) *All Americans bear political responsibility for public safety.* Further, even if we as a political community have compromised our standing to punish, we remain fully bound by civic obligations and natural duties. This means we must maintain some public safety apparatus that prevents people from unjustly harming others, and that provides redress for victims of unjust harm. In other words, even if we can't legitimately punish certain Americans for certain crimes, we still have obligations toward all Americans to minimize harms associated with crime generally. Until we remedy the breaches that have cost us our standing to punish, our efforts to fulfill our public safety obligations should be designed solely to protect citizens from harm, not to impose punishment in the service of moral purposes that we currently lack standing to pursue.

Thus, the answer to the first question raised by our discussion of standing – who should hold unjustly disadvantaged Americans responsible for crimes, if the community has lost standing to do so? – is that we can't legitimately undertake that task until we collectively redress the injustices by which we've lost standing. But in virtue of ongoing civic obligations and natural duties to all, we still can and should work to minimize harms caused by crime. In practice, this may lead to policies that look like punishment, such as confinement of "serious" offenders who would otherwise be extremely likely to commit further serious crimes. But until we restore our

standing to hold all Americans criminally responsible, such policies would be legitimate only insofar as they're narrowly tailored to serve the non-penal purposes of protecting all citizens.

*(iii) Incarcerated Americans share in these political responsibilities.* Incarcerated Americans remain members of our society, and as such they too are responsible to rectify penal injustice. While many non-incarcerated Americans are connected to the penal system as passive enablers or even beneficiaries, most incarcerated Americans bear responsibility as direct victims. On the liability model, blaming a victim amounts to absolving others of responsibility for his plight. But in the social connection model, victims of structural injustice can be counted as *participants* in systems that have harmed them, and thus can be called to bear responsibility for reforming these systems. Indeed, their interests are most acutely at stake, and their social positions afford them special insight into the structural problems and harms to be addressed.<sup>60</sup>

So, the answer to the second question raised by our discussion of standing – Whose job is it to hold the community responsible for penal injustice, given that those most directly harmed by it tend to be the most disadvantaged citizens? – is that all participants in the penal system, including those who bear the brunt of injustice, have moral reasons to critique and change the system. This isn't to say that all are at fault for penal injustice, nor that all should take action in the same way or to the same degree, but rather that the challenges of reform must be tackled through the coordinated efforts of all citizens who are connected to the system and to each other.

Of course, many incarcerated Americans have limited access to the resources and basic liberties necessary to engage fully in collective action. Under a social connection model, to count them among responsibility-bearing participants in the penal system is not to blame them for deprivations they suffer, nor to impose further punitive burdens on them, but rather to spotlight meaningful ameliorative actions they may be able to take despite their constraints. Indeed, as I'll argue in subsequent chapters, the most meaningful and impactful penal reform measures are those that empower currently and formerly incarcerated Americans to lead the way as truth tellers, community organizers, and advocates of systemic change.

### *Addressing critics from right and left*

Since the political responsibility framework is designed as a supplement to the liability-based approach, not as a replacement, it can effectively withstand rights-based objections from both ends of the political spectrum, including the libertarian position noted above.

*(i) Slippery slope of socialism and boundless expansion of responsibility.* Some critics on the right, particularly libertarians, would object that Young's social connection model makes everyone liable for every social ill, positing boundless obligations that are morally meaningless and practically impossible to discharge.<sup>61</sup> This model, they'd argue, envisions a "socialistic" scenario in which ordinary law-abiding Americans are forced to bear the massive costs of overhauling institutions they have nothing to do with and, essentially, to fix other people's problems. But in fact, the social connection model finds people responsible only for injustices to which they're actually connected, calls for only those actions that people are well positioned to take, and envisions collective action produced by individuals who combine their efforts in self-determined ways. Thus, while this model reveals that each of us may have greater obligations to

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<sup>60</sup> See Young, *Responsibility for Justice*, 113.

<sup>61</sup> See Young, "Global Labor Justice," 383.

act than the liability model would imply, it allows us to limit and interpret these obligations so that they're logically deducible and practically manageable.<sup>62</sup>

(ii) *Burdening victims and letting perpetrators off the hook.* Some critics on the left, particularly those who share Young's concern about structural injustice, would object that her social connection model is wrong to include victims among political responsibility-bearers. This stance, to them, cruelly saddles disadvantaged individuals with burdensome tasks that better-off citizens should undertake, and it neglects the key tasks of blaming and shaming perpetrators.<sup>63</sup> Indeed, while the social connection model is silent about blame and guilt, it doesn't reject these notions; it simply distinguishes them from the forward-looking tasks of securing redress and reform, which are best achieved through collective action. This model does call on victims to join such action, but in a manner free of blame, and only insofar as victims are able to empower themselves and others by acting. This model indeed doesn't oppose the singling out of key perpetrators, but only insofar as such efforts to impose liability don't impede redress and reform.

### *Parameters of reasoning about political responsibility*

To strengthen her framework in light of such concerns, as well as to provide more specific guidelines for diversely situated responsibility-bearers, Young outlined several parameters for reasoning about individual and organizational obligations to act in relation to structural injustice: connection, power, privilege, interest, and collective ability.

(i) *Connection.* In principle, individuals bear responsibility for all structures to which they're connected as voters, taxpayers, leaders, consumers, beneficiaries, passive members, or even victims. Indeed, "most of us are connected to too many people mediated by too many institutions" to take action regarding all of them. In allocating limited energy and resources, then, ordinary citizens should give "pragmatic priority" to improving those unjust structures to which they're more directly and explicitly connected.<sup>64</sup> While penal injustice is a nationwide problem, for example, citizens can focus their efforts on policies and practices in their home states.

(ii) *Power.* Different positions within social structures carry different degrees of power to bring about change. Those who hold positions of power, such as elected officials, policy makers, recognized experts, or community leaders, should bear greater responsibility to use their influence to address injustice. Meanwhile, ordinary citizens, including those in prison, might do well to focus on acting within spheres where they have more capacity to build and exert influence, as well as pressuring more powerful agents to use their influence constructively.<sup>65</sup>

(iii) *Privilege.* Systems of structural injustice, by nature, tend to privilege some while disadvantaging others. Those occupying positions of power in an unjust system typically hold privilege that coincides with such power. But many who are relatively privileged by such a system – such as most middle-class voters, taxpayers, and consumers who enjoy stable lives untouched by incarceration – hold little power to change it. These privileged parties should bear

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<sup>62</sup> Also, as Young notes, the social connection model is needed precisely for the purpose of challenging the idea "that the moral claims of justice ought not to be too demanding on individuals." See "Global Labor Justice," 391.

<sup>63</sup> See Young, "Global Labor Justice," 381, 387.

<sup>64</sup> Young, "Global Labor Justice," 385.

<sup>65</sup> See Young, "Global Labor Justice," 386; *Responsibility for Justice*, 144–145.

greater responsibility to address injustices that benefit them: not because they're more to blame than the relatively disadvantaged, but because as beneficiaries of the system, they can better afford to contribute energy and resources toward reform. Compared to most incarcerated Americans, that is, they can stand to lose more without suffering serious deprivation.<sup>66</sup>

(iv) *Interest*. Personal or institutional interests may coincide with responsibility for justice. Direct victims of structural injustice in particular, such as incarcerated Americans and their families, have unique interests in exposing and reforming unjust structures, and should take part in doing so. Indeed, they're often best positioned to shed light on harms they suffer and to critique remedial efforts. Aside from direct victims, various other parties may have political or economic interests in promoting just conditions; figuring out how to align such interests with the demands of justice is, in fact, in an integral aspect of bearing shared responsibility effectively.<sup>67</sup>

(v) *Collective ability*. Collective action is the key to discharging shared responsibility for justice, and this entails the complex tasks of networking, community organizing, and resource coordination. Where possible, rather than start from scratch, responsibility-bearers should leverage the resources of already-organized entities such as unions, church groups, political coalitions, or professional associations. Such entities are often poised to exert significant power insofar as their many members are already committed to acting together.<sup>68</sup>

### 2.3.6 Summary and implications

If we accept Rawls's proposition that we have natural duties of justice – that is, fundamental obligations to uphold and bring about just social arrangements – then Young's political responsibility framework enriches our understanding of this requirement by insisting that it be shared with others and discharged through collective action, as well as by providing guidelines to reason about individual roles and strategies. Accordingly, this framework both deepens and sharpens our thinking about the obligations held by diversely situated Americans regarding penal injustice. Further, as a counterpoint to the liability model, a social connection model helps resolve issues of moral standing that would otherwise impede clear allocation of responsibility for penal reform.

The upshot is a provisional account of responsibility that resonates with shared normative premises, is compatible with the major penal philosophies that have shaped our public discourse, and appeals to broadly acceptable notions of civic obligations and natural duties. With this account as a foundation, I turn to the task of spelling out our proposed philosophical consensus.

## 2.4 Our potential philosophical consensus

I've constructed a provisional account of responsibility that allows us to distinguish and reason about three overlapping sets of obligations: (1) those that all Americans, regardless of criminal history or penal status, owe each other as a matter of justice; (2) those that incarcerated Americans may (or may not) owe the political community; and (3) those that we as a political community owe incarcerated Americans who have been unjustly and inhumanely treated.

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<sup>66</sup> See Young, "Global Labor Justice," 387; *Responsibility for Justice*, 145.

<sup>67</sup> See Young, *Responsibility for Justice*, 145–146.

<sup>68</sup> Young, *Responsibility for Justice*, 146–147.

By providing a normative foundation to reason about these obligations, the above account makes it possible for us to establish a philosophical consensus that consists of: (1) agreement about key moral obligations that apply to incarcerated Americans, non-incarcerated Americans, and the political community; and (2) agreement about the forms of collective action and the long-term vision of just correctional practice that should flow from these moral obligations.

### **2.4.1 Key moral obligations**

Three sets of moral requirements are relevant to our proposed philosophical consensus on penal reform and reintegration: those stemming from civic reciprocity, human personhood, and social connectedness respectively. Here I outline each set of requirements in turn.

#### *Civic obligations*

As Americans we share membership in a political community, which entails reciprocal civic obligations that connect us to each other as well as to public institutions. Each American must treat other Americans with civic respect – with basic regard for their rights and obligations as citizens – and to uphold rules and institutions that make our collective life in society possible. Public institutions, acting on behalf of our political community, must treat all Americans with civic respect and secure the necessary conditions for all Americans to live safe and healthy lives.

A majority of incarcerated Americans are members of social groups that have been systematically excluded from full participation in civic life; this exclusion has occurred through unequal distribution of resources as well as unjust discrimination. We as a community have thus breached our civic obligations toward these Americans by failing to treat them as equal citizens.

Due to our breaches of civic reciprocity, these Americans may be excused from some otherwise-binding civic obligations to uphold the rules and institutions that have failed to secure the conditions essential to their wellbeing. This means that we as a political community, acting through our public institutions, shouldn't be punishing these Americans for certain legitimate forms of non-compliance with our civic norms; instead, we should be remedying our own breaches of civic obligations toward these Americans.

#### *Natural duties*

As human beings, we all possess a form of dignity that's inherent in our personhood, and in virtue of this personhood we're bound by unconditional duties to each other. Duties of humanity obligate us to treat each other in a manner consistent with each person's dignity. Duties of justice obligate us to uphold and preserve just social conditions, and to rectify unjust ones.

Many incarcerated Americans have breached natural duties by committing crimes that disregard others' human dignity. In response, rather than holding these Americans responsible in a fair and humane manner, we as a political community have breached natural duties of humanity as well as civic obligations – by subjecting them to inhumane penal practices that disregard their dignity as persons, and that impede their reincorporation into civic life as full and equal citizens.

When Americans commit crimes that violate duties of humanity, we as a political community have grounds to hold them criminally responsible. But insofar as we've been punishing people in ways that in turn violate duties of humanity, we've compromised our standing to hold these people (and arguably others) responsible for future such crimes. To restore our standing, we must first rectify collective violations committed through our penal practices.

### *Political responsibility*

Insofar as we're all socially connected to the policies and practices that constitute our penal system, we share responsibility for rectifying its injustices. Thus, we share responsibility for holding both individuals and institutions responsible for breaches of civic obligations and natural duties. This means working to secure redress for unjust harms suffered by victims of injustice, as well as to reform policies and practices so they cease to be intolerably unjust. All Americans, including those incarcerated, have moral reasons to contribute to these efforts.

#### **2.4.2 Appropriate collective action**

Because our penal system has been producing unjust harms, we as a society share the responsibility of redressing these harms and of reforming the structures that produce them. To bear our responsibility of redress, we must support and develop measures to remedy deprivations suffered by incarcerated Americans; and to bear our responsibility of reform, we must change our penal institutions so that they not only fulfill our obligations to treat incarcerated Americans as equal citizens and human persons, but also equip them to fulfill their obligations to others.

Our shared responsibility to address penal injustice will be discharged, then, when we've established a correctional system that treats every incarcerated American as a person (1) who is entitled to remedies for any injustices inflicted by public institutions, (2) who should be held responsible for his own unjust acts, (3) who should be supported in endeavors to discharge his civic obligations and natural duties going forward, and (4) who should be equipped not only to reincorporate into civic life but also contribute to its improvement.

Taking as a shared foundation the account of responsibility set forth above, this is a vision of just correctional practices that all Americans should be able to endorse. This is a vision of a correctional system that facilitates the eventual reintegration of our prisoners – through policies that are not driven solely by political and economic incentives, but that are crafted with a view to aligning the material interests of all Americans with the moral demands of justice.

### **2.5 Our need for a humane policy framework**

In this chapter, I've developed an account of responsibility that can serve as a shared foundation for public discourse about penal reform; and, in turn, I've proposed a philosophical consensus about our responsibilities to transform our penal system so that it facilitates the reintegration of incarcerated Americans. Now, to bring about this vision of a just correctional system, we need an appropriate framework to help us develop and assess the policies we need.

As I'll argue in Chapter 3, we as a society would do well to use the Capabilities Approach ("CA") as a normative toolkit for developing our penal reform agenda, as well as for reframing our public discourse about crime, punishment, and reintegration. The CA encompasses a set of philosophical principles as well as a conceptual framework for policy analysis. As a matter of principle, the CA holds that a civilized society should secure and develop its citizens' capabilities, or valued freedoms, so that they can flourish. As a matter of policy, the CA provides guidelines for prioritizing among capabilities, and for identifying what resources and conditions must be present to secure those capabilities deemed essential.

While the CA has proved to be a fruitful framework for policy and research in various fields, including welfare economics and human development, the correctional field remains unexplored by CA experts and is ripe for application. But beyond the CA's track record as an analytical tool, there are key philosophical and practical reasons in favor of applying it here.

First, the CA resonates with key elements of the account of responsibility developed above. According to the CA, a civilized society's core imperative is to secure the conditions in which all citizens can lead lives worthy of human dignity; and such a life requires, at minimum, access to a set of certain essential capabilities. As such, the CA can help us develop principled and persuasive answers to two politically troublesome questions: Why should we as a society commit public resources to improving the life prospects of people in prison? And, given the many urgent and profound needs of these adults, which needs should we prioritize?

Further, the CA conceptualizes capabilities in ways that shed valuable light on the issue of moral standing – namely, our society's loss of standing to punish incarcerated Americans by failing to treat them with due respect and dignity. What the CA adds to this discussion is a rich conceptual understanding of the deprivations by which we've compromised our standing, and likewise the specific forms of redress by which we should endeavor to restore our standing.

Finally, while the CA shifts our focus from individual to collective responsibilities, it does so in a way that takes seriously the task of holding individuals accountable for crimes they have committed. Far from denying the importance of that task, the CA challenges us to zoom out and critique the structures surrounding that task. With a view to promoting greater integrity in our practices of holding people accountable, the CA prompts us to ask: What existing policies, practices, and circumstances tend to deter pro-social choices by individuals, and instead encourage harmful choices that lead to crime and punishment? Which communities in our society have been most heavily impacted by such policies, practices, and circumstances? For members of these communities who have been convicted and incarcerated for crimes, what measures are required to expand their opportunities to make healthy and pro-social choices going forward? What measures are required to ensure that, going forward, all incarcerated Americans are free not only to understand and accept their responsibilities through meaningful dialogue and reflection, but moreover to discharge these responsibilities through rehabilitation and restitution?

### 3 The Capabilities Approach as a Framework for Reintegration Policy

In the last decade we've seen a surge of public attention to our prison system's costly failures to promote public safety and rehabilitation, accompanied by a surge of public investment in penal reform. At every level of government, there's growing concern to identify and address the myriad "risk factors" that keep individuals from attaining health and stability upon release, and growing willingness to explore various means to reduce social costs related to recidivism.

While the fiscal and political incentives driving our reintegration policy agenda are clear, the philosophical foundations of this agenda have rarely been discussed openly, let alone theoretically developed. In Chapter 2, I offered an account of responsibility, rooted in shared moral premises, which could ground our philosophical commitment to promoting reintegration. Now in Chapter 3, I draw on the Capabilities Approach ("CA") to outline a more fully developed normative framework for reintegration that further specifies the underlying moral values and their political implications. By explicitly grounding our reintegration policy agenda in the CA, I argue, we can make our commitment to it more ethically robust and politically resilient: that is, more likely to persist when the material incentives undergirding our current consensus fall away.

In Chapter 2, I also proposed a philosophical consensus regarding our society's collective obligations toward incarcerated Americans, which emphasized our imperatives to treat them as citizens and as human persons who bear rights as well as responsibilities. While this proposed consensus sets forth broad guidelines for collective action and a general vision of just correctional practice, it doesn't specify how to go about satisfying those moral imperatives and fulfilling that vision. Nor does it provide guidance for setting policy priorities in a context involving many needs and limited resources. Thus, here in Chapter 3, I derive from the CA a set of policy principles for ensuring that reform measures are both ethical and cost-effective, even if they can't immediately achieve the full redress and comprehensive reform that justice requires.

My goal in this chapter is to establish that the CA provides an invaluable normative framework for reform-minded Americans working to develop, justify, and implement an ethically grounded policy agenda to facilitate reintegration. Drawing on the CA, I aim to (1) set forth a dignity-based foundation for penal reform and reintegration policy; (2) justify heightened public investment in the wellbeing of incarcerated Americans; and (3) outline principles for disaggregating and prioritizing among incarcerated Americans' many unmet needs.

I begin in **Section 3.1** by introducing the CA, noting its key potential contributions to the field of penal justice. In **Section 3.2**, I examine the crosscutting implications of criminal culpability and socioeconomic disadvantage for the central capability entitlements of incarcerated Americans, arguing that culpability leaves those entitlements intact while disadvantage heightens their moral urgency. In **Section 3.3**, I derive from the CA specific policy principles for navigating issues of agency, vulnerability, and cost-effectiveness. In **Section 3.4**, I propose Martha Nussbaum's list of central capabilities as an ethical checklist for reintegration policy, and also as a rubric for identifying optimal intervention points in a context of relative resource scarcity. Finally, in **Section 3.5**, I note some normative insights yielded by applying both the political responsibility model and the CA to our penal reform and reintegration agenda.



## 3.1 The Capabilities Approach

In the face of profit motives and social inequalities, the Capabilities Approach (“CA”) anchors policy choices to ethical concerns about human flourishing. The CA is not a theory that *explains* poverty, inequality, or wellbeing; rather, it’s a framework that helps to *conceptualize* and *evaluate* these phenomena.<sup>69</sup> Its animating concern is to ensure a decent quality of life for every living person, and to orient all social policies and practices toward this end.

The CA encompasses two complementary components: a policy framework created by Amartya Sen and a political philosophy developed by Martha Nussbaum. The policy framework component offers conceptual tools to assess and analyze social problems, whereas the political philosophy component sets forth moral and political principles to justify and critique collective responses to these problems. Below I set forth the intellectual context, central concerns, and key analytical concepts that are common to both components of the CA; and then, in the last part of this section, I outline normative elements specific to the political philosophy component, indicating how and why these elements can ground and enrich our penal reform efforts.

### 3.1.1 Intellectual context and central concerns

The CA was first introduced as an alternative to growth-based models of social and economic development. Growth-based models, rooted in utilitarian logic, equate improvements in a nation’s “quality of life” with increases in GDP per capita. CA proponents argue that such models are flawed because, by focusing solely on aggregate wealth, they ignore problems of unequal distribution and also fail to account for significant dimensions of human life – such as health, education, and political rights and liberties – that don’t correlate well with GDP.<sup>70</sup>

Thus, departing from these growth-based models, the CA takes a more holistic view of wellbeing, focuses on freedom rather than profit, and directs a more critical eye toward social inequalities. The key idea behind the CA is that development policy shouldn’t focus on economic growth in itself, but rather on the creation of enabling environments in which people can enjoy long, healthy, and creative lives in accordance with their needs and interests.<sup>71</sup>

For purposes of policy design and critique, then, the CA starts with the question: “What are people really able to do and to be?” The CA holds that the proper aim of any policy is to expand *capabilities*: people’s real opportunities for choice and healthy functioning.<sup>72</sup> In tandem with making capabilities the focus of policy, the CA revolves around these interrelated concerns:

- **Recognition of each person’s intrinsic worth:** Every individual’s wellbeing matters. Therefore, rather than looking only at aggregate measures of a society’s wealth, it’s important to assess how every individual is doing and seek to empower each one.
- **Attention to social inequalities:** Since every individual’s wellbeing matters, it’s important to look critically at imbalanced distributions of social goods and economic opportunities across different groups in society. Whenever a policy yields vital social benefits, it’s necessary to ensure no one is unfairly cut off from such benefits.

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<sup>69</sup> Nussbaum, *Creating Capabilities*, 18–20, 28; Robeyns, “Capability Approach in Practice,” 352–353.

<sup>70</sup> Nussbaum, *Creating Capabilities*, 46–56; Dixon and Nussbaum, “Children’s Rights,” 556.

<sup>71</sup> United Nations Development Program, *Human Development Report 1990*, 1, 9.

<sup>72</sup> Nussbaum, *Creating Capabilities*, 18–20.

- **Holistic and pluralistic approach to wellbeing:** Human wellbeing isn't simply a function of material resources; it requires a combination of physical, psychological, and social elements for each person. Thus, rather than focus solely on increasing material wealth, policies should be designed to promote and sustain all the elements of wellbeing.
- **Special priority for genuine freedom to choose:** The most fundamental element of human wellbeing is having freedom to make reasoned choices about one's life. Thus, policies shouldn't strive simply to put resources in people's hands, nor should they force people to use resources in specific ways. Rather, policies should establish conditions in which people can freely access and use the resources they need in order to thrive.<sup>73</sup>

In the context of penal reform, then, the CA directs us to ask: "What are incarcerated Americans really able to do and to be? What opportunities for choice and functioning do they have, both during incarceration and upon release?" And as we endeavor to facilitate their reintegration, the CA insists that, rather than focus solely on securing tangible benefits for the rest of society as a whole, we must seek to secure all the physical, psychological, and social building blocks that these individuals need to thrive. Further, we must seek to expand each individual's freedom to access and use these resources in ways that both effectively support their wellbeing and genuinely reflect their own reasoned choices.

### 3.1.2 Key analytical concepts

In a nutshell, both Sen's and Nussbaum's versions of the CA rest on two normative assumptions: (1) All persons should have *freedom to achieve wellbeing*, which is of utmost moral importance. (2) All laws, policies, and social arrangements should support and expand this *freedom to achieve wellbeing*. As I'll elaborate below, the CA uses the concept of *capabilities* to describe various forms of freedom to achieve wellbeing, and the concept of *functioning* to denote the actual achievement of wellbeing. In turn, the CA uses the concept of *conversion factor* to capture the practical gap between any given capability and its related functioning(s).<sup>74</sup>

#### *Capabilities*

As noted above, capabilities are answers to the core question: "What are people free to do and to be?" Each capability is a form of freedom: an opportunity to choose and to act in some manner that promotes human wellbeing.<sup>75</sup> Capabilities tend to be instrumentally valuable, since they lead to good results; but, more importantly, they have inherent value as forms of freedom to pursue those results. As such, *agency* – the power of reasoned choice – is built into the notion of capability; and so is *wellbeing*, the end-result of freely pursuing a valuable opportunity.<sup>76</sup>

<sup>73</sup> See Nussbaum, *Creating Capabilities*, 18–20.

<sup>74</sup> These concepts are discussed extensively by Nussbaum in *Women and Human Development, Frontiers of Justice*, and "Capabilities and Human Entitlements"; and by Sen in *Inequality Reexamined* and *Development as Freedom*. See Nussbaum, *Creating Capabilities*, 18–20, 204.

<sup>75</sup> Nussbaum, *Creating Capabilities*, 20. Importantly, capabilities encompass only those opportunities that enable human *flourishing*. They don't include opportunities to act in ways that degrade or destroy human life. Thus, the freedom to exploit children is not a capability; nor is the freedom to abuse drugs that damage one's health.

<sup>76</sup> Nussbaum, *Creating Capabilities*, 25, 28–32; Sen, "Capability and Well-Being," 30–53

For the sake of illustration, let's consider physical health and education: both are widely valued and commonly studied capabilities,<sup>77</sup> and both are also areas of vital unmet need among incarcerated Americans. We can think of the capabilities of health and education, respectively, as the freedom to be healthy and the freedom to be educated. Like all capabilities, each of these forms of freedom requires a combination of (1) innate faculties, (2) acquired traits or skills, and (3) external conditions that must be in place in order the freedom to be exercised.<sup>78</sup>

After all, we wouldn't conclude that a person is truly free to be healthy unless, at the very least, (1) her body's essential systems are intact and working, (2) she has acquired habits that support her health, and (3) she has access to safe and clean living conditions, adequate nutrition, and any care or treatment she needs to maintain her health. Likewise, we wouldn't view a person as truly free to be educated unless, at the very least, (1) her brain's essential processes are intact and working, (2) she has acquired cognitive and behavioral skills that allow her to study effectively, and (3) she has access to teachers, educational materials, and any other resources she needs to learn. Accordingly, a person's capabilities of health and education are fully secured only when these combinations of innate, acquired, and external conditions are in place for her.

### *Functionings*

If capabilities are freedoms or opportunities to be and to do well, functionings *are* those “beings” and “doings”: they denote those things a person can actually be and do as a result of exercising capabilities. Functionings, then, are tangible outgrowths, or active realizations, of capabilities. Reflecting the multifaceted nature of human life, functionings encompass a diverse range of states and activities, simple and complex, that constitute wellbeing. Commonly pursued functionings include playing, sleeping, voting, being healthy, being educated, being gainfully employed, and partaking in civic life.<sup>79</sup>

Returning to our two examples, we've noted that a person has the capabilities of health and education if she has genuine opportunities to be healthy and educated: that is, if she's truly free to pursue those opportunities. But it remains up to her whether to pursue them. To exercise her capability of health, she must *choose* to put her healthy habits into action, to take advantage of vital health services accessible to her, and thereby to achieve the functioning of being healthy. In turn, to exercise her capability of education, she must *choose* to put her intelligence and study skills to work, to enroll in courses and engage with texts that are accessible to her, and thereby achieve the functioning of being well educated. It's by voluntarily exercising her capabilities of health and education that she achieves the functionings of being healthy and being educated.

### *Conversion factors*

As our examples have made clear, agency – the power of reasoned choice – plays a pivotal role in turning capabilities into functionings. But agency operates in the context of

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<sup>77</sup> See Nussbaum, *Creating Capabilities*, 69.

<sup>78</sup> In describing these components, Nussbaum uses a terminology that delineates between “basic capabilities” (innate powers), “internal capabilities” (acquired traits or abilities developed by interacting with external environments), and “combined capabilities” (freedoms produced by combining personal abilities with external environments, i.e. “capabilities” proper). See *Creating Capabilities*, 20–24. Since I find this terminology potentially confusing and needlessly complex for my purposes, I simply describe the three components here in plain language.

<sup>79</sup> Nussbaum, *Creating Capabilities*, 24–26.

circumstances: we make choices in the real world, amidst conditions that can either support or frustrate our endeavors. The concept of a conversion factor captures this real-world gap between capabilities and functionings, and the degree to which circumstances shrink or widen that gap.<sup>80</sup>

A conversion factor indicates how much net benefit a person can get from a resource, given her circumstances: how easily she can use it to exercise her capabilities and thereby attain functionings. A higher conversion factor indicates more enabling circumstances; a lower factor indicates more adverse circumstances. Mirroring the range of internal, acquired, and external elements that must align to make a capability, conversion factors arise from a combination of one's physical constitution, personal traits, social circumstances, and physical environment.<sup>81</sup>

Revisiting our education example, a four-year college is a valued resource that individuals may access and use to achieve the functioning of being college-educated. But the same institution bears different conversion factors for differently situated persons. Consider an entering student who has no cognitive deficits, who graduated from a top-ranked high school, and whose caring and affluent family lives near campus. Due to her cognitive capacities, well-honed academic skills, and ready access to emotional and material support, she may have a high conversion factor in using the institution (resource) to become college-educated (functioning).

In contrast, for an entering student who has an undiagnosed learning disability, who studied at an under-performing high school, and whose low-income family is far away or unsupportive, his conversion factor is much lower. On paper, this second student has the same access to the same institution (resource) as the first; but in reality, he can't obtain the same educational benefit (functioning) from it, unless he can somehow access and deploy other outside resources – e.g. alternative learning methods, individualized tutoring, supportive social networks or community programs – to help him do so. Despite having formal access to this highly valued educational resource, this second student's capability of higher education is relatively restricted.

The concept of a conversion factor captures how important it is, as a practical matter, to assess the gap between a capability and a functioning; and how urgent it is, as an ethical matter, to bridge that gap for people who are subject to various forms of personal, social, and economic disadvantage, as are most incarcerated Americans today. Even though we won't undertake to calculate conversion factors with precision in the current philosophical project, we should grasp this vital take-away point: If promoting reintegration means securing the essential capabilities that people need to thrive in society, it's not enough to funnel resources into programs and institutions that purport to meet diverse human needs in a blanket manner. Instead, we must identify and dismantle *all* the barriers that keep disadvantaged individuals from using resources effectively to exercise their essential capabilities, both during incarceration and upon release into society. As I discuss below, Nussbaum has elaborated the normative foundations of these tasks.

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<sup>80</sup> While the substance of this concept is important to both Sen and Nussbaum, the term "conversion factor" appears explicitly only in the work of Sen and others developing his approach. Robeyns, "Capability Approach," *Stanford Encyclopedia of Philosophy*. See also Sen, *Inequality Reexamined*, 19–21, 26–30, 37–38.

<sup>81</sup> *Personal conversion factors* are internal to a person; these include metabolism, physical condition, sex, learned skills, and intelligence. *Social conversion factors* derive from the society one inhabits; these include public policies, social norms, discriminatory practices, cultural hierarchies, and power relations related to class, gender, or race. *Environmental conversion factors* emerge from one's physical or built environment; aspects of geographic location include climate, pollution, and access to water; aspects of the built environment include the stability of roads and buildings, and means of transport and communication. Robeyns, "Capability Approach: A Theoretical Survey," 99.

### 3.1.3 Partial theory of justice

While Sen uses the concept of capabilities only comparatively, without explicit reference to philosophical or political claims, Nussbaum has used the concept to develop a partial theory of social justice, rooted in human dignity.<sup>82</sup> Thus, Nussbaum's CA expressly sets forth moral premises and political principles that can be helpful tools for clarifying the foundations and aims of our penal reform and reintegration policy agenda.

#### *Moral premises*

(i) *Dignity*. In Nussbaum's CA, the premise of *universal human dignity* is central and fundamental. Every human person is held to possess full and equal human dignity. This means that, by nature, people have special innate capacities that set them apart from nonhuman animals. Due to these capacities, people have potential to flourish in distinctly human ways.<sup>83</sup>

(ii) *Agency*. Among the most essential human capacities, in Nussbaum's view, is the ability to make reasoned choices: in a word, *agency*. Each of us has potential to exercise this ability well or poorly; our choices may be more or less reasonable, in view of what courses of action are likely to promote wellbeing. When people are exercising agency reasonably, they're living in a manner most worthy of their dignity. Thus, agency is vital to human flourishing, and respect for people's dignity requires preserving and protecting their exercise of agency.<sup>84</sup>

(iii) *Vulnerability*. In turn, efforts to protect agency must account for human *vulnerability*: by nature, people have inherent needs and weaknesses, especially in the earliest and latest stages of life. This feature, in contrast to the capacity for agency, makes people somewhat like other animals. Just as all animals need to live in nourishing habitats in order to thrive, people need to inhabit societies that afford them freedom to flourish by meeting welfare needs, protecting against exploitation, and supporting the growth and exercise of essential human capacities.<sup>85</sup>

(iv) *Central capabilities*. For Nussbaum, a life worthy of human dignity requires a "minimum threshold level" of *central capabilities*, of which she identifies ten: life; bodily health; bodily integrity; cognition; emotions; practical reason; social affiliation; connection to nature; play; and control over one's environment. Each of these is essential to wellbeing; thus, justice

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<sup>82</sup> Nussbaum, *Creating Capabilities*, 17–20, 26–28. Both Nussbaum and Sen hold that the CA resonates with intuitions that are widely shared across all cultures, and that it has roots in influential philosophical traditions from around the globe. See Nussbaum, *Creating Capabilities*, 102–106, 123–142; Nussbaum, *Frontiers of Justice*, 78–79; Sen, "Capability and Well-being," 30–53; Sen, *Development as Freedom*, 14, 24.

<sup>83</sup> Nussbaum, *Creating Capabilities*, 20, 29–33; "Capabilities as Fundamental Entitlements," 40, 51–54; *Frontiers of Justice*, 278–279; Dixon and Nussbaum, "Children's Rights," 557.

<sup>84</sup> Nussbaum doesn't invoke "agency" in the same sense or with the same frequency as Sen does, but along with Sen she highly values the related notion of "choice" and treats it as central to the idea of "capability as freedom." See *Creating Capabilities*, 25–26, 39, 178–179; *Frontiers of Justice*, 182–185; *Women and Human Development*, 58; Dixon and Nussbaum, "Children's Rights," 559–560. See also Sen, "Capabilities, Lists, and Public Reasons," 77–80. In this dissertation I use the term "agency" because it aptly denotes the power of reasoned choice that serves as a key premise for Nussbaum's CA, even though she often uses other terms to describe the content of this premise.

<sup>85</sup> Nussbaum, *Creating Capabilities*, 127–128, 132–141; *Frontiers of Justice*, 159–160, 278–279 (characterizing human dignity as "the dignity of a needy enmattered being"); Dixon and Nussbaum, "Children's Rights," 572 (explaining that the CA "starts with notions of human frailty and vulnerability" and argues that all persons are morally entitled to access "a life worthy of human dignity – in their frailty and vulnerability").

requires that all ten be secured for every person. Each central capability is distinct in quality, and independently essential; thus, a deficit in one can't be corrected by providing more of another.<sup>86</sup>

### *Political principles*

Building on the premises above, Nussbaum proposes a set of political principles that reflect each society's moral obligations to its citizens. Since these obligations are based on the dignity inherent in each person's humanity, they're unconditionally binding on any civilized society. Thus, Nussbaum views these principles as a template for each nation's constitutional commitments: those it must secure in order to be a just or "minimally decent" political order.<sup>87</sup>

(i) *Core imperative.* The core political imperative, in Nussbaum's CA, is this: Each society must secure for all individuals a threshold level – the minimum required for a decent quality of life – of all ten central capabilities.<sup>88</sup> From this imperative flow several implications regarding how a society must implement and interpret its obligations to citizens.

(ii) *Implementation.* As noted earlier, each capability requires the combined presence of (1) innate faculties, (2) acquired traits or skills, and (3) enabling material conditions. Accordingly, as a practical matter, the imperative to secure central capabilities entails two kinds of tasks. First, it entails ensuring that people can develop their innate faculties into valued traits and skills, such as through education and training.<sup>89</sup> Second, it entails making available the material conditions in which people can freely use their traits and skills to pursue valued opportunities.<sup>90</sup> In short, a society hasn't fulfilled its imperative to secure central capabilities until it's provided all resources and conditions necessary to make them live options, so to speak.

(iii) *Interpretation.* Efforts to implement capability-supportive policies must be tailored to their context. Each society must interpret the content and scope of its tasks with regard to each central capability; it must determine, with reference to its particular values and circumstances (ideally through democratic deliberation), what each central capability and its threshold will look like in practice.<sup>91</sup> Likewise, each society must decide whether and to what extent it will designate

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<sup>86</sup> Nussbaum, *Creating Capabilities*, 33–34. For clarity, in this dissertation I've slightly rephrased the names for a few of Nussbaum's central capabilities. See Appendix D for the full list as it appears in her recent published works.

<sup>87</sup> On this point, Nussbaum's CA mirrors human rights approaches. See *Creating Capabilities*, 62–68; "Capabilities and Human Rights," 273–300.

<sup>88</sup> Nussbaum, *Creating Capabilities*, 32–33.

<sup>89</sup> This means, for example, ensuring access to schooling so that people can acquire the traits and skills that flow from a good education; and ensuring access to health care and social services so that people can attain states of physical and emotional wellness. See Nussbaum, *Creating Capabilities*, 21.

<sup>90</sup> For example, a society should not only ensure access to education so that people acquire the skills and abilities necessary for political participation; it should also provide forums for dialogue as well as legal protections that enable people to engage in political discourse and decision-making. Nussbaum, *Creating Capabilities*, 21–22.

<sup>91</sup> Nussbaum purports to define each capability specifically enough to resonate with common intuitions, yet broadly enough to allow for context-specific tailoring. In response to Sen's concerns that the list might take on canonical status, and thereby stifle or bias democratic deliberation, Nussbaum insists that the list is open to ongoing discussion and revision. At the same time she holds that the list, in its current form, reflects reliable insights drawn from cross-cultural research and confirmed by scientific evidence. Nussbaum, *Creating Capabilities*, 36–42; see also Sen, "Capabilities, Lists, and Public Reason."

other capabilities as central.<sup>92</sup> Meanwhile, the moral premises of dignity, agency, and vulnerability must serve as orienting norms for the interpretation of capability-related tasks.

(iv) *Remedial measures.* Due to resource constraints, a society may need to make trade-offs between its capability-related obligations. Any such trade-off is what Nussbaum calls a tragic choice – “tragic” since it deprives some people of freedoms that are essential to wellbeing, and to which they’re entitled in virtue of their dignity. When a society can’t fulfill its core imperative and must make a tragic choice, respect for dignity requires short- and long-term measures to remedy the injustice. First, it must take steps to move people as close as possible, as soon as possible, to adequately defined thresholds of all central capabilities. Second, it must pursue reforms and interventions that, in the long run, prevent the need for more tragic choices.<sup>93</sup>

### *Implications for penal justice*

The CA’s moral premises about humanity – that all human beings have inherent moral worth, special choice-making capacities that deserve respect, and basic needs that call for various forms of support – provide explicit and intuitively compelling grounds to critique our most troublesome penal practices. First and foremost, the premise of universal human dignity makes clear that incarcerated Americans are human rights bearers who, despite their penal status, are entitled to certain freedoms that are essential for their wellbeing. In addition, the premises of agency and vulnerability, taken together, provide grounds for securing these freedoms in ways that both respect incarcerated individuals’ powers of choice *and* fully address their welfare needs. As I discuss in detail later, this moral foundation can help us derive ethical guidelines for developing a reintegration policy agenda that’s just and humane as well as cost-effective.

In turn, the CA’s political principles require unconditional recognition and fulfillment of every citizen’s central capability entitlements. These principles help to clarify the scope and nature of our society’s obligations to incarcerated Americans:

(i) *Respect for full and equal humanity.* First, as a matter of universal human dignity, the CA’s core imperative applies to *all persons*. Justice requires that we as a society secure for all Americans, regardless of criminal history, a threshold level of the central capabilities. If all Americans are entitled to essential freedoms in virtue of human status, it’s unjust to withhold these for any reason. This aspect of the imperative underscores the moral failure of our penal system, which deprives incarcerated adults of various central capabilities as a consequence of criminal convictions: sometimes overtly by law, and at other times “collaterally” or by neglect.

(ii) *Threshold levels of capabilities.* The CA’s core imperative requires a minimum *threshold* of the central capabilities for each person. The notion of a threshold pushes us to determine what a minimally decent quality of life looks like in our society, and to pay special attention to those who fall below that measure. Given the many unmet needs of incarcerated Americans, this notion gives us a framework for setting policy priorities. Among which demographic groups, geographic regions, or carceral institutions do we observe many people falling below acceptable thresholds for the central capabilities? Justice requires that we focus our

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<sup>92</sup> In cases where a proposed capability has robust support, consensus may be relatively easy to reach. Otherwise, extensive activism, outreach, and debate may be necessary; in such cases, the debate should focus on how the contested capabilities are implicated in human dignity. Nussbaum, *Creating Capabilities*, 29, 32.

<sup>93</sup> Nussbaum, *Creating Capabilities*, 36–39.

resources on those groups and places. At the same time, the threshold requirement acts as a check on resource allocation, requiring that we invest resources in remedying the largest capability deficits (i.e. among highly disadvantaged prisoners) before assisting others who are already above the threshold (i.e. relatively privileged non-incarcerated citizens).

(iii) *Measures that make capabilities real.* The CA's core imperative requires two kinds of practical measures: (1) enabling people to develop the relevant internal capacities, and (2) providing external conditions in which they can freely and fully exercise such capacities. This breakdown sharpens our understanding of how we as a society have wronged incarcerated Americans, and why many attempts at penal reform have failed: we've established some high-level legal guarantees, but these measures won't secure justice in the absence of sufficiently detailed institutional reforms and program implementation plans. Today, incarcerated Americans have formal rights to several (though not all) of the central capabilities; and yet, because we've failed at one or both of the tasks required to make capabilities real, few incarcerated Americans enjoy more than a few of the central capabilities at levels adequate for a decent quality of life.

(iv) *Remedial measures.* The CA's core imperative entails an obligation to take remedial measures when it can't be fulfilled. The notion of tragic choice indicates that failure to secure central capabilities for incarcerated Americans reflects not just an economic but an ethical failure: even if constrained by a lack of resources, we bear responsibility for *choosing* to breach certain entitlements and not others, and for maintaining structures in which such choices must occur. Since this failure is an *injustice*, it obligates us to pursue short-term redress and long-term reform.

In sum, by considering our penal system through the lens of the CA, we see that incarcerated Americans are (1) morally entitled to central capabilities not formally granted to them by law; as well as (2) legally entitled to central capabilities not effectively secured to them by public institutions. Further, we see that, given our failures to secure the central capabilities to which they're morally and legally entitled, we have a collective obligation – a shared political responsibility – to take remedial measures of immediate redress as well as long-term reform.

### 3.2 Capability entitlements of incarcerated Americans

Since we as a society have failed to secure threshold levels of the central capabilities for incarcerated Americans as a class, we're collectively obligated to pursue remedial measures of redress and reform.<sup>94</sup> We must bring as many members of this class as close as possible, as soon as possible, to threshold levels of the central capabilities; and we must reform our penal institutions so that, going forward, they treat incarcerated Americans justly and humanely.

These obligations are complicated by two characteristics of incarcerated Americans as a class: their legal and moral status as *criminally culpable*, and their social and material status as *highly disadvantaged*. Their culpability apparently provides grounds for limiting their capability entitlements, whether for public safety or for penal purposes. Meanwhile, their disadvantaged status seems to provide grounds for prioritizing their capability entitlements, as a direct application of the CA's core imperative. In the interests of crafting an ethically coherent policy agenda, below I explore both sets of implications and establish that they're ultimately compatible.

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<sup>94</sup> See Appendices A, B, and C for background on mass incarceration, its disproportionate impact on disadvantaged groups, and specific ways in which imprisonment impedes various aspects of individuals' wellbeing.



### 3.2.1 Culpability as a basis for restrictions

Incarcerated Americans are, at least in theory, a class of *culpable* citizens. They are behind bars because they have been convicted by a system designed to punish crimes: acts that society deems unacceptably damaging to others or to civic life generally. How might their culpability qualify our obligations toward them under the CA? Might culpability *weaken* entitlements to threshold levels of the central capabilities, and/or other capabilities?

As a preliminary point, given the injustices and biases that infect our public institutions, we must keep in mind the issue of moral standing, as discussed in Chapter 2. While it's beyond the scope of this project to delineate *which* convicted individuals our society does or doesn't have standing to punish, we must note that this distinction exists. That is, when determining collective obligations toward people caught in our penal system, different normative considerations apply to cases in which we have standing to punish, and those in which we don't.

#### *Cases in which we don't have standing to punish*

In cases where we lack standing to punish, we may still have a limited right and duty to restrict the rights and freedoms of individuals who have committed crimes – those commonly called “offenders.” This right and duty, as discussed in Chapter 2, may be grounded in civic obligations and natural duties to secure public safety for *all* citizens. In terms of the CA, we can understand this right and duty as grounded in society's core imperative to maintain the conditions of peace and stability required to secure all citizens' central capabilities.

Where certain “offenders” present a significant risk of inflicting serious harm to others, i.e. undermining others' central capabilities, we may impose restrictions on them to reduce this risk to acceptable levels. But, as noted in Chapter 1, such restrictions must be tailored to public safety purposes – not any moralistic penal purposes, such as retribution, which we lack standing to pursue. While public safety restrictions might, in practice, resemble practices used for penal purposes, they must be designed and limited with reference to their non-penal rationales.

Public safety rationales, insofar as they're rooted in the CA's core imperative, don't permit sacrificing any individual's fundamental entitlements to secure others'. Thus, public safety measures must never compromise a criminally culpable citizen's entitlements to threshold levels of central capabilities, i.e. by trading them off to secure collective social benefits or even other citizens' capabilities. While restrictions may infringe the peripheries of a given central capability, they must never breach the threshold required for basic human decency.

#### *Cases in which we do have standing to punish*

Despite problems of fairness and accuracy in our criminal justice processes, we can posit that *at least some* incarcerated Americans have violated civic obligations and natural duties, and that we as a society have standing to punish *at least some* of them. In those cases, we may have a right (and, Kantians believe, a duty) to place explicitly *punitive* restrictions on individual rights.<sup>95</sup>

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<sup>95</sup> As discussed in Chapter 2, many incarcerated Americans may have viable moral objections to being punished, for example, based on claims that they're excused from certain civic breaches due to society's failures of reciprocity, or that we as a society lack standing to punish them due to our failures to treat them humanely. But it's reasonable to imagine that not *all* incarcerated Americans are in a position to raise these objections. So we can grant for the sake of argument that, for some, their crimes are unexcused and we as a society do have standing to punish them.

The CA then compels us to ask: Must effective punishment *necessarily* involve restricting rights and freedoms? Either way, what degree of capability restriction is permissible?

Interpreting “restriction” in the broadest sense, the answer to the first question is *yes*: punishment always restricts rights and freedoms, at least insofar as it affords no opportunity to choose whether to be punished. But in a narrower sense, it’s not so clear that the answer is *yes*. We can imagine forms of punishment that serve various penal purposes – retribution, utility maximization, behavioral correction, moral condemnation, restitution – and that, apart from being mandatory, don’t deprive individuals of other rights or freedoms. Consider German, Dutch, and Swedish prisons: while these facilities restrict freedom of movement, they place individuals in conditions that otherwise afford a decent quality of life both during and after imprisonment.<sup>96</sup>

Further, even if our answer is *yes* in this narrower sense – for example, if we believe that for certain crimes or certain offenders, punishment necessarily requires a total loss of several important rights – few would argue that we can legitimately disregard *all* the rights and freedoms of those punished. Recall our Chapter 2 discussion of reciprocity’s limits: In *most* instances of crime, we generally agree that offenders retain their status as citizens, and hence their basic civic entitlements. And in *all* cases, even extreme cases where crimes are so heinous or persistent as to sever civic bonds, offenders retain their humanity, and thus their human rights to be treated with dignity. These are indeed the norms underlying our federal constitutional standards prohibiting cruel and unusual punishment, as well as analogous international human rights standards.<sup>97</sup>

Under the CA, this means that any offenders subject to punishment are still entitled, as human persons and as members of society, to threshold levels of all central capabilities. Just as *non-punitive* public safety restrictions must never compromise central capability entitlements, the same is true for explicitly *punitive* restrictions. Penal practices may impose restrictions, but must not push anyone below a threshold of basic human decency.

In sum, we as a society have a limited right and duty to restrict rights and freedoms of certain offenders: in some cases, for public safety purposes only; in other cases, for explicitly punitive purposes. But out of respect for human dignity, such restrictions may never compromise individuals’ central capability entitlements. Culpability leaves these basic entitlements intact.

### 3.2.2 Disadvantage as a basis for remedies

Culpability aside, incarcerated Americans are a class of *highly disadvantaged* citizens – not only because our criminal justice system disproportionately convicts and sentences the underprivileged, but also because imprisonment itself inflicts enduring disadvantages.<sup>98</sup> Indeed, a

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<sup>96</sup> See Reiter, Sexton, and Sumner, “Denmark Doesn’t Treat Prisoners Like Prisoners”; Subramanian and Shames, *Sentencing and Prison Practices*; Chammah, “Prison Without Punishment”; Turner and Travis, “What We Learned From German Prisons”; Larson, “Why Scandinavian Prisons Are Superior.”

<sup>97</sup> See *Brown v. Plata*, 131 U.S. 1910 (2011), at 1928 (explaining that “although prisoners may be deprived of rights that are fundamental to liberty,” they “retain the essence of human dignity inherent in all persons . . . that animates the Eighth Amendment prohibition against cruel and unusual punishment”; in particular, deprivation of a basic life necessity such as health care is “incompatible” with such dignity and “has no place in civilized society”). See also Human Rights Watch, “International Human Rights Standards Governing the Treatment of Prisoners.”

<sup>98</sup> Our penal system’s *inequality* and its *inhumanity* – its biased operations and its brutal nature – are two distinct matters of injustice. For my purposes it suffices to note that, as a result of both realities, incarcerated Americans constitute one of our most materially impoverished and socially marginalized demographic groups. However, other

vast majority of incarcerated Americans suffer from major deficits in *all* the central capabilities – as a result of poverty experienced in childhood, inhumane conditions endured in prison, or both.<sup>99</sup> How do these disadvantages impact our obligations toward incarcerated Americans? Do the circumstances surrounding their needs *heighten* our obligations to secure their capabilities?

Indeed, insofar as their deprivations are of a kind that no member of a civilized society should endure, we must provide remedies out of respect for human dignity. And insofar as their deprivations are due to the failures of our social systems and public institutions, we must provide remedies as a form of redress. Meeting the capability needs of incarcerated Americans, then, is a matter of both basic justice and corrective justice: providing what they're due as persons entitled to a decent existence, as well as restoring that which we've wrongly taken or withheld.

Our past and ongoing failures to secure the central capabilities of incarcerated Americans amount to failures of justice, grounding a collective obligation to provide remedies. The severity of their deprivations, along with their resulting from injustice, makes this obligation practically and morally pressing: worthy of special priority. Therefore, we do have *heightened obligations* to target the most severe capability deficits affecting incarcerated Americans, and to move as many of them as possible toward adequate central capability thresholds as soon as possible.

### 3.2.3 Culpability and disadvantage: The upshot

Incarcerated Americans are marked by both culpability and disadvantage: two characteristics that seem to yield two distinct sets of implications regarding our collective obligations to uphold their rights and freedoms. But upon careful application of the CA, we see that the two sets of implications are fully compatible in principle:

- *Criminal culpability* provides grounds to restrict certain rights and freedoms, but only in the manner and to the degree necessary to serve legitimate public safety or penal purposes. Such purposes never justify restricting central capabilities beyond a threshold of basic decency.
- *Social and material disadvantages* provide strong grounds to prioritize unmet basic human needs – that is, central capability deficits. Where these disadvantages and deficits are due to structural injustice, special priority is even more strongly warranted.

In sum, while culpability justifies some peripheral constraints on capabilities, it leaves intact the core of those central capability entitlements that disadvantaged status makes worthy of special priority. As such, with respect to incarcerated Americans, we as a society have (1) a limited and conditional moral rationale for restricting their rights and freedoms, short of breaching their central capability entitlements, and (2) a heightened and unconditional obligation to remedy their central capability deficits.

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writers and researchers have focused on illuminating precisely how bias and brutality intertwine in our penal system. Regarding the role of racism in mass incarceration, see Alexander, *New Jim Crow*; regarding the ways in which penal practices essentially criminalize the poor, see Dolan and Carr, *The Poor Get Prison*; regarding the interplay of race- and class-based exclusion in mass incarceration, see Wacquant, “Class, Race and Hyperincarceration.”

<sup>99</sup> See Appendices B and C for information on various forms of disadvantage that are common among incarcerated Americans, including those preceding imprisonment as well as those caused by it.

### 3.3 Parameters for disaggregating and prioritizing capability needs

How, then, should we prioritize among the many pressing capability needs created by structural injustice? As a starting point, we can look to general implications flowing directly from the CA's moral premises. But to navigate the practical challenges of reforming and transforming our correctional system, we'll need more precise principles for setting priorities.

#### 3.3.1 General normative guidelines

Under the CA, each society must ensure that all citizens are free to achieve the essential elements of wellbeing. The ultimate norm governing this imperative is respect for the dignity of persons, which in turn entails recognizing their vulnerability and upholding their agency.<sup>100</sup>

(i) *Respecting dignity*: Respect for dignity must be the normative focal point of any policy agenda. The key question is: "What measures are required to show full respect for each person's equal human dignity?" In making policy decisions, then, we must never allow economic costs to trump those capability entitlements that are rooted in each person's humanity.<sup>101</sup>

(ii) *Recognizing vulnerability*: Recognizing vulnerability means, in part, devoting special attention to the capability deficits of the most disadvantaged persons: those with the poorest access to resources and the lowest conversion factors. More broadly, it means rejecting standardized approaches to development and reform, such as programs that dispense resources on a blindly equal basis and thereby leave the greatest needs unmet.<sup>102</sup>

(iii) *Upholding agency*: Concern for agency, in turn, requires upholding each person's powers of reasoned choice. This means treating capabilities as direct targets of policy, and functionings as only hoped-for fruits of exercised capabilities. In other words, we must design policies to secure people's opportunities to flourish as they choose, rather than force people to achieve specific forms of wellbeing regardless of their own reasoned choices.<sup>103</sup>

As such, the CA's moral premises serve as general guidelines for reasoning about our capability-related policy challenges. Taken together, these norms provide a solid foundation for broadly justifying and outlining our policy agenda to promote reintegration.

#### 3.3.2 Specific policy principles

In an era marked by mass incarceration, however, we need more nuanced guidance to navigate the enormous practical challenges of securing redress for penal injustice. Given the myriad capability deficits suffered by millions of incarcerated Americans – not to mention their

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<sup>100</sup> Nussbaum, *Creating Capabilities*, 32–33; Dixon and Nussbaum, "Children's Rights," 571.

<sup>101</sup> Nussbaum, *Creating Capabilities*, 29–33; Dixon and Nussbaum, "Children's Rights," 555, 557.

<sup>102</sup> Nussbaum, *Creating Capabilities*, 127–128, 132–141; *Frontiers of Justice*, 159–160, 278–279; Dixon and Nussbaum, "Children's Rights," 557, 572.

<sup>103</sup> It means, for example, ensuring people have the *capability* of being well nourished, while allowing them to decide what, when, and how much to eat per day; as well as allowing freedom to fast – to forgo the *functioning* of being well nourished – for religious, cultural, or other purposes. On this point, the CA directly and deliberately departs from utilitarianism, which focuses on material satisfaction and favors policies that maximize cost-efficiency. In contrast, the CA's core commitment to dignity forbids policy decisions that impede the exercise of agency by overriding people's choices. See Nussbaum, *Creating Capabilities*; 25, 30–31.

families, particularly their children – *complete* redress won't be achievable in the near future.<sup>104</sup> We need to begin somewhere, though, and we need ethical principles for clarifying priorities and allocating resources as we attempt to apply the general normative guidelines set forth above.

As a point of departure, it's instructive to consider Nussbaum's arguments for giving special priority to the capability entitlements of children: a class whose members obviously lack the maturity and culpability that characterize incarcerated adults, but who share the characteristic of being legally and materially dependent on others for a significant period. In Nussbaum's view, prioritizing children's rights is justified by two considerations: first, their relative vulnerability, which is due to immaturity as well as legally sanctioned dependence; and second, the relative plasticity of their essential capacities – including the capacity to develop mature powers of agency – which makes investments in their capabilities particularly cost-effective over time.<sup>105</sup>

Although incarcerated adults should by no means be treated the same as children – this would violate their dignity as mature human persons – their relative vulnerability and potential for future development provide analogous grounds for reasoning about their capability entitlements. Thus, while carefully noting the significant moral and developmental distinctions between these classes, I'll draw on Nussbaum's reasoning about children's rights to delineate specific principles for addressing incarcerated adults' capability entitlements.<sup>106</sup>

### *Principles for recognizing vulnerability*

As discussed above, incarcerated Americans are marked by socioeconomic disadvantages that make them highly vulnerable, that is, materially unable to meet their essential human needs without external support. But another key source of vulnerability lies in their custodial status as inmates: “wards of the state” who are legally dependent on their captors for their basic welfare. Accounting for the vulnerability of incarcerated Americans, therefore, means addressing the severe capability deficits they suffer both during and after incarceration, as a result of both disadvantages suffered before conviction and additional disadvantages imposed by inhumane or infantilizing penal practices. Thus, we need an approach to vulnerability that recognizes their special needs for resources and protections due to their disadvantages and temporary dependency, yet that doesn't disempower them or unduly magnify the effects of their dependency.

In seeking nuanced policy principles to guide our treatment of incarcerated Americans, it's helpful to consider the normative roles played by vulnerability in the areas of children's and women's rights respectively, and to use these examples as points of departure.

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<sup>104</sup> After three decades of penal escalation, our society has only recently shifted course in seeking to shrink the prison population and support pathways to reintegration. As of this writing, our prisons confine about 2.2 million adults; nearly 7 million remain under some form of correctional custody; and about 65 million have a criminal record. Bureau of Justice Statistics, *Correctional Populations in the United States, 2014*. Regarding the long-term destructive impact of incarceration on the families and children of those incarcerated, see Wildeman and Western, “Fragile Families”; Murray et al., “After Parental Incarceration”; Travis and Waul, *Prisoners Once Removed*.

<sup>105</sup> Dixon and Nussbaum, “Children's Rights,” 550–583.

<sup>106</sup> Another relevant consideration is that our harsh penal practices cause significant, enduring, and undeserved harm to the vulnerable children of incarcerated American adults. See Wildeman and Western, “Fragile Families”; Murray et al., “After Parental Incarceration”; Travis and Waul, *Prisoners Once Removed*.

(i) *The case of children: Temporary vulnerability and paternalism.* As Nussbaum notes, children depend on adults for many important aspects of their lives. Because their physical and mental capacities aren't fully developed, children are physically and emotionally dependent on adults.<sup>107</sup> Further, because laws and social arrangements formally limit their rights to govern their own activities, children are economically and materially dependent on adults as well.<sup>108</sup>

Legal limitations on children's autonomy are justified by their inability to navigate the adult world effectively. In particular, laws give parents broad decisional rights regarding children's welfare (e.g. health care and schooling) because children lack emotional and choice-making maturity; and laws that mandate primary education and ban child labor are designed to ensure children have the space and support they need to develop. At the same time, certain laws are designed to shelter children against harmful actions by their parents or guardians. In short, legal constraints and protections concerning children are designed to protect them in their most vulnerable phases of life, and to ensure the conditions they need to grow into healthy adults.<sup>109</sup>

But once individuals reach adulthood, such constraints and protections fall away; they become mature rights-bearers in the law's eyes. Paternalistic legal constraints on children are properly temporary and conditional: they apply only until the age of maturity, and they operate to promote long-term freedom. As such, we can plausibly interpret these constraints as reflecting respect for the dignity of children as particularly vulnerable, still-developing human individuals.

(ii) *The case of women: Falsely imputed vulnerability and patriarchy.* When analogous paternalistic measures are applied to mature adults, however, our assessment must be more critical. Historically, when the law has constrained adult women's choices regarding their private affairs – including decisions about reproduction, education, and work – it's often done so based on social norms and legal theories that deny women's mature choice-making capacities. In some cases, women's choice-making capacities may not have been *maximally* developed since they'd been unjustly deprived of equal access to educational and professional development; but insofar as women are mature adults capable of reasoned choices, we as a society now recognize that purely gender-based constraints on their autonomy represent an affront to their human dignity.<sup>110</sup>

(iii) *Principle for incarcerated adults: Protection but not infantilization.* What about incarcerated American adults? Because of their incarceration, their status is partly analogous to that of children. But insofar as they're mature adults subjected to artificial restrictions, their situation is like that of women under a patriarchal regime.

Like children, incarcerated adults are vulnerable on account of their physical immobility, as well as their legal and material dependence on others – namely state actors – for their basic welfare. Confined to penal facilities, they have limited opportunities for paid work, typically

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<sup>107</sup> Children lack physical maturity until about age 10; they also lack cognitive and emotional maturity until late adolescence. The very young also lack mobility, such that they're at the mercy of their surroundings for cognitive and emotional stimulation and stability. Dixon and Nussbaum, "Children's Rights," 573–574.

<sup>108</sup> Children lack the skills and training to earn wages, and they're legally barred from engaging in significant wage labor. In most countries, parents or guardians have broad rights to decide where children will live or go to school, and how they should be represented legally and politically. Dixon and Nussbaum, "Children's Rights," 575–576.

<sup>109</sup> Dixon and Nussbaum, "Children's Rights," 576–577.

<sup>110</sup> Dixon and Nussbaum, "Children's Rights," 576; citing *Planned Parenthood v. Casey* 505 U.S. 833 (1992) at 897–898 (criticizing common-law principle that "a woman had no legal existence separate from her husband").

earning very low wages. While they're in custody, the state is constitutionally mandated to meet their essential physical needs by providing decent shelter, nutrition, hygiene, and medical care.<sup>111</sup>

Thus, as in the case of children, the law should provide protections for incarcerated adults for as long as they're made vulnerable by their custodial status. In particular, the law should protect them from the effects of malice, neglect, or other misconduct by state actors on whom they rely for survival.<sup>112</sup> Further, the law should protect these adults through the early phases of post-release adjustment to society: upon emerging from enforced dependency, many are vulnerable to poverty and illness as they reassume the burden of securing their own welfare.<sup>113</sup>

Unlike children, however, incarcerated adults have reached the age of mature rights-bearers under the law. Further, like adult women subjected to patriarchal rules, the class of incarcerated adults includes many individuals who – despite having attained chronological maturity and some degree of mature agency – have been deprived of access to education, subjected to infantilizing legal and institutional rules, and prevented from making reasoned choices about their lives. Thus, just as patriarchy fails to respect the dignity of female adults, a repressive penal system fails to respect the dignity of incarcerated adults by falsely denying and unduly constraining their agency.

Penal policies and practices are unjust, then, when they needlessly entrench and intensify what should be a temporary and limited state of dependency, instead of providing supportive pathways to reduce dependency over time. As such, we should reject policies that sweepingly deny agency and impute vulnerability to incarcerated adults in blanket ways. We should seek instead a nuanced approach that fully recognizes the sources and degrees of their vulnerability, and just as fully respects their rights and capacities to exercise agency as mature adults.

(iv) *Summary.* A penal reform agenda that accounts for vulnerability must enable us to diagnose and address the most pressing needs of incarcerated adults, while supporting their capacities to make reasoned choices about their lives. In sum, properly accounting for the vulnerability of incarcerated Americans requires (1) addressing heightened capability deficits created by socioeconomic disadvantages, (2) instituting preventive and protective measures to minimize abuse and neglect by state actors, and (3) affording opportunities to exercise agency in ways that affirm their dignity, enabling them to choose how to manage their own vulnerabilities in preparation for release into society.

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<sup>111</sup> See *Rhodes v. Chapman* 452 U.S. 337 (1981) (prison conditions violate the Eighth Amendment when they cause “serious deprivation of basic human needs” or of “minimal civilized measure of life’s necessities”); *Wilson v. Seiter* 501 U.S. 294 (1991) (prison conditions must not deprive individuals of basic human needs such as food, warmth, or exercise); *Estelle v. Gamble* 429 U.S. 97 (1997) (government must provide medical care for prisoners).

<sup>112</sup> While such protections exist on paper, they're difficult to enforce: the legal burdens of raising and proving claims of violation must be borne by the very individuals whose vulnerability requires protection. See *Rhodes v. Chapman* (petitioners bear the burden of showing that conditions involve “wanton and unnecessary infliction of pain” and are “grossly disproportionate”; it’s not enough to show conditions are restrictive and harsh); *Estelle v. Gamble* (petitioners bear the burden of proving “acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs,” constituting “unnecessary and wanton infliction of pain” in a manner “repugnant to the conscience of mankind”; it’s not enough to show an accident or even medical malpractice occurred).

<sup>113</sup> Such protection is lacking. Federal and state governments have begun to support reentry initiatives in recent years, but the quality and extent of service provision remains inconsistent across jurisdictions. See Mears and Cochran, *Prisoner Reentry*; Rhine and Thompson, “Reentry Movement in Corrections”; Travis et al., *Growth of Incarceration*, 351–353.

### *Principles for upholding agency*

The above discussion of vulnerability has emphasized the importance of respecting the agency of mature adults. But for many incarcerated Americans, especially those serving extremely long sentences, the capacities for reasoned choice may atrophy or become warped in the prison environment. Further, many actually lack these capacities upon entering the penal system, due to factors such as cognitive disabilities, mental illnesses, emotional disorders, chronic addictions, or inadequate opportunities for education and healthy development.<sup>114</sup>

Thus, we need an approach to agency that responds to the needs of all these individuals in ways that uphold their dignity. In our effort to derive nuanced principles, it's helpful to consider three categories of incarcerated adults in turn: (i) those who possess mature capacities for reasoned choice; (ii) those whose capacities for reasoned choice are significantly underdeveloped or impaired; and (iii) those whose powers of agency are non-functional and irreparable.<sup>115</sup>

*(i) Where capacities for agency are developed and functional.* Generally, respect for the dignity of mature adults requires upholding their right to exercise agency: to make reasoned choices about the capabilities they pursue and try to turn into functionings. Since the exercise of agency is essential to human flourishing, the CA holds that capabilities, not functionings, should be the direct targets of most policies. Policies must secure individuals' freedoms to flourish as they choose, not force individuals into specific forms of wellbeing for society's benefit.

As discussed above, limited restrictions on adult offenders' rights and freedoms may be justified if narrowly tailored to serve legitimate public safety or penal purposes. But in order to be consistent with respect for human dignity, such restrictions must never compromise any individual's entitlements to threshold levels of central capabilities, and must be no more restrictive and enduring than required by the legitimate public safety or penal purpose they serve.

Accordingly, we should pursue penal policies and practices that, in addition to making threshold levels of all central capabilities accessible for incarcerated Americans, also respect each individual's reasoned decisions whether to exercise them. We should likewise be wary of approaches that force incarcerated individuals into specific functionings, without regard for their reasoned choices, in order to make them more "manageable" inmates and save public resources. Such approaches fail to respect incarcerated individuals as mature adults.

*(ii) Where capacities for agency are underdeveloped or impaired.* As for incarcerated adults whose powers of reasoned choice aren't fully mature or functional, respect for their dignity requires enabling them to develop or restore these powers as far as possible. Since the exercise of agency is integral to the exercise of capabilities, the CA holds that a just society must be as serious about developing powers of agency as it is about securing central capabilities. So,

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<sup>114</sup> As noted above, while in prison, most incarcerated Americans experience deprivations that not only constrict agency in the short run, but also damage capacities to exercise agency in the long run. See Appendices B and C.

<sup>115</sup> Many rights-based approaches treat agency as a prerequisite for claiming rights and liberties. For the CA, in contrast, agency is a precondition for *exercising* freedoms effectively, but not for being fully entitled to *access* those freedoms. Thus, the CA views people with mental disabilities as fully entitled to equal respect for their dignity. If a person's agency is underdeveloped, this fact doesn't diminish her humanity or her moral entitlements; rather, it creates a *heightened* imperative to support the development of her associated faculties so she can fully exercise her freedoms in the future. As such, the CA is distinctive in providing grounds not only to respect powers of agency, but also to develop or repair them as needed. See Nussbaum, *Frontiers of Justice*, 96–98, 195–211.



for adults whose agency is underdeveloped for lack of education or supportive conditions, we should secure these elements. Likewise, for those whose capacities for agency are damaged by stress or trauma, we should afford proper treatment to facilitate recovery to the extent possible.

As a matter of political morality, adults in these cases are analogous to children in several interrelated respects. First, as noted above, they're dependent and thus vulnerable to abuse and neglect: in addition to being materially dependent on guardians for basic welfare, their imperfect capacities for agency make them mentally dependent on these same guardians to make decisions about their day-to-day lives. Second, they have potential for growth and maturity, and thus their dependency shouldn't be treated as absolute and permanent: they should be afforded the resources and environments they need to develop into mature decision makers and rights bearers.

Accordingly, we should pursue penal policies and practices that, in addition to diagnosing and addressing central capability deficits, also diagnose and address remediable deficits in the capacities required for reasoned choice. We should reject approaches that ignore such deficits and simply impose harsh penalties for poor prior decisions, and that neglect to provide opportunities to improve decision-making capacities. We should also reject approaches that too quickly label "difficult" individuals as incapable of mature agency and, rather than provide them opportunities to develop the relevant capacities, restrict or withhold such opportunities.

*(iii) Where capacities for agency are non-functional and irreparable.* As for incarcerated adults whose capacities for reasoned choice are totally lacking and beyond repair, respect for their dignity requires promoting their *material* wellbeing, even if social, emotional, and cognitive wellbeing are unattainable. Even if their lack of agency precludes flourishing as fully functional persons, the CA calls for good-faith efforts to enable as healthy and dignified an existence as possible, and to afford special protections due to the vulnerability that inheres in lacking agency.

As a matter of political morality, adults in these cases are analogous to children in their material dependency, but dissimilar in that they lack the same potential to grow and mature. Indeed, the dependency of these adults, if not greater in degree than that of young children, is more extreme in its permanence. Thus, they are at least as vulnerable to abuse and neglect as children are, and insofar as they can never develop the mental or social capacities to provide for themselves, their need for special protection lasts indefinitely.

For most of these impaired adults, it makes little sense to keep them behind bars, at least for any of the purposes purportedly served by our penal system. As for those who lacked agency at the time of their alleged crimes, they can't be culpable in any meaningful sense, and no penal purpose can be served by incarcerating them. And as for those whose capacities of agency were intact at the time of their crimes but were irreparably impaired thereafter, we can plausibly conclude that any legitimate penal purpose has become moot. As such, these adults should be released from the penal system and placed in safe conditions that ensure their material wellbeing.

In a subset of such cases, where adults have incorrigible cognitive and behavioral problems that pose serious risks of harm – e.g., they tend to engage in violence while lacking any understanding or control over their actions – it may make sense to confine them for non-punitive public safety purposes. Such adults also don't belong in the penal system. The CA requires that, out of respect for their human dignity, we place them in secure conditions that both prevent them from harming others and ensure their material wellbeing.

Accordingly, we should pursue penal policies that, in addition to addressing deficits in agency that are partial and remediable, also diagnose those that are complete and irreparable. Since the exercise of capabilities is impossible for individuals who lack agency, our policies should secure those essential functionings that they can attain even without agency, allowing them to access a quality of life that is as dignified as possible.

At the same time, we must exercise great caution in assigning individuals to this category. We must not dismiss individuals as hopelessly incapable of agency simply because it's costly or difficult to fulfill their central capability entitlements. If they have any potential to develop and flourish, the CA requires that we secure their freedoms to do so. Thus, we must be scrupulous in establishing fair and accurate diagnostic procedures.

We must also exercise great caution in upholding adequate standards of care for individuals in this category. We must not minimize our obligations to secure their material welfare simply because they can't fully perceive or appreciate these provisions. And we must not compromise our standards of care for these individuals simply because they don't have conventionally "productive" lives ahead of them. Respect for their human dignity requires that we pursue measures that best secure their overall wellbeing under the circumstances.

*(iv) Summary.* A penal reform agenda that upholds the value of agency must enable us to diagnose varied capacities for reasoned choice among incarcerated adults, and to provide appropriately differentiated measures that (1) protect and preserve these capacities when they're present and intact, (2) develop and repair these capacities when they're weak or impaired, and (3) respectfully promote material aspects of wellbeing when such capacities are absent or irreparable.

Since agency is integral to the exercise of central capabilities, all incarcerated Americans are entitled to conditions that enable them to preserve, develop, or repair their capacities for agency as appropriate for their capability needs. Just as we must never compromise their central capability entitlements, we must never override their agency for the sake of cost or convenience. Even if incarceration must involve some limits on certain freedoms, we must ensure that as many incarcerated Americans as possible will be fully equipped to exercise agency in pursuit of their central capabilities upon their release, or soon thereafter.

### *Principles for cost-effectiveness*

To summarize the implications of the policy principles derived above:

- Given that our penal system disproportionately incarcerates disadvantaged citizens, and given that incarceration itself both aggravates and multiplies capability deficits, we should establish policies to diagnose and reduce incarcerated Americans' greatest central capability deficits.
- Given that incarcerated Americans are made materially and legally dependent on the penal system during incarceration, we should establish policies that protect them from abuse and neglect, while respecting their agency as adult persons.
- Given that agency is integral to the exercise of capabilities, and given that many incarcerated Americans are at risk of leaving prison with underdeveloped or impaired capacities for agency, we need policies that diagnose and reduce, to the extent possible, deficits in these capacities.
- Given that some incarcerated Americans are unlikely ever to acquire the capacities required for agency, we should secure their material welfare as well as protect them from abuse and neglect; in many cases, this means moving them to safe conditions outside the penal system.

Establishing and implementing the above policies will entail significant investments of resources over time. As public resources are limited, we need guidelines to make policy decisions that are both ethical and cost-effective. Below I clarify why and how cost-benefit analysis should inform our decisions; and I introduce two concepts, fertile functioning and corrosive disadvantage, that can help us minimize injustices caused by tragic choices we need to make.

(i) *The subordinate role of cost-benefit analysis.* Under the CA, if a class of citizens has fallen below the threshold of a decent quality of life, as incarcerated Americans have, respect for dignity requires prioritizing their welfare needs over less-urgent freedoms of more well-situated citizens. The CA requires such a policy choice even if it's costlier than the alternative.<sup>116</sup>

That said, while such a policy choice may require large up-front expenditures, it yields long-run savings if the individuals served are effectively empowered. It's well established that this is true for young children, since they have high potential to develop into healthy and productive citizens under supportive circumstances, as well as great susceptibility to enduring and costly disabilities if subjected to adverse circumstances. A growing body of evidence indicates this is also true for incarcerated adults, who in most cases have significant potential for rehabilitation and/or development yet face great risk of adverse outcomes, depending on the resources and opportunities provided to them. As such, investing as early as possible in the healthy development of our most vulnerable citizens can be cost-effective as well as humane.

Typically, our public discourse regarding these investments elevates cost-effectiveness as an end in itself, invoking the value of dignity as a footnote if at all. Especially in the penal context, public officials and advocates tend to emphasize society's material interests rather than individuals' essential entitlements. Only peripherally do they argue that securing the welfare of each citizen, whether disadvantaged child or incarcerated adult, is a matter of basic moral decency and social justice.<sup>117</sup> The CA insists that we flip this emphasis: dignity must be our top concern, and cost-benefit calculations must serve as a tool for achieving justice. We must seek to manage our resources effectively, that is, so as to allocate them as humanely as possible.<sup>118</sup>

For example, when deciding how to invest resources, we might use cost-benefit analysis to determine which services will yield large and life-changing benefits to disadvantaged citizens at a low marginal cost. Our analysis might then help us conclude that failure to provide such services would be an affront to the dignity of the disadvantaged, especially if we have sufficient

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<sup>116</sup> See Nussbaum, *Creating Capabilities*, 56–58; Dixon and Nussbaum, “Children’s Rights,” 586–587. As noted above, most incarcerated Americans experience deprivations that not only constrict agency in the short run, but also damage capacities to exercise agency in the long run. See Appendices B and C.

<sup>117</sup> Regarding child welfare, the prevailing utilitarian argument is that it's in society's best interest to invest in early education and health care for young children. Such investments yield great dividends over a lifetime, not just for each child but for the institutions to which she later contributes. See Pepper and Zimmerman, “Capitalists for Preschool”; Heckman, “Disadvantaged Young Children”; Grunewald and Rolnick, “Early Childhood Investment.”

A parallel argument prevails in the penal context: it's in best society's interest to provide incarcerated adults with education, health care, and social services; and to ensure their access to housing and employment on release. By doing so, the state enables them to become productive citizens rather than repeat offenders, and thereby grows the tax base while reducing system costs. See Petersilia, *When Prisoners Come Home*, 260–261 (noting that good reentry programs “save money in the long run”), 264 (arguing that reentry reform is worth investing in “not only because it will be good for prisoners returning home,” but because it's “ultimately be good for [society] at large.”)

<sup>118</sup> On this point, the CA departs explicitly from utilitarian approaches. See Nussbaum, *Creating Capabilities*, 47–56, 69–100; Dixon and Nussbaum, “Children’s Rights,” 578–579.

resources to do so. Conversely, when seeking ways to streamline spending, we might use cost-benefit analyses to discern which services are yielding low marginal benefits to mostly well-off citizens while depleting scarce resources. Our analysis might then help us conclude that respect for the dignity of worse-off citizens, including incarcerated Americans, requires redirecting resources to meet their more urgent needs, especially if we have cost-efficient means to do so.<sup>119</sup>

In sum, under the CA, cost-benefit analysis should inform but never dictate our policy choices: economic factors alone can never justify a decision to prioritize some capability needs over others. The ultimate goal of policy must be full empowerment of all citizens; and the focus of policy assessment must be individual wellbeing, not total or average wealth.

(ii) *Fertile capabilities and corrosive disadvantages.* Since we can't redress every incarcerated American's central capability deficits immediately, the CA requires efforts to promote maximal realization of their central capabilities over time. The challenge, then, is to balance two tasks: (1) addressing acute central capability deficits as soon as possible; and (2) reforming structures to enable long-term development of all central capabilities. The notions of fertile capability and corrosive disadvantage can help us balance these tasks in an ethical way.<sup>120</sup>

A *fertile capability* is a capability that's likely to foster many other capabilities, of the same person or of other people. The capability of practical reason, for example, bolsters one's ability to marshal available resources in pursuing other capabilities. Likewise, the capability of education fosters valued skills and experiences that in turn create a range of social and economic opportunities. A *corrosive disadvantage*, on the flip side, is a deficit or disability that triggers multiple forms of capability failure. Cognitive and emotional disorders, for example, can damage one's freedoms to work, stay healthy, and maintain relationships. Similarly, stigma – a barrier to the capability of social affiliation – causes stress that damages the capabilities of emotional and bodily health, while also impeding access to education, employment, and civic engagement.<sup>121</sup>

Both concepts are instrumental for identifying strategic intervention points as we strive to address many capability needs using finite resources. By investing heavily in fertile capabilities right now, we can reduce the resources required to support related capabilities in the future; we can thus achieve greater progress, per dollar spent, toward fully securing all central capabilities. And by eliminating acute forms of corrosive disadvantage, we can directly improve our ability to secure numerous capabilities in a shorter period. In this way we can avoid spiraling costs, trigger self-reinforcing gains, and maximize the capability-expansive impact of each dollar we invest.

(iii) *Summary.* Where capability needs are urgent, resources are limited, and large-scale systemic reform is needed, the CA requires that we manage resources prudently. We should use cost-benefit analysis to inform policy choices, with a view to setting priorities in ways that best uphold human dignity right now. We should also focus resources on supporting fertile capabilities and reducing corrosive disadvantages, so as to minimize the number and impact of our tragic choices over time. In applying these principles, key first tasks are (1) mapping out the most urgent central capability deficits to be addressed immediately, and (2) identifying fertile capabilities and corrosive disadvantages to serve as strategic targets. To these tasks I turn next.

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<sup>119</sup> See Dixon and Nussbaum, "Children's Rights," 579–580.

<sup>120</sup> See Nussbaum, *Creating Capabilities*, 44–45; Dixon and Nussbaum, "Children's Rights," 580–583.

<sup>121</sup> *Ibid.* (citing Wolff and De-Shalit, *Disadvantage*).

### 3.4 Central capabilities, fertile capabilities, and reintegration

Facilitating reintegration means preparing incarcerated individuals to exercise their essential freedoms upon release, and enabling them to build healthy lives in society over time. Our society's commitment to reintegration, then, can be understood as a special case of its commitment to ensuring a life worthy of dignity for every member of society.

Nussbaum's list of central capabilities can thus properly serve as a rubric, or at least a point of departure, for reintegration-oriented reforms. As a matter of political morality, if these ten capabilities are essential to a minimally decent quality of life, we should treat them as a checklist when assessing the needs of incarcerated individuals and designing pre- and post-release support systems. And as a matter of ethical cost-effectiveness, we should identify intervention points that improve access to many of these particular capabilities at once.

In fact, Nussbaum's central capabilities mirror those major areas of need that many researchers and practitioners have established as vital to success in reintegration. Below I make these parallels explicit, and then I identify key fertile capabilities and corrosive disadvantages we should focus on as we work to support the long-term flourishing of incarcerated Americans.

#### 3.4.1 Central capabilities as a reintegration checklist

According to Nussbaum, the central capabilities are "areas of freedom so central that their removal makes a life not worthy of human dignity."<sup>122</sup> She designates ten such capabilities, which are listed below (along with paraphrased definitions):

##### **The Central Capabilities**

1. *Life* (freedom to live out a normal life span; to avoid premature death);
2. *Bodily health* (freedom to have good health, nourishment, and physical shelter);
3. *Bodily integrity* (freedom to move about without risk of violent assault);
4. *Cognition* (freedom to use the senses, imagination, and powers of thought; to experience and produce creative works; to use the mind in free expression; to experience pleasure and avoid non-beneficial pain);
5. *Emotions* (freedom to experience healthy and varied emotional connections, feelings, and development);
6. *Practical reason* (freedom to form normative beliefs; to reflect critically in planning one's life);
7. *Social affiliation* (freedom to live with and toward other people; to experience respectful treatment and be free from humiliation);
8. *Connection to nature* (freedom to interact with animals, plants, and nature); play (freedom to play and enjoy recreation);
9. *Play* (freedom to play, laugh, and enjoy recreational activities);
10. *Control over one's environment* (freedom to engage in political processes; to hold property and be safe from arbitrary search and seizure; to seek and engage in work under humane conditions).<sup>123</sup>

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<sup>122</sup> Nussbaum, *Creating Capabilities*, 31–32.

According to Nussbaum, this list reflects basic standards of wellbeing that are shared across all cultures and intellectual traditions. Thus, while the language is broad to permit context-appropriate interpretation in different societies, the ten listed capabilities are presented as the non-negotiable moral entitlements of any human person anywhere.<sup>124</sup>

Sen prefers not to endorse any such list, arguing that the substance and relative priority of various capability entitlements should be worked out through public deliberation in each political community. Sen and others believe that a list like Nussbaum's may hinder democratic decision-making processes that are crucial to individual and collective self-determination.<sup>125</sup>

For this project's specific purposes, we can sidestep this debate, since Nussbaum's central capabilities largely mirror those areas now well established as high-priority needs among incarcerated Americans, and as factors significantly affecting odds of successful reintegration. These five key areas are listed below (along with their associated central capabilities):

### **High-Priority Needs in Reintegration**

- a. *Employment*: access to work programs in prison, and legitimate gainful employment upon release (directly associated with control over one's environment);
- b. *Education*: access to adequate educational programs both in prison and upon release (typically discussed as a stepping stone to employment, but in practice directly associated with cognition, emotions, practical reason, and affiliation);
- c. *Family relations*: ability to maintain contact in prison and reunite upon release (directly associated with emotions, social affiliation, and possibly play);
- d. *Health care*: access to adequate services and resources for maintaining good health in prison and upon release. This includes care and treatment for *physical* wellbeing (directly associated with bodily health and life), but it also includes:
  - i. *Mental health*: access to continuous care and treatment in prison and upon release (directly associated with cognition, emotions, and practical reason);
  - ii. *Substance abuse treatment*: access to continuous care and treatment in prison and upon release (directly associated with bodily health and emotions);
- e. *Housing*: access to adequately safe, stable, and hygienic shelter upon release (directly associated with bodily health and bodily integrity).<sup>126</sup>

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<sup>123</sup> For simplicity and clarity, I've renamed some of the central capabilities and paraphrased their explanatory details. See Appendix C to see an unedited version of the list as set forth in Nussbaum, *Creating Capabilities*, 33–34.

<sup>124</sup> See Nussbaum, *Creating Capabilities*, 32–33, 36, 106–112.

<sup>125</sup> See Sen, "Capabilities, Lists, and Public Reasons," 77–80.

<sup>126</sup> See James, *Offender Reentry*, 12–15; Travis et al., *Growth of Incarceration*, 195–196; Baer et al., *Challenges of Prisoner Reentry*; Gaynes, *Reentry*, 11, 26–44.

Of Nussbaum's ten central capabilities, nine are directly implicated in at least one of these five key areas of need.<sup>127</sup> Given this substantive congruity, even if we accept Sen's philosophical reasons not to canonize Nussbaum's list for *all* purposes, we have scientific and pragmatic grounds to accept it for the purpose of guiding penal reform and reintegration policy. Thus, we can fruitfully use the list as a normative standard: an ethical checklist of freedoms that incarcerated Americans should not be excessively deprived of for any reason, including public safety or punitive purposes.

While correctional scholars and practitioners have already begun to identify concrete steps and policy recommendations in each of the five areas of need, an important next step is to incorporate CA principles explicitly. This will entail specific interpretive commitments and deliberative tasks: first, equating "progress" and "success" in each area with the expansion of key capabilities; second, determining which capabilities should be deemed central (whether all ten on Nussbaum's list, a subset thereof, or others); and third, defining the scope and substance of our political commitments regarding each central capability, including thresholds of decency.

### 3.4.2 Fertile capabilities and corrosive disadvantages as analytic tools

Once we've adopted the CA as a framework for reintegration and explicitly incorporated central capabilities into needs assessments, a further important step is to apply the concepts of fertile capability and corrosive disadvantage as analytic tools for crafting strategic interventions.

For starters, we can consider each of the five key areas of need, broadly, as an area of fertile capability and corrosive disadvantage: each area represents an aspect of wellbeing that impacts all the other areas, and thus plays an influential role in a person's freedom to achieve reintegration overall. For example, as I'll discuss at length in Chapter 4, the freedom to pursue a quality education – especially at the college level – supports a person's success in all five areas of need by her expanding employment options, better positioning her to provide for family members, and thereby improving her access to health care and stable housing.

Further, we can refine our analysis by looking *within* the five areas of need to identify more precisely defined fertile capabilities and corrosive disadvantages: activities or resources that prove especially impactful in a person's reintegration, such that having access to them not only supports her progress in a given area of need *but also* creates cascading effects that remove barriers and expand central capabilities across all five areas. For example, as I'll argue in Chapter 5, the freedom to construct a redemptive self-narrative directly engages the central capabilities of practical reason and social affiliation, which in turn play pivotal roles across all five areas of need by enabling a person to navigate all her options more purposefully as well as by strengthening her community-based support network.

Fertile capabilities and corrosive disadvantages are both conceptually and practically intertwined. As a conceptual matter, both refer to optimal intervention points for promoting wellbeing: fertile capabilities for supporting capability expansion, and corrosive disadvantages for preventing capability failures. As a practical matter, many fertile capabilities are fertile

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<sup>127</sup> The one central capability not overtly accounted for among these five areas is "connection to nature." Notably, however, a small but growing number of correctional programs across the country have this central capability as their focus, and have shown promising (albeit anecdotal) results. Gardening and dog training programs are among the most common and well-publicized examples of such efforts. Insofar as these programs hold potential to develop multiple capabilities in a cost-effective manner, they call for further experimentation and research.

precisely because their capability-expansive effects directly alleviate capability-restrictive effects of corrosive disadvantages. Thus, we reap many of the same analytical benefits by studying a corrosive disadvantage as by studying a related fertile capability.<sup>128</sup>

Particularly in the context of reintegration, given that the five areas of need are highly interconnected, it's useful to analyze fertile capabilities and corrosive disadvantages in tandem. Often, the most direct and effective way to reduce a major corrosive disadvantage will be to support one or more fertile capabilities. With this in mind, below I begin to demonstrate how both concepts can focus our analysis of the capability needs at stake in correctional reform, and how they can guide our efforts to craft an ethical yet cost-effective policy agenda.

### 3.4.3 Incarceration itself as a corrosive disadvantage

Of course, the most far-reaching corrosive disadvantage affecting incarcerated Americans is *incarceration itself*, especially if we understand this to encompass (1) the condition of being punitively confined and cut off from society, (2) the physical and psychological effects of that experience, and (3) the social and legal consequences of having been sentenced to prison. Each of these components, in turn, is associated with a slew of disabilities and barriers.

At the heart of the third component, often called “collateral consequences” of conviction, is the effect of stigma: the attribution of moral taint for having been convicted and punished for a crime. Due to this stigma, incarcerated Americans face a debilitating web of legal restrictions, institutional exclusions, and informal discrimination upon release.<sup>129</sup> These barriers, combined with physical and mental harms inflicted by the penal system, undermine individuals’ progress in all five areas of need – education, employment, family relations, health, and housing – triggering multiple capability deficits and ultimately impeding access to all the central capabilities.<sup>130</sup>

Given that the institutions of mass incarceration are so deeply embedded in our social arrangements, the corrosive disadvantage of incarceration cannot be completely eliminated overnight. This being so, the CA counsels that we respond strategically to the array of capability needs it has created, grouping and prioritizing these needs in light of their relative urgency and their susceptibility to create cascading effects:

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<sup>128</sup> But sometimes we may have methodological reasons to deploy one concept rather than the other. When we study a particular attribute or barrier as a *corrosive disadvantage*, the focus is on tracing negative ripple effects that result in multiple capability failures. This approach seeks to understand the pathways to these capability failures so we might prevent them, and to assess the nature and degree of these capability failures so we might remedy them.

In contrast, when we study a particular freedom as a *fertile capability*, the focus is on tracing positive ripple effects that result in the expansion of multiple capabilities. This approach seeks to understand pathways to these benefits so we can protect and streamline them, and to assess these benefits’ importance so we can determine the cost-effectiveness of various approaches to securing them.

<sup>129</sup> For example: Americans with criminal records typically have trouble acquiring housing and gainful employment, on account of (1) legally sanctioned exclusion from certain categories of housing and jobs, (2) legally permissible disqualification by potential landlords and employers who can access their records, and/or (3) legally impermissible discrimination by potential landlords and employers who can access their records. See Rodriguez and Emsellem, *65 Million*; Bushway, Stoll, and Weiman, *Barriers to Reentry?*; Carpenter, “Think It’s Hard Finding a Place to Live?”; National Reentry Resource Center, “Reentry Myth Buster: On Public Housing.”

<sup>130</sup> Since the five areas are interrelated, a capability deficit in any one area acts as a corrosive disadvantage, triggering deficits in the other areas. For example, if a person can’t acquire housing, several adverse effects follow: she’s at greater risk for poor health; less able to hold a job or to study; and less likely to keep her family together.



- To fulfill our short-run obligation of redressing acute injustices (past and ongoing), we should identify the most morally pressing capability deficits currently associated with incarceration, using cost-benefit analysis to inform but not dictate our resource allocations within each of the five key areas of need;
- To fulfill both our short-run obligation of redressing acute injustices and our long-run obligation of securing full justice, we should identify and target corrosive disadvantages within each key area of need, and invest strategically in supporting fertile capabilities; and
- To fulfill our long-run obligation of securing full justice, in part by expanding access to central capabilities across all five key areas of need, we should target the corrosive disadvantage of *stigma*, as well as specific legal and institutional barriers to reintegration that tend to reflect and reinforce this stigma.

In recent years, advocates and reformers have made progress on each of these fronts – but mainly in reliance on policy frameworks that define each task in utilitarian terms, while downplaying (or leaving implicit) their normative dimensions. As we continue to make progress, we’d do well to draw explicitly on the CA as a toolkit for grounding our policy choices in a collective commitment to human dignity, and for pursuing interventions that don’t simply reduce system costs but more meaningfully redress structural injustices and promote human flourishing.

When we take seriously the CA’s core imperative to secure a decent quality of life for all, it becomes clear that incarceration itself is a corrosive disadvantage because our penal system essentially debilitates and stigmatizes individuals, and these effects can’t be compatible with any legitimate public safety or punitive measure in a civilized society. In the same vein, as a matter of redress for prior injustices, the CA sets forth compelling policy reasons to focus our resources on two fertile capabilities – higher education and self-narrative – that, in today’s political climate, would otherwise be difficult to defend as high-priority interventions in the correctional field.

### **3.4.4 Education as a fertile capability**

In our society, quality education is a contested and unequally distributed good. Just as incarceration disproportionately impacts the most disadvantaged Americans, quality education is regularly accessible only to the privileged, acting as an amplifier of socioeconomic inequalities. Indeed, low educational attainment is among the strongest predictors of incarceration in our society, as well as a predominant characteristic among the incarcerated population.

Quality education at any level is also a fertile capability in its own right, fostering a range of skills, affiliations, and credentials that make lifelong health and stability more readily attainable. Among incarcerated Americans, any amount of educational attainment is positively correlated with better outcomes in all the high-priority areas of need, and higher education in particular is strongly predictive of success in reintegration.

Thus, under the CA, we have reasons to treat education not only as a high-priority need in reintegration, but also as an *entitlement* for individuals whose capabilities have been stunted by poor access to education. Providing quality education for this population is a matter of both corrective and prospective justice: it’s a way to redress the injustice of unequal access, mitigate the harms of inhumane punishment, *and* secure a just future by fertilizing central capabilities.

A formidable barrier to these steps is the corrosive disadvantage of criminal stigma, which drives popular perceptions that incarcerated Americans are less than full citizens and, as such, don't deserve educational opportunities. This stigma has long prevented voters and public officials from devoting resources to education (and other capabilities) for incarcerated adults. In recent years, the voting public has somewhat warmed to the notion of basic education and job training as means to reduce recidivism; but support for such programs remains limited, conditional, and rooted in stereotyped perceptions of prisoners. So, despite some growing willingness to meet the basic welfare needs of incarcerated Americans, there remains strong resistance to expanding their access to quality education, especially higher education.

For these reasons, it's important to explore the notion of education as a fertile capability, illuminating its robust connections to all the central capabilities, as well as its moral significance as a scarce and unjustly withheld social good. These are the tasks I undertake in Chapter 4.

### **3.4.5 Self-narrative as a fertile capability**

Social stigma, as noted above, is a corrosive disadvantage for incarcerated Americans, restricting their pathways to reintegration: it fuels various forms of legal exclusion and informal discrimination, impeding day-to-day survival as well as high-level policy reform. Eliminating this stigma will require transforming our society's cultural narratives about crime and prison, along with popular perceptions of criminals and prisoners: spoken and unspoken assumptions about who they are or can become. It will require affirming incarcerated Americans' moral status as persons possessing dignity, their capacities to exercise responsible agency, their many forms of vulnerability, and their potential to develop as individuals and to contribute to society.

This task, the transformation of cultural narratives and popular perceptions, requires expanding and deepening the public discourse so that it can support alternative narratives and perceptions. As such, in large part, it requires equipping incarcerated Americans to construct their own self-narratives both as "former offenders" and as valuable members of society. Indeed, respect for their dignity and agency requires enabling them to participate in public discourse and contribute to its development, especially when that discourse concerns who they are and what they're entitled to as citizens. Thus, insofar as we as a civilized society are committed to penal reform, reintegration, self-determination, and democracy, we must pursue measures that empower all incarcerated Americans to develop and articulate their authentic self-narratives.

As I argue at length in Chapter 5, we have other compelling reasons to secure the capability of self-narrative for incarcerated Americans. Empirical research indicates that self-narrative reconstruction may be essential to rehabilitation, and that certain self-narrative templates in particular can promote a slew of vital social and psychological benefits, specifically for adults navigating reintegration. In fact, efforts to secure the conditions necessary to develop an adaptive self-narrative – i.e. the acquired skills, social interactions, and learning opportunities – would also redress several resource deficits that are common among incarcerated Americans. Thus, the freedom to develop a self-narrative is not only a means to removing the corrosive disadvantage of stigma; it's also a means to redress multiple capability deficits and expand multiple capabilities that are vital to incarcerated Americans' long-term wellbeing.

### 3.5 Capabilities as a matter of political responsibility

The CA offers a robust framework for developing a policy agenda that fulfills our shared political responsibilities toward incarcerated Americans. At the same time, it affords conceptual resources that enrich our understanding of that shared responsibility.

To bear our political responsibilities regarding our penal system, as I argued in Chapter 2, we must redress the harms produced by structural injustice and reform the social arrangements that have been producing them. Our political responsibilities will be discharged when we've established a correctional system that (1) treats all individuals with respect according to their status as equal citizens and human persons; (2) enables them to take responsibility for their actions and ultimately for their life trajectories, which includes ensuring they have opportunities to remedy the causes and consequences of their crimes; and (3) equips them to join others in bearing responsibility for the justness of social arrangements, including penal practices.

Through the lens of the CA, we can understand the harms produced by penal injustice as numerous interrelated capability deprivations that violate thresholds of basic decency. Further, using principles derived from the CA, we can flesh out the imperatives and objectives entailed by our obligations of redress and reform, enriching our vision of just correctional system as follows:

1. A correctional system that treats all individuals with due respect for their dignity is one that brings everyone up to threshold levels of all central capabilities, and in ways that properly account for their vulnerability – that is, their specific forms of dependency and disadvantage.
2. A correctional system that empowers individuals to take responsibility for their conduct is, in part, one which diagnoses and addresses existing deficits in agency, namely by cultivating and repairing the capacities for reasoned choice as needed; and it is one which also respects the reasoned choices of mature adults, namely by providing but not imposing opportunities to grow and to develop their full potential.
3. A correctional system that equips individuals to join their fellow citizens in bearing political responsibility for justice is one that ensures their post-release success in all the key areas of need – education, employment, family relations, health care, and housing – so that, with their welfare needs (central capability entitlements) secured, they are well positioned to contribute meaningfully to their families, workplaces, civic institutions, and political communities.

Finally, by taking seriously the CA's imperative, we arrive at the conclusion that the development of fertile capabilities (such as education and self-narrative) and the elimination of corrosive disadvantages (such as stigma and harsh incarceration itself) are matters of heightened obligation. These intervention points should be the focus of collective action as we, diversely situated Americans, work together to bear our political responsibility for penal injustice.

## 4 Higher Education as a Fertile Capability for Incarcerated Americans

*“If we have reason to believe that educational opportunities, both inside prison and in the community, can improve reentry outcomes – by reducing recidivism, enhancing human capital, improving family functioning, and connecting returning prisoners to career opportunities – how would we make that happen?”<sup>131</sup>*

When Jeremy Travis posed this query in 2011, he was addressing advocates and reformers who were eager to tackle the “how” component, in part, because they wholly accepted the “if” component. Numerous empirical studies had established by then that participation in correctional education (“CE”), especially post-secondary correctional education (“PSCE”), can help break cycles of incarceration and recidivism. Since then, such evidence has continued to accrue.

Yet, despite the evidence, the American public remains ambivalent about investing resources in PSCE. While advocates have emphasized that PSCE programs reduce crime and save taxpayer dollars, opponents object that lavishing higher education on criminals is unjust and wasteful. Thus the two sides argue past each other, with neither rooting its arguments in concern for the human dignity, civic membership, or life prospects of incarcerated Americans.

In the interests of upholding our core values as a political community, I argue, we must squarely engage with the questions of political morality that underlie this policy debate. If the key economic question is “What CE policies and programs are *cost-effective* as a matter of tax dollars and human capital?” then the key ethical question is this: “Given the past and ongoing deprivations unjustly suffered by incarcerated Americans, to what educational opportunities might they now be *entitled* as a matter of justice?”

My task in Chapter 4 is to show that the CA can enrich and advance our public discourse by providing answers to this unexamined ethical question – and, specifically, by providing robust grounds for the argument that all incarcerated Americans should have access to quality CE programs, including PSCE programs, that equip them to pursue flourishing lives. By recognizing varied ways in which education enriches human life, the CA clarifies the distinctive roles that quality higher education can and should play in the lifelong wellbeing of incarcerated Americans.

I begin in **Section 4.1** with background, explaining why CE is a high-priority need and tracing PSCE’s scarcity to collective disregard for the wellbeing of incarcerated adults. In **Section 4.2**, I argue that the CA should serve as an overarching framework for CE policy, with human capital and human rights models serving ancillary roles. In **Section 4.3** I establish that, while all forms of CE merit support, PSCE should be prioritized as a fertile capability, in large part because it stands to serve CE’s capability-expansive objectives in distinctly impactful ways. In **Section 4.4**, I engage with objections from conservative and liberal critics, drawing on Nussbaum and Young to uphold my argument for prioritizing PSCE. In **Section 4.5**, I consider the role of stigma as a corrosive disadvantage, and I conclude that access to PSCE is particularly crucial for empowering incarcerated Americans to lead the way in dissolving the roots of stigma.

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<sup>131</sup> Travis, “Rethinking Prison Education,” 3.

## 4.1 Higher education as a willfully unmet need

Correctional experts have designated education as a high-priority need for incarcerated Americans: not only because so many individuals arrive in prison with educational deficits, but also because access to CE can significantly improve their prospects for long-term wellbeing. Yet public support for CE has fluctuated in tandem with shifting political and economic incentives, and funding for PSCE in particular has been singled out for public opposition and elimination.

In light of PSCE's recent history in this country, summarized below, I argue that securing broad support for PSCE will entail a normative shift in public discourse. Rather than appeal solely to political and economic incentives, which have proved unstable, advocates need to adopt a framework that rests on unconditional respect for the human dignity of incarcerated Americans.

### 4.1.1 Confirmed economic and social benefits

As long as current trends continue, about 700,000 Americans will transition from prison to society each year, and roughly half will be re-incarcerated within a few years of release.<sup>132</sup> While the causes of recidivism are complex and difficult to untangle, evidence has made clear that access to education, especially college, can break the cycle.<sup>133</sup>

Most incarcerated Americans have had inadequate schooling and, as a whole, have much lower levels of educational attainment than the general population.<sup>134</sup> But studies show that those who participate in CE prior to release have lower recidivism rates,<sup>135</sup> better job prospects,<sup>136</sup> and better chances for economic stability.<sup>137</sup> Recidivism reduction effects are especially pronounced for PSCE participants,<sup>138</sup> who are also more likely to avoid misconduct in prison, to act as peer mentors and positive role models,<sup>139</sup> to support their children's health and education, to achieve upward social mobility, and to pursue careers that ultimately improve their communities.<sup>140</sup>

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<sup>132</sup> Bureau of Justice Statistics, *Correctional Populations*; Bureau of Justice Statistics, *Recidivism of Prisoners*; California Department of Corrections and Rehabilitation, *2013 Outcome Evaluation Report*.

<sup>133</sup> Mukamal et al., *Degrees of Freedom*, 18.

<sup>134</sup> Nearly two in five incarcerated Americans have failed to attain literacy, compared to one in five among the general population; and about 17 percent of incarcerated Americans have a diagnosed learning disability, compared to 6 percent of the general population. Travis, "Rethinking Prison Education," 3.

<sup>135</sup> CE participation reduces recidivism by 43 percent; PSCE participation by 51 percent; and PSCE completion by up to 72 percent. Davis et al., *Correctional Education* report, 13–14; Mukamal et al., *Degrees of Freedom*, 18. See also Chappell, "Meta-Analysis"; Duwe and Clark, "Effects of Prison-Based Educational Programming"; Lockwood et al., "Effect of Correctional Education."

<sup>136</sup> Individuals with criminal records face major barriers to employment, including discrimination by employers and disqualification by licensing agencies; but earning a credential raises odds of securing a job. Mukamal et al., *Degrees of Freedom*, 19–20 (citing Pager, Western, and Sugie, "Sequencing Disadvantage"); Duwe and Clark, "Effects of Prison-Based Educational Programming"; Lockwood et al., "Effect of Correctional Education."

<sup>137</sup> A growing proportion of jobs require advanced degrees, and individuals with such degrees have better labor market outcomes: lower poverty and unemployment rates, as well as higher incomes. Mukamal et al., *Degrees of Freedom*, 18–19; U.S. Census Bureau, *Educational Attainment*.

<sup>138</sup> Davis et al., *Correctional Education* report, 14–15; Westervelt, "Power of Prison Education."

<sup>139</sup> Life-term prisoners, who typically comprise a significant percentage of PSCE participants, are especially likely to recruit and encourage their incarcerated peers to pursue educational goals. Mukamal et al., *Degrees of Freedom*, 44.

<sup>140</sup> Mukamal et al., *Degrees of Freedom*, 20 (citing Comfort, *Doing Time Together*; Manza and Uggen, *Locked Out*).

Thus, while all forms of CE programming have the potential to yield tangible benefits, evidence indicates that PSCE is a particularly effective *and* cost-effective means to reduce tax dollars spent on correctional discipline and law enforcement, to increase contributions to the tax base, and to yield long-term savings by interrupting intergenerational cycles of poverty.<sup>141</sup>

#### 4.1.2 Political and economic drivers of scarcity

Despite the evidence in its favor, quality PSCE remains underfunded and scarce, largely as a result of political and economic circumstances.<sup>142</sup> As explained below, the recent decimation of PSCE programs can be traced to a politically motivated act of Congress in 1994, and ongoing efforts to restore these programs have been hampered by budgetary constraints.

##### *Rise and fall of PSCE: 1960s to 1990s*

The rise of PSCE was sparked by two developments in the 1960s:<sup>143</sup> first, a shift in penal philosophy that favored education as rehabilitation; second, establishment of the federal Pell Grant Program under Title IV of the Higher Education Act.<sup>144</sup> Since virtually all incarcerated Americans qualified for student aid based on their lack of income, Pell grants quickly became the main funding source for PSCE.<sup>145</sup> Pell-funded PSCE programs multiplied throughout the 1970s and early 1980s, finding favor among state prison administrators as effective means to improve institutional order and reduce recidivism on the federal government's dime.<sup>146</sup>

But the early 1990s saw the rise of “penal populism” and tough-on-crime policies enacted to appease fearful American voters. As part of this trend, through a provision of the Violent Crime Control and Law Enforcement Act in 1994, Congress categorically disqualified all incarcerated adults from receiving Pell Grants.<sup>147</sup> In the surrounding debates, members of Congress who endorsed this provision made explicit their intent to mollify popular anxieties about crime, the economy, the job market, and access to higher education.<sup>148</sup>

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<sup>141</sup> See Mukamal et al., *Degrees of Freedom*, 20; Davis et al., *Correctional Education* report, 41–47; Chappell, “Meta-Analysis.”

<sup>142</sup> U.S. Dept. of Education, “Second Chance Pell Pilot Program”; RAND Corporation, “Prison-Based Education.”

<sup>143</sup> PSCE programming was relatively rare until the mid-1970s. In 1965, 12 correctional institutions offered degree programs; this figure rose to 237 in 1976, 350 in 1982, and 772 in 1990. The percentage of prisoners in PSCE rose from 6 in 1973 to 10 in 1977, dropped to 9 in 1982, and slid to 7 in 1995. Page, “Eliminating the Enemy,” 361.

<sup>144</sup> The program was originally called the Basic Educational Opportunity Grant Program, and renamed after Senator Claiborne Pell (D-RI) in 1980. Page, “Eliminating the Enemy,” 362.

<sup>145</sup> By 1982, 72 percent of correctional systems used Pell funding for PSCE. Page, “Eliminating the Enemy,” 362.

<sup>146</sup> When Congress voted to cut Pell support for prisoners, it was despite formal opposition by the Federal Bureau of Prisons and by state correctional administrators across the country. The bill also elicited the opposition of then-Attorney General Janet Reno, the Clinton Administration, every major educational organization in the nation, and numerous high-profile civil rights organizations. See Page, “Eliminating the Enemy,” 359, 363.

<sup>147</sup> Although federal support for other forms of CE continued under the Workforce Investment Act (“WIA”) of 1998, Congress limited this stream of support as well. Historically, 10 percent of spending on adult education and literacy had been *reserved* for CE. But the WIA turned this minimum into a *cap*. See Mulhere, “Prison College Programs.”

<sup>148</sup> See Page, “Eliminating the Enemy,” 360.

In fact, the fiscal impact of this decision on the federal budget was minimal.<sup>149</sup> But the intended political message was clear and well received, and the operational effects were drastic. Once the federal government cut funding for PSCE, most state governments followed suit, and the number of PSCE programs began to plummet almost immediately – by 44 percent within a single year. Over the next fifteen years, from 1994 to 2008, that figure dwindled from over 350 to eight.<sup>150</sup>

### *Economic downturn: 2008 to present*

When the 2008 recession hit, state-level spending sharply declined for *all* forms of CE, causing the contraction of literacy, adult basic education, secondary education, and vocational training programs in prisons nationwide.<sup>151</sup> Today, although virtually all prisons offer some form of CE, program quality and capacity remain limited and inconsistent.<sup>152</sup> Meanwhile, PSCE relies on patchworks of funding that vary significantly by state. Of the 32 state prison systems now affording access to PSCE, most require students to pay their own way, and many offer only self-study courses that don't culminate in accredited degrees.<sup>153</sup>

Concerned to address the unmet need for CE, particularly PSCE, private and public actors in some states have begun to develop pilot projects and local partnerships between educational and correctional institutions. Private foundations have played important roles in funding these initiatives, which have generated promising results and a good deal of positive press.<sup>154</sup> In order to sustain these initiatives and bring them to scale, however, broad-based popular support and significant public investments will be necessary.<sup>155</sup>

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<sup>149</sup> As of 1994, grants to incarcerated Americans accounted for \$35 million of \$6 billion total Pell spending: that is, less than 1 percent. U.S. Government Accountability Office, *Pell Grants for Prison Inmates*.

<sup>150</sup> In one year, the number of enrolled PSCE participants dropped by half; in three years, the percentage of institutions offering PSCE declined from 83 to 55. Page, “Eliminating the Enemy,” 359.

<sup>151</sup> Davis et al., *Correctional Education* report, 5, 61–66; RAND Corporation, “Prison-Based Education.” On the bright side, in reauthorizing the WIA in 2014, Congress raised the 10 percent cap on literacy-specific CE spending to 20 percent; it also expanded the category of eligible educational programs. But it remains to be seen whether and how the states will allocate funding under these provisions. See Mulhere, “Prison College Programs.”

<sup>152</sup> Davis et al., *Correctional Education* report, 77; Davis et al., “Correctional Education” brief, 3; Brazzell et al., *From Classroom to Community*, 9–13.

<sup>153</sup> Davis et al., *Correctional Education* report, 66–68, 77; RAND Corporation, “Prison-Based Education”; Mulhere, “Prison College Programs”; Supiano, “3 Things to Know About Higher Education in Prisons.”

As of this writing, the federal government is running a pilot project with a view to reversing the 1994 exclusion. However, even if incarcerated Americans formally regain Pell eligibility in the near future, they currently face limited PSCE options. See U.S. Department of Education, “Second Chance Pell Pilot Program.”

<sup>154</sup> For example, the Vera Institute of Justice has spearheaded a five-year initiative in three states (Michigan, New Jersey, and North Carolina), funded by five high-profile philanthropies, called the “Pathways from Prison to Postsecondary Education Project”; and the Opportunity Institute has spearheaded a four-year initiative in California, partnering with researchers at Stanford and Berkeley Law and with funding from the Ford Foundation, called “Renewing Communities: California Pathways from Corrections to College.” See Vera Institute of Justice, “Pathways from Prison to Postsecondary Education Project,” <http://tinyurl.com/VeraPSCE>; Opportunity Institute, “Opportunity & Justice: Renewing Communities,” <http://theopportunityinstitute.org/opportunity-justice>.

<sup>155</sup> See Mukamal et al., *Degrees of Freedom*, 57–79; Mulhere, “Prison College Programs.”

### 4.1.3 Moralistic roots of political opposition

At present, Americans collectively lack the political will to turn these initiatives into sustainable, far-reaching policies. Despite growing acceptance for more basic forms of CE, voters in some states have fiercely rejected proposals to expand PSCE, and other states have passed laws to limit or ban spending on PSCE specifically. As the public discourse has made clear, such actions are typically not motivated by rational economic concerns alone, but rooted in moralistic narratives of retribution and stigmatization.<sup>156</sup>

The ultimate factor fueling opposition to PSCE today, as in 1994, is not the fiscal cost itself; it's a culturally entrenched set of attitudes and judgments that make voters unwilling to bear that cost, even though the net material benefits would likely be significant. This being so, purely economic arguments – particularly those framing PSCE as an investment in human capital – won't dissolve the most vehement objections.<sup>157</sup>

Human capital arguments draw deserved attention to concrete data and validly spotlight PSCE's cost-effectiveness, but they can't account for the *non-economic* concerns that matter to many individuals and communities on all sides of the debate. Further, these arguments leave intact the root problem of stigma: the collective impulse to treat people with criminal histories as second-class citizens, or as sub-human, even when doing so is fiscally costly. Thus, rather than continue to rely on economic rationales, advocates for PSCE should shift the terms of the debate.

## 4.2 Education as human capital, capability, and right

*Why and how does education matter? Who should have guaranteed access to it? What kind of access, and how much of it, should be guaranteed?* These are the foundational questions at the heart of political debates over PSCE funding. While opponents often frame higher education as a privilege that criminals don't deserve, advocates in turn tend to frame it as an economic investment that promises to transform unskilled criminals into productive workers. Each side characterizes education and its value in a narrow way that talks past the other side, and that fails to consider the full humanity and citizenship of incarcerated persons.

To build a compelling case for significant public investments in PSCE, advocates should instead adopt a normative framework that recognizes a broader range of ways in which education contributes value to human life, and that calls for a robust commitment to the wellbeing of incarcerated persons. This is a framework that the CA, but not the human capital model, can provide. Below I make clear why this is so, arguing for an approach that adopts the CA as an overarching framework, with the human capital and human rights models serving ancillary roles.

### 4.2.1 Typology of education's value

One key to the CA's ethical advantage over the human capital model is its capacity to recognize a fuller range of human needs and values, and accordingly a richer array of normative reasons for improving access to education. The CA holds that education contributes to the quality of life in at least five ways – first through its intrinsic value, and additionally through four distinct forms of instrumental value:

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<sup>156</sup> See Page, "Eliminating the Enemy"; Mulhere, "Prison College Programs."

<sup>157</sup> See Travis, "Reducing Mass Incarceration," 3–4, 8.



- First, education can hold *intrinsic* value: a person may derive direct satisfaction from the learning process, or from the pursuit of knowledge, just for its own sake.
- Additionally, education can play a range of *instrumental* roles, which vary along two dimensions: individual versus collective, and economic versus non-economic.
  - As for *economic* value, education can produce *individual* benefits by enabling a person to find and secure decent employment, thus elevating his standard of living; and, when broadly available, it can produce *collective* benefits by supporting the expansion of a skilled workforce and promoting overall economic growth.
  - As for *non-economic* value, education can yield *individual* benefits by enabling a person to access information, communicate effectively, and engage in self-reflection; and, when broadly available, it can yield *collective* benefits by supporting a culture enriched by diverse perspectives, critical thinking, and meaningful civic engagement.<sup>158</sup>

In a policy-making context, the CA requires that all five roles be accorded normative weight in light of how the benefits associated with each role actually contribute to human wellbeing. Following from the core imperative to ensure access to a decent quality of life for all, the CA calls for policies that will secure for all citizens – especially the disadvantaged – full access to educational opportunities that are essential to achieving a decent quality of life in their society.

In contrast, the human capital model calls for the distribution of opportunities only to those citizens who are likely to produce market value; and it provides weak grounds, if any, for designing programs to accommodate disabilities and meet diverse needs. As such, exclusive reliance on this model can lead to policies that amplify existing inequalities and neglect the most disadvantaged individuals. Below, I unpack these ethical implications for CE.

#### 4.2.2 Human capital model: Education as investment

In the human capital model, an investment is *instrumentally* valuable for the *economic* benefits it yields. Thus, education is valuable insofar as it builds knowledge and skills that boost labor productivity, allowing workers to earn higher wages and to produce greater market value. Accordingly, an education program is deemed cost-effective, and hence a worthwhile investment, when it produces knowledge and skills whose overall market value exceeds the material costs of implementing the program.<sup>159</sup>

This approach has been useful for spotlighting the actual and potential economic benefits produced by CE to date; it also provides useful tools for confirming PSCE’s distinctive cost-effectiveness relative to other forms of CE. But if used as an exclusive lens, the narrow economic focus of this approach leads to several ethically troubling consequences, including (i) exclusion of highly disadvantaged individuals; (ii) inattention to non-economic benefits and obstacles; and (iii) failure to consider individuals as full citizens and complex human persons.

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<sup>158</sup> See Walker, “Reimagining Education,” 117, 121–123; Robeyns, “Three Models,” 70–71; Saito, “Critical Exploration,” 24–25 (citing Drèze and Sen, *India: Development and Participation*, 38–40, 43).

<sup>159</sup> See Walker, “Reimagining Education,” 116–117, 121–123; Robeyns, “Three Models,” 72; Saito, “Critical Exploration,” 24.

First, since the human capital model values education principally as a means to produce economic ends, it can't justify the pursuit of learning for its own sake. Where the "rate of return" on education is unequal across persons, this model suggests that the education of disadvantaged persons is *less* worthy of investment, particularly if they're less likely to develop marketable skills.<sup>160</sup> Indeed, *all* incarcerated Americans face barriers to gainful employment, including but not limited to discrimination based on criminal history; and some are unlikely ever to work due to age or physical condition. Many need extra support to overcome barriers to learning, such as physical or cognitive disabilities. Educating the most highly disadvantaged of these adults may not be cost-effective, and in some cases may yield no tangible benefits. Accordingly, the human capital model would justify excluding some or all of these adults from CE, particularly PSCE, based on their seemingly low potential to derive or produce tangible benefits from education.

Second, since the human capital model recognizes only economic value, it can't account for the social, emotional, or cultural dimensions of educational access and attainment. It overlooks non-economic *benefits*, such as the acquisition of self-confidence, the experience of intellectual growth, and the development of positive relationships; it also neglects non-economic *obstacles* to attainment, such as lack of familiarity with cultural norms, or lack of emotional resources to persist through frustration.<sup>161</sup> With respect to CE, we've seen this model translate into policy choices designed to produce cost savings without regard for social and cultural values (e.g. shifting of resources from academic to vocational programs, and wholesale defunding of PSCE); and approaches to programming that leave intact significant inequalities of access (e.g. failures to address remediable disadvantages stemming from social or cultural barriers).<sup>162</sup>

Third, human capital arguments for CE promote a view of incarcerated students as primarily producers of market value. Such a view may seem more constructive than one that treats them only as social liabilities or worthless outcasts; but in fact it occludes their identities as learners, thinkers, and ultimately citizens and moral agents bearing rights and responsibilities. This capitalistic characterization starkly contrasts with the holistic manner in which most of us consider our own identities and needs as persons, and the respectful manner in which we expect to be treated as members of a civilized society. Further, it leaves little room to consider the requirements of political morality and human decency: our collective obligations to redress past injustices, to respect the capacities of agency, and to address needs arising from vulnerability.<sup>163</sup>

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<sup>160</sup> See Walker, "Reimagining Education," 116–117, 123, 127–128; Robeyns, "Three Models," 72–74.

<sup>161</sup> See Robeyns, "Three Models," 72–74.

<sup>162</sup> See generally Page, "Eliminating the Enemy"; Frey, "Critical Literature Review."

<sup>163</sup> See, e.g., *New York Times* Editorial Board, "A College Education for Prisoners," which urges expansion of prison college programs on the ground that "the most effective way to keep people out of prison once they leave is to *give them job skills that make them marketable employees*" (emphasis added).

Compare: Wesleyan University Center for Prison Education, "Why College in Prison?" which notes that prison education "translates to dramatic cost-savings for the state," but also emphasizing that CE programs have the non-economic benefits of "transformatively impact[ing]" incarcerated students' worldviews, priorities, and aspirations; affording them opportunities to serve as positive role models for their families and communities; creating a safer and more positive environment in prison; and arguing that, "[m]ost fundamentally," PSCE "constitutes a powerful investment in the individual lives of those upon whom society has set its lowest expectations."

See also Frey, "Critical Literature Review," 194–195, observing the prevalence of top-down "human capital ideology" in CE discourse, and the relative paucity of perspectives grounded in "social justice," "humanitarianism," and the lived experiences of incarcerated Americans.

In sum, while the human capital model underscores the real need to make CE policies cost-effective and sustainable, it offers no tools for considering whether they are ethical and just. To rely solely on this model – to treat labor productivity as *the* metric of success – would be to frame policy choices in a manner that obscures the full humanity of incarcerated persons and the multifaceted dimensions of their wellbeing.

#### 4.2.3 Capabilities approach: Education as freedom

In contrast to the human capital model, the CA takes a holistic view of wellbeing and thus attributes value to education for a broad range of normative reasons. First, education has *intrinsic* value as a capability – that is, as an opportunity to pursue learning for its own sake. But education is also *instrumental* in expanding other capabilities, such as the freedoms to engage in critical reflection, to be gainfully employed, and to partake meaningfully in civic activities and political processes. Each of these freedoms, in turn, holds intrinsic value while also yielding various economic and noneconomic benefits.<sup>164</sup>

As a matter of policy design and assessment, then, the CA would assign value to the full range of needs addressed by CE, including acute social and psychological needs arising from poverty and incarceration, not just the need for gainful employment. Equally, the CA is concerned to address the full range of obstacles to educational attainment that incarcerated adults face, including personal conditions (e.g. illnesses and disabilities) and external factors (e.g. physical threats, cultural barriers, and discriminatory practices).<sup>165</sup>

As for allocating resources, the CA calls for the distribution of educational opportunities based on actual need rather than potential productivity, since those who can't work in the labor market may still derive non-economic benefits from CE, and may indeed be unjustly deprived of many such benefits. Likewise, far from excluding disadvantaged persons in order to cut costs, the CA calls for intervening to boost their conversion factors for the sake of justice and decency.

In sum, instead of viewing education as solely a capitalistic investment, the CA views it as a form of freedom that both constitutes and contributes to human flourishing. The CA offers a context-sensitive framework for determining whether and how individuals can benefit from education, what supports are necessary for individuals to secure a full range of educational benefits, and what educational “success” means for students and for programs. Cost-effectiveness plays a role as one among several factors worth considering.<sup>166</sup>

It's worth emphasizing that the CA does not disfavor the role of economic factors in policy analysis: it recognizes that individual and societal wellbeing include economic dimensions, that effective policies must be fiscally sustainable as well as just, and that resource constraints require ethical compromises – that is, tragic choices. But the CA does insist that, while economic factors matter instrumentally to flourishing, capabilities matter intrinsically and must be the ultimate metric of normative assessment.<sup>167</sup>

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<sup>164</sup> Walker, “Reimagining Education,” 117, 121–123; Robeyns, “Three Models,” 70–71, 78; Drèze and Sen, *India*, 38–40; Unterhalter, “Education, Capabilities,” 8–9.

<sup>165</sup> See McCowan, “Education for All,” 293–295.

<sup>166</sup> See McCowan, “Education for All,” 293–295; Walker, “Reimagining Education,” 116–118, 123–128; Unterhalter, “Education, Capabilities,” 5–6, 10.

<sup>167</sup> See Sen, “Editorial: Human Capital and Human Capability” (“we must go *beyond* the notion of human capital, after acknowledging its relevance and reach”); Robeyns, “Three Models,” 72, 74–75.

#### 4.2.4 Human rights framework: Education as entitlement

The CA finds a natural ally in the human rights framework, which holds each government responsible for securing access to essential freedoms based on both their *intrinsic* value and their *instrumental* roles in improving the quality of life. Human rights discourse also mirrors the CA in elevating human flourishing over economic growth as an orienting aim, and in insisting that education should be accessible to all persons, not withheld from those deemed less productive. Given their congruent core principles, these two frameworks complement each other as normative approaches; thus, advocates would do well to draw on both with an eye to the relative strengths of each.<sup>168</sup>

Indeed, while the human rights framework has the apparent advantage of being more politically established than the CA, and hence more broadly familiar, it's subject to strategic drawbacks that correspond to specific strengths of the CA. First, human rights arguments run the risk of reducing rights to legal entitlements, obscuring the fundamental moral entitlements that undergird them. If the right to access education is no more than a legal entitlement, responsibility to fulfill it falls only to government actors that are legally bound to provide it; however, if it's fundamentally a moral entitlement, the responsibility to fulfill it might be borne by all parties positioned to act, including but not limited to state actors. Unlike the CA, which emphatically defines central capabilities as moral entitlements, human rights discourse often glosses over this vital distinction.<sup>169</sup>

Second, and relatedly, the human rights framework runs the risk of reducing rights to formalistic requirements that governments can hide behind, and that have no normative bearing on private parties – as opposed to baselines that public and private parties may build on together, as needed, to fulfill the spirit of the right. Official education policies typically state what rights are guaranteed to whom, and what steps government actors must take to make the rights effective; but in some cases, extraordinary barriers and deficits may require that government actors go beyond their legal duties and collaborate with private parties to ensure that all individuals fully enjoy their entitlements.<sup>170</sup> Unlike the CA, human rights discourse has no normative basis to hold governments and others responsible for bridging such gaps.

As noted above, the human rights framework has the apparent advantage of being broadly recognized and extensively formalized due to its long political history. Compared to capabilities, therefore, human rights are more familiar to the public and perhaps more readily translated from theory to policy. But for the purpose of reframing entitlements to education in the United States, this advantage is limited: although international human rights principles are broadly endorsed in many Western societies, they exert weaker normative force in America, where they take a political and cultural backseat to domestic federal constitutional principles.<sup>171</sup> Thus, human rights arguments for expanding access to PSCE, on their own, may have limited traction with the American public.

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<sup>168</sup> See Robeyns, “Three Models,” 75.

<sup>169</sup> See Robeyns, “Three Models,” 76–78.

<sup>170</sup> See Robeyns, “Three Models,” 77–78.

<sup>171</sup> See Posner, *Twilight of Human Rights Law*.

#### 4.2.5 Capabilities as rights: Educational opportunities as entitlements

In light of the above considerations, a promising approach for American advocates would be to characterize the *capability of education* as a *human right* – to frame adequate educational opportunities as moral entitlements, on par with central capabilities, to be secured for all persons including incarcerated adults. This framing draws on the distinctive strengths of each framework: the discursive power of human rights and the conceptual architecture of the CA.

Characterizing the capability of education as a *human right* helps to underscore that it's a universal entitlement that should be formally guaranteed to every human person, without regard to one's criminal history or potential productivity. Although this point is also advanced by the concept of central capabilities, the familiar rhetoric of human rights can help to communicate it powerfully to a broader lay audience.<sup>172</sup>

At the same time, it's valuable to characterize the substance of this right as a *capability*, establishing that it's not just a formal entitlement to schooling, but a moral entitlement to have genuine access to a meaningful learning experience – which may entail accommodations for disabilities, as well as interventions to combat social, cultural, or institutional barriers. This framing highlights the need for attention to low conversion factors, and the possibility that both public and private actors should help boost these factors for the most disadvantaged.<sup>173</sup>

By characterizing education as a *capability* that constitutes a *human right*, then, advocates can reorient debates surrounding PSCE in a way that clearly prioritizes dignity and emphasizes the shared, context-specific nature of the responsibility to secure educational opportunities for all. That said, while human rights discourse serves the strategic purpose of conveying the entitlement's universal nature, the CA – with its more robust philosophical foundation and conceptual toolkit – should serve as the overarching normative framework.<sup>174</sup>

In sum, it's in the service of the CA's overarching ethical imperatives that human rights discourse, along with human capital arguments, should play *supporting* roles. Of course, many opponents of PSCE won't be swayed by ethical arguments alone, any more than by economic arguments alone. But by adopting the CA as a framework and explicitly invoking its principles, advocates can shine a clarifying light on the core values at stake, as well as on the troublesome cultural and psychological roots of moralistic objections to PSCE. I engage with these moralistic objections later in this chapter. For now, I take a closer look at the objectives CE should serve from the CA's perspective, with an eye to clarifying why PSCE merits normative priority.

### 4.3 Higher education as a fertile capability

The CA provides ethical grounds for distributing educational opportunities to all persons, including the culpable and the disadvantaged, and making those opportunities truly accessible to them. But *what kinds* of educational opportunity should be distributed to incarcerated Americans?

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<sup>172</sup> See McCowan, "Education for All," 291–293; Robeyns, "Three Models," 82–83.

<sup>173</sup> Also, it's important to affirm that the substance of this right is not the *functioning of being educated* but the *capability of education*: freedom to pursue education for any array of intrinsic or instrumental reasons (or not at all). This distinction, which upholds agency, is a key contribution of the CA. See Robeyns, "Three Models," 79. See also my discussion in Chapter 3 of the CA's key analytical concepts and moral premises.

<sup>174</sup> See McCowan, "Education for All," 291–296; Robeyns, "Three Models," 81–83.

That is, what objectives should CE programs be designed to serve, if not merely the reduction of recidivism and the production of market value? And, in pursuing these objectives, why is it insufficient to provide CE up to the secondary level – that is, why and how does PSCE matter?

Below I address these questions in turn, deriving principles from the CA to guide CE policy decisions and, specifically, to justify heightened public investment in PSCE programming on account of its distinctive potential to fertilize essential capabilities. Since capabilities scholars have yet to consider CE specifically, I draw insights from their writings about education in general, higher education in particular, and capabilities in non-correctional contexts.

### 4.3.1 Key objectives of correctional education

The CA holds that education policy and practice, like all social policies and practices, should increase individuals’ opportunities to exercise freedoms they enjoy and pursue lives they have reason to value. According to CA scholars, a decent education promotes this end by both *expanding capabilities* and *developing agency*.<sup>175</sup> The importance of these educational functions is heightened in the CE context, due to the significant (and typically debilitating) deprivations and restrictions experienced by incarcerated adults. Thus, as elaborated below, all CE programs should be valued, designed, and assessed in reference to these functions as their major objectives.

#### *Expansion of capabilities*

The expansion of capabilities has two interrelated dimensions. First, education should expand the set of *abilities* one may exercise, namely by cultivating a range of useful skills. Second, education should expand the set of *opportunities* one may pursue, namely by making possible valuable academic or career options. By conferring a formal credential along with useful acquired skills, a decent education should qualify individuals to pursue various life paths that wouldn’t otherwise be open to them.<sup>176</sup>

What abilities and opportunities should CE programs expand? Not just those associated with labor productivity, but the full range associated with wellbeing, including those robustly linked to success in reintegration. Nussbaum’s central capabilities list,<sup>177</sup> given its congruence with the key areas of need in reintegration,<sup>178</sup> can serve as a template for identifying abilities and opportunities that are instrumental to the long-term flourishing of incarcerated adults.<sup>179</sup>

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<sup>175</sup> See Walker, “Reimagining Education,” 118–123, 126; Robeyns, “Three Models,” 78–79; Saito, “Critical Exploration,” 27–29; Unterhalter, “Education, Capabilities,” 6–8; Bakhshi et al., “Life Skills Education,” 2–3, 6–8.

<sup>176</sup> Saito, “Critical Exploration,” 27–28.

<sup>177</sup> Nussbaum’s central capabilities are: life; bodily health; bodily integrity; cognition; emotions; practical reason; social affiliation; connection to nature; play; and control over one’s environment. See Chapter 3 and Appendix D.

<sup>178</sup> The five high-priority areas of need are: employment; education; family relations; health care (including resources and services for physical health, mental health, and addiction recovery); and housing. See Chapter 3.

<sup>179</sup> Notably, the international community has identified four “pillars” of an education that adequately prepares students for a healthy and stable life, each of which can be mapped on to a subset of central capabilities: (1) “learning to know,” or *cognitive reasoning skills* (linked to practical reason and cognition); (2) “learning to be,” or *self-management skills* (linked to cognition, emotions, and play); (3) “learning to live together,” or *interpersonal and social skills* (linked to social affiliation and emotions); and (4) “learning to do,” or *practical reasoning skills* (linked to practical reason, life, bodily health, bodily integrity, and control over environment).

### *Development of agency*

The development of agency also has two interrelated dimensions. First, education should equip a person to form normative *judgments* about different forms and uses of freedom, namely to assess whether specific freedoms are worth pursuing in light of one's values.<sup>180</sup> Second, education should equip a person to make reasoned *choices* based on such judgments, namely to make sound practical decisions about one's options. By developing these capacities, a decent education equips students to think and act as autonomous adults. It's particularly vital that CE programs exercise these capacities in ways that prevent their atrophy during incarceration.<sup>181</sup>

The CA further insists that, especially with vulnerable students, efforts to develop agency *must* occur with sensitivity to conversion factors – that is, with attention to the fact that individual choices occur amidst numerous situational variables, each of which can either enable or derail the pursuit of wellbeing. Rather than teach decision-making skills in isolation, stripped of context, CE should enable students to gain realistic knowledge of personal and environmental factors that may expand or constrain their options in the reentry process, as well as strategies for locating resources and navigating barriers to reintegration in all the key areas of need.<sup>182</sup>

### *Intertwinement of freedom and agency*

Since freedom and agency are both vital to human flourishing, the CA insists that all incarcerated adults have access to an array of CE programming that serves *both* key objectives – expansion of capabilities *and* development of agency – not just one or the other. To flourish as a person, it's not enough to have abilities and opportunities at one's fingertips; one should also be able to weigh one's options, to choose among them, and to pursue one's chosen options in ways

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To the extent that these pillars comprise foundational capacities necessary to pursue long-term wellbeing, they should be incorporated in the design and assessment of CE programs. See Delors et al., *Learning*; Tawil and Cougoureux, "Revisiting *Learning*." See also Bakhshi et al., "Life Skills Education," at 7–8.

<sup>180</sup> Saito, "Critical Exploration," 28–29.

<sup>181</sup> Different approaches are appropriate for different individuals, depending on whether they can already function as mature adults. For *mature adults who are already equipped to exercise agency effectively*, they should be free to choose whether to continue developing their capacities to do so; and, ideally, they should have access to optional programming that is geared to their maturity level, and that constructively stretches their capacities of judgment and choice. For *adults with remediable deficits* in the capacities required for agency, certain forms of CE may properly be compulsory. These adults should have access to programming that is appropriate to their learning needs, or at least supplemental resources that reduce barriers to learning. CE programs should support their progress toward effective agency, protecting and developing the relevant capacities as far as possible. But *adults with severe and permanent deficits* may need therapeutic intervention, either in addition to or in lieu of CE. As argued in Chapter 2, such adults don't belong in the penal system.

Regarding the need to tailor educational approaches to differently situated individuals with a view to maximizing each student's exercise of agency over time, see Saito, "Critical Exploration," 25–28; Robeyns, "Three Models," 79; Unterhalter, "Social Justice," 6–8.

<sup>182</sup> This is particularly true of cognitive-behavioral therapy (CBT) programs that purport to reduce recidivism by teaching individuals moral reasoning and decision-making skills. Insofar as CBT emphasizes personal responsibility for one's choices and actions, it's imperative that participants also learn about the social contexts in which they'll be choosing and acting, including material barriers to reintegration and practical tools for overcoming them. Unless the individualistic reasoning of CBT is balanced by context-sensitive pre-release preparation and post-release support, research suggests, CBT participants returning to poor communities are prone to blame themselves for their failures and give up hope. See Kellett and Willging, "Pedagogy of Individual Choice," 256–263.

that reflect one's values. Equally, even if one has a clear sense of personal values and solid decision-making skills, these assets can't lead to wellbeing unless one is truly free to exercise those abilities and opportunities that one has reason to value. Under the CA, then, CE should cultivate the full range of capabilities and powers of agency that are essential for students not only to meet their basic needs, but also to lead a decent life that reflects their interests and values: to attain wellbeing *and* develop autonomy.<sup>183</sup>

Why, then, devote resources to PSCE in particular? Are more basic forms of CE not sufficient, or even more essential, to effectively expanding capabilities and developing agency among incarcerated Americans? And if not, what aspects of higher education make it distinctively effective in promoting these two key objectives within the correctional context? These questions are salient not only in view of today's economic climate, but also for reasons of political morality. As such, below I clarify the basis and extent of our collective obligations regarding the provision of higher education as a form of CE.

#### 4.3.2 Special importance of higher education

From the CA's viewpoint, education at any level is valuable for various intrinsic and instrumental reasons. However, higher education has special value as a "key site for lifelong learning" that builds meaningfully on a person's prior education and powerfully impacts her quality of life, while also serving significant broader functions in society.<sup>184</sup>

For many individuals, higher education is a *fertile capability*. It's a distinctively valuable capability in itself, comprising the freedoms to pursue advanced knowledge, join a privileged learning community, and earn a respected degree. In addition, as noted earlier, higher education actively creates and expands other capabilities, yielding economic and non-economic benefits such as personal development, superior employment prospects, and enhanced opportunities for civic engagement.<sup>185</sup> For these reasons, more so than other levels of education, higher education can play a prolifically capability-expansive role in the lives of incarcerated adults, directly and indirectly reversing many capability-restrictive effects of both incarceration and poverty.

Meanwhile, higher education is a *social good* that is contested in ways that more basic forms of education are not. Unlike primary and secondary schooling, higher education isn't universally accessible, and it conveys relatively scarce public as well as private benefits (e.g. professional services for society, as well as professional status and elevated income for the educated individuals providing them).<sup>186</sup> Secondary schooling and equivalency diplomas, though valued, are not associated with equivalent levels of privilege, status, and tangible reward. PSCE is thus socially significant in ways other forms of CE aren't: it opens new doors for incarcerated Americans – who are otherwise stigmatized and marginalized as a class – to attain elevated social status and thereby to become active and valued participants in public and private spheres.

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<sup>183</sup> See Saito, "Critical Exploration," 25–29; Bakhshi et al., "Life Skills Education," 2–3; Walker, "Widening Participation," 132–34.

<sup>184</sup> See Walker, "Widening Participation," 132–134.

<sup>185</sup> See Walker, "Widening Participation," 132 (citing Schuller et al., *Adult Life*).

<sup>186</sup> For example, a professional degree program translates into not only status and economic benefits for the educated individual, but also public and social benefits for the community and parties whom the individual will professionally serve. Walker, "Widening Participation," 133 (citing Jonathan, "Higher Education Transformation," 31).



Higher education is also a site of *cultural practice and transmission*: a context where certain identities and expectations are validated over others, formally and informally. College-level pedagogy occurs through practices governed by middle-class codes of language and conduct, and students are expected to acquire and master the relevant linguistic and cultural capital. Thus, higher education transmits dominant cultural norms, teaching students what counts as legitimate knowledge and respectable behavior.<sup>187</sup> PSCE, accordingly, is a context where many incarcerated Americans – who may otherwise lack exposure to formal academic discourse and “high culture” – can grapple with such norms and expectations for the first time. Whether they experience this initiation as empowering, oppressive, or both, incarcerated students can thereby learn to navigate social situations and institutions that might otherwise be inscrutable and inaccessible to them.

At the same time, as an institution of power and privilege, higher education has distinct potential to be a site of *disruption or transformation*: a context where students not only learn new subjects, but also choose “new subjectivities” and learn “how to be.” Students gain access to a wide array of knowledge, skills, values, and relationships that can serve as lifelong resources for clarifying their identities, building careers, navigating social spheres, and pursuing intellectual interests.<sup>188</sup> By enabling diversely situated students to access these experiences of growth and learning, higher education can transform individual life prospects as well as disrupt existing social and cultural hierarchies – such as those of race, class, sex/gender, ethnicity, and criminal history. In the same vein, by ensuring that this access extends to disadvantaged Americans in prison, PSCE can significantly improve many individuals’ chances for reintegration, and thereby help remedy broader effects of concentrated poverty, penal injustice, and stigmatization.<sup>189</sup>

Given that higher education stands to play a prolifically capability-expansive role in individual wellbeing, and given its social and cultural significance in our society, the CA’s principles require that access to quality PSCE be expanded as a high-priority element of CE programming. To do otherwise would be an affront to the human dignity of incarcerated Americans, in view of growing evidence that quality PSCE can be not only effective (in preventing recidivism, boosting employment prospects, promoting social mobility, and improving the quality of life for individuals) but also cost-effective (in reducing costs related to crime and punishment, expanding the workforce and the tax base, and saving an estimated five dollars in system costs for each tax dollar invested).<sup>190</sup>

#### **4.3.3 Special role of higher education as a form of CE**

From the CA’s perspective, PSCE, like all forms of CE, should be designed to expand capabilities and develop agency. But given higher education’s special functions, PSCE can and should be designed to serve these objectives in distinctly meaningful and impactful ways.

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<sup>187</sup> See Walker, “Widening Participation,” 133, 134 (citing Baker et al., *Equality*, 23; Bourdieu and Passeron, *Reproduction*, 99; Barr, “Universities after Postmodernism,” 322).

<sup>188</sup> See Walker, “Widening Participation,” 133, 134 (citing Colby et al., *Educating Citizens*, viii; Bernstein, “Symbolic Control,” 23).

<sup>189</sup> See generally Runell, “Desistance Pathways.”

<sup>190</sup> Davis et al., *Correctional Education* report, xv–xvi, xxi; Mukamal et al., *Degrees of Freedom*, 18–22, 43–44.

### *Expansion of architectonic capabilities*

In Nussbaum's CA, the central capabilities of practical reason and social affiliation serve the "architectonic" function of organizing and undergirding the full exercise of *all* capabilities. These two capabilities must be secure in order for people to enjoy all their rights and freedoms in "fully human" ways; thus, these capabilities must be "woven into" all other capabilities worth protecting, so that people are free to act as both decision makers and social beings in exercising every right and freedom available to them.<sup>191</sup>

Indeed, more so than other forms of education, higher education can play a powerful role in expanding the architectonic capabilities – particularly among students from disadvantaged communities where higher education is not the norm, provided that their disadvantages are properly recognized and accommodated.<sup>192</sup> Through rigorous college coursework, students can expand their capabilities of *practical reason* by learning to engage in critical thinking and reflection; to clarify and revise their beliefs; to identify and work toward academic objectives; and to think strategically about their long-term prospects, setting new life goals that their college degree can help them attain. Meanwhile, through interactions within and surrounding classes, students can expand the capabilities of *social affiliation* by building relationships with supportive instructors; interacting and cooperating with peers; forging stronger ties with their families; learning culturally significant norms and materials; and earning socially recognized degrees.<sup>193</sup>

In the PSCE context, *practical reason* can be effectively "woven into" higher education by policies and programs that make course and degree options clear and accessible to diverse adult learners, enable them to make informed decisions about their participation as students, and support students' efforts to formulate and pursue their own academic or career goals. *Social affiliation*, in turn, can be "woven into" higher education by policies and programs that facilitate mentoring relationships between students and instructors, encourage collaboration and friendship among fellow students, and create varied avenues for students' learning experiences to improve relationships with others within and beyond the prison.<sup>194</sup>

As discussed above, higher education bears special social-cultural significance and often demands levels of critical thinking, collaborative learning, and self-management that other forms of education don't. Because of this, PSCE programs can afford opportunities to expand the two

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<sup>191</sup> As Nussbaum sees it, the capability of practical reason – "the opportunity to plan one's life" – enables a person to choose and prioritize among all other capabilities. "Good policy" that supports all the capabilities must respect practical reason, then, since choice is central to the notion of "capability as freedom." In turn, affiliation "organizes" other capabilities in that many kinds of relationships – "familial, friendly, group-based, political" – tend to expand, contract, or otherwise condition one's access to other capabilities. Nussbaum, *Creating Capabilities*, 39–40.

<sup>192</sup> Although CA scholars have not yet studied PSCE, there's a rich literature on the capabilities of working-class and otherwise-disadvantaged learners in higher education. See Walker, "Widening Participation," 137–44; Wilson-Strydom, "Access and the Capabilities Approach," 57–81; Watts and Bridges, "Enhancing Students' Capabilities?"; Walker, *Higher Education Pedagogies*, 89–109; Walker, "Framing Social Justice in Education," 175–176.

<sup>193</sup> See Mukamal et al., *Degrees of Freedom*, 19–20, 43–44, 59–60; Walker, "Widening Participation," 139–140. See also Appendices F, G (regarding documented benefits of San Quentin College Program for incarcerated students).

<sup>194</sup> Conversely, CE policies that fail to "weave in" *practical reason*, such as by imposing unwanted or inappropriate programs on mature adult learners as if they were children, fail to secure the capability of education in a manner worthy of their dignity. See Unterhalter, "Education, Capabilities," 6–8. Likewise, CE policies may fail to "weave in" *social affiliation* by securing access only to distance learning programs, which afford limited interactions with instructors and none with peers. See Mukamal et al., *Degrees of Freedom*, 41–43.

architectonic capabilities that are generally not matched by lower-level CE programs focused on literacy, basic and secondary education, and vocational training. By ensuring that practical reason and social affiliation are “woven into” policies and practices, PSCE programs can play an unparalleled role in bolstering and enriching the exercise of all capabilities, significantly improving incarcerated students’ immediate and long-term quality of life.<sup>195</sup>

### *Strengthening of values and value-driven action*

Just as higher education enriches the exercise of *all* rights and freedoms by expanding the architectonic capabilities, it can empower students to exercise *all* rights and freedoms more deliberately and effectively by developing key elements of agency. *Agency*, the ability to choose and pursue goals that reflect one’s values, is built into the very concept of capability, and it’s especially closely related to the capability of *practical reason*: the freedom to form normative beliefs and reflect critically in planning one’s life. The distinction between agency and practical reason is subtle: practical reason is an architectonic capability (i.e., freedom or opportunity) that makes the exercise of other capabilities fully human; agency is a foundational ability (i.e., power or capacity) that makes the exercise of capabilities possible at all.<sup>196</sup>

As a practical matter, most features of higher education that expand the capability of practical reason also tend to develop the capacities required for agency. For example, when an academic program gives students real *freedom* to clarify their values and reflect critically in planning their lives – such as by encouraging them to define their long-term goals, and giving them tools and incentives to plan their coursework in light of their goals – students can then strengthen the *powers* of judgment and choice that make them effective agents.

As a conceptual matter, though, we can identify certain aspects of PSCE that directly exercise and strengthen key elements of effective agency – core values, normative reasoning, and value-driven decision making – to a much greater degree than other forms of CE tend to do:

- *First*, by engaging with the *substance* of college-level coursework, perhaps most explicitly in humanities courses, students wrestle with intellectual questions that prompt clarification of the core values that ground their normative judgments.
- *Second*, by working through the *practical requirements* of college-level coursework – especially in courses demanding intensive written work and dynamic in-class dialogue – students learn to articulate and respond to reasoned arguments; to manage their time and energy in completing assignments; to incorporate critical feedback; and to take ownership of their words, ideas, work product, and learning processes.
- *Third*, by *enrolling and staying enrolled* in college, students develop distinct academic identities – as students, learners, and future members of desired professions – governed by the values and goals that have led them to pursue higher education. As they work through each course, they must decide how to address new intellectual, emotional, and logistical challenges. Whereas the initial

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<sup>195</sup> The College Program at San Quentin offers a promising case study: students there have reported positive effects that amount to expansions of practical reason and social affiliation, which in turn translate into benefits for cognitive and emotional functioning, as well as improved bodily integrity and control over environment. See Appendices F, G.

<sup>196</sup> Note: The central capability of practical reason, like the central capabilities list as a whole, is a feature specific to Nussbaum’s CA. Sen doesn’t endorse any such list; agency plays a more explicitly central role in his version of the CA, doing much of the work in Sen’s approach that the notions of “architectonic” capability and practical reason do in Nussbaum’s approach. See Robeyns, “Capability Approach: Interdisciplinary Introduction,” 23–26.

decision to enroll reflects each student’s values and aspirations, the ongoing decision to persist until graduation, if not thwarted, tends to consolidate and refine those values and aspirations.

Notably, for the same reasons that PSCE holds distinctive potential to empower disadvantaged students, it holds distinctive potential to disempower them. College programs can (and often do) impose formal requirements, social expectations, or cultural norms on students in a blanket manner that fosters conformity, competition, or intimidation rather than critical thinking, social affiliation, and self-determination.<sup>197</sup> Such risks are heightened for incarcerated adults: many have already had alienating experiences in school, and all are in the infantilized position of having their day-to-day choices and activities monitored and restricted.<sup>198</sup>

Thus, it’s imperative that students be empowered to bear responsibility for their own academic plans and progress, but in a manner that addresses vulnerabilities arising from their incarceration and other disadvantages. More broadly, current and potential students should be included in dialogues about the structure and content of PSCE so that they can give voice to the needs and values that inform their educational pursuits, and so that programming can be designed in response to those needs and values.<sup>199</sup> Such measures can help ensure that students’ freedom and autonomy develop hand-in-hand within the CE context, even if the experience of incarceration is otherwise capability- and agency-restrictive.

### *PSCE as a distinctively fertile capability*

All forms of CE, taken together, constitute an area of fertile capability: a type of opportunity that is likely to foster many other capabilities, both in the life of any given person and in the lives of others affected. Participation in quality CE programs at any level can help reduce recidivism, boost employment prospects, and facilitate reintegration. As such, given the depth and pervasiveness of central capability deficits among incarcerated Americans, all forms of CE programming should be deemed key intervention points that merit public investment.

But among all forms of CE, PSCE is an area of distinctively fertile capability for the multiple reasons discussed above – some of these reasons stemming from the documented effects of PSCE compared to other CE programs, and others stemming from the special status and functions attributed to higher education within our society. Statistically, PSCE is the most robustly linked to positive post-release outcomes noted above. Economically, PSCE is the most cost-effective in boosting labor market outcomes for individuals and for society, as well as in breaking intergenerational cycles of poverty. Socially, PSCE has the most symbolic power to reposition and re-label otherwise-stigmatized persons as members of an educated class who bear respected credentials. Culturally, PSCE is the most likely to equip otherwise-marginalized persons with norms, codes, and forms of knowledge associated with privileged institutions. For all these reasons, PSCE holds unmatched potential to foster many important capabilities that would otherwise remain severely undeveloped – in the lives of incarcerated students, in the lives of their peers and families, and in the collective life of a political community enriched by the educational attainment, upward social mobility, and lifelong flourishing of its members.

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<sup>197</sup> See Walker, “Widening Participation,” 144–145; “Reimagining Education,” 124–125.

<sup>198</sup> See Brazzell et al., *Classroom to Community*, 25.

<sup>199</sup> See Walker, “Widening Participation,” 145.

PSCE, like higher education generally, may not be an appropriate choice for every person; and, out of respect for agency, it should not be mandated or forced upon any person. But given the influential and meaningful roles that higher education plays in our society, particularly in conferring power and respect to college-educated individuals, the freedom to pursue it should be secured for all Americans on an equal basis. And given the extreme deprivations of power and respect associated with incarceration in our society, justice requires not only making PSCE itself available, but also developing educational pathways toward college that the most disadvantaged Americans can beneficially pursue while incarcerated, even if many don't ultimately earn college degrees. To create pathways from prison to higher education – to secure access to college for all incarcerated adults – is to invest in an extremely fertile capability, one that is vital to removing the corrosive disadvantage of incarceration itself, and ultimately to building a society in which incarcerated Americans are treated with respect for their dignity and concern for their flourishing.

#### 4.4 Objections to higher education in prison

Considerations of human dignity and flourishing, as set forth above, appear only rarely and fleetingly in contemporary public discourse surrounding correctional reform in the United States. It's imperative for advocates of PSCE to shift the debate toward these considerations: not because ethical arguments are likely to persuade the fiercest objectors, but because such arguments make possible the airing and assessment of those deep-seated attitudes and judgments that drive many to object. These attitudes and judgments constitute the roots of criminal stigma, which is perhaps the ultimate cultural obstacle to humanizing our penal practices and facilitating reintegration on a large scale. Below I examine common objections to PSCE in order to shed light on the attitudes and judgments that animate them, and to demonstrate that the keys to responding effectively can be found within the CA and the political responsibility framework.

##### 4.4.1 Objections from the right

The most prominent objections to public investment in PSCE have remained substantially the same since at least the 1990s, focusing on five key points that often appear together in various combinations:<sup>200</sup>

- *First*, publicly funded PSCE would unfairly divert educational resources away from “deserving” Americans: law-abiding students who are members of working families.
- *Second*, publicly funded PSCE would be a foolish waste of resources, since most prisoners are cheats and/or simply incapable of rehabilitation.
- *Third*, publicly funded PSCE would be a gross and gratuitous indulgence, since the government already funds enough rehabilitation and CE programming.
- *Fourth*, publicly funded PSCE would serve as a perverse incentive, essentially rewarding criminal conduct with a free college education that wouldn't otherwise be available.
- *Fifth*, publicly funded PSCE would signify a decision to coddle rather than to punish criminals, which would stand as an insult to crime victims and survivors.

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<sup>200</sup> See Page, “Eliminating the Enemy,” 363–366 (elaborating each point as argued by proponents of the 1994 decision to cut Pell funding for incarcerated Americans). See also Mulhere, “Prison College Programs.”

In a nutshell, publicly funded PSCE programs are condemned as *unjust* and *wasteful* on grounds that they redirect resources from deserving Americans to incorrigible criminals, incentivize and condone crime, and thereby make a mockery of crime victims' suffering. To respond effectively to all these points, it's important to disentangle the factual assumptions, moralistic judgments, and symbolic concerns that underlie the rhetoric. I examine each of these elements below.

### *PSCE diverts and wastes scarce funds*

The first three points of objection rest on factual assumptions that can be refuted, in part, by straightforward facts and empirical evidence thereof.

*First*, it's simply false that funding for PSCE would diminish budgets dedicated to need-based student aid. Under the Pell program, student aid is distributed as a quasi-entitlement based on financial need, not through a zero-sum contest. Thus, Pell grants awarded to incarcerated students wouldn't detract from awards to other needy students. The same is generally true for student aid granted by states and colleges, where available. Other funding sources for PSCE are veterans' benefits and state corrections budgets, which have no bearing on education budgets.<sup>201</sup>

*Second*, CE programming has been shown to rehabilitate. Recent meta-analyses have confirmed that CE participation is linked to significant drops in recidivism as well as to significantly improved employment outcomes. A developing body of qualitative evidence also links CE with positive effects on psychosocial functioning, immediate as well as long-term.<sup>202</sup>

*Third*, evidence suggests that PSCE can promote even more consistent and pronounced benefits. Rigorous research on this point is admittedly young; but a number of recent studies show that, at least in some contexts, participation in PSCE (as compared to other CE) is linked to even larger drops in recidivism as well as to distinctive social and emotional benefits.<sup>203</sup>

Thus, evidence has a role to play in addressing factual inaccuracies embedded in these objections. But it's a limited role. Ultimately, evidentiary arguments alone won't dispel the deep-seated moralistic assumptions and concerns that underlie these objections to PSCE. In part, this is because the research base itself is still developing and needs further bolstering. More fundamentally, this is because the moralistic assumptions and concerns in question, which aren't always explicitly articulated, act as filters that influence people's perceptions of the evidence – and, accordingly, color and constrain the conclusions that people will draw from the evidence.<sup>204</sup>

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<sup>201</sup> In any case, before incarcerated Americans became ineligible for Pell funding, they accounted for a paltry 0.006 percent of total Pell grants distributed. See Page, "Eliminating the Enemy," 366.

<sup>202</sup> See Davis et al., *Correctional Education* report. See also Mukamal et al., *Degrees of Freedom*; Duwe and Clark, "Prison-Based Educational Programming"; Lockwood et al., "Correctional Education"; Lathrop, "Recidivism Rates"; Steurer and Smith, *Education Reduces Crime*; Gaes, "Prison Education Programs." Qualitative studies include: Davis and Roswell, *Inside Out*; Piotrowski and Lathrop, "Prison-Based Educational Programs"; Winterfield et al., *Effects of PSCE*; Tucker, "Liberal Arts Unbound"; Allred, "Inside-Out"; Hall, "Voices Behind Bars"; Ellis, "Female Inmates"; Torre and Fine, "Bar None"; Crouse, "Higher Education." See also Appendices F and G.

<sup>203</sup> See Davis et al., *Correctional Education* report, 14–15. See also Mukamal et al., *Degrees of Freedom*, 18–20; Kim and Clark, "Propensity Score Matching"; Borden et al., "Postsecondary Programs"; Ross, *Education from the Inside, Out*; Winterfield et al., *Effects of PSCE*; Batiuk et al., "Disentangling the Effects"; Erisman and Contardo, "Learning to Reduce Recidivism"; Chappell, "Meta-Analysis," 148–169; Karpowitz and Kenner, "Education as Crime Prevention"; Craft, "Long-Term Benefits." See also Appendices F and G.

<sup>204</sup> See Whittle and Parker, "Public Ideology, Minority Threat"; Hurwitz and Peffley, "Perceptions of Fairness"; Kahan, "Fixing the Communications Failure"; Kahan and Braman, "Cultural Cognition and Public Policy."

### *PSCE is at odds with just retribution*

The first three objections rest not only on false factual premises, but also on assumptions about the moral worthiness, personal character, and civic entitlements of incarcerated Americans as a class. Respectively, these points rest on sweeping judgments of incarcerated Americans as (1) morally “undeserving” of the same educational opportunities afforded to other Americans, (2) fundamentally incapable of substantial personal integrity and growth, and/or (3) not entitled to pursue educational attainment to the same high levels that other Americans can and should.<sup>205</sup>

PSCE’s opponents often pair these sweeping judgments with a commitment to retribution: the infliction of harsh punishment as a matter of moral desert. The resulting argument goes like this: Incarcerated Americans have proved by their criminal conduct that they deserve punishment; *and, by the same token*, that (1) they don’t deserve the educational opportunities that others do, (2) their character is such that they wouldn’t benefit from such opportunities anyway, and/or (3) they should be satisfied with the limited opportunities they get, and have no right to ask for more.

The problem with this argument is that it takes an illogical leap from principled retribution to categorical *civic exclusion* and *stigmatization*. Revisiting the premises I established in Chapter 2, criminal culpability may warrant certain punitive deprivations, but it rarely justifies treating people as less than equal citizens, and it never justifies treating them as less than fully human. To bar incarcerated Americans from educational pathways held open to others, based on criminal history alone, is to treat them as less than equal citizens. And to restrict their educational options categorically, based solely on demeaning assumptions about their potential to learn and grow – and, indeed, their abilities to develop a deeper understanding of their crimes and make meaningful amends – is to treat them as less than fully human. As such, even if criminal conduct merits harsh punishment, it surely doesn’t establish any of the three conclusions set forth here.

A commitment to retribution as proportional payback for crime, bounded by principles of civic reciprocity and human dignity, may be compatible with the norms of a civilized society.<sup>206</sup> But the extreme retributive impulse here seeks to denigrate and stigmatize categorically, without regard for proportion; and, therefore, it clearly defies such bounds.<sup>207</sup>

### *PSCE sends the wrong moral messages*

The fourth and fifth objections rely on assumptions about the social meaning and communicative impact of investment in PSCE. Respectively, these points hold that to fund PSCE is to condone crime rather than condemn it, and thereby to signify a stance of (4) permissiveness toward actual and would-be perpetrators, and (5) dismissiveness toward the suffering of victims and survivors. The core claim here is that a prison sentence, by imposing harsh conditions, should convey morally meaningful messages of censure to offenders, of deterrence to would-be

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<sup>205</sup> See Page, “Eliminating the Enemy,” 363–365, 368–374.

<sup>206</sup> Indeed, for those committed to proportional retribution, PSCE should be acceptable insofar as participants remain subject to punitive deprivations of liberty inherent in their sentences. And for retributivists who believe punishment is required out of respect for moral agency, PSCE should be appealing insofar as it cultivates powers of agency, expanding individuals’ capacities to experience remorse for their crimes and take responsibility for their actions.

<sup>207</sup> Regarding issues of proportion, see Yankah, “Republican Responsibility,” 472–473 (on the republican requirement to punish in ways that respect and sustain civic bonds); Travis et al., *Growth of Incarceration*, 324–327 (on “desert and proportionality” and “parsimony” as longstanding principles that properly limit our penal practices).

offenders, and of vindication toward victims and survivors; and that PSCE, by offsetting the harshness of prison and improving prisoners' life prospects, conveys the opposite messages.<sup>208</sup>

This claim assumes, without warrant, that the fact of imprisonment is insufficient to impart the desired messages of censure, warning, and vindication; it essentially implies, without argument, that such messages are incompatible with measures that enable people with criminal histories to pursue less destructive pathways in the future.

More fundamentally, this claim ignores the context of social and penal injustice in America: the disturbing correlation between poverty and incarceration, the unjust deficits and disadvantages borne by most entering prisoners, and the disproportionately severe and enduring deprivations inflicted by incarceration itself. Given the totality of these circumstances, the penal system already communicates a message of disrespect and disregard toward those caught within it. Within this context, the creation of educational opportunities for incarcerated Americans might more plausibly be construed as a message of overdue apology, a gesture of much-needed humanity, and a symbol of hope for both individual and collective redemption.<sup>209</sup>

A commitment to expressivist penal theory can surely be compatible with the norms of a civilized society. And as discussed in Chapter 2, a civilized society is indeed obligated to implement policies that criminalize certain forms of antisocial conduct and remedy their unjustly destructive effects.<sup>210</sup> But in the context of mass incarceration, members of society also bear responsibility to recognize, and endeavor to reduce, broader patterns of structural injustice that keep disadvantaged communities entrenched in vicious cycles of poverty, crime, and incarceration.<sup>211</sup> Thus, if policy decisions are to be taken as moral statements, they must be interpreted in full view of this troubling context.

Contrary to the fourth and fifth objections, a collective decision to support PSCE wouldn't serve primarily to condone crime or to disrespect victims. Rather, it would signify a decision to restore respect for the dignity of incarcerated Americans, remedy the effects of injustices they've suffered, and support their endeavors to pursue law-abiding and flourishing lives – and, where possible and appropriate, to make amends for their prior criminal conduct. Insofar as the decision to support PSCE wouldn't cancel a person's sentence, free her from prison, or erase her criminal record, it can stand as a gesture of due respect and remedy without undermining the profoundly condemnatory effects of incarceration.

#### **4.4.2 Objections from the left**

Somewhat less prominent in our public discourse, yet still important to acknowledge and address, are objections from the left. Among liberal reformers, some would prefer to focus on developing programs that provide for needs more urgent and basic than the need for higher education. Among abolitionists, some would insist that the penal system is the wrong place to provide for human needs, educational or otherwise. In responding to both sets of criticisms, it's

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<sup>208</sup> See Page, "Eliminating the Enemy," 363–365, 368–374.

<sup>209</sup> See Loury, *Race, Incarceration*, 24–25, 28–29.

<sup>210</sup> Yankah. "Republican Responsibility," 463–466. See also Duff, *Punishment, Communication, and Community*.

<sup>211</sup> Loury, *Race, Incarceration*, 26–28, 32–37; Shelby, "Dark Ghetto," 152–156; Young, *Responsibility for Justice*, 105–113.



helpful to revisit the notion of fertile capability as well as Young’s parameters of reasoning about political responsibility.

*PSCE detracts from more important needs*

For some reformers, the focus on PSCE is strategically problematic. In their view, higher education isn’t the most common or acute need among incarcerated Americans, so resources should be directed toward more pervasively urgent needs such as health care, basic literacy, addiction recovery, vocational training, housing arrangements, and family reunification. Some of these objectors hold that, since most incarcerated adults aren’t college-ready, and since voters seem more willing to fund programs that provide for basic forms of CE and survival needs in reentry, advocates should redouble their efforts to solidify support in those areas. Focusing the public debate on PSCE, these objectors argue, needlessly diverts attention from such efforts.<sup>212</sup>

Indeed, incarcerated Americans have many serious capability deficits, including those implicating basic survival needs, which education doesn’t directly resolve. But establishing full access to CE, including pathways to college, is a key to empowering individuals to better address all their central capability needs, immediate and long-term. Given that both penal reform and reintegration are long-term endeavors, and given that the presence of PSCE generates significant benefits even for those incarcerated individuals who don’t enroll,<sup>213</sup> PSCE not only merits inclusion among publicly funded forms of CE; it merits *heightened* support as a fertile capability.

In Nussbaum’s CA, *all* central capabilities – not just those implicating survival needs, but also those involving social and intellectual development – are equally essential to a decent quality of life. For this reason, under the core imperative to secure threshold levels of all central capabilities for all persons, justice forbids trade-offs that would violate any of these thresholds. Where trade-offs are unavoidable because needs are profound and resources are limited, the CA requires that tragic choices be made in ways that strategically minimize the frequency and impact of similar tragic choices over time. That is, we must allocate resources in ways that balance two needs: (1) the need to address urgent capability deficits now, and (2) the need to create structures that support long-term development of all central capabilities. The ethical key to these strategic decisions is to focus on *fertile capabilities* that help eliminate corrosive disadvantages.

CE, as we’ve seen, is a *fertile capability* that speaks to both urgent and long-term needs, and PSCE is a form of CE whose long-term payoffs are crucial to preventing future tragic choices. In the reintegration context, we’ve seen that five types of need – education, employment, family support, health, and housing – have been established as areas of acute capability deficit. We’ve also seen that progress in each of these areas is intertwined with progress in all the others. Thus, it makes little sense to contest the role of education as one of these five high-priority areas, since it equips individuals with the skills, opportunities, and decision-making capacities they need to navigate all the other areas. And it makes little sense to exclude higher education from the educational opportunities to be secured for incarcerated Americans, especially given PSCE’s evident cost-effectiveness and its distinctive potential to counteract the corrosively infantilizing and stigmatizing effects of incarceration.

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<sup>212</sup> See Bozelko, “GEDs First”; Grasgreen, “Kids Before Cons.”

<sup>213</sup> As noted earlier, PSCE participants are especially likely to serve as mentors and positive role models among their incarcerated peers. See Mukamal et al., *Degrees of Freedom*, 44; see also Appendices F and G.

Under the CA's core imperative, then, advocates have both ethical and strategic reasons to keep pushing for public support that extends to PSCE, not to settle for programming that provides only for survival needs and caps the educational options available to incarcerated adults.

### *PSCE props up an immoral system*

For some radical abolitionists, efforts to support PSCE, along with most prison reform efforts, are wrong in principle. These objectors reject most of the penal philosophies that have shaped public discourse, except for certain strands of restorative justice. In their view, punitive incarceration is part of a fundamentally unjust cluster of institutions; thus, to build programs into prisons under the guise of humanizing them is to legitimize and perpetuate an evil system. They hold that justice requires working to dismantle this system, rather than engaging in incremental improvement efforts that only postpone its collapse. Accordingly, some of the most radical abolitionists oppose *all* endeavors to improve prison conditions by working within the system.<sup>214</sup>

However, insofar as some abolitionists view the elimination of prisons as a distant goal, and the empowerment of prisoners as an urgent short-term aim or intermediate step toward abolition, they may be open to supporting CE programs that truly empower incarcerated students, so long as these programs don't have the effect of endorsing or entrenching penal structures. As such, PSCE's advocates may find common ground with abolitionists who see CE as a means to liberation. They can agree that the system is unjustly destructive, and that incarcerated Americans should have their deficits redressed so they can pursue flourishing lives. They can also agree that incarcerated Americans should be empowered to support, if not lead, collective efforts to transform unjust practices; and that the key to empowerment is quality education. In view of these points, advocates can and should design PSCE initiatives so that they respond to abolitionist concerns, empowering individuals without expanding the penal infrastructure.<sup>215</sup>

Applying Young's framework, as laid out in Chapter 2, *all* Americans bear political responsibility for rectifying penal injustices. In virtue of our participation in the penal system as engineers, enablers, and/or victims of harsh policies, we collectively share the responsibility to secure redress for harms suffered, as well to bring about just conditions through structural change. But since we're diversely situated as participants, our individual obligations will vary according to the connections, power, and privilege we respectively hold. Those who hold less power and privilege with respect to social structures have more limited opportunities to act; those who hold more, in turn, can and should support the cause in more direct and impactful ways.<sup>216</sup>

While reformers and abolitionists disagree as to what structural changes are ultimately called for, both can appreciate PSCE as a vital means to empower incarcerated Americans as citizens and advocates by increasing the connections, power, and privilege at their disposal. From the viewpoint of this overlapping consensus, by investing public resources in PSCE, we non-incarcerated Americans not only bear our responsibility for redressing injustice toward incarcerated Americans; we also empower them to join us, and/or to lead us, in bearing responsibility for identifying, demanding, and pursuing the broader social and structural changes that justice requires.

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<sup>214</sup> See McLeod, "Prison Abolition," 1172–1173, 1207–1218; Harkins and Meiners, "Beyond Crisis."

<sup>215</sup> See Harkins and Meiners, "Beyond Crisis"; McCleod, "Prison Abolition," 1167–1168, 1238–1239.

<sup>216</sup> See Young, *Responsibility for Justice*, 105–113; "Global Labor Justice," 385–387.

## 4.5 Higher education as an antidote to stigma

In this chapter, I've established that higher education is not just a cost-effective means to support long-term success in reintegration; it's a moral entitlement for Americans whose central capabilities have been stunted by poverty and damaged by incarceration. As such, providing pathways to college for incarcerated Americans is a matter of both corrective and prospective justice: it's a measure that serves to redress the injustice of unequal opportunity, mitigate the harms of inhumane punishment, and secure a just future by fertilizing central capabilities.

As argued above, human capital arguments establish that CE is cost-effective, but they don't account for non-economic factors that make higher education a distinctly meaningful and impactful element of CE. Further, these arguments can't justify expending educational resources on the most highly disadvantaged individuals in prison, particularly those who face non-economic obstacles to academic achievement and labor productivity. This being so, advocates would do well to adopt the CA as a framework for debates regarding PSCE, spotlighting our core imperative as a civilized society to secure a decent quality of life for all, and the varied ways in which access to education – particularly higher education – contributes to human flourishing.

That said, ethical arguments alone won't persuade PSCE's most vehement opponents. In the quest to secure public support for PSCE, refocusing our discourse on fundamental ethical values is but a preliminary step: one that pushes opponents to articulate their objections, affording a closer look at their underlying attitudes and judgments. It's these attitudes and judgments that constitute the roots of stigma, which manifest in cultural narratives of criminality that justify treating incarcerated adults as second-class citizens. Stigma thus acts as a corrosive disadvantage, barring public support of policies required to achieve educational equity and, more broadly, the comprehensive overhaul of correctional policies and practices that justice requires.

Incarcerated Americans, as the class directly harmed by stigma, should be involved in collective efforts to reduce this stigma and to combat its corrosive effects. Indeed, it's through exercising their capabilities of education, particularly higher education, that some have begun to do so. Having honed their abilities to think critically and communicate effectively, and having acquiring the social and cultural capital required for upward mobility, a small but growing contingent of formerly incarcerated college graduates are beginning to reshape our public discourse regarding penal injustice. As members of a society marked by penal injustice, we all share responsibility for securing conditions in which *every* incarcerated American, like these early leaders, is free to become an educated member of society, and particularly to become an informed and skilled contributor to public discussions regarding his rights and responsibilities.

Thus, PSCE is a fertile capability not only because it produces the capability-expansive ripple effects discussed in this chapter, but also because it's a powerful means to address the corrosive disadvantage of stigma. More so than other forms of CE, PSCE can equip incarcerated Americans with the skills, relationships, and credentials they need to organize effectively among themselves and with others, to advocate publicly for systemic change, to testify about unjust practices they've seen and survived, and to articulate their personal narratives of suffering and redemption. In short, we should prioritize higher education for incarcerated Americans because, in addition to cost-effectively improving their life prospects, it empowers them to expose, critique, and discredit the very cultural narratives that have fueled their unjust disempowerment.

## 5 Self-Narrative as a Fertile Capability for Incarcerated Americans

In our public discourse, rehabilitation and reintegration programs are often framed as means to reduce recidivism and its associated social costs – and indeed, as discussed in earlier chapters, we as a society bear collective responsibility to prevent unjust harms associated with crime. But we’ve also seen that a narrow focus on producing aggregate social benefits, to the neglect of human dignity, tends to justify correctional policies that infantilize and dehumanize.

If, as the CA insists, the core imperative of social policy is to expand human freedom, we should understand rehabilitation and reintegration programs primarily as efforts to develop the capabilities of incarcerated adults. And if, as the CA further insists, the exercise of agency is essential to human freedom, we should further ensure that such programs treat people as authors of their lives, equipping them to reinterpret their histories as well as to take ownership of their future choices. In our efforts to promote rehabilitation and reintegration, that is, we have an ethical obligation not simply to keep incarcerated Americans from committing more crimes, but to empower them to reconstruct their self-narratives in ways that support their flourishing.

Indeed, the freedom to construct an adaptive self-narrative, or narrative identity, is vital to normal human development. It’s by creating and revising self-narratives that individuals develop a sense of agency, impute meaning to their lives, and restore their mental health in the wake of adversity; and it’s by listening to others’ self-narratives that individuals learn to exercise empathy and build relationships. Thus, the capability of self-narrative holds *intrinsic* value, since exercise of this freedom is rewarding in itself; but it also holds great *instrumental* value as a fertile capability, expanding an array of essential freedoms that support long-term wellbeing.

For incarcerated Americans in particular, the capability of self-narrative is a highly fertile one, expanding freedoms they need in order to leave criminality behind, pursue healthy life goals, and build social ties. Since most incarcerated Americans have been both perpetrators of crime and victims of systemic injustice, they face significant obstacles to flourishing in society, both as individuals and as a class, that implicate their capacities to construct adaptive self-narratives.

In light of these considerations, I argue, our efforts to promote their rehabilitation and reintegration should focus on building their self-narrative capabilities. Such efforts should not only equip individuals to develop healthy narrative identities as contributing members of society, but moreover to articulate and live out these identities in their communities. Ultimately, securing these capabilities for incarcerated Americans is a matter of justice and political responsibility: a matter of treating individuals with respect for their dignity, securing redress for penal injustice, and empowering incarcerated Americans to play important roles in catalyzing social change.

In **Section 5.1**, I describe the role of self-narrative in human development; and in **Section 5.2**, I introduce the redemption script as a self-narrative template that holds special potential to promote flourishing, specifically among those with criminal histories. In **Section 5.3**, I spell out the capability-expansive roles of self-narrative, and redemptive self-narrative in particular, for adults navigating rehabilitation and reintegration. In **Section 5.4**, I offer policy implications, responses to objections, and caveats. In **Section 5.5**, I close by affirming that securing the self-narrative capabilities of incarcerated Americans is a matter of justice and political responsibility.

## 5.1 Self-narrative as an element of human development

The construction of a *self-narrative* is an essential component of human development. In every known culture, most well-functioning adult individuals engage in self-narration not only to entertain and to socialize, but also to make sense of their lives: to establish who they are, what they value, and how they relate to the world.<sup>217</sup> Thus, before exploring how the capability of self-narrative is relevant to the needs and entitlements of incarcerated Americans in particular, it's important first to establish its typical roles in normal psychosocial functioning.

### 5.1.1 Self-narrative and psychosocial functioning

A self-narrative is an internalized life story: “an imaginative reconstruction of the personal past linked to an imaginative anticipation of the future.” Rather than an *objective* account of events, this story is a “personal myth,” part fact and part fiction, selectively edited to establish a *subjective* sense of purpose. Most individuals begin to construct self-narratives in adolescence; and, as adults, we draw on these self-narratives to explain ourselves to others, to guide and justify our decisions, and to interpret our perceptions. Generally, we continue to develop our self-narratives throughout adulthood, updating and revising them in response to life events, relationships, and shifting social roles.<sup>218</sup>

#### *Psychological integration of experiences*

Like all stories, self-narratives are cognitive devices that allow us to integrate disparate characters and events within one coherent frame. Self-narratives enable *synchronic integration*, expressing how one complex person – the narrator – can embody multiple personal qualities, behavioral tendencies, and social roles at once; they also enable *diachronic integration*, explaining how the narrator, over time, has passed through many phases to arrive at her current set of circumstances and stage of growth. Both forms of integration are necessary for mature psychological functioning.<sup>219</sup> Accordingly, both forms of integration are also vital to recovery from the kind of traumatic pain or suffering that tends to fragment one's baseline sense of self.<sup>220</sup>

#### *Social and cultural contextualization of self*

Self-narratives are equally important for interpersonal connection and social development. Individuals construct self-narratives in order to tell them, and indeed to share them in the context of actual or potential relationships. Accordingly, self-narratives are intuitively formulated in light of others' expectations, and their delivery is calibrated with an eye to affecting others' mental

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<sup>217</sup> McAdams, *Redemptive Self*, 55–56; see also “American Identity,” 21.

<sup>218</sup> McAdams, “American Identity,” 21; see also *Redemptive Self*, 62–63; “Personal Narratives,” 242–243.

<sup>219</sup> McAdams, “Personal Narratives,” 242, 244–245.

<sup>220</sup> Among trauma survivors, those who incorporate their adversities into self-narratives experience greater and swifter strides in recovery. Indeed, the very act of narrating one's adversities, in oral or written form, hastens physical recovery and yields long-term improvements in psychosocial functioning. Such effects are especially profound among those who frame adversities in “benefit-finding” ways: they're most likely to experience lower stress and post-traumatic growth. See McAdams, “Personal Narratives,” 248; *Redemptive Self*, 13–17 (citing many studies, including Pennebaker, “Writing About Emotional Experiences”; Tedeschi and Calhoun, *Trauma and Transformation*; Adler and Poulin, “Political Is Personal”; Affleck et al., “Causal Attributions”). See also van Ginneken, “Making Sense” (finding that narrative therapy promotes post-traumatic growth for incarcerated women).

and emotional states. Thus, in developing and articulating self-narratives, individuals learn to situate themselves in relation to others, as well as to predict and decipher others' reactions.<sup>221</sup>

While self-narratives spell out individual identities, then, they also speak to and for cultural contexts. Self-narratives emerge and develop according to shared cultural norms, including tacit sensibilities regarding what counts as a "tellable life." In order to construct a self-narrative that will be well received within a given cultural context, individuals must learn to draw on shared understandings and expectations of a typical human life course. In doing so, self-narrators both internalize and reinforce these understandings with each act of telling.<sup>222</sup>

### 5.1.2 Self-narrative as a fertile capability

The freedom to construct a self-narrative is not only a key element of normal human development; it's a fertile capability – a form of freedom that, when exercised, supports many other key forms of freedom. In particular, acts of self-narration help to develop the central capabilities of cognition, emotions, bodily health, and life, as well as the architectonic capabilities of practical reason and social affiliation.<sup>223</sup>

- **Cognition:** Self-narration engages cognitive capacities involved in the retrieval of sensory memories, the envisioning of past and future scenes, and the imputation of causal connections between events. Thus, it develops the faculties of sense perception, reason, and imagination in producing a "creative work": a dynamic narrative that expresses a vision of the self.<sup>224</sup>
- **Emotions:** Self-narration develops capacities to build emotional connections with others. It entails retrieving emotion-laden memories; cultivating and assessing emotional responses to situations; and learning to express and elicit emotions. In the wake of trauma, self-narrative therapy supports recovery by helping to manage or transform stressful memories.<sup>225</sup>
- **Bodily health:** By supporting emotional wellness and recovery, self-narration also supports physical wellness. Self-narrative techniques that help to heal emotional trauma can thereby also serve to mitigate the physiological effects of stress.<sup>226</sup>
- **Life:** Insofar as self-narration improves mental and physical health, it supports the freedom to enjoy a full life span. Among patients with serious medical conditions, self-narrative therapy is linked to physiological benefits that slow disease progression and reduce mortality risks.<sup>227</sup>
- **Practical reason:** Self-narration develops the capacities to clarify and explain one's values and goals, and to link these causally with one's actions over time. Thus, self-narrators learn to reason about personal priorities, and to plan and justify their actions in light of these priorities.<sup>228</sup>
- **Social affiliation:** Self-narration occurs through conversation as well as reflection, and thus it develops various interpersonal skills, including the abilities to communicate and to listen effectively. Further, in intimate settings, self-narration can facilitate meaningful relationships.<sup>229</sup>

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<sup>221</sup> McAdams, "Personal Narratives," 245–246, 250–252.

<sup>222</sup> McAdams, "Personal Narratives," 246–248; "American Identity," 21.

<sup>223</sup> See Chapter 3 for discussion of the nature and role of architectonic capabilities.

<sup>224</sup> See McAdams, "Personal Narratives," 244–245; *Redemptive Self*, 63–66.

<sup>225</sup> See McAdams, "Personal Narratives," 252–255; *Redemptive Self*, 15; see also references listed in note 220.

<sup>226</sup> *Ibid.*

<sup>227</sup> *Ibid.*

<sup>228</sup> See McAdams, "Personal Narratives," 244–246.

As elaborated later in this chapter, the capability of self-narrative is a particularly fertile one for incarcerated Americans, who face tremendous hurdles in attaining threshold levels of all the central capabilities. Virtually all incarcerated Americans have endured adversities associated with crime and punishment, and a majority has experienced traumatic forms of suffering related to violence, addiction, and poverty. At the same time, they're isolated from the social services, therapeutic resources, and supportive relationships available to other members of society.<sup>230</sup> Thus, the psychosocial functions of self-narrative, as well as its capability-fertilizing effects, have heightened salience for these individuals as they prepare to rebuild their lives in the community.

## 5.2 The redemption script as a self-narrative template

While the self-narrative construction process is intrinsically valuable, different self-narratives support healthy functioning to varying degrees. A self-narrative is most adaptive, or best able to promote wellbeing, when it not only clarifies a person's values and coherently integrates her experiences, but also resonates with her cultural context and hence can secure a measure of social acceptance.<sup>231</sup> In fact, according to two lines of research discussed below, self-narratives based on a certain redemption script – redemptive self-narratives – have proved highly adaptive among two specific categories of adults: midlife Americans who are committed to fulfilling productive and caring roles in the world, and former “career criminals” who are committed to building crime-free lives in society. Each of these groups mirrors the population of incarcerated Americans in important respects, suggesting that the redemption script can be a highly adaptive self-narrative template for incarcerated Americans as well.

### 5.2.1 McAdams's findings: Generative American adults

Generative adults are those who are exceptionally responsible, caring, and motivated to improve others' wellbeing.<sup>232</sup> Because of their strong drive to pursue both deep interpersonal connections and socially impactful achievements, generative adults tend to be more proactive in varied social roles – at home, at work, and in their communities – and enjoy higher levels of psychological health and maturity compared to less generative adults.<sup>233</sup>

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<sup>229</sup> See McAdams, “Personal Narratives,” 245–246, 250–252.

<sup>230</sup> See Appendices A, B, and C for background on the prison population and common barriers to their wellbeing.

<sup>231</sup> Self-narratives are just as diverse, in substance, structure, and style, as the narrators who construct them and the cultures they inhabit. Psychologists have determined that self-narratives vary as to plot, imagery, theme, tone, and complexity, and have identified correlations between variations along these dimensions and important markers of psychological and social wellbeing. McAdams, *Redemptive Self*, 66–72; “Personal Narratives,” 248–250, 256–257.

<sup>232</sup> The notion of “generativity,” as conceived by Erik Erikson and subsequently developed by other social psychologists, denotes an adult's concern for and commitment to the wellbeing of future generations. Classic expressions of generativity are procreation and parenting; but generativity is also expressed through teaching, mentoring, leadership, and any commitment that involves leaving a positive legacy. See McAdams, “American Identity,” 21; *Redemptive Self*, 31–34 (citing de St. Aubin, McAdams, and Kim, *Generative Society*).

<sup>233</sup> Compared to their less generative peers, highly generative adults tend to express more warmth and discipline in their parenting practices, be more actively involved in their children's schooling, maintain closer familial ties and broader friendship networks, vote more and engage in more civic activities, and be more likely to take leadership roles and achieve tangible success in their workplaces and communities. They also exhibit higher levels of life

Through hundreds of “life story” interviews, narrative psychologist Dan P. McAdams found that highly generative American adults, particularly at midlife (the phase spanning ages 35 to 65), tend to construct self-narratives that reflect a biographical script marked by a distinct set of themes and plot elements; and, further, that these self-narratives help them maintain exceptional dedication to generative endeavors over time.<sup>234</sup> The plot of this script, which McAdams calls the “redemptive self,” can be summarized as follows:

“In the beginning, I learn that I am blessed, even as others suffer. When I am still very young, I come to believe in a set of simple core values to guide me through a dangerous life terrain. As I move forward in life, many bad things come my way – sin, sickness, abuse, addiction, injustice, poverty, [and/or] stagnation. But bad things often lead to good outcomes – my suffering is redeemed. Redemption comes to me in the form of atonement, recovery, emancipation, enlightenment, upward social mobility, and/or the actualization of my good inner self. As the plot unfolds, I continue to grow and progress. I bear fruit; I give back; I offer a unique contribution. I will make a happy ending, even in a threatening world.”<sup>235</sup>

Notably, McAdams found, use of this script doesn’t correlate with the presence of any particular category of life events, positive or negative. Instead, it serves as one of many lenses that adults can apply in curating and editing their “tellable” memories. The adults who use this script aren’t those whose lives include more redemptive material; rather, their reliance on this script reflects a narrative strategy: a *decision* to frame adversities as precursors of redemptive developments.<sup>236</sup>

Why, then, are generative Americans more likely than others to choose this life script? In McAdams’s analysis, their generative tendencies create context-dependent incentives to do so. First, as a *psychological* framework, this script enables them to draw motivational meaning from their difficulties as they labor to create a positive impact on the world; second, as a *cultural* narrative, the script resonates with cherished American texts and ideals. Thus, this script offers a culturally resonant and subjectively compelling template for generative Americans seeking to justify their generativity.<sup>237</sup> As such, the freedom to construct a redemptive self-narrative is a fertile capability for these Americans, sustaining energy-intensive but ultimately rewarding choices to invest in many productive activities and meaningful relationships over time.

Why and how are McAdams’s findings about generative Americans relevant to the wellbeing of incarcerated Americans? First, since the two populations share the same cultural context and actually overlap, these findings have at least some direct practical relevance. Insofar as the redemptive script has provided a culturally resonant self-narrative template for many generatively inclined American adults, it should provide similarly helpful guidance for at least those incarcerated Americans who choose to pursue a generative life.

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satisfaction and happiness; lower levels of depression and anxiety; and higher measures of maturity, self-control, and life purpose. See McAdams, “American Identity,” 21; *Redemptive Self*, 37–39.

<sup>234</sup> McAdams, *Redemptive Self*, 42–43, 49–50.

<sup>235</sup> McAdams, “American Identity,” 20; see also *Redemptive Self*, xvii.

<sup>236</sup> McAdams, *Redemptive Self*, 26–27.

<sup>237</sup> McAdams locates the script’s core themes in Puritan culture, Black slave and civil rights narratives, self-help psychology, political rhetoric, myriad forms of modern media and entertainment, and the notions of American exceptionalism and manifest destiny. See “American Identity,” 20–21; *Redemptive Self*, 18–25, 287–288.



Second, since the two populations occupy sharply differing social positions within their shared cultural context, the findings have ethical and aspirational relevance. The generative adult, idealized in our society as a model citizen, stands in stark symbolic contrast to the stigmatized convict. Whereas generative adults are honored in their communities for assuming roles of care, service, and leadership, incarcerated adults are those who have been condemned for crimes, cut off from society, stripped of agency, and labeled as dangerous deviants. In short, a generative life represents the normative opposite of an incarcerated life. Thus, insofar as the redemption script justifies and motivates choices that typify a generative adult life, it holds promise as a template for incarcerated Americans who seek to radically reconstruct their identities in pro-social ways.

Further, as I discuss below, McAdams's findings regarding generative Americans are mirrored by Maruna's findings regarding rehabilitated English offenders: a population marked by a similar range of traumas, and facing analogous obstacles to wellbeing, as incarcerated Americans. The same redemption plot that helps sustain the pro-social commitments of generative adults, it turns out, can do the same for former offenders.

### 5.2.2 Maruna's findings: Former "career criminals" who desist

While McAdams collected life stories from a broad swath of American adults from various walks of life, Shadd Maruna focused on a sample of English adults who all had troubled histories and long criminal records. Based on extensive interview data, Maruna distinguished between "persisters" and "desisters" in this sample – those who had stayed active in criminal activity and those who had successfully left it behind – in order to discern *how*, despite major obstacles, desisters maintain crime-free lives over time.<sup>238</sup>

Maruna identified striking contrasts between the self-narratives of persisters and desisters. While persisters tended to adopt a *condemnation script*, expressing despair and helplessness in the face of adversities, desisters hewed to a *redemption script*, framing adversities as precursors of growth and progress.<sup>239</sup> Resembling the script used by McAdams's generative American adults, the life stories of Maruna's desisters reflected a common plot structure that can be summarized as follows:

"The redemption script begins by establishing the goodness and conventionality of the narrator – a victim of society who gets involved with crime and drugs to achieve some sort of power over otherwise bleak circumstances. This deviance eventually becomes its own trap, however, as the narrator becomes ensnared in the vicious cycle of crime and imprisonment. Yet, with the help of some outside force, someone who 'believed in' the [narrator], the narrator is able to accomplish what he or she was 'always meant to do.' Newly empowered, he or she now also seeks to 'give something back' to society as a display of gratitude."<sup>240</sup>

Rather than abruptly "knifing off" or suppressing a desister's criminal history, Maruna observed, this redemption script reframes it as a "necessary prelude to a productive and worthy life." For

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<sup>238</sup> Maruna, *Making Good*, 6–9, 38, 43–52.

<sup>239</sup> Maruna, *Making Good*, 73–84 (exposition of condemnation script), 85–108 (exposition of redemption script).

<sup>240</sup> Maruna, *Making Good*, 87.

that reason, this script is uniquely able to provide a “personally and culturally persuasive, meaningful, and enabling” self-narrative template for desisters.<sup>241</sup>

Notably, in Maruna’s sample, desisters and persisters faced equally troubling histories and equally daunting obstacles to success. What set desisters apart wasn’t any *objective* difference in their underlying personality traits or their earlier life trajectories, but rather their contrasting *subjective* perceptions of these trajectories.<sup>242</sup> As Maruna’s analysis suggests, then, it’s a desister’s commitment to desistance – which entails significant effort in the face of myriad barriers – that creates incentives to adopt the redemption script as a self-narrative template.

First, as a *psychological* framework, the redemption script establishes a stable understanding of the self as good, powerful, and steadily improving; thus, it affords a secure pro-social identity, as well as a buffer against paralyzing shame about the past.<sup>243</sup> Second, as a *socially acceptable* narrative, the script explains the narrator’s prior criminality and personal turning-point in ways that make his positive strides seem plausible and genuine to others; thus it helps to attract the moral and material support he needs to press on.<sup>244</sup> Third, as a narrative that evokes and sustains *generativity*, the script enables a desister to channel his efforts wholeheartedly into pro-social endeavors, which invites further social acceptance and accelerates the reintegration process.<sup>245</sup> The narrative logic of this script, in sum, allows desisters to achieve both psychological integration of their histories and social acceptance of their reformed selves, securing their commitment to desistance and supporting personal choices that reinforce it.

Why and how are Maruna’s findings about English desisters relevant to the wellbeing of incarcerated Americans? As noted above, both populations have been subject to a similar range of traumas, and both face analogous obstacles to flourishing in society. Like Maruna’s interviewees, most incarcerated Americans have pressing psychological and social needs to be met before they can succeed in rehabilitation and reintegration, and they inhabit a cultural context in which the redemption script holds high potential to help them meet those needs.

### 5.3 Self-narrative as a key to rehabilitation and reintegration

McAdams’s and Maruna’s findings provide a strong empirical basis for the two ethical claims that constitute the heart of this chapter: first, to make rehabilitation genuinely possible for incarcerated Americans, we as a society should secure for them the fertile capability of self-narrative; second, to maximize their prospects for long-term success in post-release reintegration, we as a society should secure them the “super-fertile” capability of redemptive self-narrative.<sup>246</sup> Below I develop each of these claims in turn.

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<sup>241</sup> See Maruna, *Making Good*, 87–88.

<sup>242</sup> See Maruna, *Making Good*, 55–70 (overview of “background factors” common among members of this sample, including “criminogenic” personality traits; socioeconomically disadvantaged backgrounds; exposure to antisocial behavior and trauma in childhood [namely abuse, neglect, and addiction], and resource-deprived environments).

<sup>243</sup> See Maruna, *Making Good*, 85–88, 105–108.

<sup>244</sup> See Maruna, *Making Good*, 85–88, 123–124.

<sup>245</sup> See Maruna, *Making Good*, 99–105.

<sup>246</sup> For working definitions of rehabilitation and reintegration, see Appendix E.

### 5.3.1 The role of self-narrative in rehabilitation

For most individuals who have been convicted and incarcerated for criminal behavior, self-narrative reconstruction is essential to the rehabilitation process. To become capable of safe and healthy functioning in society, most of these individuals need to revise their self-narratives so as to chart a feasible path toward pro-social goals they value. This position, though not yet mainstream, isn't entirely new: it's been developed in the last decade by correctional experts who seek to shift rehabilitation's focus away from statistical risks toward individual strengths.

#### *The strengths-based model of rehabilitation*

Since the 1980s, the reigning paradigm of correctional rehabilitation has been a *risk-based model* that seeks to identify personal deficits and environmental triggers associated with criminal behavior, and to minimize these "risk factors" in order to reduce recidivism. The model focuses on calibrating each individual's monitoring and treatment to his statistical risk profile.<sup>247</sup>

Around the time Maruna published his findings, some correctional therapists began to critique the dominant risk-based model as too narrowly fixated on recidivism prevention. Since the model treats individuals as passive units of risk rather than as authors of their lives, these critics argued, it ultimately fails to equip them as functioning members of society. In short, the risk-based model fails because it's designed to manage risks rather than motivate people.<sup>248</sup>

As an alternative, these critics developed a *strengths-based model*: an approach that strives to equip individuals to construct and pursue healthy life plans that reflect their values. True to its name, this model treats individuals as moral agents and potential contributors to society, and thus seeks to build on their personal strengths. Avoidance of criminality, then, isn't the focal point, but rather the natural byproduct of more holistically defined aims.<sup>249</sup>

#### *Key assumptions of the strengths-based model*

The strengths-based model, departing from the risk-based model's heavy reliance on aggregate statistics, finds its roots in principles of narrative psychology and positive psychology. Accordingly, it rests on a more nuanced, empirically grounded, and theoretically developed foundation of premises regarding human identity, motivation, and criminal behavior.

One key premise is that human persons are *complex and malleable agents*: both biologically embodied and culturally embedded beings, with minds that both shape and are shaped by their environments. A person's identity, as such, is co-constructed through the interplay of various genetic, psychological, and environmental factors. Typically, by early adulthood, a person has begun to develop a self-narrative that draws on an *internal* repertoire of values, motives, and memories, as well as *external* resources and opportunities available to him. He fleshes out his values and motives through the activities he pursues and meanings he attaches to experiences; in turn, his pursuits and experiences become part of his self-narrative.<sup>250</sup>

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<sup>247</sup> Ward and Maruna, *Rehabilitation*, 44–48 (critiquing Andrews and Bonta, *Psychology of Criminal Conduct*). See also Feeley and Simon, "New Penology."

<sup>248</sup> Ward and Maruna, *Rehabilitation*, 104–106; Ward and Marshall, "Narrative Identity," 282–284.

<sup>249</sup> See Ward and Maruna, *Rehabilitation*, 21–25, 107–108; Ward and Marshall, "Narrative Identity," 283–286.

<sup>250</sup> See Ward and Maruna, *Rehabilitation*, 114–119; Ward and Marshall, "Narrative Identity," 286–287.

A second premise is that all human persons share the same basic range of needs for *primary human goods*: intrinsically valued activities or experiences that tend to enhance wellbeing, and that people tend to pursue for their own sake. In other words, primary goods act as fundamental human motives. Drawing on research in multiple fields, proponents of the strengths-based model have identified ten primary human goods that, notably, resonate with Nussbaum's central capabilities list.<sup>251</sup>

### *Rehabilitation as self-narrative reconstruction*

Following from the above premises, the strengths-based model holds that most instances of criminal behavior – except in rare cases of psychopathy – arise from a person's maladaptive attempt to meet his need for one or more primary goods. Generally, the person's need and desire for a primary good is natural and legitimate; it's his choice of means in pursuing the good that is harmful or otherwise counterproductive.<sup>252</sup>

So, assuming that the broad goal in *rehabilitation* is to enable a person to desist from crime and to adopt a healthy lifestyle, the core tasks are (1) to identify what primary good a person has been seeking through his criminal behavior, (2) to discern why he has tried to attain these goods through the particular problematic means used, and (3) to motivate and equip him to attain those goods by lawful and adaptive means instead.<sup>253</sup>

To carry out these tasks effectively is to engage the person in a guided process of *self-narrative reconstruction*: to enable him to reconstruct his narrative identity so that he can reorient his motives and behaviors toward a pro-social lifestyle. He should have an opportunity to clarify his core values and to identify what socially acceptable activities or experiences would comprise a meaningful life to him. Then, in light of his clarified values, he should have an opportunity to reshape his self-narrative into an adaptive account: one that frames criminal behavior as no longer desirable, and that charts a lawful and feasible path to achieving the primary goods he values. Rehabilitation thus entails not simply managing the person's needs and actions, but affirmatively equipping him to develop a healthy and sustainable self-narrative.<sup>254</sup>

### **5.3.2 The role of redemptive self-narrative in reintegration**

Just as self-narrative reconstruction is essential to rehabilitation, maintenance of one's adaptive self-narrative is vital to reintegration. To sustain progress in building ties to society, that is, one must stay actively committed to and engaged in the living out of one's adaptive self-narrative. Thus, for rehabilitated Americans leaving prison, the *redemptive* self-narrative holds special potential to facilitate reintegration in virtue of its tendency to produce therapeutic benefits, invite social acceptance, and promote generativity.

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<sup>251</sup> Proponents of the strengths-based model have identified the ten primary goods as: life and health; knowledge; excellence in play and work; agency (autonomy and self-directedness); inner peace (freedom from distress); relationships (intimate, romantic, familial); community; spirituality (meaning or purpose); happiness; and creativity. See Ward and Maruna, *Rehabilitation*, 112–114, 144–146; Ward and Marshall, "Narrative Identity," 284.

<sup>252</sup> See Ward and Maruna, *Rehabilitation*, 111, 118, 120–25; Ward and Marshall, "Narrative Identity," 284–285.

<sup>253</sup> See Ward and Maruna, *Rehabilitation*, 23–25, 122, 129–136; Ward and Marshall, "Narrative Identity," 283–86.

<sup>254</sup> See Ward and Maruna, *Rehabilitation*, 125–136, 150–151; Ward and Marshall, "Narrative Identity," 283–86.

### *Enabling post-traumatic growth*

Redemptive self-narratives, as McAdams has established, are the mark of distinctive health and resilience in adulthood. They have been found to promote flourishing not only by sustaining generativity among socially engaged adults, but also by fostering recovery and growth among trauma survivors. While acts of self-narration can promote swifter and fuller recovery from trauma in general, survivors who narrate their adverse experiences *redemptively* tend to enjoy even greater health benefits associated with “post-traumatic growth.”<sup>255</sup>

Thus, there are strong therapeutic reasons to secure the capability of redemptive self-narrative for Americans who have endured incarceration: by interpreting their adverse experiences of poverty, criminality, and punishment through a redemptive lens, they may significantly improve their prospects for psychological health and post-traumatic growth, developing the mental strength and resilience they need to rebuild their lives in society.<sup>256</sup>

### *Inviting social acceptance*

Mental strength and resilience, of course, are necessary but not sufficient for reintegration. More so than rehabilitation, reintegration hinges on both social acceptance (by others) and social engagement (by the desister). As such, the redemption script can be a highly adaptive template for desisters because it effectively achieves two delicate narrative feats: (i) first, it salvages a “good self” from the past, establishing that one’s life hasn’t been wasted despite one’s mistakes; (ii) second, it carves out a productive social niche to grow into as a “reformed offender.”<sup>257</sup>

(i) *Salvaging a “good self.”* The script establishes the narrator’s “true self” as essentially good: first by foregrounding evidence of his innate goodness, and second by dissociating his innately good self from his past crimes.<sup>258</sup> Next, the script makes the narrator the driver of his own redemption, which begins when his “true self” is liberated from crime. It was an evil outside force that caused his criminality; now it’s the good “true self” who regains control of his life.<sup>259</sup> Ultimately, the script affirms that his darker phases were necessary, perhaps orchestrated, to prepare him for a higher mission: it’s *through* his mistakes that he’s become stronger and wiser. His criminal history and incarceration are thus sources of growth, not marks of shame.<sup>260</sup> As such, this script not only insulates the narrator’s good nature from his past criminality; it presents him as a morally enriched person for having endured the consequences of his criminality.

(ii) *Carving out a pro-social niche.* Now that the narrator is redeemed, according to the script, he has strong motives to serve others. As part of his redemption, he’s had to find a larger cause to fill the moral void once falsely occupied by criminality. Beyond simply realizing that

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<sup>255</sup> Observed benefits include greater capacities for empathy, intimacy, moral clarity, emotional maturity and resilience. Indeed, the more pervasively survivors invoke redemptive imagery, the more complete and robust their progress in recovery tends to be. See McAdams, *Redemptive Self*, 13–17, 27; see also Maruna, *Making Good*, 106.

<sup>256</sup> There’s a developing body of qualitative research to support this point. See van Ginneken, “Making Sense.”

<sup>257</sup> See McAdams, *Redemptive Self*, 203; see also Maruna, *Making Good*, 85–88.

<sup>258</sup> The first task is achieved by recounting scenes from earlier life that show his moral decency; the second, by tracing his shameful mistakes to evil alien forces that, while arising from his circumstances or even in his mind, are not part of *him*. See Maruna, *Making Good*, 88–95; 132–136.

<sup>259</sup> Maruna, *Making Good*, 95–97.

<sup>260</sup> Maruna, *Making Good*, 97–99.

crime is wrong, he's come to redefine "success" in generative terms. He's likely to assume the role of a "wounded healer" whose mistakes have equipped him to be a mentor or counselor for others who struggle as he once did.<sup>261</sup> Thus, the script establishes him not only as a decent person and resilient survivor, but as a conscientious citizen who makes fruitful use of his life by helping others. By establishing generativity as the desister's driving motive, the script affirms his status as a civically engaged member of society. This makes for an intelligible and uplifting account of his life – and, as explained below, a potentially self-reinforcing prophecy.

### *Sustaining generative pursuits*

As we've learned from McAdams, the redemptive self-narratives of generative Americans promote their wellbeing by sustaining their generative choices. Such choices align with both inner drives and social demands they face in midlife, so enacting these choices enables them to attain high levels of psychosocial wellbeing. Thus, for generative adults, the redemption script supports a positive feedback loop of social engagement and personal rewards.<sup>262</sup>

Generative pursuits supported by this script bear even greater significance for formerly incarcerated desisters, given the internalized shame and externally imposed stigma they grapple with. For these adults, generative pursuits address several pressing psychological and social needs that, if unmet, tend to derail the reintegration process.<sup>263</sup>

First, generative pursuits provide *fulfillment* by creating pro-social opportunities to feel useful and accomplished, displacing the feelings of futility and despair that, in many cases, contributed to the desister's prior patterns of criminal behavior.<sup>264</sup> Second, generative pursuits serve as a form of symbolic *restoration*, providing healthy avenues to channel feelings of guilt and shame that may otherwise lead to paralysis or isolation.<sup>265</sup> In a similar vein, generative pursuits also help confer public *legitimacy*, consolidating a desister's new status as a law-abiding citizen.<sup>266</sup> Finally, generative pursuits yield *therapeutic benefits*, reminding a desister how far he has come and assuring him of his potential to improve others' lives as well as his own.<sup>267</sup> Thus, by rooting desisters' identities in generative roles, the redemption script helps them to avoid the downward spiral of despair and recidivism that's all too common among their peers, pushing them instead into a positive feedback loop of constructive behavior and social acceptance.

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<sup>261</sup> Maruna, *Making Good*, 99–104. See also LeBel, Richie, and Maruna, "Helping Others."

<sup>262</sup> See McAdams, *Redemptive Self*, 37–39, 287.

<sup>263</sup> Maruna *Making Good*, 118, 125 (citing Leibrich, *Straight to the Point*, 51; Matza, *Becoming Deviant*, 117; Becker, *Outsiders*, 53).

<sup>264</sup> Maruna, *Making Good*, 119–121 (citing Waldorf et al., *Cocaine Changes*; Baskin and Sommers, *Casualties of Community Disorder*; Singer, *Message in a Bottle*; Hamm, "Offender Self-Help Movement").

<sup>265</sup> As Maruna and others have found, desisters commonly engage in community service as gestures of restitution for harm they've caused as well as reciprocity for help received. By symbolically repaying debts to society, they reclaim a sense of respect for others, the law, and themselves. See *Making Good*, 121–123; citing Braithwaite and Mugford, "Conditions of Successful Reintegration Ceremonies," 143–144, 148.

<sup>266</sup> By taking formal generative positions, such as those of social workers or addiction counselors, desisters fill the familiar roles of "repentant deviants" who urge others to avoid their mistakes and uphold societal values. See Maruna, *Making Good*, 123–124 (citing Cressey, "Rehabilitation of Criminals"; Faller, *Turned to Account*; Trice and Roman, "Delabeling"). See also LeBel, Richie, and Maruna, "Helping Others."

<sup>267</sup> See Maruna, *Making Good*, 124–125. For a recent study confirming that taking a "wounded healer" role is positively linked to success in desistance and reintegration, see LeBel, Richie, and Maruna, "Helping Others."

### 5.3.3 The fertilization of architectonic capabilities

The capability of self-narrative – the freedom to construct any adaptive self-narrative, even if not necessarily a redemptive one – is a highly fertile capability for incarcerated Americans: not only because it remedies multiple capability deficits, but also because it affirmatively develops the architectonic capabilities of practical reason and social affiliation.<sup>268</sup> The freedom to construct a *redemptive* self-narrative, in turn, should be considered a “super-fertile” capability because it tends to engage these architectonic capabilities in powerfully explicit, consistent, and far-reaching ways.

#### *The fertility of adaptive self-narratives*

*Practical reason* is the freedom to form normative beliefs and to engage in critical reflection about planning one’s life.<sup>269</sup> For fairly obvious reasons, this capability plays a vital role in establishing an incarcerated individual’s prospects for building a healthy and stable life as a free member of society. Prior to release from incarceration, in order to achieve rehabilitation, the individual must be able to craft reentry plans that are both personally meaningful and practically feasible; and upon release, in order to maintain progress in reintegration, the individual must be able to modify and sustain those plans in the face of various obstacles and shifting circumstances over time.

*Social affiliation* is the freedom to live with and toward other people; to recognize and show concern for other people; to engage in various forms of social interaction; and to be treated with respect for one’s human personhood.<sup>270</sup> In other words, this capability consists in opportunities to build a life in society, as an equal citizen, that is anchored by relationships and unencumbered by stigma: the very set of opportunities that constitute success in reintegration. Indeed, since this very set of opportunities is typically destroyed through the experience of incarceration, we might say that the process of reintegration *is* essentially the process of restoring the capability of social affiliation.

To exercise the capability of self-narrative – that is, to do all that’s necessary to construct, articulate, and maintain an adaptive self-narrative – is directly to engage and expand both of these architectonic capabilities. For most incarcerated Americans, the self-narrative reconstruction process entails clarifying core values, critically reframing past choices, and reshaping life plans, thereby expanding the capability of practical reason. In turn, the tasks of articulation and revision entail presenting self-narratives to others, receiving and incorporating feedback, and engaging respectfully with audiences, thereby expanding the capability of social affiliation. As such, by fully exercising the capability of self-narrative, incarcerated Americans cultivate two profoundly important capabilities that are vital to their success in rehabilitation and reintegration, and ultimately to exercising all their capabilities in fully human ways.

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<sup>268</sup> As discussed in Chapter 3, practical reason and social affiliation play architectonic roles by enabling a person to exercise capabilities in fully human ways (i.e. in ways that reflect his nature as a rationally reflective and a social being). These capabilities organize and undergird the full exercise of *all* capabilities; thus, to secure them is to bolster enjoyment of all freedoms worth protecting. See Nussbaum, *Creating Capabilities*, 39–40.

<sup>269</sup> Nussbaum, *Creating Capabilities*, 34, 39.

<sup>270</sup> Nussbaum, *Creating Capabilities*, 34, 39–40.

### *The “super-fertility” of redemptive self-narratives*

The architectonic capabilities of practical reason and social affiliation respectively have close analogues in the psychological concepts of *agency* and *communion*, or personal efficacy and interpersonal connection, which researchers have identified as fundamental human motives and common self-narrative themes in virtually every known culture.<sup>271</sup> Narrative psychologists have further established that, alongside other themes, agency and communion appear with varying intensity across self-narratives, mirroring interpersonal variations as well as intrapersonal shifts in individuals’ predominant concerns over time.<sup>272</sup>

Both McAdams and Maruna found agency and communion to be distinctly prominent themes in the redemptive self-narratives of their interviewees, signifying the narrators’ strong commitments to the twin (and competing) pursuits of leaving a legacy and caring for others. As such, both corroborate findings that people reveal aspects of their psychosocial functioning in their self-narratives – specifically, that generative adults develop self-narratives which express their driving motives to fully exercise the capabilities of practical reason and social affiliation.<sup>273</sup>

But a more critical finding to consider is that, by changing their self-narratives, people can actually promote changes in their psychosocial functioning. For example, when relatively less mentally healthy adults revise their self-narratives to place greater emphasis on agency, they thereby reshape their motives and priorities and, as a result, both alter their behavioral tendencies and improve their long-term health outcomes.<sup>274</sup> It’s for this reason that the redemption script, which foregrounds generativity as a driving motive and as a core aspect of identity, holds distinctive potential to improve the life prospects of Americans who are motivated to desist, bolstering their efforts to proceed in rehabilitation and reintegration despite myriad obstacles.

Of course, for purposes of rehabilitation and reintegration, it’s possible for a self-narrative to be fully adaptive without specifically placing emphasis on generative motives or featuring a redemptive arc. But a developing body of research indicates that the effect of such an emphasis, when internalized and supported, is to consolidate and accelerate progress in reintegration, namely by facilitating engagement in activities that are both personally and socially rewarding. Beyond helping individuals to dissociate themselves from criminal behavior, that is, the redemption script affirmatively commits them to the pursuit of generative roles; and, given adequate opportunities to grow into such roles over time, they thereby become much more likely to fold these roles explicitly into their self-narratives.<sup>275</sup> Hence, as one variant of the fertile capability of self-narrative, the freedom to construct a *redemptive* self-narrative can serve as a “super-fertile” capability for incarcerated Americans who face the challenges of reintegration.

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<sup>271</sup> As discussed in Chapters 3 and 4, the conceptual distinction between agency and practical reason is subtle. *Agency*, the ability to choose and pursue goals that reflect one’s values, both undergirds the notion of capability and is closely related to the capability of *practical reason*. In practice, policies and activities that support agency tend also to expand the capability of practical reason, making the exercise of all freedoms more purposeful.

<sup>272</sup> See McAdams, *Redemptive Self*, 68–69.

<sup>273</sup> See McAdams, *Redemptive Self*, 37–39, 69–70; Maruna, *Making Good*, 147–151, 170–173.

<sup>274</sup> See McAdams, *Redemptive Self*, 70 (citing Adler, “Living into the Story”). See also Bauer and McAdams, “Eudaimonic Growth.”

<sup>275</sup> See, for example, Maruna and Ramsden, “Living to Tell the Tale”; Stone, “Desistance and Identity Repair.”



## 5.4 Self-narrative building blocks, policy implications, and caveats

In the discussion above I have established that, if we as a society are committed to promoting the rehabilitation and reintegration of incarcerated Americans, we should commit to ensuring that they have the freedom to develop adaptive self-narratives, particularly redemptive self-narratives. With this proposition in mind, below I identify the practical components of the fertile capabilities in question and spell out general policy implications. In turn, I consider likely objections and offer ethical caveats.

### 5.4.1 Building blocks of self-narrative capabilities

As discussed above, rehabilitation is not merely a top-down effort to manage risk factors, but a guided process in which one constructs an adaptive self-narrative. Securing the freedom to engage in this process, then, entails providing access to the resources and opportunities required not only to reinterpret the past, but also to reimagine the future and to pursue revised life goals.

#### *Resources for developing an adaptive self-narrative*

Generally, to construct an adaptive self-narrative, a maturing young adult needs access to both material and discursive resources. He needs adequate *material resources* (nutrition and shelter, health and social services, means of survival) to maintain a stable and pro-social lifestyle, one that meets his basic needs and allows him to grow and mature in a healthy manner. He also needs appropriate *discursive resources* (cultural norms, knowledge, practices) to make sense of his experiences and shape them into a self-narrative that's coherent and socially acceptable.<sup>276</sup>

A first step in rehabilitation, then, is diagnosing whether and how a person's existing self-narrative is maladaptive: what resource deficits have led to the formation of a maladaptive self-narrative, and what resources are needed to reshape it into an adaptive one. If a now-grown adult has spent his formative years living in violent and impoverished conditions, as many incarcerated Americans have, physical insecurity and material deprivation may have driven him to criminal activity in attempt to meet his basic needs. Further, if he's been exposed to anti-social norms, poor role models, and negative stereotypes associated with aspects of his identity, he may have constructed a warped or conflicted conception of himself and his place in the world. As a result, he may have developed a self-narrative that reflects maladaptive ways of thinking and acting.<sup>277</sup>

To support the rehabilitation of incarcerated Americans, then, it's necessary to ensure their continuous access to adequate material and discursive resources, during both incarceration and reentry. To be capable of engaging fruitfully in any therapeutic work, they need to be free of pressing concerns about physical survival and safety; and to be capable of reinterpreting their lives in healthy and constructive ways, they need exposure to curriculum, conversations, and role models that afford appropriate guidance and accessible examples. Efforts to promote rehabilitation, therefore, must encompass the provision of basic life necessities as well as appropriate social and cultural resources.

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<sup>276</sup> See Ward and Marshall, "Narrative Identity," 284.

<sup>277</sup> See Ward and Marshall, "Narrative Identity," 284–285; Ward and Maruna, *Rehabilitation*, 131–135, 151.

### *Opportunities for self-narrative reconstruction*

In addition to resources, a person in rehabilitation needs opportunities to engage in the interactive processes of reflection, articulation, and revision that self-narrative development entails. For most adults, narrative identity construction begins by the early 20s and continues through the life course. The process starts with the sharing of personal episodes and unfolds through an iterative cycle of conversation and introspection. Once a person has constructed a self-narrative in early adulthood, it becomes a lifelong project, subject to ongoing revision and reconstruction in response to various life experiences.<sup>278</sup>

A key task in rehabilitation, then, is to create opportunities to engage in this process for the purpose of editing one's life into an adaptive self-narrative. Like the timeline of self-narrative development that begins for most people in early adulthood, the rehabilitative process of self-narrative reconstruction can't occur instantaneously or in isolation: it unfolds through a cycle of conversation and introspection, and it requires a blend of internal and external conditions.

As for *internal conditions*, a person needs to acquire the cognitive skills implicated in narration, including temporal coherence, causal coherence, thematic coherence, and the concept of biography. To acquire these skills, he must possess certain innate capacities (such as episodic memory) and be exposed to external stimulation (namely, social interaction and exposure to culture) that allows these capacities to develop into competencies. As for *external conditions*, a person needs regular access to physical and social environments in which he can exercise his acquired narrative skills, as well as shape his developing self-narrative in response to feedback. He needs regular occasions to articulate his self-narrative for audiences who will listen and react, whether through formal performances or informal conversations.<sup>279</sup>

Efforts to promote the rehabilitation of incarcerated Americans, therefore, should include the provision of opportunities to cultivate relevant cognitive skills, as well as to apply those skills in meaningful acts of storytelling. As for cognitive skills, these can be cultivated through formal education and therapy. But as for the actual process of self-narrative development, which entails sharing one's self-narrative and incorporating feedback, this requires more fluid and extensive interactions with audiences: including not only peers and professionals in the controlled environment of a prison, but also members of the outside community whose support in the real world will be instrumental to an individual's long-term success in rehabilitation and reintegration.

### *Conditions for realizing an adaptive self-narrative*

For a reconstructed self-narrative to be adaptive, it must not only be coherent and socially acceptable; it must also be feasible so that the narrator can implement it. As noted above, rehabilitation requires that a person reconstruct his self-narrative so that it consists of pro-social strategies for pursuing primary goods. His adaptive self-narrative must continue to evolve not only as he tells and retells it, but also as he strives to realize it in the world. Accordingly, to sustain progress in rehabilitation, he needs access to the full range of resources, relationships, skills, and opportunities necessary to live in accordance with his reconstructed self-narrative.<sup>280</sup>

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<sup>278</sup> McAdams, *Redemptive Self*, 62–66; “Personal Narratives,” 252.

<sup>279</sup> See McAdams, *Redemptive Self*, 63–65, 73–76; “Personal Narratives,” 245–247; 250–252.

<sup>280</sup> While it's healthy to have a somewhat inflated sense of optimism about one's overall life prospects, it's equally important to have feasible objectives toward which one can take concrete steps. See Maruna, *Making Good*, 88, 106.

First, just as one's ability to develop an adaptive self-narrative as a young adult depends on access to material and discursive resources, so does one's ability to maintain a reconstructed self-narrative as a rehabilitated adult. As for *material resources*, one needs the means not only to meet his survival needs, but also to pursue appropriate goals specified in his revised life plan (e.g. the means to enroll in school or in workforce development programs). As for *discursive resources*, he needs exposure to pro-social norms, expectations, and cultural contexts not only when he first begins to reinterpret his history, but also over the course of his long-term endeavor to build a new life in society (e.g. through peer support networks, counselors or mentors, or community groups).<sup>281</sup>

Second, just as a person's ability to start reconstructing his self-narrative depends on access to internal and external conditions, so does his ability to sustain that self-narrative. As for *internal conditions*, beyond skills of narration, he also needs those cognitive and emotional skills that facilitate an adaptive lifestyle, namely by enabling him to adjust his habits, monitor his progress, and rebound from setbacks. As for *external conditions*, beyond having opportunities to develop his self-narrative by sharing it and receiving feedback, he needs opportunities to confirm his reconstructed identity by engaging in pro-social activities and receiving recognition.<sup>282</sup>

In sum, supporting the rehabilitative success of incarcerated Americans entails not only securing their freedom to develop adaptive self-narratives, but also securing the array of *other capabilities* that are essential to sustaining those self-narratives in the real world. As human beings, people in rehabilitation should be guaranteed threshold levels of all their central capabilities; and as citizens who have endured the pains and deprivations of incarceration, they should have access to targeted interventions that address all their high-priority needs in reintegration. Their self-narrative reconstruction process, properly understood, entails not only reinterpretation of their histories using thoughts and words, but also the complex endeavor to build a better future through concrete choices and actions in the world. Efforts to promote their success in rehabilitation, therefore, must fully and concretely support all parts of this process.

#### 5.4.2 Building blocks of redemptive self-narrative capabilities

As I've discussed at length, adaptive self-narratives hold distinctive potential to facilitate reintegration when they're based on a redemption script. Accordingly, as we work to secure the capabilities of self-narrative for incarcerated Americans, we should ensure that they have the resources and opportunities to develop and sustain *redemptive* self-narratives in particular.

##### *Exposure to redemptive self-narratives*

Given that the nature of a person's self-narrative reflects the discursive resources available to him, his freedom to construct a *redemptive* self-narrative depends on his exposure to cultural contexts that enable him to adopt the redemption script as a lens for his life story.

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<sup>281</sup> See Ward and Marshall, "Narrative Identity," 284–286, 289–292; Maruna, *Making Good*, 112–115.

<sup>282</sup> While this point overlaps with the above statement about access to resources, it's more poignantly about the interpersonal aspect of rehabilitation: the pivotal roles of social interaction and validation in consolidating one's reconstructed identity. See Maruna, *Making Good*, 155–158; Ward and Marshall, "Narrative Identity," 290, 295.

For analysis of empirical research on prison-based therapeutic communities that support narrative identity reconstruction, see Stevens, "Identity Reconstruction and Narrative Reframing."

In American society today, adults with criminal histories face a discursive context affording both resources and hindrances with respect to redemptive self-narratives. On one hand, the redemption script is deeply embedded in our cultural history; indeed, it's for this reason that redemptive self-narratives hold enormous power to secure social acceptance.<sup>283</sup> On the other hand, the redemption script runs counter to our society's cultural assumptions about criminality. Thus, for Americans with criminal histories, few narratives of radical personal change – as opposed to narratives depicting a return to one's former self – are readily available as life story templates.<sup>284</sup>

To maximize their potential to turn their histories into redemptive self-narratives, then, we should strive to provide incarcerated Americans with exposure to alternative discourses that can help them understand their experiences of desistance as part of a transformative process. Key resources to be developed for this purpose are the life stories of successful desisters, particularly those who have interpreted their own redemptive trajectories as deep personal transformations.<sup>285</sup>

### *Opportunities to cultivate generativity*

Much of the redemption script's "fertility" for desisters, we've established, stems from its power to reinforce commitments to generative pursuits. But generative motives don't just spontaneously arise in hearts and minds: for most desisters, *experience* must provide the initial spark of generativity. For this reason, their freedom to construct redemptive self-narratives depends on their access to activities that foster generativity.<sup>286</sup>

Most desisters' self-narratives, Maruna found, reflect a process in which they first learn that they're capable of achieving success through generative activities, and only then learn to find pleasure in these activities. Exposure to such activities is necessary but not sufficient to inspire wholehearted adoption of generative roles, since initial efforts may amount to awkward or discouraging experiences; desisters come to embrace generative roles only if and when they can manage, through persistent effort and with external validation, to redefine these challenging activities as pleasurable and rewarding.<sup>287</sup>

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<sup>283</sup> The redemptive self-narrative resonates with classic American ideals, appears regularly in public discourse and the media, and has long shaped popular depictions of political leaders, cultural heroes, and other influential figures. See McAdams, *Redemptive Self*, 4–12, 18–23, 97–98, 268–276, 287–288; "American Identity," 21–24.

<sup>284</sup> The dominant tenor of public discourse in our society reflects broad acceptance of *criminal essentialism*: a view that criminality is a permanent trait and that "real criminals" can't change. It's arguably due to the dominance of essentialism in Western culture that Maruna's desisters insisted they were really decent individuals "all along," describing their redemption as nothing more drastic than a return to older selves. Apparently, they had no discursive resources to make sense of radical transformations in character. See Maruna, *Making Good*, 165–167; see also Nellis, "Aesthetics of Redemption."

Maruna also points out that there are cultural contexts where criminal essentialism is less dominant, and changes in character are accordingly both encouraged and recognized, citing Rotenberg, *Re-Biographing and Deviance*; Braithwaite, *Crime, Shame and Reintegration*; Haley, "Crime Prevention Through Restorative Justice."

<sup>285</sup> See Maruna, *Making Good*, 167. See also Liem and Richardson, "Role of Transformation Narratives."

<sup>286</sup> See Maruna, *Making Good*, 125.

<sup>287</sup> See Maruna, *Making Good*, 125–127 (citing Leibrich, *Straight to the Point*, 51; Matza, *Becoming Deviant*, 117; Becker, *Outsiders*, 53; Rotenberg, *Damnation and Deviance*, 90).

The freedom to develop a redemptive self-narrative, as such, depends on having opportunities to acquire and cultivate a generative orientation. Securing this freedom for incarcerated Americans entails ensuring access to productive activities and roles they can find meaningful; it also entails expanding opportunities to reflect constructively on their participation therein, particularly in the company of peers, mentors, supervisors, and others who can recognize and encourage their efforts.

### *Conditions for sustained generativity*

To maximize the redemption script's capability-fertilizing impact, it's necessary to ensure that, once desisters have developed redemptive self-narratives, they're adequately equipped to live in accordance with these self-narratives. Thus, supporting the reintegration of incarcerated Americans entails not only securing their freedom to interpret their histories redemptively, but also securing *other capabilities* they need to make and fulfill generative commitments going forward. This means ensuring their access to material and discursive resources that enable them to stay committed to generative roles, as well as their access to internal and external conditions that help them sustain generative lifestyles over time.<sup>288</sup>

In sum, to maximize their prospects for success in reintegration, we should ensure that incarcerated Americans have access not only to the redemption script, but also to the kinds of long-term service opportunities and supportive relationships that make a redemptive self-narrative feasible and sustainable. The process of constructing and maintaining a redemptive self-narrative, properly understood, encompasses learning to reinterpret the past redemptively, developing generative motives, and actively engaging in generative pursuits over time.<sup>289</sup>

Fully supporting this process means developing at least three sets of capabilities: (1) those required to apply the redemption script to one's life, which requires access to appropriate discursive resources, ideally prior to release; (2) those required to cultivate generativity, which requires access to productive and meaningful service opportunities, also starting prior to release; and (3) those required to realize one's generative commitments over time, which requires post-release access to service opportunities as well as social and material support in the community.

### **5.4.3 Policy implications**

Having outlined the building blocks necessary to secure the self-narrative capabilities of incarcerated Americans, here I offer high-level recommendations for developing a correctional system that secures these building blocks.

#### *Explicitly reframe policy priorities and goals*

First and most broadly, correctional policies and practices should be explicitly reframed as efforts to secure the self-narrative capabilities of incarcerated Americans. Shifting from a risk-based to a strengths-based model of rehabilitation, policy makers and correctional administrators should publicly commit to establishing correctional environments in which all individuals are free to construct and maintain adaptive self-narratives. Treating the building blocks of self-

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<sup>288</sup> See Maruna, *Making Good*, 127–130; see also Ward and Marshall, “Narrative Identity,” 285–286, 293.

<sup>289</sup> Recent research confirms that the “wounded healer” role bears positive correlations with successful desistance and reintegration. See, e.g., LeBel, Richie, and Maruna, “Helping Others.”

narrative as a general checklist for correctional system reform and program design, they should commit to ensuring that incarcerated Americans in every facility have access to:

1. Adequate *material resources* to cover survival needs both before and after release, as well as the means to pursue and sustain continued recovery and growth in society;
2. Adequate *discursive resources* to support ongoing recovery and growth before and after release, including exposure to positive relationships and cultural norms;
3. Adequate opportunities to acquire *internal conditions* for developing and living out adaptive self-narratives before and after release, including opportunities to cultivate generative motives;
4. Adequate *external conditions* for developing and living out adaptive self-narratives before and after release, including opportunities to share their life stories, live out pro-social commitments embedded in their life stories, and receive support and recognition for their pro-social efforts.

Formal commitments to provide these broad categories of resources and conditions, in turn, need to be translated into concrete efforts to secure continuous access to key capabilities on both sides of the prison walls. These efforts should include bolstering material support for existing pre- and post-release programs that already provide some of the needed resources and conditions, as well as developing and replicating effective programs to target persistent unmet needs.<sup>290</sup>

#### *Holistically assess and develop correctional programming*

Just as every correctional facility is legally required to fulfill individuals' basic survival needs through an array of appropriate services,<sup>291</sup> every facility should be required to provide the building blocks of self-narrative through an array of quality programming – namely education, counseling, peer support, and work opportunities. Policy makers and correctional administrators should be required to ensure that all these programs – as implemented in each facility – *work together* to provide a full set of self-narrative building blocks; and, in turn, that each incarcerated individual has access to a set of programs that, taken together, can equip him to construct an adaptive self-narrative. Programming standards should mandate that, in each facility,

1. An adequate range of *education, counseling, and peer support programming* is providing the conceptual tools, cognitive skills, positive relationships, and learning environments necessary to construct adaptive self-narratives. Programs should be developed to incorporate a storytelling focus in their approaches to teaching, therapy and recovery.
2. An adequate range of *vocational training, work, and service programming* is affording opportunities to cultivate the social skills, work habits, and service-oriented sensibilities necessary to construct adaptive (and particularly redemptive) self-narratives. Priority could be given to programs that develop both marketable skills and generative values, such as those that train and certify individuals to be addiction counselors or peer tutors.
3. An adequate range of *arts programming* is securing the building blocks of self-narrative. In particular, creative writing and performing arts programs could be directly oriented to the acquisition of cultural sensibilities and storytelling skills, including occasions for individuals to present their work and interact with non-incarcerated audiences.

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<sup>290</sup> The work of implementing such programs, which involves operational considerations that fall outside the scope of my project, requires that administrators strategically tailor the programs in light of institutional needs and values that prevail in each prison's context. See Lin, *Reform in the Making*, for a full account of these considerations.

<sup>291</sup> See, e.g., *Estelle v. Gamble*; *Rhodes v. Chapman*; *Wilson v. Seiter*; and *Brown v. Plata*.

Correctional institutions should further be incentivized to facilitate partnerships between prison-based and community-based programs so that, for each incarcerated American, access to the building blocks of self-narrative – normative guidance, social support, meaningful work – continues uninterrupted throughout his reentry process, especially in the earliest and most vulnerable phases of post-release adjustment.<sup>292</sup>

### *Recognize and reward progress in rehabilitation and reintegration*

Social rituals and public recognition play significant roles in establishing the external conditions necessary for desisters to sustain their reconstructed self-narratives.<sup>293</sup> If we take seriously the centrality of self-narrative in rehabilitation and reintegration, therefore, we should develop and institute social practices and policies that can fulfill these significant roles.

Our society's penal practices, particularly those surrounding conviction and incarceration, have the collective effect of a "status degradation ceremony" that serves to express public denunciation, demote individuals from "citizens" to "criminals," strip them of personal identities, and exile them to a liminal existence outside of conventional society. Yet we have no parallel set of "redemption rituals" by which we reverse this degradation and reincorporate individuals as citizens and community members.<sup>294</sup> Thus, there's an unmet need in our society for cultural practices that symbolically reconnect these individuals to the community in ways that both motivate them to embrace their citizenship and move the community to embrace them as citizens.

We as a society would do well, then, to develop and popularize redemption rituals in which a desisting individual can affirm his reconstructed self-narrative, and community members can recognize and validate his progress in living it out. We might start by studying those redemption rituals that exist in our society and elsewhere, which have ranged from public pronouncements by judicial or correctional officers, graduation ceremonies held by correctional program providers, and semi-formal community-wide celebrations.<sup>295</sup> Where adopted, such rituals have proved most effective when they occur at multiple points in a person's rehabilitation and reintegration, recognizing and reinforcing his progress in increments over time.<sup>296</sup>

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<sup>292</sup> Five Keys stands as a shining (and unfortunately exceptional) example of such partnerships. Established by the San Francisco Sheriff's Department as the nation's first charter school to operate in a jail, Five Keys is a non-profit corporation that now runs three public charter schools for currently and formerly incarcerated adults in San Francisco and Los Angeles, as well as wraparound services and job training administered in partnership with community-based organizations. See "Five Keys Charter Schools and Programs," <http://fivekeyscharter.org>.

<sup>293</sup> Maruna, *Making Good*, 155–158. See also Maruna and LeBel, "Desistance Paradigm," 76.

<sup>294</sup> Maruna, *Making Good*, 158, 162–164 (citing Braithwaite and Mugford, "Reintegration Ceremonies," 243; Trice and Roman, "Delabeling"; Thomas Meisenhelder, "Becoming Normal"; Lofland, *Deviance and Identity*, 227–228). See also Maruna, "Reentry as a Rite of Passage," 10–13.

<sup>295</sup> See Maruna, *Making Good*, 163–164; Maruna and LeBel, "Desistance Paradigm," 76–80.

<sup>296</sup> To develop effective rituals, the sociology literature suggests, we should ensure they are emotive and symbolic (rather than technical or formulaic), involve community members as participants (rather than professionals only), focus on positive achievements (rather than the risks of failure), impart some tangible certification of earned status change (rather than a generic award), and are repeated periodically (rather than on a one-time basis). See Maruna, "Reentry as a Rite of Passage," 14–21; see also *Making Good*, 156–58, 162.

As a corollary to these redemptive rituals, we'd do well to adopt laws and policies that allow for "state-sanctioned rebiographing": the cleansing of one's criminal record upon maintaining a certain period of desistance (that is, avoidance of re-arrest or relapse), and/or upon achieving certain affirmative milestones in reintegration (such as restitution payment, community service, academic attainment, gainful employment, or maintenance of sobriety).<sup>297</sup> Such laws and policies would serve not only to incentivize progress in reintegration, but also to signify that our society expects, encourages, and rewards individuals' sustained efforts to live out their reconstructed self-narratives.

*Elevate and disseminate the redemptive self-narratives of desisters*

To unlock the redemption script's capability-fertilizing potential, we must establish a richer array of discursive resources than is now available to incarcerated Americans. As noted above, while the redemption script resonates with broadly shared cultural ideals and thus holds power to secure social acceptance, it also sits in tension with cultural assumptions that "real criminals" can't change.<sup>298</sup> Our public discourse affords few redemptive self-narrative templates for adults with criminal histories.<sup>299</sup> Thus, if we take seriously the power of redemptive self-narrative to improve their life prospects, we should compile such templates for them to draw on, looking to the self-narratives of successful desisters whose use of the redemption script has served them well.<sup>300</sup>

To date, a number of self-narratives of this kind have been formally published for broad audiences or informally circulated within specific communities.<sup>301</sup> But collectively, these existing redemptive desistance stories are not numerous or culturally prominent enough to overpower the anti-redemptive assumptions about criminality that dominate our public discourse. As such, we should strategically marshal and spotlight those that exist – not only to honor those desisters who have struggled to rebuild their lives, but also to shift our public discourse about criminality, and thereby to enrich the discursive resources available to incarcerated Americans. We should also expand and diversify the pool of publicly known desistance narratives, ensuring that incarcerated Americans of diverse backgrounds and identities have access to narrative examples and role models they find relatable.

These are culture-transforming tasks that may belong primarily to certain members of society – educators, advocates, activists, media professionals, desisters from various walks of life – other than policy makers and correctional administrators. But these are tasks that policy makers and administrators can and should facilitate, in part by supporting and expanding correctional programs that support the development of adaptive self-narratives, as well as by enabling (or at least not impeding) the free flow of information between such programs and the general public.

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<sup>297</sup> Maruna, *Making Good*, 164–165.

<sup>298</sup> McAdams, *Redemptive Self*, 5, 287–278; "American Identity," 21–24. See also footnotes 283 and 284 above.

<sup>299</sup> Maruna, *Making Good*, 165–167 (citing Irwin and Austin, *It's About Time*; Allen, *Decline of the Rehabilitative Ideal*; Braithwaite, *Crime, Shame, and Reintegration*; Haley, "Crime Prevention Through Restorative Justice").

<sup>300</sup> Maruna, *Making Good*, 167.

<sup>301</sup> For example: Senghor, *Writing My Wrongs*; Rodriguez, *It Calls You Back*; Hopwood, *Law Man*; Betts, *Question of Freedom*; Kerman, *Orange Is the New Black*; Waldman and Levi, *Inside This Place*; Ladette, *Pink Elephant*; Lamb et al., *Couldn't Keep It to Myself*; Law and Whitehorn, *Resistance Behind Bars*. See also Appendix G.



#### 5.4.4 Objections and ethical caveats

The claims I've set forth regarding the self-narrative capabilities of incarcerated Americans, particularly the policy implications, are likely to provoke objections analogous to those considered in Chapter 3 regarding post-secondary correctional education (PSCE). In addition, my policy proposals here will likely raise ethical concerns about the risk of abuse, both by incarcerated individuals and by correctional institutions. Below I address these objections and concerns, each in turn, and offer ethical caveats in light of policy principles derived from the CA.

##### *Responding to objections from left and right*

Like the capability of education, the capability of self-narrative implicates significant resource investments, including the expansion of costly programs; and its most obvious benefits are associated with long-term psychosocial development rather than immediate survival needs. Thus, from critics on the right, my proposals here will raise concerns about wasting public funds on undeserving or incorrigible criminals, violating principles of just retribution, and symbolically condoning crime by providing services to prisoners. In turn, from the left, my proposals may raise concerns among moderates about diverting resources away from urgent welfare needs, as well as concerns among radicals about tinkering with a system we should instead be dismantling.

As for objections from the right, no amount of evidence confirming the cost-effectiveness and public safety value of capability-expanding interventions will resolve the underlying doubts and concerns, which are moral rather than empirical at their core. As with the issue of PSCE, some versions of these objections rest on flawed assumptions about the moral worthiness, personal character, and civic entitlements of individuals who have been convicted of crimes; others rest on the dubious premises that our penal practices are insufficiently harsh and that promoting the reintegration of prisoners violates the dignity of victims. These objections reflect deep-seated attitudes and judgments linked to criminal essentialism, and they point to the need not for more logical arguments, but rather for deeper cultural and discursive changes – indeed, the very same changes that, as discussed above, are necessary to enrich the self-narrative resources available to incarcerated Americans.<sup>302</sup>

As for objections from the left, the CA and political responsibility model hold the keys to justifying investments in incarcerated Americans' self-narrative capabilities, even if it means pouring resources into a deeply flawed system. First, according to the CA's core imperative, we as a society have both ethical and strategic reasons to focus on securing fertile capabilities for incarcerated Americans, as we lack the capacity to remedy all their capability deficits at once. We've established that the capability of self-narrative, by fertilizing the architectonic capabilities, better positions individuals to meet *all* capability needs in the reintegration process and achieve a decent quality of life. Securing this capability for incarcerated Americans, then, significantly expands their prospects for flourishing and reduces the need for future tragic choices to meet their needs. For these reasons, the freedom to construct and sustain an adaptive self-narrative is a fertile capability that, among all capabilities we could support, merits heightened investment.

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<sup>302</sup> A large body of research has established that punitive attitudes correlate with various social beliefs, including religious views, political orientation, and racial bias; and recent studies suggest that, among Americans, punitive attitudes are strongest among those who hold degrading stereotypes of people who commit crimes and are thus less likely to empathize with them. See Unnever and Cullen, "Empathetic Identification and Punitiveness" (citing Bowman, "Murder, Meth"; Cavendar, "Media and Crime Policy"; Braithwaite, *Crime, Shame, and Reintegration*).

Second, under the political responsibility model, *all* Americans bear responsibility for rectifying injustices caused by our penal system: to secure redress for the harms it's inflicted, as well as to change the system and make it more just. As discussed in Chapter 3, reformers and abolitionists disagree as to what structural changes are ultimately called for, but they can all appreciate the capability of self-narrative as a vital means to heal and empower incarcerated Americans as redeemable citizens, and to elevate their voices as survivors of injustice and advocates for change. By investing in the fertile capability of self-narrative, we not only begin to bear responsibility for redressing injustices toward incarcerated Americans; we also empower them to join us, and even to lead us, in bringing about cultural, political, and structural changes.

### *Establishing ethical caveats*

Two other likely objections aren't specific to liberal or conservative perspectives, but are rooted in concerns about the operational and ethical risks inherent in my proposals. We can think of these as the "con artist" concern and the "brainwashing" concern, respectively:

- First, there's a risk that capability-supportive interventions won't have their desired rehabilitative effects, and that some individuals will abuse their newly acquired capabilities. Specifically, they may simply become better storytellers without abandoning their criminal ways, and thus persuade the system to release them prematurely.
- Second, there's a risk that the capability-supportive interventions in question, by favoring certain self-narratives as "adaptive" and others as "maladaptive," will serve as forms of indoctrination, pressuring individuals to reshape their identities in ways that are culturally or politically sanctioned rather than authentic.

Based on these concerns, some would argue that efforts to secure the self-narrative capabilities of incarcerated Americans would be too fraught with risks to merit significant public investment.

While operational and ethical risks should be taken seriously, both of these concerns can effectively be addressed through careful application of the policy guidelines derived from the CA in Chapter 2: the foundational principle of respect for human dignity, as well as the corollary principles that require upholding agency and accounting for vulnerability. To recapitulate:

- Respect for *dignity* requires that, if the capability of self-narrative is vital to the wellbeing of incarcerated Americans, we as a society bear the burden of securing it in ways that minimize known risks. Our choice of methods should be governed by principles of agency and vulnerability, which entail treating individuals both as striving agents and as persons with needs.
- Upholding *agency* means protecting individuals' powers of reasoned choice: treating capabilities as direct targets of policies, and functionings as only hoped-for fruits of exercised capabilities. This calls for policies which ensure that incarcerated Americans are *free* to construct adaptive self-narratives as they choose, but not coerced into doing so.
- Accounting for *vulnerability*, in turn, means not only addressing material inequalities but also attending to power imbalances that cause capability deficits. For incarcerated adults, a key source of vulnerability is incarceration itself, which gives state actors direct control over their bodies. Efforts to secure their capabilities, then, should be designed to preserve and repair their powers of agency, equipping them to define and manage their own needs in preparation for release.

Regarding the “con artist” concern, then, we must recognize that human individuals are moral agents and, as such, they can and sometimes will exercise their freedoms in maladaptive or socially disfavored ways. This risk is present in every policy context; however, under the dignity principle, it can never justify a decision to deprive individuals of freedoms that are vital to their wellbeing. What this risk does justify is a decision to exercise due caution through reliance on evidence-based methods in program design, parole suitability assessment, and post-release monitoring. Ultimately, this risk can only be addressed by accruing evidence that particular interventions are reliably effective in expanding capabilities, minimizing occasions for abuse, and yielding positive results. To date, there’s a small but developing body of evidence to this effect with regard to several forms of educational, therapeutic, and arts programming; and in order to accrue more evidence, we must continue to build iteratively on what we’ve learned through careful implementation, documentation, and progressive refinement of our practices.<sup>303</sup>

As for the “brainwashing” concern, we must recognize that the risk of coercion is indeed heightened for individuals subject to the traumas and restrictions inherent in incarceration. Guided by respect for their agency as well as sensitivity to their specific forms of vulnerability, we should minimize this risk through careful program design and assessment, as well as scrupulous staff training and accountability measures. Program standards should ensure that individuals are free to develop a diverse array of adaptive self-narratives, and that self-narratives are assessed as “adaptive” with reference to evidence-based criteria (i.e. their tendency to facilitate wellbeing), not political or ideological norms. The redemption script must never be imposed, but rather offered as one of several self-narrative templates with therapeutic value.

## 5.5 Self-narrative as a matter of political responsibility

As *individuals*, incarcerated Americans face the challenge of constructing a stable sense of self that both recognizes the impact of past events and motivates them to rebuild their lives. For rehabilitation to be possible, they need to interpret their personal histories in ways that help them to heal and to develop healthy habits. And for reintegration to be possible, they need to present themselves in ways that invite acceptance and support from others.

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<sup>303</sup> For recent research on different approaches to rehabilitative programming and evidence of their effects, see (in addition to works cited in Chapter 4, especially footnotes 135, 202, 203): Runell, “Desistance Pathways”; Brewster, “Impact of Prison Arts Programs”; Miles and Clarke, “Arts in Criminal Justice”; Hughes, “Doing the Arts Justice”; Langelid et al., *Nordic Prison Education*; Gardner et al., “Prison Arts Resource Project” (annotated bibliography).

As mentioned in footnote 290, successful implementation of rehabilitative policies depends on the tailoring of each program to the institutional context in each facility. Programs are likely to rehabilitate only insofar as they’re administered in ways that (1) satisfy the *needs* of both correctional staff and prisoners, and (2) protect the *values* of both correctional staff and prisoners. These needs and values will vary and intersect in unique ways across facilities. Hence, in designing and improving policies, policy makers and administrators must fully understand and respond to the nuances of each institutional context. This means (1) first, looking closely at the needs, expectations, and coping strategies that structure the daily lives of staff and prisoners; and (2) second, working with staff and prisoners to develop programs that meet their needs and incentivize their participation. Unless policies reflect this kind of contextual understanding and input, they are doomed to fail. See Lin, *Reform in the Making*, especially 162–174.

Notably, Lin holds that successful implementation requires “prior commitment” to rehabilitation. Since the process of fitting a program to its context entails extensive planning, dialogue, and trial-and-error, getting it to work requires “time, a minimum commitment of resources, and . . . insulation from threats to the program’s existence.” What makes all this possible, Lin rightly observes, is “political support”: the kind of support that, as I’ve argued at length, must be rooted in respect for the dignity of incarcerated Americans if it is to endure. See *ibid.*

Further, as a *class*, incarcerated Americans face the challenge of proving to the public that they're entitled to the same basic rights and opportunities as other citizens are. They must do so in the face of entrenched cultural narratives that stigmatize them as second-class citizens, as less than fully human, and as morally unworthy "offenders" who are categorically incapable of personal transformation. Indeed, it's these stigmatizing narratives that have fueled and sustained our inhumane penal practices in the first place.

Thus, as I've argued here, the freedom to construct and sustain an adaptive self-narrative – particularly a *redemptive* one – is a highly fertile capability for Americans who are committed to rejoining society after having lived through crime and punishment. It's a capability that not only remedies several capability deficits that are common among incarcerated persons, but also develops capabilities that are vital to reintegration and long-term flourishing. For this reason, securing this capability for incarcerated Americans is essential from a standpoint of basic decency, which requires that we as a civilized society ensure a life worthy of human dignity for all citizens regardless of their criminal history or penal status.

Equally important, securing this fertile capability for incarcerated Americans is an essential component of bearing political responsibility for penal injustice. By enabling incarcerated Americans to develop and realize adaptive self-narratives, we begin to bear our shared responsibility to redress the social and material injuries our penal system has inflicted on them, and to fully honor their dignity as human persons and citizens. We thereby also pave the way for them to join us in actively bearing responsibility to bring about just conditions, empowering them to act as advocates and leaders who will push for meaningful systemic reforms.

The stigma associated with criminality is perhaps the ultimate barrier to policy changes that would ensure the humane treatment of incarcerated Americans. Since this stigma is rooted in cognitive beliefs and transmitted through culture, it must be overcome through measures that address both its psychological roots and its cultural expressions. Eliminating this stigma and its corrosive effects entails subverting our dominant narratives about crime and our popular perceptions of incarcerated Americans. It entails the cultivation of alternative narratives that affirm their moral status as human persons, that illuminate their many forms of vulnerability, and that uphold their potential to develop as individuals and as contributing members of society.

Self-narratives, along with other forms of creative expression, hold the strategic key to dissolving the roots of stigma, namely by dispelling stereotypes and encouraging empathetic identification between listeners and narrators. The process of self-narrative construction impels a narrator to consider the perspectives of his listeners; and acts of self-narration, in turn, unite a narrator and his listeners in profoundly human moments of communication and focused mutual attention. Exercise of this capability, in short, cultivates empathy on all sides. As such, the self-narratives of incarcerated Americans are instrumental not only in promoting their own wellbeing, but also in transforming our public discourse about crime and, ultimately, generating the political will we need to transform our penal institutions and remove systemic barriers to reintegration.

Self-narratives also hold normative significance as means of political action. Incarcerated Americans, as bearers of political responsibility and as the class degraded by our penal system, should be empowered to play meaningful roles in opposing and redressing the injustices of mass incarceration. They should be empowered to organize among themselves and with others, to advocate for systemic change, to testify about unjust practices they've experienced, and to articulate stories of suffering and growth. By securing their self-narrative capabilities, we clear the way for them to do so. In turn, by listening to and championing their self-narratives, we begin to bear our collective responsibility to reverse the corrosive effects of incarceration and stigma.

## 6 Conclusion

In closing, I wish to revisit the question at the heart of this dissertation – *Why* should non-incarcerated Americans invest in the wellbeing of incarcerated Americans? – and, in light of the argument developed, consider practical implications for incarcerated and non-incarcerated actors.

### 6.1 Recap of the argument

As I noted in Chapter 1, we as a society must openly discuss and resolve this question if our political consensus on penal reform is to be ethically sound and sustainable. In Chapter 2, I argued that our commitment to penal reform should be anchored to a *philosophical* consensus regarding our moral obligations and political responsibilities. That is, in our public discourse, we can and should recognize these key ethical reasons for promoting reintegration:

- First, we Americans *have obligations toward each other* in virtue of where we live and the kind of beings we are. Because we inhabit the same political community, we owe each other obligations of civic reciprocity; and because we all possess the dignity inherent in human personhood, we also owe each other duties of basic decency. To the extent that we as a society have breached these obligations toward incarcerated Americans – namely through harsh penal practices that deny their equal citizenship and degrade their humanity – we owe them redress.
- Second, we Americans *share responsibilities with each other* in virtue of how we're linked by social structures. Because we're all socially connected to unjust policies and practices that constitute our penal system, we all bear responsibility for rectifying them. Since incarcerated and non-incarcerated Americans are diversely situated – bearing different connections to systemic injustices, as well as varying degrees of power to expose or remedy them – we should strive to discharge our respective shares of this responsibility in correspondingly diverse ways.

In Chapter 3 I further argued that, if we accept the CA's moral premises, we as a civilized society have an unconditional imperative to uphold the dignity of every American – regardless of criminal history or penal status – in a manner that reflects respect for agency and concern for vulnerability. As members of a civilized society, we must collectively sustain social arrangements which ensure that all of us, including those incarcerated, are free to enjoy a minimally decent quality of life: a life characterized by threshold levels of the central capabilities.

Given these ethical reasons for improving the life prospects of incarcerated Americans, what reform measures should we prioritize? In Chapter 3, I made the case for investing strategically in fertile capabilities that remove the most severely corrosive disadvantages affecting this population; and in Chapters 4 and 5, I established the need and potential for investing specifically in the fertile capabilities of higher education and redemptive self-narrative.

So, what next? What social and political changes will be necessary to secure these capabilities, and who should be in charge of making them? Recall that, according to Young, our shared responsibility for rectifying structural injustice can be discharged only through collective action – specifically, *political* action that involves many differently positioned agents working together to produce systemic changes that no agent could achieve alone.<sup>304</sup> With this in mind, let's revisit Young's parameters for reasoning about the contours of our political responsibilities.

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<sup>304</sup> As discussed in Chapter 2. See Young, *Responsibility for Justice*, 111–112, 142–147.

## 6.2 Reasoning about responsibilities for penal injustice

To reason about our political responsibilities as diversely situated parties, as discussed in Chapter 1, is to consider our respective positions of connection, power, privilege, interest, and collective ability in relation to structural injustice – specifically, for this project’s purposes, in relation to the unjust harms caused by our penal system.

The first parameter, *connection*, is the very basis for political responsibility: that is, we each bear responsibility to rectify the unjustness of structures to which we’re socially connected. This parameter allows us to prioritize needs created by injustices to which we’re *most directly* linked, given that no individual can reasonably address *all* the injustices in his or her community. In applying this parameter, we can ask: “To what penal practices or reform efforts am I most closely connected as a voter, taxpayer, consumer, beneficiary, or victim?” It may be sensible to focus on needs for reform and redress in one’s county or state, or even in one’s neighborhood, especially if needs are pressing there and one is well positioned to address them.<sup>305</sup>

The parameter of *power* prompts us to ask: “What aspects of our unjust penal system do I have the greatest capacity to influence?” And further: “Am I in a position of power to promote the social, political, or institutional changes that can help bring about justice for incarcerated Americans?” For those who hold such power – including policy makers, prison administrators, corporate executives, and other public figures – it may be sensible to focus on areas of need where one’s statements and actions will have the greatest positive impact.<sup>306</sup> For those lacking such personal influence, it may be sensible to focus on areas of need where one can most effectively join others in pressuring the powerful to use their influence in constructive ways.<sup>307</sup>

The parameter of *privilege* prompts us to ask: “Am I privileged in relation to the unjust structures that need to be changed?” That is: “Do I benefit, actively or passively, from harsh penal policies and practices? In my social position, can I actively support penal reform efforts, or choose to stop passively enabling unjust penal practices, without suffering serious deprivation?” Those holding greater privilege include ordinary citizens who, despite holding little power, are well positioned to vote for reform measures, donate time or money to prison education programs, and speak out for humane policy changes. Those holding less privilege include incarcerated Americans for whom such actions are less feasible, if not impossible, due to their restricted liberties and limited resources. Thus, it’s sensible to calibrate one’s actions in light of one’s relative privilege and, likewise, to escalate one’s actions if and when one gains more privilege.<sup>308</sup>

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<sup>305</sup> Accordingly, a concerned citizen might ask herself: “Do prisons or jails in my local community have adequate educational and rehabilitative programs? Does my community have adequate reentry programs for residents returning from prison or jail? As a voter and resident, am I directly connected to decisions about these programs?”

<sup>306</sup> This consideration applies, most obviously, to members of official bodies that establish penal policies, or that allocate funding for correctional programs. It also applies to public figures or professionals who, though not officially tasked with shaping policies or budgets, hold power to raise public awareness and shape popular opinion.

<sup>307</sup> Accordingly, a concerned citizen (who does not hold a position of great influence) might ask: “In my community and beyond, what groups or organizations are effectively advocating for penal reform, access to education, or heightened investment in reentry services? How can I support or help publicize their work?”

<sup>308</sup> For example: An incarcerated person may gain some measure of privilege by obtaining release, earning a college degree, and securing gainful employment, thereby increasing her capacity to support and/or help lead reform efforts.

The parameter of *interest* prompts us to ask: “Whose interests are most centrally at stake?” More specifically: “Whose interests are most aligned with the social, political, and institutional changes required by justice?” This parameter is important both for reasoning about individual obligations and for guiding collective action strategies. For obvious reasons, incarcerated Americans have uniquely salient interests in exposing and redressing the injustices inherent in our penal system; thus, as far as possible, they should be empowered to discharge their political responsibility by shedding light on the harms they have suffered and the remedies that are called for. While many other parties do have material interests at stake in reducing recidivism, such interests are less directly connected to the dignitary violations at the root of penal injustice; thus, while these parties should be invited to join in reform efforts, they must also be persuaded that the ultimate goal is to rectify injustice, not to serve their material interests.<sup>309</sup>

The parameter of *collective ability* follows from the fact that political responsibility, by definition, is always shared, always calls for collective action, and always targets structural changes that no one can achieve alone. This parameter prompts us to ask: “Are there already-organized groups whose members are (or should be) concerned about penal injustice? Can their resources or connections be leveraged to promote penal reform measures?” Rather than start from scratch, that is, it’s prudent to coordinate with existing entities such as activist networks, advocacy nonprofits, churches or schools, political coalitions, or professional associations. It may also be wise to focus on areas of need where such coordination is more readily achievable.

### 6.3 Differently situated responsibility-bearers

With Young’s parameters in mind, let’s consider what opportunities for action may be possible for differently situated responsibility-bearers – including those who wish to support penal reform more generally, and those who wish to support the capabilities of higher education or redemptive self-narrative more specifically. The following suggestions are offered not as exhaustive guidelines, but rather as illustrative starting points.

#### 6.3.1 Currently incarcerated Americans

Of all the parties who are socially connected to our penal system, incarcerated Americans collectively are the least powerful, least privileged, and most directly impacted by capability deprivations caused by harsh policies and practices. They are uniquely well positioned to understand the harms they have suffered within this system, as well as to develop critical insight into how correctional policies and programs work (or don’t work) in practice. But because of the

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<sup>309</sup> This consideration applies to the growing proportion of politicians, prison administrators, and taxpayers who, as discussed in earlier chapters, have begun to recognize that penal reform efforts serve their material interests in public safety, system savings, and labor market productivity.

Parties *opposed* to penal reform may include politicians who feel pressured to appear “tough on crime,” citizens who hold stereotyped misgivings about prisoners or believe the current system is justly harsh, and corporate entities who are economically invested in the private prison industry. The task of responsibility-bearers seeking reform, in essence, is to publicly expose the facts and the grounds of these parties’ respective interests in maintaining the status quo, while making clear to all that capability-expanding reform measures will both serve the public interest and secure redress for injustice. See Young, *Responsibility for Justice*, 148–149.

restrictions and deprivations they experience in prison, very few are well positioned to articulate and publicize these understandings and insights.<sup>310</sup>

These individuals bear responsibility, first and foremost, to inform themselves as much as they reasonably can about unjust policies and practices affecting them. Although immediate opportunities for collective action may be limited, they can strive to understand what educational and rehabilitative opportunities they may be entitled to access, pursue those available to them, and urge peers to do the same. A key first step may be contacting organizations whose mission is to empower people in prison by providing free informational resources and advocacy tools.<sup>311</sup>

As for those incarcerated Americans who have already benefited from access to quality educational and rehabilitative programs, they can use their newly acquired skills and credentials in ways that both promote their own flourishing and support the flourishing of their peers – even while they are incarcerated. They might do this by becoming active leaders in these programs; by recruiting and encouraging peers to participate and persist in these programs; by creating or coordinating peer-led group activities that supplement these programs,<sup>312</sup> or by finding ways to publish first-hand accounts of these programs and their meaningful impact.<sup>313</sup>

### 6.3.2 Formerly incarcerated Americans

Like those who remain in prison, formerly incarcerated Americans are, among those socially connected to the penal system, among the least powerful, least privileged, and most directly harmed by harsh policies and practices. For many, the cumulative effects of incarceration and the daily struggles of reentry, taken together, make the prospect of political action impractical. Given their circumstances, it's fair to say that their primary responsibilities revolve around staying afloat and moving toward stability as best they can, against the odds.<sup>314</sup>

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<sup>310</sup> That said, it's worth noting that individual access to privilege and power varies within the prison population. Some individuals have relatively greater privilege on account of personal background, social connections, and disciplinary history in prison. Some have access to material support through privileged friends or family outside the prison. Also, through prolonged periods of good behavior (and good luck), some may earn institutional privileges, including access to a wider array of programs or better work assignments. Individuals may obtain some power in prison as well, such as by being recognized informally as a leader among peers, or by being appointed to formal work positions that involve authority over others and/or influence over important institutional operations.

<sup>311</sup> For example, incarcerated Americans can call or write to nonprofits such as Prison Law Office, Justice Now, Legal Action Center, and Root & Rebound for free resources regarding their rights and options in various matters.

<sup>312</sup> Research shows that life-term prisoners, who comprise a majority of PSCE participants, often take the lead in mentoring and encouraging incarcerated peers to pursue educational goals. Mukamal et al., *Degrees of Freedom*, 44. Indeed, a number of successful prison-based rehabilitation programs explicitly expect alum to “give back” by guiding newer program participants or by otherwise positively influencing peers outside the program. Examples include: Insight Prison Project; San Quentin TRUST; Alliance for Change; and California Reentry Institute.

<sup>313</sup> For example, see Lennon, “Let Prisoners Take College Courses;” Nash, “Earning a Degree in Jail.” Consider also Brothers in Pen, an incarcerated writers’ group that publishes books and holds readings for non-incarcerated invitees.

<sup>314</sup> As for family members of currently and formerly incarcerated Americans, they too are significantly impacted by harsh penal policies and practices – sometimes through harms inflicted on their loved ones, sometimes through direct contact with the system (such as when visiting), and generally through the loss, hardship, and stigma associated with having a loved one in prison. Like their loved ones, these family members are both directly harmed by incarceration and uniquely positioned to understand the harms they suffer; accordingly, they face an analogous range of constraints and possibilities in bearing political responsibility to rectify the injustices of our penal system. See Travis et al., *Growth of Incarceration*, 260–280; Comfort, *Doing Time Together*.



But for those who have managed to obtain some privilege or power – whether through pre-release education and training, post-release success in reintegration, or both – they share political responsibility for exposing and addressing the structural injustices they have faced. Upon achieving success in reintegration, these resilient individuals can (and do) use their talents and resources to promote systemic change in diverse ways, such as: by creating and coordinating reentry programs that facilitate pathways from prison to college; by serving as mentors and leaders in these programs;<sup>315</sup> by building grassroots movements in support of penal reform and reintegration; by serving as reentry-focused program and policy consultants; by pushing for changes to public discourse that will emphasize the human dignity of incarcerated Americans;<sup>316</sup> and by publicly sharing their own and others’ redemptive self-narratives with diverse audiences, thereby helping to dispel the stigma associated with incarceration.<sup>317</sup>

### 6.3.3 Americans relatively untouched by incarceration

What about American voters and taxpayers whose daily lives are only indirectly impacted by the penal system? At the very least, most citizens can and should vote in support of reform measures that will improve the life prospects of incarcerated individuals, when such measures appear on the ballot.<sup>318</sup> Granted, the act of casting one vote may not make much of a dent; but this remains true only if that act is utterly unaccompanied by other proactive and coordinated efforts. One person’s voting behavior *can* be politically meaningful insofar as it’s well informed, and it *can* be politically impactful insofar as it’s coordinated with the voting behavior of others.

In the context of mass incarceration, being a well-informed citizen entails more than becoming aware of penal reform efforts as they make headlines; it entails understanding the circumstances that make reforms necessary and, correspondingly, critically assessing any proposed reforms in light of that understanding. Thus, as bearers of political responsibility for our penal system, American voters and taxpayers should start by learning key facts about this

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<sup>315</sup> For example, consider these “prison-to-college pipeline” programs, each founded and/or largely staffed by formerly incarcerated individuals: Project Rebound (San Francisco State University); Underground Scholars Initiative (UC Berkeley); Second Chance Program (City College of San Francisco); College Initiative (John Jay College of Criminal Justice); College and Community Fellowship (New York City).

<sup>316</sup> For example, consider the work of these community-based initiatives, all founded and led by formerly incarcerated leaders: All of Us Or None; Asian Prisoner Support Committee; A New Way of Life; Fortune Society; JustLeadership USA; Center for NuLeadership; Starting Over Strong. For more examples, see Moore, “11 People.”

<sup>317</sup> For example, consider the published first-person narratives of Shaka Senghor (memoir: *Writing My Wrongs*), Piper Kerman (memoir and drama series: *Orange Is the New Black*), TiTi Ladette (memoir and play: *Pink Elephant*), Troy Williams (op-eds in the *Oakland Post*), and Seth Sundberg (official origin story of his company Prison Bars). Consider also the first-person narratives featured in community-based outreach campaigns, such as Root & Rebound’s “Stories of Reentry” series. Finally, consider the ongoing work of Incarcerated Voices and On the Count. For more examples, see Moore, “11 People.”

<sup>318</sup> For an overview of recent criminal justice reforms, see Porter, *State of Sentencing 2015* (research report). For an overview of pending reform issues, see Prison Policy Initiative, “Winnable Criminal Justice Reforms” (policy brief). For an overview of federal and California policies affecting college access for incarcerated individuals, see Mukamal et al., *Degrees of Freedom*, 70–79. Generally, for ongoing updates on actual and potential reforms, some highly accessible and reliable national sources include The Marshall Project; Pew Charitable Trusts (Public Safety Performance Project); Prison Legal News; Prison Policy Initiative; Prison Studies Project; The Sentencing Project; Vera Institute for Justice; and Education From the Inside Out Coalition (see Bibliography for website addresses).

system: its recent history, its globally exceptional size and scope, the unequal and destructive nature of its impact, and the disparity between its supposed purposes and its actual operations.<sup>319</sup>

Beyond knowing these basics, it's important for reform-minded citizens to be generally informed about which correctional practices and programs have strong track records as means to promote reintegration and flourishing.<sup>320</sup> It's equally important, particularly for more privileged citizens, to look beyond general conclusions drawn from statistical data, and to learn also from the experiences of currently and formerly incarcerated persons: about the proximate causes and consequences of their crimes; the deprivations they have endured before, during, and after incarceration; and the factors that have impeded or improved their prospects for health and stability. Indeed, one easy way to become better informed – both about promising reform efforts and about the concrete experiences of incarcerated Americans – is to follow the work of formerly incarcerated Americans who have become advocates, writers, and leaders.<sup>321</sup>

Once informed, responsibility-bearing citizens should translate their knowledge into words and actions that, taken together, will contribute to broader social and political changes. At a basic level, this includes helping other Americans – friends, neighbors, family members, colleagues – become better informed about our penal system, the injustices and human costs it has created, and our social connections to it. This may involve sharing relevant resources and events, starting conversations about relevant headlines, or using social platforms at one's disposal to promote awareness of relevant local needs and initiatives. Well-informed citizens who develop a clear stance about specific issues may also choose to write op-eds or blog posts.<sup>322</sup>

The ultimate hope, of course, is that a critical mass of well-informed Americans will not simply talk about and vote for systemic changes, but actually help make these changes happen from the ground up. If a key first step is to learn about groups or organizations that are already working effectively to promote penal reform and reintegration, a natural next step is to support that work. This means making contact with such groups or organizations, learning about their needs, and determining whether and how one can help meet those needs, such as by donating one's time, resources, relevant skills, or professional connections. Depending on one's location, there may be a range of opportunities to volunteer in nonprofit offices, support public outreach initiatives, participate in organizing efforts, and teach or mentor in correctional facilities.<sup>323</sup>

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<sup>319</sup> Appendices A, B, and C are decent starting points. Other helpful introductory pieces include: Wagner and Rabuy, *Mass Incarceration: The Whole Pie* (report); Equal Justice Initiative, "Slavery to Mass Incarceration" (short film); Coates, "Black Family" (article). See also Prison Policy Initiative's online clearinghouse of criminal justice research.

<sup>320</sup> As suggested in note 318, one way to stay updated is to look up organizations that publish news and resources on criminal justice, prison reform, and reentry. See the Bibliography for a list of all those mentioned in this chapter.

<sup>321</sup> Several such individuals have created organizations whose mission is to serve, de-stigmatize, and empower the formerly incarcerated. Because public outreach and advocacy is a key component of their missions, they make it easy to access free information through their websites and online feeds. See notes 315 and 316 for some examples. For a more big-picture perspective on formerly incarcerated leaders and advocates, see *Futures Without Violence*, "Voices of Formerly Incarcerated Leaders"; Moore-Backman, "Formerly Incarcerated People Lead Movement."

More generally, using digital searches (e.g. Amazon, YouTube, iTunes) or analog resources (e.g. public library), one can readily find first-hand narratives of currently or formerly incarcerated persons, as a growing number have begun to publish their stories in various formats: books, articles, films, podcasts, blogs. See note 317 for examples.

<sup>322</sup> See, for example, Letters to Editor, "A College Education for Prisoners," *New York Times*. April 13, 2015.

<sup>323</sup> See the Bibliography for a list of all organizations and programs mentioned in this chapter. For a searchable directory of American PSCE programs, see Prison Studies Project, "National Directory."

### 6.3.4 Policy makers and correctional administrators

Those who hold the greatest *direct* power over penal policies and practices, namely politicians who make laws and administrators who implement them, bear heightened responsibility to make our penal system as just as possible. Specifically, they bear responsibility for adopting measures that will secure the fertile capabilities of higher education and redemptive self-narrative for all incarcerated Americans; and, more generally, they bear responsibility for actively investing in and implementing programs that facilitate long-term success in reintegration.

That said, these parties have also been subject to heightened political pressures to make our penal system harsh and inhumane, and this is why we're now seeing massive capability deprivations among incarcerated Americans. As Young observed, in political struggles between those who defend an unjust status quo and those who seek to change it, government authorities and institutions can't be our arbiters: the policies they enact will simply reflect the *outcome* of those struggles, not serve to adjudicate them.<sup>324</sup> The policies of mass incarceration, that is, reflect the balance of political pressures exerted by the American public through the 1980s, 1990s, and early twenty-first century.

This means that, while today's policy makers and correctional administrators do bear responsibility for advancing a humane reform agenda, the rest of society collectively bears responsibility for pushing them to do the right thing – repeatedly and consistently over time. The proposed policy measures outlined in Chapters 4 and 5, therefore, are for *all* citizens to publicly discuss, develop, and champion. To ensure that such measures are taken seriously and upheld in practice, less powerful citizens should – through some combination of the steps outlined above – organize, speak out, and put pressure on those in power, helping to align these officials' political interests with the requirements of justice. In turn, those in power should heed the voices of citizens, especially insofar as their demands are persistently forceful, thoughtfully formulated, and explicitly rooted in shared principles as basic as respect for human dignity. This is how democracy works, if and when we collectively bear our responsibilities to make it work.

### 6.3.5 Colleges and universities

As institutions of higher learning, colleges and universities have a critical role to play in expanding the capabilities of incarcerated Americans. As interest in PSCE has reignited in recent years, a number of “prison-to-college pipeline” programs have developed across the country. Learning from the pioneers in this field, colleges and universities should partner with nearby correctional institutions to develop quality academic programs for incarcerated students; build local and regional networks for sharing resources and strategies; dedicate human and material resources to improve existing PSCE and “pipeline” programs; ensure that enrollment and transfer processes are clear and accessible for currently and formerly incarcerated students; and push for further policy reforms that would expand funding for PSCE.<sup>325</sup>

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<sup>324</sup> Young, *Responsibility for Justice*, 151.

<sup>325</sup> For a more detailed set of sensible policy and program recommendations along these lines, see Mukamal et al., *Degrees of Freedom*, 57–79; Borden et al., “Practical Guide,” 8–15; Erisman, “Reentry Education Model,” 11–29. For a list of existing college programs that work with currently and formerly incarcerated students, see Mukamal et al., *Degrees of Freedom*, 89–103. For an online directory of PSCE programs, see Prison Studies Project, “National Directory.”

As research institutions, universities have an equally critical role to play in illuminating the capability needs of incarcerated Americans, as well as in identifying best practices for meeting those needs and expanding their potential to flourish. There's a need for quality research to fill our knowledge gaps about the experiences of incarceration and its long-term consequences, the comparative effectiveness of different forms of rehabilitation and educational programming (both in and out of custody), and the ripple effects of incarceration in poor communities.<sup>326</sup> There's equally a need for research that adopts the CA as a framework for addressing these issues: that is, research that assesses the wellbeing of incarcerated Americans, their families, and their communities in terms of capabilities; and that likewise assesses correctional policies and practices, including rehabilitation and educational programming, in terms of their impact on capabilities. Colleges and universities, as well as their component departments, can help meet that need by supporting and incentivizing such research among their students and faculty.

### 6.3.6 Media professionals

As major influencers of public discourse and opinion, media professionals are generally tasked with holding public institutions accountable and keeping citizens well informed, and doing so in ways that are both truthful and humane. Insofar as media professionals hold enormous power to expose systemic injustices and elevate the voices of people harmed by incarceration, these professionals bear heightened responsibility to do so. Journalists, writers, television producers, and radio hosts should seek out opportunities to illuminate the causes and consequences of mass incarceration, to dispel myths and stereotypes about crime and prisons, to highlight the humanity and diversity of incarcerated Americans, and to direct attention to programs, policies, and organizations that are helping to bring about systemic changes.<sup>327</sup>

Further, media professionals should seek ways to elevate the first-person viewpoints of currently and formerly incarcerated Americans, whose voices are too often excluded from public discussions and political decisions that directly impact their lives. This means, at a bare minimum, including their perspectives in published pieces about the penal system; and it means quoting or profiling them as experts regarding the deprivations they have suffered and the programs or personal interventions that have been effective in their lives. Indeed, it also means creating opportunities for them to be trained – as well as commissioned and hired – as qualified reporters, commentators, and producers in their own right.<sup>328</sup>

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<sup>326</sup> For more detailed descriptions of current knowledge gaps and research priorities, see Travis et al., *Growth of Incarceration*, 353–356; Jonson and Cullen, “Prisoner Reentry Programs.”

<sup>327</sup> For excellent examples of media pieces along these lines, see: Coates, “Black Family” (long-form essay); Chen, “Prison Education” (national news commentary); Chambers, “Released” (local news article); Minhaj, “Ban the Box” (cable TV clip); Oliver, “Prison” and “Prisoner Re-entry” (cable TV episodes); Sale, “I Killed Someone” (podcast episode); Brown, “Trauma Room” (podcast episode); Mullane, “Release Day” (podcast episode); Quinn, “On Prison and Pregnancy” (podcast episode); Westervelt, “Higher Ed Programs Behind Bars” (national radio story).

<sup>328</sup> Consider *San Quentin Prison Report* (radio) and *San Quentin News* (print), both produced for the general public by incarcerated men who are trained and mentored by professional journalists. See also Mullane, “Professional Journalists Report from San Quentin”; Salonga, “San Quentin Inmate-Run Media Earn Outside Acclaim.”

Consider as well the following, sponsored by media outlets and produced by currently and formerly incarcerated people: Sasser and Stelzer, “Mutual Support” (radio story); Eskridge et al., “Live @ San Quentin” (podcast episode); Williams and Prest, “Outside the Walls” (podcast episode); Williams, “Is America Hearing the Message?,” “Arts in Prisons,” “Parenting from Prison,” “Separation from Family” (op-eds); “Life Inside” series, *The Marshall Project*.

## 6.4 Reflecting together on our responsibilities

The systemic injustices implicated in mass incarceration are many and complex, as are the harms caused by these injustices and, equally, the positions and interests of the various parties responsible for rectifying them. The remedial actions required by justice – reframing the goals of our penal system, investing in rehabilitation and educational programs, reaffirming the dignity of incarcerated Americans and empowering them to be responsibility-bearers – require the combined and sustained efforts of the responsible parties described above, as well as others.

America’s shared responsibility to rectify penal injustice is *political*, that is, because it requires a collective social project: one in which a critical mass of citizens enjoin each other to support penal reform, debate about strategies and methods, and hold each other accountable for actions that connect us to injustice. Such a project requires organization, willing cooperation among diverse actors and agencies, knowledge of how individual acts and institutional rules together produce injustice, and foresight regarding the possible effects of proposed remedies.<sup>329</sup>

I don’t imagine that my high-level recommendations in this dissertation are sufficiently detailed to power such a project. The harms of mass incarceration stretch far beyond the deprivations noted here, and political decisions to invest in fertile capabilities would be vital but insufficient steps toward full redress and reform. Understanding this to be the case, I’ve sought only to bring to the discussion table a set of untapped discursive resources: a nuanced account of moral responsibility, including shared political responsibility; the Capabilities Approach as a humane policy framework; the notions of incarceration and stigma as corrosive disadvantages; and the notions of education and self-narrative as fertile capabilities. In doing so, my modest purpose has been to spark more expansive ethical reflection than our current policy frameworks have made possible; and, thereby, to push our public discourse about crime, punishment, and incarcerated Americans in more humane and constructive directions.

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<sup>329</sup> See Young, *Responsibility for Justice*, 153.

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Here is a list of all sources cited in my dissertation, sorted by chapter. If I've cited to a given source in multiple chapters, it appears multiple times below, once per chapter. Where possible, I've included URLs for free downloadable versions (in brackets); I've also converted some URLs into compressed links for easier cutting and pasting (named "tinyurl"). Links are prone to turn obsolete, so apologies in advance.

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## CHAPTER 5

### Self-Narrative as a Fertile Capability for Incarcerated Americans

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## CHAPTER 6

### Conclusion

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## ORGANIZATIONS, GROUPS, AND PROJECTS MENTIONED

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# Appendix A: The phenomenon of mass incarceration

Considered in historical and global context, America's prison system is unrivaled both in its excess and its destructiveness: its rapid growth and intensifying harshness in recent decades; its focused impact on disadvantaged people and places; and its tendency to fuel vicious cycles of poverty, crime, and concentrated disadvantage in minority neighborhoods.

## A.1 Exceptional scale and overcrowding

Between 1973 and 2009, state and federal prison populations rose steadily from about 200,000 to 1.5 million. This amounts to a quadrupling of incarceration rates over about four decades, although both federal and state prison populations have begun to decline in recent years. In addition to those individuals serving prison time for felonies, another 700,000 are held daily in local jails. Today, with 2.2 million Americans behind bars – that is, nearly 1 in every 100 adults – both our incarcerated population and our incarceration rates are the highest in the world, and higher than they have ever been in this country.<sup>1</sup>

This penal escalation has been fueled largely by a series of policy choices, across all branches and levels of government, to get “tough on crime.” Throughout the 1970s, 1980s, and 1990s, voters and officials collectively approved policies to attach lengthier sentences to a broader range of criminal acts, while reducing possibilities for early release through good behavior. As a result, prison population increases far outpaced any changes in criminal activity throughout this period, persisting even as crime rates began to plummet in the late 1990s.<sup>2</sup>

Over the same period, American prison conditions have deteriorated. The rapid influx of new prisoners has resulted in system-wide overcrowding, imperiling basic safety and hygiene as well as impeding access to medical care, mental health services, and rehabilitative programs. Overcrowding, particularly at the high levels that persist in American prisons, has been linked to a range of poor consequences for health and behavior as well as elevated suicide risks.<sup>3</sup>

## A.2 Demographically and spatially uneven impact

The distribution of incarceration is highly uneven across the United States population, heavily impacting already-disadvantaged groups and neighborhoods while leaving most middle-class communities relatively untouched.<sup>4</sup> Incarceration rates are disproportionately high for young men with low education and poor labor market prospects, particularly African Americans: among White male high school dropouts born in the late 1970s, one-third have a prison record by their mid-30s; among their Black counterparts, the rate is two-thirds.<sup>5</sup>

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<sup>1</sup> See Jeremy Travis, Bruce Western, and Steve Redburn, eds., *Growth of Incarceration in the United States* (Washington, DC: National Academies, 2014), 33–37. As of 2012, the United States accounted for about 5 percent of the world's population and 25 percent of its prisoners. *Growth of Incarceration*, 2.

<sup>2</sup> See Travis et al., *Growth of Incarceration*, 3–4, 44–56, 70–85, 104–121.

<sup>3</sup> See Peter Wagner and Daniel Kopf, *Racial Geography of Mass Incarceration* (Northampton, MA: Prison Policy Institute, July 2015), <http://tinyurl.com/PPI-geo>.

<sup>4</sup> See Travis et al., *Growth of Incarceration*, 5, 64–68, 127–128. Incarcerated Americans average less than 12 years of schooling and had little work experience prior to incarceration; between one quarter and one-third were employed at the time of incarceration. *Growth of Incarceration*, 234.

<sup>5</sup> See Travis et al., *Growth of Incarceration*, 5, 64–68, 127–128. Incarcerated Americans average less than 12 years of schooling and had little work experience prior to incarceration; between one quarter and one-third were employed at the time of incarceration. *Growth of Incarceration*, 234.

Geographically, a vast majority of incarcerated Americans come from minority (non-white) neighborhoods characterized by chronic poverty, social instability, and violence; and, as a result, many have entered the prison system with unsound physical and mental health. In these resource-deprived neighborhoods, prison admission and return have become commonplace.<sup>6</sup>

### A.3 Viciously cyclical effects on communities

For those American neighborhoods marked by the highest rates of poverty and crime, incarceration's impact tends to be *cyclical*, contributing to a complex mix of destabilizing factors that impede the life prospects of these neighborhoods' residents.

As the American prison population has grown and its health needs have proliferated, the penal system has not responded by directing greater resources toward those needs. Instead, American prisons have largely continued to warehouse individuals in conditions that facilitate disease transmission, mental illness, and psychological dysfunction, limiting access to services that might help. Thus, most incarcerated Americans have been destined to leave prison even less equipped for healthy, productive lives than when they arrived.<sup>7</sup>

Along with neglecting health needs, incarceration damages prospects for upward social mobility. As noted above, many incarcerated Americans already have poor social and economic prospects when they first enter the system. Incarceration further worsens their prospects by disrupting transitions into adulthood, preventing entry into roles and responsibilities – academic, professional, and familial – that might otherwise facilitate progress toward material stability.<sup>8</sup>

Only in recent years have American prison administrators and policy makers begun to show meaningful interest in providing the pre- and post-release programming necessary to improve these individuals' prospects for healthy and stable lives in the community. Indeed, as the need for such programming grew through the early 2000s, most states cut funding for it, leaving tens of thousands of newly released individuals vulnerable to relapse and susceptible to re-offense.<sup>9</sup>

As the cycle of poverty, crime, and punishment has played out for the residents of our poorest neighborhoods, each affected community has repeatedly experienced the forced removal and return of a critical mass of residents. Over time, as residents have kept going to prison and returning with unmet needs, these communities have grown further entrenched in poverty and instability, ever less capable of providing the resources and opportunities people need to rebuild their lives.<sup>10</sup>

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<sup>6</sup> See Travis et al., *Growth of Incarceration*, 127–128.

<sup>7</sup> See Travis et al., *Growth of Incarceration*, 5–6.

<sup>8</sup> In our society, young people typically pass into adulthood by completing a series of conventional stages: from school, to work, to marriage, to establishing a home and becoming a parent. Incarceration derails this process by eroding ties to work and family, and conferring a stigma that repels potential employers as well as potential mates. See Bruce Western, *Punishment and Inequality in America* (New York: Russell Sage, 2006), 20.

<sup>9</sup> See Travis et al., *Growth of Incarceration*, 6, 10.

<sup>10</sup> See Robert J. Sampson and Charles Loeffler, "Punishment's Place: The Local Concentration of Mass Incarceration," *Daedalus* 139, no. 3 (Summer 2010): 20–31, <http://tinyurl.com/punpl2010>; Todd R. Clear, *Imprisoning Communities: How Mass Incarceration Makes Disadvantaged Neighborhoods Worse* (New York: Oxford University Press, 2007).

## Appendix B: The American prison population

At the end of 2014, over 1.5 million Americans were held in state and federal custody. By definition, Americans held in state and federal prisons are felony offenders serving sentences of at least a year. About 85 percent are held in state facilities.<sup>11</sup> Nearly half (47 percent) of those in state prisons and over 90 percent in federal prisons are serving time for non-violent offenses; about 16 percent in state prisons and half in federal prisons were convicted of drug offenses.<sup>12</sup>

### B.1 Demographic characteristics

The overwhelming majority of Americans in prison are young, non-white, and male: about two-thirds are under age 35, nearly two-thirds are Black or Hispanic, and over 90 percent are men. Black men have the highest incarceration rate in every age group. As for women, who account for 7 percent of the prison population, half are White and 21 percent are black.<sup>13</sup>

Most Americans in prison are characterized by “low social capital”: limited education; limited marketable skills and work experience; low levels of income and economic wealth.<sup>14</sup> While most of these individuals have family members – according to most recent estimates, over half are parents to minor children – relatively few come from stable nuclear households.<sup>15</sup>

### B.2 Adverse life circumstances

The life trajectories of incarcerated Americans collectively reveal correlations between race, birthplace, early adversity, social deviance, and punishment. The vast majority spent their youth in inner cities where educational and employment opportunities are scarce. In childhood, they’re highly likely to have experienced abuse or neglect, foster care, and poor schooling. In adolescence and in early adulthood, they’re highly likely to have experienced drug use, gang activity, arrest, and unemployment.<sup>16</sup>

Because they come from disadvantaged neighborhoods and have lacked access to medical care, many incarcerated Americans also bear health deficits: more than half enter prison with a mental health problem; one in four suffer from a serious mental illness (e.g. schizophrenia or bipolar disorder); more than half have a history of substance dependence or abuse; and two in five suffer from a chronic disease.<sup>17</sup>

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<sup>11</sup> The American penal system is divided among federal, state, and local jurisdictions. Local jail populations, which typically include individuals awaiting trial and those serving sentences of one year or less, account for about one-third of all incarcerated Americans. See Bureau of Justice Statistics, *Correctional Populations in the United States, 2014*, NCJ 249513 (Washington, DC: U.S. Dept. of Justice, December 2015), 2, 10; <http://tinyurl.com/cpus2014>.

<sup>12</sup> See Bureau of Justice Statistics, *Prisoners in 2014*, NCJ 248955 (Washington, DC: U.S. Dept. of Justice, September 2015), <http://tinyurl.com/bjs-p2014>.

<sup>13</sup> At the end of 2014, our prison population was 37 percent Black, 32 percent White, and 22 percent Hispanic. Bureau of Justice Statistics, *Prisoners*. See also Travis et al., *Growth of Incarceration*, 56–63.

<sup>14</sup> Since 1972, nearly all the growth in incarceration has been concentrated among individuals with no college education. See Travis et al., *Growth of Incarceration*, 64–68; see also 234–235.

<sup>15</sup> See Travis et al., *Growth of Incarceration*, 260–262.

<sup>16</sup> See Christopher Wildeman and Bruce Western, “Incarceration in Fragile Families,” *Future of Children* 20, no. 2 (2010): 157–177. The term “cradle-to-prison pipeline” has been coined to capture these correlations, evoking a conveyor belt that funnels disadvantaged children from fragile families, to broken schools, to misconduct, arrest and incarceration. While the pipeline metaphor downplays agency, it duly emphasizes that the pull toward prison is exceedingly strong in certain communities, and that we as a society can interrupt the pattern. See “Cradle to Prison Pipeline Campaign,” Children’s Defense Fund, [www.childrensdefense.org/campaigns/cradle-to-prison-pipeline/](http://www.childrensdefense.org/campaigns/cradle-to-prison-pipeline/).

<sup>17</sup> See Travis et al., *Growth of Incarceration*, 204–210.

## Appendix C: Incarceration's effects on individuals

For most incarcerated Americans, the experience of imprisonment creates harmful ripple effects along several dimensions of wellbeing, namely by compromising their physical and mental health, reducing their prospects for economic and social stability, impeding civic and political engagement, and straining or damaging family relationships. This is largely because conditions in many prisons tend to stunt or warp the capacities necessary to function in society, as well as restricting or severing access to important resources both during and after confinement.

### C.1 Physical and mental health

More than half of incarcerated Americans have arrived in prison with health problems, and many more contract infectious diseases, develop chronic conditions, and/or experience worsening of their preexisting health problems while confined. Among those in prison with diagnosed conditions, a significant proportion does not receive adequate care; nearly half of those with mental health problems receive zero treatment. And while an overwhelming majority of incarcerated Americans suffer from substance abuse problems, as little as 10 percent have access to any drug treatment services.<sup>18</sup>

Inadequate health care during incarceration, in turn, paves the way for hardship in reentry. Post-release, many individuals are left on their own to locate appropriate health services and treatment: a challenging feat for those returning to impoverished communities. Those who suffer from serious untreated health problems may find it nearly impossible to obtain housing, find and maintain employment, and abide by parole conditions.<sup>19</sup>

### C.2 Psychological functioning

Prisons are designed to impose physical and mental stress. Typical aspects of prison life that act as stressors include material deprivations, restrictions on movement, lack of privacy and meaningful activity, social volatility, and physical danger. In recent decades, overcrowding has amplified the stressful effects of such conditions, exacerbating psychological vulnerabilities and producing negative behavioral and physical changes in many prisoners.<sup>20</sup>

As a result, larger numbers of people in prison are susceptible to *prisonization*: the adoption of peculiar cognitive and behavioral habits in response to the pressures of incarceration. Patterns of prisonized thought and behavior include: dependence on institutional structures and routines, hyper-vigilance, emotional over-control, social withdrawal, adaptation to anti-social or exploitative norms, diminished self-worth, and traumatic stress reactions. These habits and behaviors, if internalized over long periods and not replaced with pro-social habits and behaviors prior to release, can make reentry a painful and awkward process, impeding people's abilities to navigate ordinary tasks and social interactions in the free world.<sup>21</sup>

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<sup>18</sup> See Travis et al., *Growth of Incarceration*, 204–210, 217–219.

<sup>19</sup> See Travis et al., *Growth of Incarceration*, 226–228.

<sup>20</sup> See Travis et al., *Growth of Incarceration*, 174–176.

<sup>21</sup> See Travis et al., *Growth of Incarceration*, 159–160, 176–178. These patterns aren't inherently pathological; rather, they're natural adaptations that help people survive the unnatural conditions of prison life. The habits *become* dysfunctional when prisoners take them to extremes, internalize them, and carry them into society. The risk of extreme prisonization is particularly high for long-term prisoners. *Ibid.*, 178.



### C.3 Social and economic prospects

Just as incarceration impedes social skills by immersing people in abnormally stressful settings, it harms economic prospects by isolating them from job markets. Most American prisons offer limited opportunities to build marketable skills, gain job experience, or develop workplace relationships that could facilitate career planning. Thus, during incarceration, many individuals experience the erosion of any useful skills or contacts they may once have had.<sup>22</sup>

Further, upon release from prison, these individuals face a slew of legal and social barriers – including formal exclusions as well as informal discrimination – that restrict their opportunities in society. On account of their felony records, they have limited access to education, decent and stable jobs, and even basic welfare benefits. As such, facing a competitive marketplace, bearing the stigma of a criminal history, and juggling financial obligations, many formerly incarcerated Americans struggle to make ends meet.<sup>23</sup>

### C.4 Political and civic engagement

Along with socioeconomic handicaps, incarceration brings formal exclusion from political rights and duties. In many states, people with felony records are barred from voting, holding public office, or serving on juries; in some states, restrictions are life-long. Such policies essentially establish that, once incarcerated, individuals no longer have an equal voice in public decision making processes.<sup>24</sup>

Meanwhile, the very *experience* of incarceration depresses civic engagement. As a practical matter, it deprives people of resources – such as income, mobility, free time, and information – they might otherwise invest in civic activity. Further, as a subjective matter, incarceration reduces individuals' trust in public institutions, their sense of civic membership, and their belief that their voices matter.<sup>25</sup>

### C.5 Family relationships

As well as alienating individuals from public institutions, incarceration damages their potential to build and sustain stable households and intimate relationships. Many Americans in prison have prior ties to partners and children, and incarceration often strains these ties – not only by making it hard to stay in touch, but also by creating financial and emotional hardships for loved ones left behind. Thus, in many cases, incarceration destabilizes the relationships and households to which people will later return.<sup>26</sup>

For those who are married when they enter prison, the stress of incarceration raises the odds of divorce. And for the majority who are single, incarceration damages marriage prospects by imposing physical and social isolation, eroding their abilities to provide for dependents, and marking them as undesirable mates. So, in addition to straining prior relationships, incarceration makes it difficult to find new life partners. In short, incarceration impedes the very relationships that could provide people with life-changing support, emotional and material, upon release from prison.<sup>27</sup>

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<sup>22</sup> See Travis et al., *Growth of Incarceration*, 191–193, 233–236.

<sup>23</sup> See Travis et al., *Growth of Incarceration*, 235–249, 258–259.

<sup>24</sup> See Travis et al., *Growth of Incarceration*, 307–309.

<sup>25</sup> These effects hold across categories of race, socioeconomic status, and levels of criminality. In fact, analogous effects follow from *any* contact with law enforcement, varying with intensity of contact. See Vesla M. Weaver and Amy E. Lerman, “Political Consequences of the Carceral State,” *American Political Science Review* 104 (November 2010): 817–833, <http://tinyurl.com/pccs-10>.

<sup>26</sup> In addition to reducing familial resources and contributing to family breakup, incarceration puts children's wellbeing and life prospects at risk. See Wildeman and Western, “Fragile Families,” 157, 165–169.

<sup>27</sup> See Travis et al., *Growth of Incarceration*, 260–75.

## Appendix D: Nussbaum's list of central capabilities

The list I present here largely reflects the version published in Nussbaum's book *Creating Capabilities*. Note that, for simplicity and clarity, I've edited and/or omitted some explanatory details and key phrases accompanying the individual capabilities as they appear in Nussbaum's list.<sup>28</sup>

1. **Life.** Being able to live out a normal life span – that is, to avoid premature death.
2. **Bodily health.** Being able to have good health. Being adequately nourished; having adequate physical shelter.
3. **Bodily integrity.** Being able to move freely from place to place. Being secure against violent assault, including sexual assault and domestic violence.
4. **Cognition.**<sup>29</sup> Being able to use the senses, to imagine, to think and to reason – in a way informed by adequate education. Being able to use imagination and thought in experiencing and producing creative works. Being able to use one's mind through free political, artistic, or religious expression. Being able to have pleasurable experiences and to avoid non-beneficial pain.
5. **Emotions.** Being able to have emotional connections to things and people outside oneself. Being able to experience a range of emotions: to love, to grieve, to experience gratitude and justified anger. Being able to experience emotional development free of excessive fear and anxiety.
6. **Practical reason.** Being able to form beliefs about what is ultimately good or right. Being able to reflect critically about planning one's life.
7. **Social affiliation. (Or: Relating to other people.)**<sup>30</sup>
  - (a) *Having relationships:* Being able to live with and toward others, to recognize and show concern for others, and to engage in various social interactions.
  - (b) *Being respected:* Being treated as a dignified being of no less worth than other people; having a social status that allows for self-respect and freedom from humiliation.
8. **Connection to nature. (Or: Relating to other species.)**<sup>31</sup> Being able to experience concern for and connection with animals, plants, and the world of nature.
9. **Play.** Being able to play, to laugh, and to enjoy recreational activities.
10. **Control over one's environment.**
  - (a) *Political:* Being able to participate in political choices that affect one's life. Being able to engage in free political participation, without repression.
  - (b) *Material:* Being able to hold property on an equal basis with others; being free of arbitrary search and seizure. Being able to seek employment on an equal basis with others; being able work in a way that allows one to exercise agency and relate humanly to others.

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<sup>28</sup> See Martha C. Nussbaum, *Creating Capabilities* (Cambridge, MA: Harvard University Press, 2011), 33–34.

<sup>29</sup> Nussbaum refers to this capability as “Senses, imagination, and thought.” Ibid.

<sup>30</sup> Nussbaum's name for this capability is simply “Affiliation.” Ibid.

<sup>31</sup> Nussbaum's name for this capability is “Other species.” Ibid.

## Appendix E: Defining rehabilitation and reintegration

Rehabilitation and reintegration are contested notions. In public discourse, these two terms often defined vaguely or inconsistently; and, compounding the ambiguity, they're treated sometimes as interchangeable, other times as complementary. Given this semantic fuzziness, here I provide basic working definitions of these two phenomena as I understand them. I maintain that rehabilitation and reintegration are indeed distinct concepts, but closely related and overlapping in practice.

To begin, both notions represent concerns that can be addressed on a policy level as well as on a personal level. First, rehabilitation and reintegration refer to *policy goals* we want correctional institutions to support, along with various programs designed to support those goals. At the same time, both are *personal processes* that, prior to release, each incarcerated person should be equipped to undertake with the aim of building a stable and healthy life. It's important to unpack each of these notions on both levels.

### E.1 Rehabilitation and reintegration as policy goals

In policy discourse, rehabilitation refers to an array of programs and services that remedy and remove the root causes of criminal behavior so as to prevent re-offense. Prototypical examples include education and work programs, as well as psychological and counseling programs. While rehabilitative interventions can serve varied objectives, experts and policy makers since the 1990s have focused heavily on reducing recidivism, equating rehabilitative success with the avoidance of undesirable outcomes.<sup>32</sup>

Reintegration, in turn, refers to an array of programs and activities that prepare people to be productive and law-abiding citizens after release, namely by helping them develop ties to their communities. Prototypical examples include family reunification and job placement services. Often, the explicit policy aim of such efforts is not just to reduce recidivism, but also, more broadly, to improve public health and public safety.<sup>33</sup>

### E.2 Rehabilitation and reintegration as personal processes

On an individual level, both rehabilitation and reintegration are interactive processes by which a person becomes able to lead a safe and healthy life in society. Each process requires significant personal change and development, which is made possible by the availability of appropriate social and material support in the person's environment.

As a personal process, rehabilitation is a journey toward healthy psychosocial functioning, typically undertaken with professional guidance, ideally initiated far in advance of release. The first step is to diagnose issues at the root of a person's criminal behavior; the core task is to equip her with skills and habits she needs to address these issues; and the ultimate aim is for her to incorporate these skills and habits into her daily life. Thus, in any given rehabilitation program, the focus is on a person's psychology and what she needs from her environment to maintain a stable, crime-free lifestyle.<sup>34</sup>

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<sup>32</sup> That is, avoidance of crime, re-arrest, and re-incarceration. See J. Stephen Wormith et al., "Rehabilitation and Reintegration of Offenders," *Criminal Justice and Behavior* 34, no. 7 (July 2007): 879–892, at 880.

<sup>33</sup> It's helpful to think about efforts to promote reintegration as a subset of broader efforts to facilitate reentry. Facilitating reentry (ensuring safe transitions from prison to society) broadly entails affording access to appropriate resources and services; promoting reintegration (enabling functional membership in society) specifically entails building connections to people and places. See Cynthia Caporizzo, "Prisoner Reentry Programs: Ensuring a Safe and Successful Return to the Community," *White House Blog*, November 30, 2011, <http://tinyurl.com/whreentry>.

<sup>34</sup> See Marianne Farkas, "Recovery, Rehabilitation, Reintegration: Words vs. Meaning," *World Association of Psychological Rehabilitation Bulletin* 8, no. 4 (October 1996): 6–8, at 7; <http://tinyurl.com/farkas96>.

A person's reintegration, then, can serve as both a catalyst and an extension of her rehabilitation. The building of pro-social roles and relationships, that is, may serve both to support and to exercise the skills developed through rehabilitation. A person should ideally map out and initiate her reintegration far in advance of release, namely by identifying key supporters in the community and securing their help with her transition. Thus, a person's success in reintegration depends not only on her own efforts, but also on the degree to which penal policies and other community members enable those efforts.<sup>35</sup>

It may be tempting to think of rehabilitation as a precondition to reintegration – i.e., to assume that a person must heal herself completely before she can build relationships with others – but in reality, the two processes can unfold simultaneously and interdependently. So, in many cases, the steps entailed by these two processes may coincide in time and substance, to varying degrees for different persons.<sup>36</sup>

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<sup>35</sup> See Lukas Muntingh, "Offender Rehabilitation and Reintegration: Taking the White Paper on Corrections Forward" (paper prepared for Civil Society Prison Reform Initiative, South Africa, 2005), 5–8.

<sup>36</sup> Cf. Farkas, "Recovery, Rehabilitation, Reintegration," 6–8.

# Appendix F: The San Quentin College Program

The College Program at San Quentin State Prison is the only on-site, degree-granting college program in the California state prison system, and one of the few remaining PSCE programs in the United States. Included below is a brief history of the program's creation and development; a description of its mission and ongoing operations; and a summary of findings from recent program evaluations.

## F.1 Program background

The College Program was born in the wake of the Violent Crime Control and Law Enforcement Act of 1994, which eliminated federal funding for higher education in prisons.<sup>37</sup> In response, a group of individuals from UC Davis, Patten College, and the San Quentin education department created a plan for a small college program that relied on a volunteer coordinator, volunteer instructors, donated textbooks, and no budget. In the fall of 1996, the College Program started running with two classes.

In 2000, volunteers began fundraising to support and expand the program; in 2003, the Prison University Project ("PUP") formed to provide the program with material and administrative support, with fiscal sponsorship by the Tides Center; and in 2006, PUP incorporated as an independent 510(c)(3) nonprofit organization. To this day, since no state or federal funding is available for higher education in California prisons, the College Program relies entirely on private donations collected by PUP.<sup>38</sup>

## F.2 Mission and activities

PUP's mission is "to provide excellent higher education programs to people incarcerated at San Quentin State Prison; to create a replicable model for such programs; and to stimulate public awareness and meaningful dialogue about higher education and criminal justice in California." PUP's central goal is "to set a world-class example of a radically inclusive, academically rigorous, student-centered liberal arts college that happens to be located within a prison." PUP strives, above all, to demonstrate "both the central importance and the possibility" of meeting the needs of students who have faced "a broad array of challenges," which requires providing individualized support as needed.<sup>39</sup>

Currently, PUP runs an Associate of Arts (A.A.) Degree Program and a corresponding College Preparatory Program at San Quentin. PUP is also engaged in various artistic and cultural projects that "document the intellectual and creative work of students, facilitate their civic engagement in the public sphere, and humanize the image of incarcerated people generally in the public imagination."<sup>40</sup>

The program charges no fees or tuition: PUP provides all school supplies and lends textbooks to students each semester. The program operates as an extension site of Patten University, an accredited independent university in Oakland, California, which confers college credits and A.A. degrees to students who complete all the required coursework (61 semester units, or 20 classes) at San Quentin. All instructors are volunteers; most are professors and graduate students from nearby universities.<sup>41</sup>

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<sup>37</sup> See Chapter 4 for a brief history of PSCE in the United States.

<sup>38</sup> "About Us," Prison University Project, accessed March 30, 2016, <http://tinyurl.com/pup-about>; Amy E. Lerman, *Prison University Project Program Evaluation: Progress Report* (August 5, 2012), 4, <http://tinyurl.com/pup-lerman>.

<sup>39</sup> "Mission & Goals," Prison University Project, accessed March 30, 2016, <http://tinyurl.com/pup-mission>.

<sup>40</sup> Ibid.

<sup>41</sup> "Associate of Arts Degree," Prison University Project, <http://tinyurl.com/pup-aad>, accessed March 30, 2016. See also Stan Wilson, "Behind the Scenes: Inside San Quentin's Prison University Project," *CNN*, July 20, 2008, <http://tinyurl.com/pup-cnn>; Greta Kaul, "San Quentin's Prison University Gives Inmates Freedom to Learn," *San Francisco Chronicle*, December 26, 2014, <http://tinyurl.com/pup-sfchron>.

Each semester the program offers about 20 college courses in the humanities, social sciences, math and science, and a few electives. All courses fulfill transfer eligibility requirements for any University of California (UC) or California State University (CSU).<sup>42</sup> The program also offers college preparatory courses in math and English; these non-credit classes are for students who would benefit from further skill building before tackling the college courses.<sup>43</sup> In addition, the program offers a daily study hall space where students can work independently or sign up for tutoring.<sup>44</sup>

### F.3 Student body

Anyone incarcerated at San Quentin is eligible to enroll in the College Program if he (1) holds a high school diploma or equivalent and (2) is housed in the general population (i.e., isn't classified as a security threat). All students take a math and writing assessment to determine their placement, and those not yet prepared for college-level study (which is about 90 percent of all who enroll) typically spend 1-2 years in preparatory courses before taking credit-bearing courses that count toward an A.A.<sup>45</sup>

From 2002 to 2012, the Program served about 1,000 students at San Quentin. As of 2012, about 330 students were active in the Program; two-thirds were enrolled in at least one credit-bearing course.<sup>46</sup>

### F.4. Evaluation findings

#### **Synthesis of Interviews: “Through the Eyes of Students” (2007)**

In 2007, a team of researchers interviewed 42 College Program students about the benefits and challenges they had experienced in the program. A synthesis of their interview data was published on PUP's website, and a brief summary was included in PUP's December 2007 newsletter.<sup>47</sup>

Overwhelmingly, the researchers found, students saw the College Program as “highly beneficial” to their lives; some called it “transformative.” While all students noted immediate effects on their quality of life in prison, many also cited ripple effects on their relationships both within and beyond the prison.

The program's most significant impact was on students' *emotional* wellbeing. For many, studying in the program improved their self-esteem – by helping them feel that they were achieving worthwhile goals instead of “just wasting time”; and by allowing them to show that they could meet challenges that once seemed impossible to them. As some described it, this helped trigger a mental shift from “bitterness and reactivity” toward a “positive goal orientation.”

The program also greatly impacted *social* and *relational* aspects of students' lives. Many students valued the chance to be in a positive learning space that is unlike the rest of the prison: a place where they felt safe, respected, and intellectually engaged; where they could be with peers and teachers who were

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<sup>42</sup> “Associate of Arts Degree,” Prison University Project.

<sup>43</sup> “College Preparatory Program,” Prison University Project.

<sup>44</sup> Having both taught and tutored for PUP I've observed that, by working with study hall tutors, students can often obtain more frequent and focused feedback on their written work than classroom instructors can provide.

<sup>45</sup> “College Preparatory Program,” Prison University Project, <http://tinyurl.com/pup-prep>, accessed March 30, 2016; Lerman, *Progress Report*, 4.

<sup>46</sup> Lerman, *Progress Report*, 4.

<sup>47</sup> See Dr. Louise Bay Waters et al., “Through the Eyes of the Students,” *Newsletter of the Prison University Project* 3, no. 2 (December 2007): 2, <http://tinyurl.com/pup-dec2007>. The full synthesis was once posted online at <http://prisonuniversityproject.org/pages/news/throught-the-eyes.html> (accessed April 19, 2013; no longer available).

“committed to doing something positive with their lives”; and where they could interact across the racial categories that pervade prison culture. Indeed, some students observed that “cross-racial alliances” forged in class helped defuse potentially violent tensions on the yard. Students cited benefits for relationships beyond prison, as well: for some, being in the program significantly improved their ability to connect with their families, namely by enabling them to be role models for their kids, giving them “positive and substantive” things to discuss during phone calls and visits, and providing “hope for life after prison.”

Many students further noted that the program was preparing them to work or to continue their studies after release from prison. For some, the College Program had inspired career or volunteer goals related to “social service” or “giving back to the community.”

In sum, interviews revealed that students most valued the program for supporting their psychological and intellectual development, for providing a positive social environment, and for enhancing their relationships – enabling them to create new connections as well as to improve existing ones. Students described these various benefits as overlapping and mutually reinforcing.

### **Multi-Phase Program Evaluation Project (2012–ongoing)**

More recently, PUP has developed a multi-phase project to evaluate its impact on students both during incarceration and after release. As of this writing, the evaluation project is ongoing and preliminary results have been published in a progress report that is available on PUP’s website.

The first project, a recidivism analysis using state data, has shown that rates of return and recidivism are substantially lower for College Program graduates than for the general population of California parolees. The recidivism rate for new offenses only (not including parole violations) is 4 percent among program graduates, compared to 19 percent among all California state prisoners released. The overall recidivism rate (including both new offenses and parole violations) is 17 percent among program graduates, compared to 65 percent among all California state prisoners released.<sup>48</sup>

The second project, a Demographic and Educational Experience Survey administered to program participants, is investigating students’ individual challenges in the program, with a view to devising supportive systems that can address such challenges in advance. Preliminary qualitative evidence shows that students believe the College Program has a beneficial impact on the prison environment, as well as on students’ relationships with friends and family members outside prison.<sup>49</sup>

In addition to summarizing preliminary findings and mapping out next steps, the progress report includes illuminative excerpts of qualitative survey data collected. A current student states:

“The impact of the College Program on the environment of the prison overall can be measured by the overall violence (or lack of) within the institution. ... A large part has to do with people that are involved in the College Program using what they have learned to facilitate self-help groups. ... Almost every self-help group in San Quentin has someone that has gone through, or is going through the College Program, as a facilitator... The College Program is producing leaders in the San Quentin community [who] are volunteering their time to help change the behavior of those that are in prison by providing the means to discuss and realize the cause of such behaviors.”<sup>50</sup>

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<sup>48</sup> To put these statistics in perspective: between 1999 and 2011, the Program graduated 98 students; and between 2001 and 2011, 47 of these graduates (about half) paroled from prison. Among the 47 released, two were convicted of new offenses within three years: one for robbery and one for burglary. Lerman, *Progress Report*, 2, 7–8.

<sup>49</sup> “Mission & Goals,” Prison University Project; Lerman, *Progress Report*, 2.

<sup>50</sup> Lerman, *Progress Report*, 9.

A recent graduate states:

“The program has had an enormous impact on how my family and friends view me as a person. ... My communication skills with my children [have] helped them to open up to me. As I share my ideas with them, [they] share their ideas with me. During my visits, my family and I talk about some of the things I have learned. We no longer talk about old problems and terrible things that go on in prison. Their interest in me has grown and I receive more letters from my nephews, nieces, Godchildren, and other family members. ... My son and daughters tell me they are proud of me.”<sup>51</sup>

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<sup>51</sup> Lerman, “Progress Report,” 9–10.



## Appendix G: Valedictorian speeches from San Quentin

In this dissertation I've argued that incarcerated Americans should be free to pursue higher education, develop adaptive self-narratives, and thereby become empowered partakers and shapers of public discourse. Here in Appendix G, I consider three speeches as windows into the human development of incarcerated men who have exercised their capabilities of higher education and self-narrative.

These are commencement speeches by San Quentin College Program students who graduated at the top of their respective classes: Christopher Schumacher (2012),<sup>52</sup> Aly Tamboura (2014),<sup>53</sup> and Michael Nelson (2013).<sup>54</sup> After briefly explaining the social context of the speeches (based on personal knowledge as a program volunteer), I note narrative techniques common to all three. I then analyze the thematic content of each speech in turn as a redemptive self-narrative. Next, I consider what the speeches reveal about capability deprivations and expansions that have shaped each narrator's redemptive storyline. Finally, I close with reflections regarding the varying degrees of generativity expressed in the speeches.

### G.1 Social context of speeches

As valedictorians, Schumacher, Tamboura, and Nelson were tasked with speaking at their respective college graduation ceremonies: a socially significant occasion in a "conventional" life course, and a moment when we typically expect young adults to commence their professional lives.

These valedictorian speeches, unlike the open-ended life history interviews that informed the research of McAdams and Maruna, were crafted as public addresses, delimited in length, and bound by implicit social conventions. Each speech was prepared for a live audience that included prison staff, PUP staff and volunteers, fellow graduates and other incarcerated peers, and non-incarcerated friends and family members of graduates. Each speech was designed to fit in a special time slot in the ceremony; and, within that slot, each was implicitly expected to convey a reflective assessment of higher education's value, as well as to provide an uplifting, celebratory message for attendees.

### G.2 Common narrative techniques

All three valedictorian speakers demonstrate significant skill and wisdom as narrators. Specifically, they demonstrate a keen understanding of their audiences, of themselves as self-narrators addressing these audiences, and of general social expectations surrounding their speeches. All three use narrative techniques that seem tailored to the occasion, designed to elicit a desired range of responses.

First, each speaker quickly establishes himself as a credible and likeable narrator, namely by engaging in good-humored self-deprecation early on, admitting his faults in a humble tone, and expressing gratitude to others for making his achievements possible. Each speaker presents himself as a vulnerable, other-regarding, and thoughtfully appreciative man – in stark (if mostly tacit) contrast to stereotypes that portray incarcerated men as crudely macho and sociopathic.

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<sup>52</sup> Christopher Schumacher, "The Valley Victorian," Prison University Project, accessed March 30, 2016, <http://tinyurl.com/Schumacher2012>.

<sup>53</sup> Aly Tamboura, "Valedictorian Speech – Patten University 2014," Prison University Project, accessed March 30, 2016, <http://tinyurl.com/Tamboura2014>.

<sup>54</sup> Michael Nelson, "Commencement Address 2013," Prison University Project, accessed March 30, 2016, <http://tinyurl.com/MNelson2013>.

Second, and relatedly, each speaker endeavors to build a sense of social affinity and emotional connection with the audience. All three use light-hearted humor, make recognizable cultural references, and describe common human experiences. Even when recounting experiences specific to incarceration, which many audience members will never know first-hand, the speakers focus on describing *feelings* – fear, loneliness, and desperation; hope, relief, and affection – that are familiar to most.

Third, each speaker uses concrete details and imagery to stimulate the imagination, encouraging listeners to take on *his* perspective – to appreciate his journey through *his* eyes. Notably, while all three speakers describe the brutalities of prison life only in very generalized terms, they use vivid concrete details to portray positive, uplifting moments that their education has afforded them.

Fourth, each speaker, especially in describing the impact of higher education on his life, appeals to widely shared values and moral intuitions. All three invoke the notions of family and community; they use these notions *literally* to describe the importance of blood ties, as well as *figuratively* to describe the vital support of former strangers who – through the College Program – have become friends, teachers, and mentors. All three also invoke the notions of perseverance through adversity, and of personal transformation through education. And, finally, all three invoke the values of social responsibility, “paying it forward,” and serving others. These are all themes with broad appeal in our cultural context, likely to elicit positive emotions in most people attending such a ceremony at San Quentin – including incarcerated peers of the graduates, as well as non-incarcerated loved ones and community members.

### G.3 Redemptive narrative analysis

Related to the fourth common feature noted above, each valedictorian presents his College Program experiences as part of a larger *redemptive story* about transformation and growth. Each speaker implies that there’s a longer personal narrative he could tell, one encompassing much more history as well as ongoing developments.<sup>55</sup> Thus, the self-narrative material in each speech is deliberately limited in scope: each speaker presents only a partial self-narrative, strategically abridged for the occasion.<sup>56</sup>

Even so, we can fruitfully observe how each speaker draws on the redemption script associated with Maruna’s desisters. Moreover, it’s illuminative to observe *varying degrees* to which the three speakers hew to distinctive aspects of this script: each speaker emphasizes certain plot points and themes over others, demonstrating how different individuals apply the same redemption script to frame their personal histories, each inflecting his self-narrative with his attitudes, emotions, and priorities.

Accordingly, below I examine the speeches in turn, first observing how each speaker includes the plot elements of the redemption script, then noting how each incorporates the script’s major themes.<sup>57</sup>

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<sup>55</sup> In addition, each speaker implies that there is a broader collective narrative he could tell about people in prison, one that encompasses many incarcerated peers who have also found redemption through education.

<sup>56</sup> That is: The three speakers give almost zero information about their personal histories before prison; and they give very little detail about their lives *in* prison, aside from the College Program. As noted above, they allude to their darkest, most difficult experiences using extended metaphors, analogies, and only the most general descriptors.

<sup>57</sup> Here is a recap of the redemption script that, as discussed in Chapter 5, was common among Maruna’s desisters:

**Plot:** (1) Narrator is a good person who was trapped in bad circumstances. (2) Narrator made bad choices to escape his situation; this led to a vicious cycle of bad conduct and bad consequences. (3) Narrator met a positive figure who “believed in” him and sparked his transformation, so that he became capable of pursuing his true calling and embodying his “best self.” (4) Now, empowered and grateful, narrator seeks to “give back” and “pay it forward.”

**Themes:** (1) Establishment of core values that define the “true self.” (2) Optimistic perceptions of “personal control over one’s destiny.” (3) Generativity as central motivation: desire to be productive and give back to society, particularly the next generation.

### Christopher Schumacher (2012)

**Plot.** Schumacher presents his experiences in a way that mostly mirrors the redemption script, though he avoids mention of his criminal history and does not place much emphasis on generativity:

(1) Schumacher presents himself as a good person who has been inhumanely confined. For his first seven years in prison he was “lost,” “struggling to stay afloat,” deprived of “opportunities for education.” He was surrounded by a “litany of injustices,” “dehumanized and cast away” into a den of “violence, racism, and criminality.”

(2) Schumacher acknowledges having made mistakes that contributed to this adverse situation, alluding to “reckless decisions” that brought him to prison. But he emphasizes that since the prison failed to provide “the tools necessary” to give him “a chance for success on the outside,” he faced no option but “to continue to recidivate in a revolving-door fashion.”

(3) Schumacher credits a higher power with leading him out of the vicious cycle: it was “the Creator” who sustained his belief “that there had to be a way” to transcend his conditions; and the pivotal change was his transfer to San Quentin, which allowed him to enroll in the College Program. The classes he took, in turn, ignited his desire to learn, initiating his “journey” toward “seeing the world through clear eyes and a pure heart.”

(4) Now, upon receiving his degree, he feels empowered to pursue a positive future: having tasted “freedom” of the mind, he’ll “show [his] gratitude” for the College Program by devoting himself “to the process of life-long education.”

**Themes.** Schumacher incorporates all three themes associated with Maruna’s desisters.

(1) He identifies core values that define his “true self”: the desire to learn has always been “inside of him”; college was simply “the catalyst” he needed to nourish that desire.

(2) He expresses a strong sense of agency and optimistic perceptions of control over his destiny: he declares that he’s committed to continuing his education, and that by earning his A.A. he has generated “momentum” that will “propel [him] towards the greatness of tomorrow.”

(3) He affirms the value of generative motives: he thanks his volunteer instructors for devoting their “time and energy” to “transforming the lives of incarcerated me[n]”; he thanks College Program staff for showing him “the true merit” of “investing yourselves into the lives of others”; and he thanks his younger sister Pamela for her moral support, dedicating his valedictorian award to her.

Although Schumacher doesn’t describe any inclination to serve a larger community or to improve others’ lives in concrete ways, he makes clear that he feels inspired to keep educating himself. Thus, while he doesn’t specify generativity as his own driving motive, his self-narrative expresses appreciation for the generative acts of others and mirrors the overall upward arc associated with Maruna’s desisters.

### Aly Tamboura (2014)

**Plot.** Like Schumacher, Aly Tamboura gives no details about his criminal past and devotes much emphasis to the unjustness of prison conditions. He too constructs a narrative in which the redemptive value of education lies *primarily* in its impact on his mental outlook and his individual life prospects:

(1) Tamboura presents himself as a vulnerable person trapped in a hellish system. When he first arrived at Corcoran State Prison, he says, “the violence, despair, and loneliness” in the environment made him feel “scared, helpless, and defeated” – like a child stuck on a scary carnival ride. In a facility that “encourage[d] men to be nothing but terrible,” he had “no opportunity to use [his] time constructively” and simply “held [his] breath to cope.”

(2) Deviating from the script of Maruna's desisters, Tamboura never mentions having made mistakes that led to his adversities. He says only that when he came to prison, "the bottom of [his] life had fallen out from under [his] feet"; and he describes subsequent difficulties in custody, including the stress of being transferred between facilities, as simply happening to him. This narrative choice sets Tamboura's narrative apart from both Schumacher's and Nelson's, as well: while all three have an upward arc, in Tamboura's story it is chiefly his situation, not his mind or character, that needs redeeming (and ultimately is redeemed) through his access to higher education.

(3) Tamboura credits a few key people with making his redemptive pathway to education possible. Early in his incarceration at Corcoran, it was his peer Ray Harts who told him about the College Program at San Quentin and gave him the program's address; and soon thereafter it was Jennifer Scaife, a College Program coordinator, whose acceptance letter became his "golden ticket" to a more humane facility and a more hopeful future. Upon arrival at San Quentin, he "fully engaged" in courses, dialed down his "hyper-vigilance," and began to feel that he "could finally exhale."

(4) Now, upon graduating, Tamboura feels vindicated and hopeful. With his new degree, "seven years and four prisons in the making," his "feet are firmly planted" on "the educational opportunities" for which he has "fought so hard." Going forward, he resolves that he "will continue to learn" because he believes "in the good and the power that comes from education."

**Themes.** Like Schumacher, Tamboura evokes all three themes of the redemption script, but with relatively light and indirect emphasis on the theme of generativity.

(1) Tamboura establishes core values that characterize his "true self": "commitment and persistence" under pressure. Using the metaphor of holding his breath to cope with the volatile thrusts of a carnival ride, he repeatedly spotlights his will to survive in prison. In his view, this quality – the "strength to endure in the face of adversity" – is what sets incarcerated students like him apart from their peers.

(2) Tamboura expresses a strong sense of agency and optimistic perceptions of control over his destiny. He believes education has produced "positive" and "mind-freeing" changes in him – changes that "reach to [his] very core" and that "cannot be ... bound by the confines of prison walls." He's confident that he "will continue to learn" and advance in his education.

(3) Tamboura affirms the value of generativity, though only briefly and indirectly. He lauds the volunteer teachers who have helped to produce "meaningful changes" in his life, and he thanks his mother for providing vital "wisdom and unwavering support." Thus, he presents himself as an appreciative *beneficiary* of others' generative activity, though not necessarily as one who feels compelled, in turn, to pass on the benefits he has received.

While Tamboura affirms that education has redemptive power for others in prison, and for society as a whole, he doesn't voice any personal ambitions to deploy his learning on others' behalf. Thus, like Schumacher – and unlike Nelson, whose narrative I discuss below – Tamboura presents a story that is redemptive yet not emphatically generative in theme.

### **Michael Nelson (2013)**

Compared to Schumacher and Tamboura, Michael Nelson places less emphasis on the unjustness of his adversities, and greater emphasis on blessings he's received from others. Nelson distinctively spotlights how these blessings have fueled his desire to serve others in turn: the theme of *generativity*.

**Plot.** (1) Nelson presents himself as a good person who has overcome a rocky history. Despite "poor choices in life," he says, "I can now say that I am proud of who I am." Unlike Schumacher and Tamboura, though, he chooses not to describe or condemn the prison conditions that may have compounded the negative consequences of those choices.

(2) Nelson indicates, if indirectly, that his poor choices have somehow led to adversities in prison. At a point in his speech where he addresses his teenage sister in the audience, he holds himself out as proof that “you can achieve all that you want to, no matter what you do in life, where you find yourself, or how difficult life sometimes feels.” Thus he obliquely implies that, while in prison, he has surmounted significant difficulties that have flowed from his past deeds.

(3) Nelson credits several positive figures – PUP executive director Jody Lewen and four student peers – with having pushed him in pivotal moments to complete his long, fitful journey to his college graduation. These personal acknowledgements take up the bulk of his speech.

(4) Now, as a graduate, Nelson feels indebted to his supporters, grateful for his education, and compelled to “pay it forward.” Whereas he once struggled to grasp “why I need[ed] to learn certain materials,” now he is set on using his education “to further what has become my life, in that I accept a responsibility to use my life as a vessel to restore what I have undone around me.”

**Themes.** While Nelson gives no details about his criminal history or life in prison, he devotes much of his speech to describing people and conversations that have shaped his current life path. Through these descriptions, Nelson imparts all three themes of the redemption script.

(1) Nelson emphasizes a strong set of core values that define his “true self.” In his opening lines, where he describes himself as an unlikely valedictorian – as “the student [who] questions the need to know” – he’s not just engaging in self-deprecation; he’s conveying his respect for the authenticity of first-hand experience, and the concrete *application* of knowledge to improve life here and now. To Nelson, “life experience,” not book knowledge, has always been the ultimate source of truth and wisdom. He was once a reluctant student, he explains, because he didn’t see how schooling could enrich his life and enable him to improve others’ lives; once he learned otherwise, he became motivated to complete his education.

(2) Nelson expresses a strong sense of agency and optimistic perceptions of control over his destiny. As noted above, in addressing his teenage sister in the audience, he points to himself as living proof that it’s possible to transcend any mistake, misfortune, or adverse environment. Likewise, addressing his fellow graduates, Nelson expresses a sense of limitless possibility, a sense that each of them holds the power to choose what to make of his education. Looking forward, he’s confident that he “will share with others” all he has learned while incarcerated.

(3) Finally, Nelson highlights *generativity* as his central motivation – and as a mindset he commends to others. Upon earning his A.A., he feels a “sense of responsibility to pay it forward” by sharing with others what he’s learned. Indeed, he offers “big brotherly advice” from the podium not only to his sister in the audience, but also to all “the other young people” present “whose journeys are just beginning.” And just as he urges all these young people to pursue goals of their choosing, he urges all his graduating peers to embrace his generative outlook.

In closing, Nelson reaffirms his belief that true freedom, for a educated person, entails deploying one’s hard-earned knowledge and skills both to improve oneself and to benefit others: “I believe that the passport to freedom is the *application* of education. *How will I use what I have learned to somehow better my life, and the lives around me?*”

## G.4. Capability analysis

In Chapter 4, I argued that PSCE is worth investing in because it enables students to develop a range of essential capabilities, thereby upholding their human dignity and agency. Building on that discussion, here I engage in a more focused capability analysis of the three valedictorians’ speeches. I observe key overlaps, identifying capabilities that play a role in all three self-narratives; I also note that each self-narrator has a unique way of emphasizing the capability expansions that matter most to him.

As discussed in Chapter 4, higher education enables students to develop the architectonic capabilities of practical reason and social affiliation; these in turn enrich all other capabilities, particularly the central capabilities of cognition and emotions. Indeed, all three valedictorians describe experiences of expanding these four capabilities (alongside others), though to different degrees and in different ways.

All three speakers attest to the development of *practical reason* through higher education. For Schumacher, college courses have allowed him to “measure [his] own beliefs alongside” diverse worldviews, to evaluate different ethical theories, and to envision and plan his next educational steps. For Tamboura, too, his college studies have enabled him to look at life through “a more informed lens,” to “question things critically,” and to make plans for further education. For Nelson, his journey through college has helped him revise and clarify his generative values, as well as his personal understanding of why a formal education matters; and it has further equipped him to construct generative life goals.

To an even greater degree, all three speakers describe how the College Program has expanded their freedoms of *social affiliation*. For Schumacher, the program has allowed him to shift from living as “just a number” in a “sea of blue shirts” to being an “articulate and thriving” member of his “communities” – both his peer group of students in prison and his family on the outside. For Tamboura, the program has placed him in a tightly knit circle of incarcerated peers who constitute “a family” – his “brothers in blue.” He also credits the program with improving the way he relates to others. For Nelson, the program has not only allowed him to build relationships with peers who inspire him; it has deepened his concern for communities beyond the prison and empowered him to serve those communities in new ways.

Aside from the architectonic capabilities, each speaker mentions other central capabilities that play major roles in his redemptive story. Most obviously, all three indicate that higher education has expanded their freedom to engage in *cognition*. For Schumacher especially, the intellectual aspects of education are intrinsically pleasurable and of utmost importance. Drawing on Plato’s allegory of the cave to describe his educational journey, he marvels at how the College Program has enabled him to pursue deeper knowledge of “himself and the world,” affording “freedom . . . of the mind.” Of the three speakers, he speaks most enthusiastically and at greatest length about complex ideas he’s grappled with in college.

Also, for all three speakers, participation in the College Program has developed and expanded the *emotions* in specific ways. In Schumacher’s case, college courses engaged his mind in dynamic and creative projects, freeing him from the “angst and hopelessness” he had felt when deprived of educational opportunities, and enabling him to manage the “anger and frustration” he had felt about that deprivation. In Tamboura’s case, enrollment in the program allowed him to relocate to an environment where, unlike in other prisons, he could be free from excessive fear or anxiety, and free to develop emotional connections to other people. In Nelson’s story, there is no mention of escape from negative emotions, but there is abundant emphasis on the value of his emotional connections to peers and role models in the program. And indeed, all three speeches make clear that the narrators, along with their peers, have been able to experience and express a range of emotions within the College Program community – love, affection, grief, hope, gratitude – in ways that they couldn’t safely do elsewhere in the prison system.

On a related note, Tamboura’s speech illustrates how the healthy emotional connections and social relationships he developed through the program, in turn, afforded him the freedom of *bodily integrity* and *control over his environment*. Prior to transferring to San Quentin and enrolling in the College Program, he lived in fear of violence within gang-dominated prison facilities, without any sense of choice or safety regarding his daily activities or interactions. For Tamboura, the program has afforded not only freedom of the mind, but also freedom from the hyper-vigilance required to stave off physical attacks. Although he’s still incarcerated and not free to leave state custody, in the College Program environment he’s relatively free to learn, to question, and to experience a range of emotions without immediate risk to his physical safety.

## G.5 Differences in generativity

In Nelson's narrative, the College Program has served primarily as a pathway to a life of pro-social giving and serving. He emphasizes that education has not only enriched *him* as an individual; it has empowered him to enrich the lives of *others*, and therein rests its ultimate value. By contrast, in the stories of Schumacher and Tamboura, the College Program has served primarily as their escape from an anti-social downward spiral. As these two men describe it, the primary benefits of their education are their *own* liberation and growth. They do suggest that the College Program is good for society at large; but they do not indicate exactly how, nor do they state whether it has motivated *them* to "give back" to society.

This is not to imply that Nelson's redemptive plot, simply because it is more explicitly generative than Schumacher's and Tamboura's, makes him likelier to succeed in society, nor that he is a worthier beneficiary of educational opportunities. Rather, these thematic contrasts should help us appreciate the different ways in which education can be genuinely redemptive for different individuals in prison. By considering these differences, in turn, we can clarify that the ultimate value of education for each of these men – as for any student – is that it has enabled him to choose, based on his evolving needs and values, what to make of it in the context of his life.

Some people in prison, like Nelson, may value higher education insofar as it enables them to take on service roles more confidently and effectively. They are ready and eager to consolidate their "redeemed" identities as role models, father figures, or community leaders. For people like Nelson, generativity will be a prominent theme in their public self-narratives, as well as in their personal self-understandings. Accordingly, such individuals are ideal spokespersons or "poster children" for PSCE and other programs designed to promote reintegration. As McAdams has noted, generative adults tend to embody our common notions of "good people" living "good lives." So to the extent that generative adults in prison are able to tell self-narratives establishing themselves as such, we may be more inclined to like them, respect them, root for them, and provide the moral and material support they need to succeed.

Programs that enable individuals like Nelson to develop and share self-narratives, clearly, are not only good for those individuals; they are also good for communities that will benefit from those individuals' generative endeavors. In Nelson's case, the College Program afforded the opportunity to acquire, over several years, the cognitive and social skills required for effective self-narration – as well as the opportunity to publicly share his self-narrative on graduation day. In turn, the broader community stands to benefit not only from hearing his uplifting story with its generative message, but also from the service and leadership activities that will flow from his generative self-understanding over time.<sup>58</sup>

Of course, not every incarcerated American harbors generative motivations; and, given access to higher education, not everyone will be moved to deploy their knowledge in generative ways. Some, like Schumacher and Tamboura, may value their education mainly because it affords them relief from the psychological and environmental stressors of prison life, while also enabling them to develop valuable intellectual powers, cultural knowledge, and social capital that improve their long-term life prospects. For these individuals, the urgent goals of self-preservation and self-improvement might not be so tightly or explicitly intertwined with lofty notions of social responsibility and altruistic community service.

This assessment of Schumacher's and Tamboura's priorities, if valid, doesn't diminish the moral or practical value of ensuring their access to education. Such individuals are fully focused, commendably, on their personal healing and wellbeing. Once they have secured their own psychosocial stability, they may then feel ready to focus their energies outward, attending to others' needs. If and when they do, their self-narratives may begin to reflect more generative motives, mirroring the emphases of Nelson's speech. In short, generative motives may take time to develop and manifest in their self-narratives.

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<sup>58</sup> Nelson is already vigorously engaged in multiple service and leadership roles in prison. His pro-social activities include charitable fund-raising, policy advocacy, and educational outreach efforts designed to benefit at-risk youth.

It's equally possible, though, that Schumacher, Tamboura, and others in prison will *not* choose a generative life path: they may reconstruct their self-narratives in ways that are socially acceptable, yet that do *not* revolve around being proactive parents, community leaders, or role models. But even if these individuals don't embrace generativity, on what grounds can we as a society demean their life plans, as long as these plans don't harm others? And on what grounds can we object to their focused efforts to educate and improve themselves? Once these individuals have served their sentences, I argue, we have no legal, moral, or practical grounds to do so. Generativity may be a prized quality in our culture, but this doesn't make it a prerequisite for being a respectable member of society and living a decent human life.

Indeed, surviving life in an American prison and reconstructing a pro-social self-narrative are formidable tasks, especially for individuals whose personal histories are marked by trauma, violence, social exclusion, and stigmatized deeds they can never undo. If people like Schumacher and Tamboura can achieve these tasks while incarcerated, *and can moreover marshal the social, emotional, and cognitive skills required to tell a coherent redemptive story about it*, then they have demonstrated admirable progress in their rehabilitation, as well as significant potential for successful reintegration.

Clearly, then, if we want to support the rehabilitation and reintegration of incarcerated Americans, we must ensure they have opportunities to acquire the skills they need to develop adaptive self-narratives – including *redemptive* self-narratives – regardless of whether they manifest generative inclinations. As I argued in Chapter 5, self-narratives need not be generative to yield psychosocial benefits: to promote recovery, growth, and health, a self-narrative must only provide an account of positive change that is coherent, plausible, and culturally acceptable to the narrator and her likely audiences. Thus educational opportunities like the College Program, in part by enabling self-narrative development, are vital to improving post-release life prospects – even for people whose narrative identities don't precisely embody our loftiest notions of model citizenship.



