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Growing Old and Getting Sick are Dangerous In Prison:
A Moral and Legal Argument for “Justice, Not Vengeance”

Jillian Sauer

Advisor: Dr. Elizabeth Hinson-Hasty

Readers: Dr. Conor Picken and Rev. Dean Bucalos

24 April, 2020

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“What is the meaning of a concept of sanity that excludes love, considers it irrelevant, and destroys our capacity to love other human beings, to respond to their needs and their sufferings, to recognize them also as persons, to *apprehend their pain as one’s own*?”

-- Thomas Merton

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Introduction

The Silver Tsunami is a term scholars use to describe the growing numbers of people over the age of 50 who are incarcerated.¹ Martina Cartwright, an Assistant Clinical Law Professor at Thurgood Marshall School of Law, theorizes that there are four major factors contributing to this phenomenon: the growing number of older individuals in the general prison population, an increasing willingness to arrest senior citizens, a national shift towards punishment over rehabilitation as the core purpose of prisons, and a decrease in the use of early release policies, such as probation and compassionate release.² However, many facilities are ill-equipped to address this growing population, either because they are under-funded over all or because they direct the funds they do get to other programs and equipment. For those in power, including legislators, governors, and Cabinet administrators, there is either no obvious problem or it is a problem that is too expensive and burdensome to address. Approaching this problem with apathy or fiscal conservatism fails to address the urgent call for moral action necessary to dismantle the unjust circumstances in which elderly persons who are incarcerated are living. This thesis explores the specific circumstances of elderly persons who are incarcerated, explains the legal and theological reasoning for why these particular circumstances demand a moral response, and suggests what liberative advocacy might look like from both a legal and theological standpoint.

¹ Martina E. Cartwright, "The Silver Tsunami: Aging Prisoners, Early Release, Guardianship and Prisoner Advocate Initiatives for Long Term Care Beyond the Prison Walls," *Journal of Aging, Longevity, Law, and Policy* 1, No. 1 (2016): 54-95. <http://digitalcommons.tourolaw.edu/jallp/vol1/iss1/6>.

² Ibid 54.

An Attempt to Pursue Justice

Any study, argument, or theory which advocates for incarcerated persons runs the risk of being seen as excusing or even justifying the crimes which lead to their incarceration in the first place. This is especially true when discussing elderly incarcerated persons, as they are often incarcerated by virtue of a lengthy sentence given in response to a verdict deeming them guilty of a major, usually violent, crime. The perception, then, is that the advocate is saying that this crime does not matter, that they are dismissing those affected by the crime in favor of the person who committed the crime. However, as I will demonstrate throughout this project, this is never the goal nor the intent of the advocate. Just as the goal of a criminal defense lawyer is to ensure due process in a criminal trial and not to justify violence, the goal of the advocate is to ensure the fair treatment of incarcerated persons. After all, at the core of justice is the truth that a just punishment should neither allow nor require the system to deny the dignity of a human being. This project, then, is not an attempt to excuse criminal acts, nor is it an attempt to vilify or dismiss the victims of such acts. Rather, it is an attempt to find a way to pursue justice in its entirety, without denying incarcerated persons their dignity in the process.

Circumstances Calling for Moral Action

Mass incarceration in the United States has resulted in a prison industrial complex³ which houses 2.3 million people in state prisons, federal prisons, juvenile correctional facilities, local

³ Mass incarceration refers to the staggering number of incarcerated persons in the United States compared to other countries. One of the most commonly cited statistics is that the US represents only five percent of the world population but incarcerates twenty five percent of the world's prisoners. This phenomenon is largely due to campaigns such as the war on drugs, and has been related to racism in the United States by theorists such as Michelle Alexander in her book *The New Jim Crow*. Prison Industrial Complex refers to the industrialization of incarceration in the United States. In other words, it criticizes the privatization of prisons and the political influence of the companies that run them.

jails, and Indian Country jails⁴ as well as in military prisons, immigration detention facilities, civil commitment centers, state psychiatric hospitals, and prisons in the U.S. territories.⁵ Each of these facilities is run differently, has different policies, reports statistics differently, and is managed by a different jurisdiction. Therefore, it would take a much more advanced project undertaken over many years to perform a thorough analysis of the treatment of the aging population of each of these facilities. For purposes of this project, I will instead focus on publicly owned state prisons, specifically in Kentucky. I will not discriminate between male and female prisons, though I will note that there may be differences in the nature of the care needed for each of these subgroups of the population. I will also address issues of race and socioeconomic status as they pertain to this issue.

The Bluegrass State is home to thirteen state prisons operating under the Commonwealth's Department of Corrections (KDOC). These thirteen facilities alone are home to 2,521 individuals over the age of 50.⁶ Of the thirteen facilities, the Kentucky State Reformatory in Oldham County houses both the most elderly persons (719) *and* has the greatest percentage of individuals over 50 (43.5%). The Eastern Kentucky Correctional Complex (295) and Luther Lockett Correctional Complex (254) house the second and third most incarcerated elderly, and the Kentucky State Penitentiary (21.79%) and Luther Lockett Correctional Complex (21.18%) house the second and third greatest percentages of incarcerated elderly. Oldham County houses two of the four institutions named above. Overall, individuals over 50 comprise roughly 15% of the population of

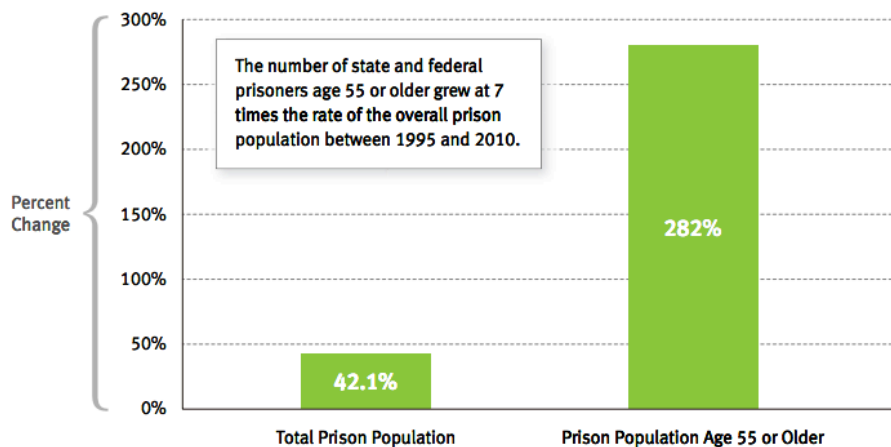
⁴ Correctional facilities operated by Native American tribal authorities or the Bureau of Indian Affairs.

⁵ Sawyer, Wendy and Wagner, Peter. "Mass Incarceration: The Whole Pie 2019." PrisonPolicy.org. The Prison Policy Initiative, March 19, 2019. <https://www.prisonpolicy.org/reports/pie2019.html>.

⁶ Erwin, James et. al., "2017 Annual Report: Kentucky Department of Corrections," Government Report, Kentucky, 2017, <https://corrections.ky.gov/About/researchandstats/Documents/Annual%20Reports/2017%20Annual%20Report.pdf>.

these thirteen KDOC facilities. However, this phenomenon is not limited to prisons in the Commonwealth of Kentucky.

GROWTH IN STATE AND FEDERAL PRISON POPULATION, BY AGE, 1995-2010



Source: Bureau of Justice Statistics, Prisoner Series, 1995-2010
 Note: Based on number of sentenced prisoners under jurisdiction of federal and state correctional authorities with sentences of more than one year.

Graph Provided by Human Rights Watch⁷⁸

Martina Cartwright writes that “between 1999 and 2012, the number of state and federal prisoners aged 55 or older increased 204%, from 43,300 to 131,500. However, during the same time the number of inmates younger than 55 years of age increased much more slowly, from 1.26 to 1.38 million—an uptick of only 9%.”⁹ Cartwright attributes this to longer sentences, noting that among people age 51 and older who are incarcerated in state facilities, 40.6% are serving sentences of 20 years to life.¹⁰

⁷ “Old Behind Bars: The Aging Prison Population in the United States.” NGO Report, Human Rights Watch. United States, 2012, https://www.hrw.org/sites/default/files/reports/usprisons0112webwcover_0.pdf.

⁸ While Cartwright’s figure represents 1999-2012 this graph represents 1995-2010.

⁹ Cartwright 70.

¹⁰ Ibid.

The continued imprisonment of elderly incarcerated persons without reason or redemption is a systemic injustice at its core. Prisons are understaffed, underfunded, and unable to properly care for these individuals. In *Estelle v. Gamble* the Supreme Court found that incarcerated persons have a constitutional right to healthcare that is not “deliberately indifferent” to serious medical needs.¹¹ The facts that led to this case were more similar to a workers’ compensation claim than to an elder abuse claim, but they laid forth an important precedent nonetheless. While the Courts have not addressed care of elderly persons in prison using the Estelle Standard it is clear that the care being provided to these people is not enough. Some prisons do their best with the resources they have, but this is not always the case. In fact, Cartwright reveals that “[t]he majority of physicians hired to provide care in prison systems generally have restrictions on their medical licenses and practice medicine only in prisons, due in part to prior findings of medical negligence or malpractice in non-prison settings.”¹² As previously stated, these circumstances cry out for moral action. I was able to witness these circumstances firsthand in the summer of 2018.

A Revelatory Experience

In the summer of 2018, I went on a tour of the Kentucky State Reformatory in Oldham County sponsored by the Department of Public Advocacy. KSR houses the largest percentage of aging incarcerated persons in the Commonwealth, and at the time thirteen of those inmates had been diagnosed with a mentally degenerative illness, such as dementia or Alzheimer’s. Our group consisted of fifteen or so future attorneys. Most of the group worked with the DPA in their summer internship program. Three of them were interning with the tri-county area’s Circuit Court judge. I had spent the summer working with an attorney who focused on civil litigation, estate planning,

¹¹ *Estelle v. Gamble*, 429 U.S. 97, 104 (1976).

¹² Cartwright 73.

and landlord-tenant matters, so of the group I had the least experience in criminal law. I was also on the younger end of the group, and the only undergraduate student. The oldest among us was a 30-year-old third year law student studying to be a criminal defense lawyer. Before the tour we had been sent a list of guidelines to follow. The prison has strict rules regarding wardrobe—no open-toed shoes, shirts covering up to the collar bone, and absolutely no skirts. We were also told to leave our phones at home, and to bring our drivers licenses. If we broke any of these rules, we would not be allowed to enter the prison.

When we arrived, we were told to hand our drivers licenses to the guard sitting by the entrance. We were each given a numbered wristband, and the guard made note of which wristband matched which license—our licenses would be returned when we finished the tour and turned in the wristband. We were then scanned with a metal detector and our bags were searched for phones and other contraband. The guards gave us strict instructions and rules to follow. None of us had our law license, so if we were asked for legal advice, we were to give a firm “no”. We were to stay with the group. And most importantly, we were to listen to the two guards leading the tour, and to follow their instructions to the letter. After this brief orientation, we were buzzed through a series of gates and into the part of the facility which houses the people incarcerated there. We stopped by the psychiatric ward, the hospital ward, and the yard. About halfway through the tour, we arrived at the dementia ward, which houses individuals with mentally degenerative illnesses such as Alzheimer’s.

The dementia ward was much quieter than the rest of the facility. As we walked through the rest of the prison the inmates had been asked to line up against the wall, hands to their sides, while we passed. This was not the case in the dementia ward. The men and women housed there were either confined to their beds or sitting in wheelchairs. Even though KSR is a male prison, we

were told that most of the facilities in the state were ill-equipped to provide for the needs of these individuals, including the women's facility in Pewee Valley. Often, they would just assign another inmate to assist the individual. When they reached the stage where the facility could no longer care for them, they were transferred to KSR. A few younger inmates were there as well, and we learned that the prison was understaffed so they allowed inmates with good behavior to help the ward's residents with daily tasks, such as mealtimes, moving around the facility, and hygiene such as brushing their teeth and hair.

We were told that in order to determine whether an individual will be placed in the dementia ward KSR requires that they undergo a series of tests performed by mental health staff at the prison. At the recommendation of a psychologist, the individual would be admitted. They do not get yard time, nor are they allowed to interact with the general population. We were told that these individuals are at an increased risk of violence or extortion. Many of these individuals do not realize they are in prison, and if they do, they do not remember why. Further, because many of the individuals housed in KSR have been convicted of violent or sexual crimes, they cannot be transferred to a civilian nursing facility. Most of the ward's residents will die before serving out their sentence. Someone in the group asked if the prison was properly equipped to deal with elderly persons or persons with dementia. We were told they were not.

When the tour ended and I returned to my car, I could not help but think that these individuals were not receiving the full extent of care they needed. Not only that, I could not shake the feeling that no one outside of the prison system *cared*. I grew up in a county that is home to three of the thirteen correctional facilities in Kentucky, and until that day I had never heard about the growing crisis facing elderly incarcerated people. Martina Cartwright does an excellent job of explaining the apparent apathy on the part of civilians. She explains that there are two schools of

thought when it comes to the purpose of prisons: the utilitarian and the retributive.¹³ Our society tends to focus on the latter.

Two Schools of Thought

The Retributive School

Those who favor the retributive school of thought tend to believe that prison is deserved, that those who are incarcerated did the crime and must then do the time. The focus is drawn to the punitive aspect of imprisonment, which Cartwright refers to as “censure”. Censure seeks to hold offenders accountable for their actions. It is important to note that “at its core the retributive model differs from the concept of vengeance as it focuses primarily on assessing ‘deserved punishment’ rather than satisfying the victim’s need for revenge.”¹⁴ The philosopher Immanuel Kant once wrote that “punishment ought to be pronounced over all criminals proportionate to their internal wickedness.”¹⁵ This viewpoint makes two dangerous assumptions. First, it assumes that each incarcerated person is actually guilty of the crime for which they were convicted. However, advocates and advocacy groups such as Sister Helen Prejean and the Innocence Project have shown that this is not always the case.¹⁶ Second, it assumes that each incarcerated person has some “internal wickedness”, and that it is our job as a society to punish this wickedness. Further, this assumption of wickedness implies that the need to punish the wickedness outweighs the need to recognize the dignity of the person being punished. In other words, proponents of the retributive

¹³ Ibid., 57.

¹⁴ Ibid., 57-8.

¹⁵ Ibid., 58.

¹⁶ Sister Helen Prejean is perhaps best known for her book, *Dead Man Walking*, which was adapted into a 1995 movie starring Susan Sarandon. Sister Prejean continues to be a passionate advocate for prison reform and the abolishment of the death penalty. The Innocence Project is an organization committed to telling the stories of those wrongfully convicted and sentenced to death, and works to abolish the death penalty.

school are less likely to favor early release where they feel it conflicts with “deserved” punishment, even when that punishment ignores the dignity of the incarcerated person.

The Utilitarian School

Those who favor the utilitarian school of thought believe that “punishment should only be used if it benefits society by incapacitating offenders, deterring others from crime, or rehabilitating criminals for the betterment of society.”¹⁷ The utilitarian school focuses on the rehabilitation and resulting prevention, arguing that, “if punishment has no usefulness in preventing crime, there should not be criminal sanction.”¹⁸ In other words, the goal of incarceration is not punishment for punishment's sake but rather allowing individuals to work towards self-betterment and prevention techniques. Neither of these models provide justification for the continued imprisonment of elderly persons who no longer pose a threat, particularly when those individuals are seriously (and especially terminally) ill.

Problems with the Retributive and Utilitarian Schools

The first question that comes to mind when considering whether the elderly (and especially the sick) incarcerated are simply imprisoned for the sake of completing their sentence is: how do you know they no longer pose a threat? It is easy to turn to anecdotal evidence, such as the July 2019 story of a man in his late sixties who was released by a judge who deemed he was no longer a threat only to be convicted of another murder eight years later.¹⁹ In this way the old argument

¹⁷ Ibid., 57.

¹⁸ Ibid., 56.

¹⁹ Hassan, Adeel, “A Murderer Deemed Too Old for Violence Was Just Convicted of Another Killing,” *New York Times* (New York, New York), July 19, 2019. <https://www.nytimes.com/2019/07/19/us/albert-flick-convicted-kimberly-dobbie-murder-maine.html>.

for the death penalty that it is “better to execute one innocent person than to let a hundred guilty people go free” is adopted and adapted. But it is not sustainable to focus on what ifs in the face of injustice. Cartwright suggests “the state must weigh the needs of the [incarcerated person] against societal needs such as safety, retribution, and deterrence.”²⁰ Further, Cartwright suggests that public opinion is a powerful driving force, writing that “[d]espite evidence that the rates of recidivism are relatively low among older [persons granted release], it is still considered politically risky to release inmates early.”²¹ However, the reality of the situation is that human dignity should be valued above re-election.

The Experience of Elderly Incarcerated Persons

The experience of an incarcerated person is certainly different from the experience of a non-incarcerated person. However, the experience of an elderly incarcerated person is particularly distinct because of the effects of aging on mental and physical health. While on the tour of Kentucky State Reformatory discussed in the introduction of this project, KSR staff members informed us that elderly persons incarcerated in the facility were more susceptible to manipulation, violence, and other dangers than their younger counterparts. Stephen Ginn does an excellent job of outlining the problems faced by elderly incarcerated persons.²² He writes about how their needs often go unnoticed because they do not pose a significant threat to prison security. However, the physical incapacitation and disability of elderly incarcerated persons means they themselves are at risk for bullying and violence inflicted by younger incarcerated persons. Ginn also notes that because many elderly incarcerated persons have been convicted of sexually violent crimes, other

²⁰ Cartwright 59.

²¹ *Ibid.*, 81.

²² Ginn discusses the incarceration of elderly persons in England and Wales, but many of the problems apply to U.S. prisons as well.

incarcerated persons may generalize this to all elderly incarcerated persons, leading to their being targeted and ostracized based on this stereotype.²³ For elderly incarcerated persons who also suffer from illnesses such as dementia these problems are magnified.

In 2002 a group of psychologists lead by Dr. Seena Fazel conducted a study of two men incarcerated in the United Kingdom.²⁴ Both men were over the age of 65, and both had a high likelihood of dementia. Shortened summaries of the interviews conducted by Fazel's team follow:

Case 1: Alex B.²⁵ is a 69-year-old man who was given a six-year sentence at the age of 66 for incest. Three years after entering prison, he suffered a stroke. The interview with Fazel's team took place four months later. Alex tested with a high likelihood of dementia at the time of the interview and was later diagnosed with vascular dementia. He is completely dependent on others to complete daily tasks and is no longer aware of why he is in prison, or even that he is incarcerated. At the time of his interview, his dementia had progressed to a point where he was unable to answer any of the interviewer's questions.

Case 2: Chris D. is a 78-year-old man serving a life sentence for the rape and murder of a child. He has been either in jail or in prison for more than ten years. In 1999 he was diagnosed with Alzheimer's. At the time of his interview, he had limited mobility and was living on the ground floor due to his inability to use stairs. Chris is able to recall his crime and express remorse.²⁶

These case studies give examples of one individual who is no longer *mentally* capable of committing a crime and one who is no longer *physically* capable of committing a crime. Both men

²³ Ginn, Stephen, "Elderly Prisoners," *British Medical Journal* 345, No. 7879 (2012): 24-27. <https://www.jstor.org/stable/41724025>.

²⁴ Fazel, S., McMillan, J., and O'Donnell, I., "Dementia in Prison: Ethical and Legal Implications," *Journal of Medical Ethics*, 28, No. 3 (2002): 156-159. <https://www.jstor.org/stable/27718883>.

²⁵ Names have been changed for anonymity's sake.

²⁶ Fazel, 156.

have been convicted of truly horrible crimes, and of course there is a great deal of sympathy owed to the victims and their families. However, Fazel and his team go on to explain why they believe the continued incarceration of these two men to be unethical.

Fazel begins by giving background on each of the schools of thought discussed in the introduction to this paper but make an interesting point when discussing rehabilitation. Fazel writes “[r]ehabilitation through offender treatment programmes [sic], education, and work are of little relevance as they require cognitive abilities incommensurate with dementia.”²⁷ I will address this criticism more in depth later in this paper, but here I would like to note that there is a difference between a rehabilitative approach and a redemptive approach. Redemption is a theological approach which seeks to validate the dignity of the person and to restore them to God’s path, while rehabilitation is a sociological approach which ultimately seeks to return a person to society. Fazel utilizes the political philosopher Robert Nozick to explain that the societal goal for punishment is for the incarcerated person “to know that others disagree and that this is why they are being punished...”²⁸ This alone makes the incarceration of the individual described in case one unethical, as AB is unable to understand where he is, why he is there, or what is being asked of him. However, Fazel notes that Nozick’s understanding is not the sole purpose of punishment. When it comes to the individual in case two, Fazel utilizes the Human Rights Act of 1998 to ask whether it is ethical to incarcerate a person with severe physical chronic illness. Fazel writes “Article 3 forbids inhuman or degrading treatment or punishment of those in detention.”²⁹ The European Court found that governments owe high levels of medical care to chronically sick incarcerated individuals under this article.³⁰

²⁷ Ibid., 157.

²⁸ Ibid., 158.

²⁹ Ibid.

³⁰ Ibid.

The Human Rights Watch offers a less clinical collection of experiences. The first is that of Cedric McDonald³¹, who is incarcerated in a Mississippi facility. Cedric is a 65 year old man who worked as a truck driver before being sentenced to twenty years in prison in 1998 for the second degree manslaughter of his wife. Cedric has had a kidney transplant and receives dialysis three times a week. At the time of his interview, Cedric did not have any teeth. Though he has dentures he is unable to afford denture cream from the commissary so he does not use them. The dialysis has rendered him unable to work, so he relies on his sister to send him money. The building where Cedric is housed is without air conditioning. Like many elderly persons, Cedric has difficulty coping with extremes in temperature. Despite this, Cedric reports that not much is done to help elderly incarcerated persons cope with extreme Mississippi temperatures. “It’s so hot in the building. I want to cool off. Fans don’t do much. It cools in the evening. You get one cup of ice after 12, none in the morning, and two cups in the evening.”³²

The Human Rights Watch also shares the story of Wilma Collins, a woman incarcerated in a Colorado facility. Wilma is 82 years old and was sentenced to thirty years in prison for a violent crime. Wilma herself refused to be interviewed, but other inmates and staff confessed that Wilma is ornery and difficult. She resides in the prison infirmary where the facility attempts to provide care similar to that of a nursing home. Staff report that Wilma is often confused, for instance claiming that she keeps a pet rabbit in her bed. One correctional officer says she is “erratic, demented, and sometimes so abusive she puts aides to tears.” Still, considering her condition he asks, “what would be the point of writing her up for verbal abuse?”³³

³¹ Names have again been changed for the sake of anonymity.

³² “Old Behind Bars”, Human Rights Watch, 49.

³³ Ibid., 62.

Finally, the Human Rights Watch chronicles the experience of Bonnie Frampton, who is incarcerated in a Colorado facility. Bonnie's incarceration began at the age of 65. She was given a 100 year sentence for conspiracy for murder. She describes life behind bars as a "culture shock". She reports that most of the staff leave her alone because they "know she'll stand up for her rights," but that she still "risks retaliation because staff get even." Some examples of abuse and mistreatment undergone by Bonnie include: being written up for assault when she put her hands up to block a mammogram due to tender breasts, being forced to stand outside in the pill line despite the weather, and being denied extra blankets in the winter despite the extreme cold.³⁴

In its conclusion, the Human Rights Watch found that prison approaches to the difficulties faced by elderly incarcerated persons range from transfer to a hospital to housing in a special unit (which is the solution utilized by the KDOC). The Human Rights Watch does not mince words when it says "Housing the elderly is a daily game of musical chairs that can shortchange individual elderly persons while it bedevils corrections officers."³⁵ This game is unconscionable and demonstrates a larger willingness to ignore the abuse and neglect of society's most vulnerable.

A Moral Response Which Calls for Compassionate Care for Elderly Incarcerated Persons

Elderly incarcerated people have the distinct position of being members of at least two marginalized groups at the same time. Elderly persons are often neglected by virtue of their age. You can see this through elder abuse in nursing homes or immoral attorneys and financial advisors taking advantage of clients whose mental capacity is not what it once was. Incarcerated persons are neglected by virtue of their sentences. Our retributive society views them as criminals, incapable of empathy and undeserving of respect. In society's desire to punish it is easy to forget

³⁴ Ibid., 65.

³⁵ Ibid., 51.

the duty to recognize the dignity of the individual. Of course, many members of the elderly incarcerated subgroup are marginalized by other factors as well, including gender, race, socio-economic status, and religion.

Cartwright explores compassionate and early release programs as a potential solution to this problem. In the state system, both compassionate and early release are determined at the discretion of the warden.³⁶ Further, Cartwright admits that “a number of studies suggest there is inadequate information or resources to provide proper reentry planning... a significant number of [recently released persons], suffering from physical and mental health maladies, often resorted to seeking treatment at emergency rooms, with a small percentage hospitalized within a year following release.”³⁷ Where this is the case, the question must be asked: how compassionate is “compassionate release”? And what is our response to this?

This project seeks to address what our response must be to the crisis facing elderly incarcerated persons. In Kentucky alone there are 2,521 individuals in this subgroup.³⁸ That means there are 2,521 souls being neglected by virtue of their age and sentence. When you have been called to recognize the dignity of each person you cannot turn a blind eye to this truth. Through scholarly research and a variety of first and secondhand experiences I hope to address this crisis in a way which utilizes both legal and theological lenses, and which utilizes a redemptive view of incarceration.

³⁶ One criticism I have of Cartwright is her use of the phrase “older offender” to refer to an elderly incarcerated person. The phrase is problematic because it identifies these individuals based on their advanced age and their status as convicted individuals, rather than as persons deserving of dignity and compassion. In order to respond to the call for moral action in a way which aligns with the new redemptive school of thought, it is important to use language which avoids reducing these individuals to their age and sentence. As discussed later in this project, language, especially in the legal world, is a highly important and potentially inflammatory tool, and the language used in our response must emphasize the individual before their age and sentence.

³⁷ Cartwright 85.

³⁸ Erwin.

The Redemptive School: A Third Option

It is clear that neither the retributive nor the utilitarian model works when it comes to elderly incarcerated people. Therefore, a third school of thought is necessary: the redemptive school. Robin W. Lovin, the Director of Research at the Center of Theological Inquiry and the Cary Maguire University Professor of Ethics emeritus at Southern Methodist University, , lays out three potential approaches from the Christian Ethical standpoint: goals, rules (or duty), and virtues. The redemptive school will emphasize goals, while containing elements of the rules (duty) and virtues approaches.³⁹ Our goal? Restorative justice and redemption for elderly incarcerated people. The purpose of prison, in other words, is to improve the lives of incarcerated individuals in a way that benefits society in the long run. Therefore, incarceration is no longer a punishment but an opportunity for redemption. When an individual who has been diagnosed with a terminal or mentally degenerative illness continues to face incarceration, they are no longer being incarcerated with the goal of redemption in mind. At that point, it is our duty to find an alternative solution to redemption, one that includes the virtues of justice, compassion, and empathy. This goal of redemption will, for the purposes of this project, be rooted in Catholic social teaching. The next chapter explores the principles of Catholic social teaching which define, support, and inform the redemptive approach for elderly incarcerated persons, and which emphasize the need to recognize human dignity in this approach.

³⁹Lovin, Robin W. *Christian Ethics: an Essential Guide*. Nashville, TN: Abingdon Press, 2000.

Chapter One

An Argument from Catholic Social Teaching

Catholic social teaching (or “CST”) provides a vital theological lens to the incarceration of elderly persons and the basic principles needed to develop a redemptive approach. According to the United States Conference of Catholic Bishops (USCCB):

Catholic social teaching is a central and essential element of our faith... It is a teaching founded on the life and words of Jesus Christ, who came ‘to bring glad tidings to the poor . . . liberty to captives . . . recovery of sight to the blind’ (Lk 4:18-19), and who identified himself with ‘the least of these,’ the hungry and the stranger (cf. Mt 25:45).¹

God actively aligns with the marginalized over the privileged. Throughout Scripture God advocates for the widows, orphans, and strangers, and condemns those who would do them harm. CST aims to serve the needs of these three groups through a combination of scriptural interpretation and Church doctrine. Further, as the USCCB states, CST is rooted in the prophetic tradition found in the Hebrew scriptures. CST is at the core of the Catholic faith. As such, it is integral to develop a well-rounded understanding of this tradition before attempting to understand a theological argument for moral action in response to the circumstances addressed in the introduction of this project.

Prophetic Tradition

Prophetic tradition stems from the writings of prophets in the Hebrew Bible such as Isaiah and Jeremiah. The prophetic books act as God’s voice on earth, and often work to course-correct earthly societies that have fallen into patterns of sin and evil. The prophetic works often make

¹ “Sharing Catholic Social Teaching: Challenges and Directions,” Church Publication, United States Conference of Catholic Bishops, 1998, <http://www.usccb.org/beliefs-and-teachings/what-we-believe/catholic-social-teaching/sharing-catholic-social-teaching-challenges-and-directions.cfm>.

references to imprisonment, whether it be the prophets themselves or incarceration in general. One well-known passage that discusses imprisonment is Isaiah 42. In the first part of Isaiah (chapters 1-35) God warns Israel that if they do not reform their ways God will punish them through an Assyrian invasion.² However, in Isaiah 40-55 God changes God's tone, adopting a more restorative and comforting message.³ Isaiah 42 is one such comforting passage. Isaiah 42:6-7 reads:

I am the Lord, I have called You in righteousness, I will also hold You by the hand and watch over You, And I will appoint You as a covenant to the people, as a light to the nations, to open blind eyes, to bring out prisoners from the dungeon and those who dwell in darkness from the prison.⁴

Isaiah 42:6-7 are particularly relevant when discussing the plight of elderly incarcerated persons for two reasons. First, because they refer to “open[ing] blind eyes”. In order to understand what is being done here, it is important to interpret the language of the Hebrew Bible word by word. This is because the original language was not English but rather Hebrew. Because of this, reading the Hebrew Bible and relying solely on the English meaning misses what is at the heart of what the prophet is calling for. For example, the word “blind”, or “‘iw·rō·wṭ” in the original Hebrew, is used figuratively. In other words, the author is not referring to individuals who are literally blind. The word “open”, or “‘līp·qō·aḥ” in the original Hebrew, is used in the same sense as when you open your eyes after sleeping. Based on the original Hebrew, this passage can be understood to mean figuratively waking those who have been asleep to the problems of the marginalized. Contemporary society is familiar with this concept (see: “woke culture”). In essence, this means educating those who are unaware about the pleas and plights of the marginalized. The second reason this passage is relevant for this project is that it is a direct call from God. This is not

² Jones, Edward Allen, III, and Alan Scharn. “Prison and the Bible: Current Practices and Reflections from Isaiah.” *International Journal of Public Theology* 10, no. 2 (2016): 211–31. doi:10.1163/15697320-12341443.

³ *Ibid*, 223.

⁴ Isaiah 42:6-7, New American Standard Version.

unique to the prophets—they do, after all, act as God’s voice on earth—but it is important because it is a call from the Creator to free those in prison. It is debated whether this means a literal freeing of the incarcerated or a more spiritual freeing through penance and rehabilitation, but regardless of the specific meaning this passage makes it clear that justice for incarcerated persons involves some kind of liberation. When dealing with the population of elderly incarcerated persons this means raising the question of whether incarceration while mentally and/or physically ill meets this call for just liberation. If it does not, that means the act of incarcerating those persons goes directly against what God asks. Therefore, in order to apply the prophetic tradition to a moral response for elderly incarcerated persons, you must utilize a response which focuses on both educating the unaware and liberating the incarcerated.

CST seeks to continue the prophetic tradition within the life of the church by speaking out against evils, especially systemic injustices such as racism and wealth inequality. Though the Church remains controversial on some political issues, there is a long history of both lay persons and clergy speaking out against other injustices, not only in their own parishes or to their own traditions, but in a larger societal context. For example, Sister Helen Prejean, a member of the Congregation of Saint Joseph, has become an incredibly vocal and well-known advocate for individuals who have been placed on death row. Because CST is so integral to the Catholic tradition, and because the plight of elderly individuals who are incarcerated certainly qualifies as the plight of the biblical “least of these”, it is vital that you explore arguments from CST which call on us to develop a theological lens and response to the incarceration of elderly persons. You can do this by looking at existing Church publications on incarcerated and elderly individuals and on compassionate healthcare.

Existing Church Publications

Incarceration

In November of 2000, the USCCB released a statement on incarceration titled “Responsibility, Rehabilitation, and Restoration: A Catholic Perspective on Crime and Criminal Justice”⁵. This statement was the bishops’ attempt to tackle growing concern over the effect of crime on both the Church and society. The statement begins “our response to crime in the United States is a moral test for our nation and a challenge for our Church.”⁶ The USCCB’s statement revolves around seeking a redemptive model of justice, which recognizes “that both victims and offenders are children of God”⁷. In other words, it calls for a response focusing on “the fundamental starting point for all Catholic social teaching... the defense of human life and dignity”⁸. To encapsulate, the dignity of the person is primary even when that person has violated the dignity of another; God loves all of us unconditionally regardless of sentence.

The USCCB does recognize the paradoxical nature of this call. Specifically, they recognize the need to “establish and enforce laws to protect people and to advance the common good.”⁹ However, the Bishops do not use this paradox as a free pass to ignore the suffering of incarcerated individuals. They write “[a]t the same time, a Catholic approach does not give up on those who violate those laws. You believe that both victims and offenders are children of God. ... **You seek justice, not vengeance.**”¹⁰ (emphasis added). In this approach, the USCCB does not require a complete dismissal of the retributive and utilitarian schools. In fact, they appear to deem both

⁵ “Responsibility, Rehabilitation, and Restoration: A Catholic Perspective on Crime and Criminal Justice,” Church Publication, United States Conference of Catholic Bishops, 2000, <http://www.usccb.org/issues-and-action/human-life-and-dignity/criminal-justice-restorative-justice/crime-and-criminal-justice.cfm>.

⁶ USCCB (2000), Ibid.

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

schools necessary for protecting society. However, they also emphasize rehabilitation and do not explicitly give either purpose more weight. Instead, what they do is establish these purposes as being *simultaneously* necessary. Wherever continued incarceration fails to meet one or both of these purposes, it can be deemed unnecessary and even sinful. While I understand the merits of the Bishops' argument, I disagree with this approach when it comes to elderly incarcerated persons. As discussed above, many of the individuals housed in KSR's dementia ward were not even aware of why or even that they were in prison. I would argue that when dealing with a terminally ill or mentally incapacitated individual there is no place for the retributive or utilitarian schools. Punishment does serve a purpose, but not when the person being "punished" is dying or unable to process the world around them. At that point, punishment serves no purpose beyond appeasing the punitive desires of society.

The Bishops go on to address the question of what rehabilitation looks like from a Catholic approach. They turn to Catholicism's rich tradition of forgiveness, redemption, and restoration through the sacrament of Penance. According to the Bishops, "the four traditional elements of Penance have much to teach us about taking responsibility, making amends, and reintegrating into community."¹¹ These four elements are contrition, confession, satisfaction, and absolution.¹² First, the sinner must truly and fully regret their wrongdoing (contrition). Next, they must acknowledge this wrongdoing and take full responsibility (confession). They must then show some sort of external effort to make amends (satisfaction). Finally, the sinner is forgiven by Jesus with the help of the clergy and the community (absolution). All four elements can also be applied to the rehabilitative process behind bars. It is vital to note that all four of these elements require a certain level of mental awareness and cognitive ability on the part of the "sinner". The USCCB demands

¹¹ Ibid.

¹² Ibid.

that “[p]unishment must have a constructive and redemptive purpose.”¹³ Where this is true, the incarceration of elderly persons is simply punishment for punishment’s sake, and there is no question that punishment without greater purpose is a sin.

Elderly Persons

CST also has a tradition of calling for care and respect of the elderly. In 1999 Pope John Paul II wrote a Letter to the Elderly.¹⁴ In this letter, Pope John Paul II writes that “[m]an remains for ever made ‘in the image of God’ (cf. *Gen* 1:26), and each stage of life has its own beauty and its own tasks.”¹⁵ He goes on to give several examples in which advanced age is revered and honored throughout scripture, citing both Old and New Testament examples. He seeks to empower these individuals through scripture and through their role as “[g]uardians of shared memory.”¹⁶ Of course, he acknowledges societal failure to assign the appropriate reverence to these guardians, writing:

[i]f you stop to consider the current situation, you see that among some peoples old age is esteemed and valued, while among others this is much less the case, due to a mentality which gives priority to immediate human usefulness and productivity. Such an attitude frequently leads to contempt for the later years of life, while older people themselves are led to wonder whether their lives are still worthwhile.¹⁷

Pope John Paul II sought a solution to this problem. He wrote,

There is an urgent need to recover a correct perspective on life as a whole. The correct perspective is that of eternity, for which life at every phase is a meaningful preparation.¹⁸

¹³ Ibid.

¹⁴ Pope John Paul II. “Letter of His Holiness Pope John Paul II to the Elderly,” Letter. From the Vatican. 1999. http://w2.vatican.va/content/john-paul-ii/en/letters/1999/documents/hf_jp-ii_let_01101999_elderly.html. (Accessed: November 1, 2019).

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

This new perspective focuses on the respect demanded by the inherent dignity of the person. Pope John Paul II does not leave much room for interpretation: both scripture and the Catholic requirement that human dignity be recognized and valued mean that you must view aging individuals not as a burden to be ignored but as valued and revered members of society.

Health Care

In addition to teachings on incarcerated and elderly individuals, CST also calls for recognition of healthcare as a human right, including healthcare for the terminally ill. In 2018, the Catholic Health Association of the United States sent a letter to the US Senate Committee on Health, Education, Labor, & Pensions.¹⁹ In this letter, the CHA urged both the chair and the ranking member of the Senate Committee on Health, Education, Labor, & Pensions to consider supporting a bill, which sought improved palliative care²⁰ and hospice resources. The CHA wrote “[a]ll persons, regardless of their medical condition, possess inherent dignity and are worthy of respect, protection, and care.”²¹ Compassionate healthcare cannot be denied because a person is terminally ill, incarcerated or elderly. Once again, the dignity of the person requires that each and every individual be given the proper care and attention they need in order to fully recognize their worth.

¹⁹ Archbishop Timothy Michael Cardinal Dolan, Most Rev. Frank J. Dewane, and Sister Carol Keehan, DC. “USCCB-Catholic Health Association Letter to Senate on Palliative Care and Hospice Education Training Act,” Letter. From USCCB. August 6, 2018. <http://www.usccb.org/issues-and-action/human-life-and-dignity/health-care/usccb-cha-letter-to-senate-on-palliative-care-2018-08-06.cfm>. (Accessed: November 1, 2019).

²⁰ Ibid.: “[p]alliative care is focused on providing patients with relief from the symptoms, pain and stress of a serious illness- whatever the diagnosis- with the goal of improving quality of life for both the patient and the family.”

²¹ Ibid.

As mentioned above, this call to healthcare is not unique to CST. The Supreme Court has deemed adequate healthcare for incarcerated persons a right. However, the Supreme Court has not yet addressed the issue of adequate healthcare for elderly individuals. Further, there is little doubt in my mind that the criminal justice system sees adequate and compassionate healthcare as being dually necessary. Cartwright reveals the troubling fact that some doctors found guilty of medical malpractice are allowed to practice on a limited license that limits them to working in prisons. The United Nations has also spoken up about the necessity of health care. In the UN's *Basic Principles for the Treatment of Prisoners*, published in 1990, the UN states that "prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation."²² The use of limited medical licenses acts as a form of discrimination based on legal situation. This practice is a perfect example of the lack of compassionate healthcare in the American prison system. CST demands health care that recognizes the dignity of the person, and it is clear that this demand is not being met in the current system.

An Argument from Theologians

While the USCCB represents the official stance of the American Catholic Church on this issue there is also a well of academic publications to draw from. In 2011, Amy Levad, a theology professor from the University of Saint Thomas, published an article entitled "I Was in Prison and You Visited Me: a Sacramental Approach to Rehabilitative and Restorative Justice."²³ This article provides an academic analysis of *Responsibility, Rehabilitation, and Restoration* and Andrew

²² United Nations Office of the High Commissioner for Human Rights, "Basic Principles for the Treatment of Prisoners," General Assembly Resolution 45/111, United Nations, December 14 1990.

<https://www.ohchr.org/en/professionalinterest/pages/basicprinciplestreatmentofprisoners.aspx>.

²³ Levad, Amy. "I Was in Prison and You Visited Me': A Sacramental Approach to Rehabilitative and Restorative Criminal Justice." *Journal of the Society of Christian Ethics* 31, no. 2 (2011): 93–112.

<https://search-ebSCOhost.com.libproxy.bellarmino.edu>.

Skotnicki's critique of the work.²⁴ Levad begins by acknowledging the lack of Catholic Church and theologian publications at the time addressing the crisis of mass incarceration. In fact, she points out that there were only two in existence at the time she published her article: the USCCB publication discussed above and an article written by Andrew Skotnicki in response to the bishops. Levad chooses to bolster the bishop's argument over Skotnicki's.

I have already provided my own analysis of the USCCB publication above. However, before going into Levad's argument, it is important to understand Skotnicki's article. Andrew Skotnicki is a theology professor at Manhattan College in the Bronx, New York. This article, titled "Foundations Once Destroyed: The Catholic Church and Criminal Justice", tackles the issue of criminal justice and the church using a two-pronged approach.²⁵ First, Skotnicki uses historical analysis to analyze the Church's position on incarceration. Second, he applies this analysis to a critique of contemporary Church teachings on criminal justice, specifically the USCCB publication discussed above. Before going into his argument, Skotnicki explains that he commends the attempt by the USCCB to address the problem of mass incarceration while noting that the attempt is "not always sufficiently informed about the beast it is attempting to tame."²⁶ Skotnicki's stance here mirrors my response to the USCCB's publication. Their 2000 attempt to address the issue of mass incarceration is, as Skotnicki puts it, commendable, if flawed. Two, I think it is important to understand where Skotnicki's critiques come from. From the beginning, he makes it clear that his criticisms come more from a methodological standpoint than from an ideological

²⁴ For the sake of brevity, throughout this section *Responsibility, Rehabilitation, and Restoration: A Catholic Perspective on Crime and Criminal Justice* shall be referred to as "the USCCB publication".

²⁵ Skotnicki, Andrew. "Foundations Once Destroyed: The Catholic Church and Criminal Justice." *Theological Studies* 65, no. 4 (2004): 792–816. <https://search-ebSCOhost-com.libproxy.bellarmino.edu/login.aspx?direct=true&db=rh&AN=ATLA0001429671&login.asp&site=ehost-live&scope=site>.

²⁶ *Ibid*, 793.

one. After all, Skotnicki himself is Catholic. That is not where his problem with the USCCB publication comes from. His problem comes from what he sees as “interpretive problems” in the USCCB publication. Skotnicki “guide[s his] own analysis with the insight that the response to crime and the treatment of the criminal in each age are, at the deepest level, driven by metaphors or social portraits of the offender.”²⁷ Skotnicki’s main criticism of the USCCB publication is that it relies on an incorrect image of prison and of the imprisoned person.

Skotnicki goes on to explore the Catholic tradition regarding crime and punishment, from Augustine to the USCCB publication. He draws several main themes from historical trends, namely order, justice, and atonement.²⁸ He points out that both St. Augustine and Thomas Aquinas emphasized these three concepts in a retributive fashion. Augustine favored them in pursuit of earthly peace, while Aquinas saw punishment as “medicinal”, as intended to allow those who have committed acts of wrongdoing to find virtue. Skotnicki argues that “both Augustine and Aquinas lend decisive foundational support to the Catholic justification for punishment: the violation of responsibility owed to one another, to the social peace, and to God.”²⁹ In other words, the Catholic approach to criminal justice and incarceration has always relied on elements of both the retributive and utilitarian schools. However, Skotnicki also makes it clear that “[t]he historical teaching is also remarkably consistent: the rehabilitation of the offender and his or her eventual reincorporation into the ecclesial and social body is the goal of punishment.”³⁰ Catholic social teaching has always demanded a redemptive approach, even as it emphasizes elements of the retributive and utilitarian schools.

²⁷ Ibid.

²⁸ Ibid, 796.

²⁹ Ibid, 797.

³⁰ Ibid, 799.

After offering this analysis of historical theologians' approach to punishment Skotnicki moves to address two contemporary areas of concern: the foundational image of both the prison and Christ as prisoner, and the Church's interpretation of contemporary penal policy. In order to address the issue of the foundational images, Skotnicki relies on an exploration of monastic prisons. The monastic prison was used as a method to guide those who had committed wrongdoings towards redemption. This tradition is derived from practices in the Gospel of Matthew where it falls on the community to confront evildoers by either encouraging repentance and reform or shunning them. According to Skotnicki, "This does not seem to be a repudiation of the willingness to forgive, but a reminder to the wayward that they must admit their fault, do penance, and seek to be reconciled to a community that desires their reincorporation."³¹ The monastic prison, then, emphasizes redemption, but also emphasizes personal responsibility in redemption. Monastic prisons were not without their harsh elements, but Skotnicki makes it clear that their goal of redemption was more in line with the mission of Christ than the retributive and utilitarian approaches. Further, Skotnicki ties this back to the USCCB publication by arguing that this balance of the "compensatory and restorative ends of punishment... [has] been weakened"³² by the USCCB publication. Specifically, Skotnicki criticizes the bishops by saying that they "cannot help but adopt a shallow reading of the role of retribution."³³ This is where Levad's criticism of Skotnicki begins.

Levad's essay "challenges Skotnicki... by proposing that the sacraments, especially the Eucharist and Penance, provide a stronger basis in Catholicism... in ways that foster rehabilitation and restore justice while also reforming broken systems and promoting social justice."³⁴ In other

³¹ Ibid, 802.

³² Ibid, 809.

³³ Ibid, 810.

³⁴ Levad 93.

words, Levad argues that the Bishops' emphasis on the sacraments does not ignore the role of retribution but rather offers an alternative. She breaks Skotnicki's argument down into four questions: (1) who are the offenders, (2) what is the justification for punishing criminal offenders, (3) what is the end at which forcible intervention aims, and (4) by what means will the end of punishment be accomplished?³⁵ Skotnicki's disagreement with the Bishops, and Levad's disagreement with Skotnicki, lies in the fourth question. Levad recognizes several problems with the use of a sacramental approach, namely "the privatization and industrialization of Christian worship practices".³⁶

However, Levad also encourages a full consideration of the importance of the sacraments in rehabilitation and redemption. She argues that the Eucharist and Penance can help guide those convicted of criminal offenses towards redemption, thus fulfilling both the Bishops' and Skotnicki's proposed goal. Levad calls on Catholics to make the Eucharist central in their response, arguing that the Eucharist and Penance are intrinsically intertwined and that "[e]mphasizing the centrality of the Eucharist in Catholic tradition may help provide stronger support for the US bishops' insistence ... the enduring potential within all people, including victims and offenders."³⁷ The Eucharist is key in Levad's response to the existing criminal justice system, and in her approach to redemption for incarcerated persons.

Having reviewed the responses of the USCCB, Skotnicki, and Levad, I tend to agree with Levad's approach. Hers is more in depth than the USCCB's and more forgiving than Andrew Skotnicki. Further, Levad's approach fits best with the redemption of elderly incarcerated persons in particular. Skotnicki's emphasis on retribution does not apply where the person incarcerated is

³⁵ Ibid, 98.

³⁶ Ibid, 101.

³⁷ Ibid., 103.

no longer physically or mentally capable of committing acts of wrongdoing, and the Bishops begin on the right track but still rely too heavily on the retributive factor. Retribution is important when discussing the general prison population, particularly those found guilty of violent or deadly offenses.³⁸ However, where the incarcerated person has a debilitating illness a sacramental approach is best to meet the goal of redemption. Further, this sacramental approach could be enacted through a guardianship or early release program, without requiring further incarceration and denial of adequate health care.

Language in Catholic Social Teaching

Because it places such a prominent emphasis on the dignity of the person, CST requires a careful use of language, especially when discussing marginalized groups. Even outside the tradition of CST the language we use carries a tremendous impact. For example, though the term “African-American” is commonly used within the American vernacular many organizations have pointed out that the term does not fully encompass the experiences of black people in the U.S. For instance, many black people may not be American citizens. The National Association of Black Journalists advises asking the individual person their preference but suggests using “black” if you are unsure. However, it also strongly advises against using “black” as a noun, suggesting instead that you use it as an adjective (for example, “black person”).³⁹ This is just one example of how the language used to refer to marginalized groups has taken a front seat in contemporary social justice.

³⁸ It is important to note here that the conversation of retribution for non-violent crimes is an entirely different matter, and that an examination of the goal of incarceration for non-violent offences is also necessary. After all, when a crime is only a crime as a result of intense lobbying by certain political groups or because of a need to appear “tough on [X issue]” it could be argued that retribution only serves to meet a political end and not to encourage the health and welfare of the public.

³⁹ “NABJ Style Guide A.” NABJ.org. National Association of Black Journalists, Accessed: November 19, 2019. <https://www.nabj.org/page/styleguideA>.

Therefore, it is impossible to continue a discourse surrounding elderly incarcerated persons without including a discussion of the language used to do so.

Both Cartwright and the USCCB use the word “offender” to describe an incarcerated person. Cartwright takes it one step further and uses the phrase “elderly offender” throughout her article to refer to elderly incarcerated persons. My issue with these terms is two-fold. First, much like the retributive model, the use of the word “offender” is problematic because it implies intrinsic guilt and because it reduces the individual to their worst moment. When I say intrinsic guilt, I mean it implies that the person not only committed this act, but that they are at their core a criminal person. However, I would argue that no person is inherently criminal, nor are human beings capable of being evil at their core. Criminal acts typically come about as a result of some combination of two things: societal and economic factors or an imbalance of brain chemistry that suggests neurodivergence rather than intrinsic criminality. My goal is to argue for a term that encompasses who these individuals are as victims of a carceral system. In order to develop a proper theological lens through which to examine the plight of elderly incarcerated individuals it is critical to use a term which does just that.

Even the term “Silver Tsunami” has the potential to be problematic as mentioned in the introduction to this project. While it is certainly a catchy way to describe the growing population of elderly incarcerated individuals, it should be noted that when discussing marginalized groups, the focus should not be on finding the catchiest phrase. I understand that the population of elderly incarcerated individuals is growing rather quickly, and that there are certainly logistical issues associated with this growth. My main criticism of the term is the implication that elderly incarcerated persons are a destructive force rather than people to be treated with compassion. Tsunamis swell from the sea floor and demolish entire coastal towns and cities. They create

devastating economic damages and are emotionally traumatizing. To refer to elderly incarcerated individuals as a tsunami is to imply that their existence is a threat. It is to reduce them to an economic burden, and to suggest that they are a force working against society that has the potential to destroy it. This term completely rejects the principle of human dignity in favor of economic and societal fear. While the continued incarceration of these people is problematic in its own way, as this thesis discusses at length, it is the act of incarceration and not the individuals themselves that is destructive. In other words, I take issue with referring to the individuals as a tsunami. It is possible to criticize the conditions which these individuals are subjugated to without implying that the individuals themselves are a destructive force. Even though “Silver Tsunami” has been widely used in the academic discourse surrounding elderly incarcerated individuals, I reject the notion that this means it can and should be used in a theological response to the needs of these individuals. In order to respond with compassion, it is necessary to develop a more careful and precise phrase, one which recognizes that it is the incarceration and not the people which poses a threat.

Throughout this project, I have used some form of the term “elderly incarcerated individuals” to describe the group whose position I seek to address. I chose this term because I believe it mirrors the recommendation of the NABJ mentioned above. Specifically, it uses “elderly” and “incarcerated” as an adjective. I use the words “elderly” and “aging” interchangeably but made every effort to avoid the term “older”. My goal was to find a term that accurately describes the group I am addressing without being reductive or simplistic. In doing this, I hope to achieve the CST mission of recognizing the inherent dignity of the individual.

Summary

CST requires that you recognize the dignity of individuals who are elderly and incarcerated at every turn. You cannot deem them unworthy based on age, sentence, or diagnosis. Our theological lens cannot be one of vengeance or punishment for punishment's sake. Rather, it must be rooted in empathy and compassion, and must consistently seek to uphold the worth and dignity of each and every individual. You cannot ignore these individuals because they are "invisible" in our society. CST demands our moral action in response to these circumstances, and it demands that this moral action pursue justice, dignity, and redemption in equal parts. This demand is not new. It is found in the Hebrew Bible through the works of the prophets. Further, CST contains calls for the distinct groups of elderly persons and incarcerated persons, through it does so separately. For these reasons, there exists an argument from Scripture and from CST for the use of a theological lens to address the plight of elderly incarcerated persons.

Chapter Two

A Perspective from Human Rights

A compassionate response to elderly incarcerated persons also contains a duty that exists beyond a belief in God. There is also a societal call to justice which can be seen by understanding the incarceration of elderly persons through the lens of social justice and human rights. In this chapter I will argue that the government has a duty beyond that of the “night watchman state” described by Ferdinand Lassalle in the 19th century. Proponents of a night watchman state (specifically, neo-liberals and libertarians) argue that the role of government is solely to enforce contracts and protect personal property, but this is a self-focused view which ignores the realities of communal living. In reality, the role of government is to ensure that each and every person’s dignity is recognized and protected. Beyond a religious emphasis on dignity, this role of government requires the preservation of human rights. As history has shown time and again, human rights cannot be thrown aside out of convenience. I will explore this idea further throughout this chapter, specifically focusing on how neoliberalisms campaign to diminish the state also diminishes the capacity for the state to protect these fundamental rights.

In order to overcome the night watchman perspective and develop a response to the growing population of elderly incarcerated persons I will explore and analyze three things. First, the experience of those who are both elderly and incarcerated; next, the impact this incarceration has on both families and on society; third, the ways in which different cultures and systems approach the issue of elderly persons convicted of criminal activity. By exploring these foundational realities, it becomes possible to determine what a response to this incarceration might look like from a human rights standpoint.

Why This Group?

As with any social justice issue a main question facing this thesis will likely be “why this group”? Why should resources and compassion be allocated towards people convicted of crimes so violent that they will grow old in prison? I have already established the theological answer: because these people have dignity which cannot be taken away. However, social justice will require a more nuanced answer. After all, in a country where 18.5 million people live in poverty according to the UN and where eleven million children live in food insecure homes it can be difficult to understand why the needs of incarcerated elderly individuals should be acknowledged and met.¹ From a social justice standpoint, the answer can be boiled down to one core truth: at no point does just punishment allow or require the denial of basic human rights.

All too often, marginalized groups are pitted against one another. The United States is rife with conflicts based on race, religion, region, employment, education, political affiliation, and so many other identifiers. It is an increasingly polarized nation, aided by the venomous rhetoric utilized by the powerful to deepen this polarization. While each of these conflicts often represents centuries of oppression and marginalization (for instance, one cannot in good conscience accuse black people of “starting” the racial divide in the United States), they also represent a history of power dynamics, with the wealthy and powerful moving “beyond” these divides in order to create a unified front while more vulnerable citizens continue to fight just to live. For example, in 2019 an image of TV personality Ellen DeGeneres and former U.S. President George W. Bush attending a football game together went viral. Many criticized Ellen for her apparent friendship with the man who pioneered incredibly homophobic and war-mongering policies during his administration. In response, Ellen took to her show where she said “Here's the thing. I'm friends with George Bush.

¹ “Kids in America are Hungry.” NoKidHungry.org. Share Our Strength, Accessed 27 January 2020. <https://www.nokidhungry.org/who-we-are/hunger-facts>.

In fact, I'm friends with a lot of people who don't share the same beliefs that I have.”² Ellen’s response illustrates the problem with how the powerful view social justice: she is an openly gay, self-proclaimed “Hollywood liberal” who spends her weekends watching football with a man responsible for the deaths of hundreds of thousands of soldiers and civilians in Iraq and Afghanistan. In other words, she can look beyond actions many have condemned as evil and write them off as a simple difference in beliefs.

While Ellen’s friendship with the former president may not seem related to the incarceration of elderly persons, it is related in as far as it represents the apathy the rich and powerful attempt to impose on the less fortunate. It is doubtful that her response was intended as malicious, but it is still indicative of a subliminal message conveyed by the modern aristocracy (including high-ranking political officials, A-list celebrities, and billionaire business owners): resources are scarce, and any resource going to *them* is a resource that does not go to *you*. In other words, the powerful profit off of the public’s apathy. All this is to say that it is ultimately not a choice between starving American children and immigrant children at the border, or between homeless veterans and drug addicts in desperate need of rehab. In 2019 the president proposed a \$4.7 trillion budget; the United States has the money to care for each and every person and their needs.³ The problem is that those in power do not prioritize the needs of the vulnerable when allocating these funds. This means that the question should not be “why should we care for elderly incarcerated persons”, it should be “why aren’t we caring for elderly incarcerated individuals?” This question returns to the question of the night watchmen state and the myth of scarcity.

² France, Lisa Respers, “Ellen DeGeneres explains hanging out with her friend George W. Bush,” *CNN* Atlanta, GA, 8 October 2019. Accessed: January 27, 2020, <https://www.cnn.com/2019/10/08/entertainment/ellen-degeneres-george-bush/index.html>.

³ Amadeo, Kimberly. “US Federal Budget Breakdown: The Budget Components and Impact on US Economy.” *TheBalance.com*. Dotdash, 31 December 2019. <https://www.thebalance.com/u-s-federal-budget-breakdown-3305789>

Neoliberalism and Libertarianism require two assumptions: one, that government exists only to protect property rights, and two, that government funds are an inherently scarce.⁴ Both of these assumptions miss the entire point of government. They corrupt the social contract theory proposed by John Locke into an entirely selfish pursuit, while writing off political philosophers like John Rawls as mere idealists. John Locke's social contract requires people to give up their right to act as a vigilante in order to live in a civilized society. Neoliberals have taken this a step further, arguing that this is the only right one must give up. However, examining the state of the increasingly Neoliberal United States reveals that this attitude only creates a "civilized society" for a certain group. In order for **everyone** to live in a comfortable and dignified fashion, there must be a willingness for those who have economic, political, and social means to utilize those means for the common good. This is where the myth of scarcity comes into play. Those in power argue that caring for elderly incarcerated persons is expensive, and they are correct. However, this argument also ignores that the solution is not to cut costs of care but rather to increase the funds used for care by increasing taxes on the ultra-rich.⁵ In the system as it exists today, incarcerated

⁴ Neoliberalism is a form of liberalism which favors laissez faire capitalism and understands competition to be the root of human behavior; neoliberalism often ignores human action in favor of allowing the market to regulate government policy, arguing, for instance, that there should not be a minimum wage as "the market will drive employers to pay a fair wage". This philosophy is flawed in its inability to acknowledge free will—for instance, in the minimum wage sample given above the "market" should demand a \$15/hour minimum wage given the way cost of living has risen exponentially since the Federal minimum wage was set at \$7.25 in 2009, yet eleven years later it is still at \$7.25/hour. Libertarianism emphasizes personal liberty above all else, and advocates for minimal government. However, the problem with libertarianism is that it does not recognize the "my rights end where yours begin" principle, and that it does not want to allow the government to regulate anything. For example, at the 2016 Libertarian Debate presidential candidate Gary Johnson was booed for supporting driver's licenses.

⁵ This thesis is being written in the heat of the 2020 presidential race. "Tax the rich" has become a sound bite for several prominent Democratic presidential candidates, including Bernie Sanders and Elizabeth Warren. Given that this has become such a politically charged and controversial statement, I want to take a moment here to clarify what I mean by taxing the ultra-rich. Here I am referring to individuals like Jeff Bezos and Bill Gates, individuals with so much money they could quite literally buy the *entire* NFL (worth approximately \$73,600,000,000) and still be multi-billionaires. This website (<https://neal.fun/spend/>) is excellent for giving an idea of exactly how much money the ultra-rich have, and of demonstrating exactly how much good the United States could do were they allowed to tax these individuals accordingly.

persons are forced to go without health care because billionaires have bought the ability to avoid taxation.

Consider here John Rawls' veil of ignorance theory. This theory begins with the following hypothetical: suppose you find yourself in a room with a group of people, behind the so called "veil of ignorance." Together, you must work to create a new system which is equal and fair for everyone, but there is a catch. None of you have any idea of what identifying characteristics you possess, including gender, race, or nationality. You do not know what role you will hold in this new society. You do not know your socioeconomic status or anything about who you will be. Under this theory, Rawls argues that those behind the veil would seek to create the most just society possible for everyone living within it. Using this theory, political scientists have argued that the current American system cannot be considered equal. For example, considering everything discussed in this thesis no one operating from behind this veil of ignorance would create the existing American prison system knowing they may find themselves in that system as an elderly incarcerated person, because no one would want to risk being subjected to the very injustices elderly incarcerated persons are subjected to. To return to the original question: why this group? Because no rational person would create this system knowing they themselves could be subjected to it.

The Societal and Familial Impact of this Incarceration

The United States spends over \$80 billion each year on corrections and incarceration.⁶ Over the past three decades the rate of state and local corrections spending has increased at three times

⁶ "Report: Increases in Spending on Corrections Far Outpace Education." Ed.gov. U.S. Department of Education, July 7, 2016. <https://www.ed.gov/news/press-releases/report-increases-spending-corrections-far-outpace-education>.

the rate of state and local spending on education.⁷ Former U.S. Secretary of Education John B. King does not mince words when he says “[b]udgets reflect our values, and the trends revealed in this analysis⁸ are a reflection of our nation’s priorities that should be revisited.”⁹ The Pew Charitable Trusts found that in 2008 prison health care spending totaled \$6.5 billion out of a \$36.8 billion corrections budget in the forty four states examined by the Federal Bureau of Justice Statistics.¹⁰ While the medical expenses of incarcerated elderly persons do not account for the entirety of this spending, it still stands that there is a significant financial impact on society from this incarceration. Further, the elderly are already particularly susceptible from social isolation and loneliness, particularly after retirement or the loss of a spouse. The incarceration of these individuals and isolation from their families removes a support system that many elderly people rely on as they begin to experience mental and physical signs of ageing. The incarceration of elderly persons, then, has a significant impact on society and on families.

Societal Impact—Cultural

Winston Churchill once said “the mood and temper of the public with regard to the treatment of crime and criminals is one of the most unfailing tests of the civilisation of any country.”¹¹ At its core, this statement acts as a criticism of the willingness to disallow dignity as a form of punishment. In the United States, this denial of dignity often goes one step further, serving as a human rights violation. In 2012 the Human Rights Watch published a report on elderly

⁷ U.S. Department of Education (2016), *Ibid*.

⁸ The analysis referred to here is a July 2016 comparative study of the budgets for corrections and education in the United States.

⁹ *Ibid*.

¹⁰ Pew Charitable Trusts. 2014. *Managing Prison Health Care Spending*. Washington, DC: Author. <http://www.pewtrusts.org/en/research-and-analysis/reports/2014/05/15/managing-prison-health-carespending>.

¹¹ Bretschneider 267.

incarcerated persons in the United States. This report delves deep into the conditions in which these persons are housed, the cost of incarceration, and an analysis of justifications for incarceration. Its conclusion is clear: the treatment received by elderly incarcerated persons in the United States is a human rights violation. The examples given in the introductory chapter highlight the nature of these violations.

Societal Impact—Financial

The Human Rights Watch reports that elderly incarcerated persons cost two to three times more to house than their younger counterparts.¹² Their medical expenses alone can be as much as nine times greater than medical expenses for the average incarcerated person.¹³ Human Rights Watch interviewed an employee of California’s Correctional Health Care Services department. This employee revealed that while young people tend to experience illness in short, acute bursts elderly people are more likely to experience it as a chronic illness. Chronic illnesses require more coordinated, long-term care which can quickly become costly. As demonstrated in the introductory chapter of this project, Kentucky prisons are currently too understaffed and underfunded to effectively coordinate all the components of care required by elderly incarcerated persons. Nationally, care for the average incarcerated person costs roughly \$5,482 per year,¹⁴ while care for incarcerated persons ages 55-59 costs \$11,000 per year and care for incarcerated persons over 80 reaching up to \$40,000 per year.¹⁵

¹² “Old Behind Bars”, Human Rights Watch 72.

¹³ Ibid 73.

¹⁴ Figure from 2012.

¹⁵ Ibid 75.

Familial Impact

A common phrase among those with a family member who is incarcerated is “the family serves time too.” Families of incarcerated individuals face unique financial, social, and health-related challenges both during and after incarceration. This phenomenon has also been referred to as secondary prisonization. A report co-authored by the Ella Baker Center for Human Rights, Forward Together, and Research Action Design details these challenges.¹⁶ The report states that “the financial impacts of incarceration place tremendous strain on families, breaking ties and weakening the relationships incarcerated individuals need to get back on track after their sentence is complete.”¹⁷ The report goes on to argue that “families are often forced to choose between supporting an incarcerated loved one and meeting basic needs for their families and themselves.”¹⁸

The financial challenges faced by families begin with the arrest. Families can expect to incur enormous costs in the form of attorney’s fees, court costs, and bail.¹⁹ They often go into debt to pay these costs, with the percentage of formerly incarcerated people owing criminal justice debt growing from 25% in 1991 to

Basic Needs Family Had Difficulty Meeting	
Food	49%
Housing	48%
Utilities	45%
Transportation	40%
Clothing	37%

Chart provided by *Who Pays: The True Cost of Incarceration on Families*²¹

¹⁶ deVuono-Powell, Saneta, Chris Schweidler, Alicia Walters, and Azadeh Zohrabi. “Who Pays? The True Cost of Incarceration on Families.” The Ella Baker Center for Human Rights, Forward Together, and Research Action Design, Oakland, CA, 2015, <http://whopaysreport.org/wp-content/uploads/2015/09/Who-Pays-FINAL.pdf>.

¹⁷ deVuono-Powell et al, Ibid, 12.

¹⁸ Ibid, 12.

¹⁹ Ibid, 13.

85% in 2015.²⁰ Once convicted, the family not only loses a loved one, but often loses a source of income. The deVuono report found that “nearly half of formerly incarcerated individuals contributed 50% or more to their families’ total household income prior to incarceration.”²² Further, “sixty-five percent of families had difficulty meeting basic needs as the result of a loved one’s incarceration.”²³ The financial challenges to families do not stop there. The report also found that the costs of staying in touch often result in families losing contact. Phone calls and visitation can be expensive as family members must either pay exorbitant phone bills or take time off work and pay to travel to the facility housing their loved ones. One formerly incarcerated person in New Orleans described the situation as follows:

It instantly destroyed my family because of the distance and the cost associated with visiting and phone calls. I suddenly became a dead person to them. My parents subsequently died during the time that I serve, siblings moved on to create their own families, moved out of state. So that’s been devastating.²⁴

This system which puts families in the horrible position of choosing between contact with their loved ones and massive amounts of debt would be unconscionable on its own, but the massive financial costs do not stop with phone calls and visits.

In addition to the large cost incurred in order to stay in touch with their incarcerated loved ones, families are also at risk of incurring massive health-care related costs. The report states that through the Federal Prisoner Health Care Copayment Act [“FPHCCA’], all federal and some state prisons²⁵ have copayment schemes requiring incarcerated persons to pay for each medical visit.

²⁰ Ibid, 15.

²¹ Ibid, 18.

²² Ibid, 17.

²³ Ibid, 18.

²⁴ Ibid, 32.

²⁵ Including Kentucky, see Sawyer, Wendy. “The Steep Cost of Medical Co-Pays in Prison Puts Health at Risk.” [prisonpolicy.org](https://www.prisonpolicy.org). Prison Policy Initiative, April 19, 2017. <https://www.prisonpolicy.org/blog/2017/04/19/copays/>.

Furthermore, the funds collected through these copays do not go towards health care but instead are used for restitution and administration. Some people choose to go without healthcare during their incarceration to avoid these copays.²⁶ The highest state co-pay is found in Nevada at \$8 per visit.²⁷ While this seems relatively low it is important to note both that prisons are not required to pay incarcerated persons anything for their labor and that the highest prison minimum wage is found in Utah at forty **cents** per hour, with Louisiana and West Virginia paying only **four cents** per hour. In West Virginia this means an incarcerated person would have to work 125 hours to afford the \$5 copay, an equivalent of a \$1,093.75 copay on West Virginia non-prison minimum wage (\$8.75).²⁸ A chart sourced from The Prison Policy Initiative detailing each state's copay scheme in relation to the earnings of incarcerated persons can be found attached as Appendix A. The financial problems faced by incarcerated persons and their families continue after release, manifesting as both financial and social challenges.

Once a person serves their time or is granted parole, they face obstacles to housing and employment. Further, “as a result of their conviction, more than one in five survey respondents in this study reported being denied public assistance.”²⁹ Not only does their conviction itself serve as a potential barrier, but criminal justice debt also serves to stand in the way of public assistance since parole and probation agreements often require the timely payment of debts, and formerly incarcerated persons who are unable to make payments on their criminal justice debts may be found to be in violation of their parole and lose benefits such as TANF, food stamps, housing assistance, and Supplemental Security income for seniors and people with disabilities.³⁰ The

²⁶ deVuono-Powell et al. 38.

²⁷ Sawyer.

²⁸ Ibid.

²⁹ deVuono-Powell et al. 25.

³⁰ Ibid.

stigma of conviction combined with the financial effects of “failure” to pay debts affect the formerly incarcerated person’s family as well, with 1 in 10 survey participants having had family members be evicted as a result of the formerly incarcerated person returning home, while 79% of participants reported they were unable to obtain housing as a result of their own or a loved one’s incarceration.³¹ One Washington DC family member’s story is as follows:

I am in tears every nights when I go to sleep because my son has a felony charge. I’m on social security right now and I’m 61 so I can’t get senior help. So for me to go and get a place to live, it’s a serious challenge. He and I want to live together but he has felony charges so when we go and get a place even if we put all our money together, it’s still a struggle. Nobody wants to take somebody that has a felony.³²

Not only are lack of employment and stable housing are both factors which contribute largely to recidivism, but they continue to humiliate and dehumanize people well after their sentence has been served. This reality renders “solutions” such as compassionate release almost as cruel as the incarceration itself. When an individual with mental or physical disabilities is released from prison with no home and no family to go to, unable to work, and unable to pay for their own medical care, compassionate release often means homelessness as a best case scenario.

When it comes to elderly incarcerated persons, all of the above challenges increase significantly. Longer sentences make it more likely that families will lose contact with their loved ones in order to avoid accumulating massive amounts of debt. This makes it difficult for elderly persons with physical or mental disabilities to reach out to their family members for assistance upon release. Further, the loss of Supplemental Security Income and other government benefits make these individuals susceptible to homelessness, acute illness, or worse, especially when they are found to be ineligible for public housing or denied housing due to their conviction. While

³¹ Ibid, 26.

³² Ibid, 26.

incarcerated, elderly individuals with physical or mental disabilities may be unable to work, meaning they are unable to pay their copays and must rely on family members or charity to visit their doctor. This amounts to a denial of healthcare, housing, and security based on age and disability, both of which are protected classes under state and federal law. This denial is nothing short of a human rights violation, and one which must be addressed in order to claim that the American Criminal Justice System is just.

Other Socioeconomic Considerations

Throughout this thesis and the literature cited herein the phrase “vulnerable population” has been heavily referenced. However, ethicists such as Florencia Luna have criticized the use of the phrase for its potentially oversimplified nature and its requirement that groups meet certain qualifications in order to be deemed vulnerable.³³ However, as Luna points out, “a person or group of persons may suffer different kinds of vulnerabilities, and this complexity is not shown if we just name a group of persons as vulnerable.”³⁴ I have written extensively in this paper on the distinct position of elderly incarcerated persons as a marginalized group. However, other socioeconomic factors certainly have a role to play in the experience of these individuals. For example, during my tour of KSR we were told that KSR is the only facility in the state of Kentucky equipped to care for individuals with illnesses such as dementia, which means that every other state facility must transfer individuals with these illnesses to KSR. This includes women who have been incarcerated, even though KSR is a male prison and is notorious for housing individuals with sexual assault and

³³ Luna, Florencia, “Elucidating the Concept of Vulnerability: Layers not Labels,” *International Journal of Feminist Approaches to Bioethics* 2, No. 1 (2009): 121-139. Accessed 28 January 2020. <https://www.jstor.org/stable/40339200>.

³⁴ Luna, Ibid, 123.

other such convictions. Luna suggests defining vulnerability in terms of layers rather than in terms of labels.³⁵ She writes:

The metaphor of a layer gives the idea of something ‘softer,’ something that may be multiple and different... It is not ‘a solid and unique vulnerability’ that exhausts the category; there might be different vulnerabilities, different layers operating.³⁶

So, for example, with elderly incarcerated persons both their age and their incarceration represent separate layers of vulnerability, both in the prison community and in society as a whole. However, I disagree with Luna’s statement that there is no solid and unique vulnerability. While there are certainly different layers of vulnerability experienced by each individual which make each person’s experience distinct, individuals with similar combinations of layers have experiences similar enough to one another (and distinct enough from the experiences of those missing one or more of those layers) that they can be said to have a unique vulnerability (even if it is not necessarily solid). For example, individuals who are both advanced in age and incarcerated experience a unique and similar combination of layers. However, Luna’s statement that there might “be different vulnerabilities, different layers operating”³⁷ is absolutely correct and vital to understanding the nuances of a response to the incarceration of elderly persons. Layers such as class, race, and gender have their own role to play in this incarceration, and even though each of the people affected by this response have the shared layers of being elderly and incarcerated those who have additional layers of vulnerability may require a modified response.

Class

³⁵ Ibid, 128.

³⁶ Ibid.

³⁷ Ibid.

The ways in which class contributes an additional layer of vulnerability have been discussed extensively in the *Familial Impact* section above. To summarize, individuals who have either a lower income or who are otherwise economically disadvantaged face greater vulnerability than those with more economic security from the moment of arrest and even after they are released. Often these individuals (and their families) are forced to choose between paying for legal counsel, bail, and court fees and using their income to support their families. Some individuals and their families go into debt to pay for these fees, with the total amount of criminal justice debt in the United States exceeding **\$50 billion** as of 2011.³⁸ While incarcerated, these individuals and their families are often responsible for the copays for their medical visits. As illustrated in appendix A, a \$5 copay in prison can be the equivalent of up to a \$1000 copay outside of prison, which represents yet another financial barrier for these individuals. Finally, upon release incarcerated individuals face barriers to employment, housing, and government benefits which are often exacerbated by that individual's age and ability to work.

Race

At this point it is no longer a secret that the United States incarcerates people of color in far greater numbers than it incarcerates white people. The sentencing project published several key findings on the matter, including the following:

African Americans are incarcerated in state prisons at a rate that is 5.1 times the imprisonment of whites. In five states (Iowa, Minnesota, New Jersey, Vermont, and Wisconsin), the disparity is more than 10 to 1.

In twelve states more than half the prison population is black: Alabama, Delaware, Georgia, Illinois, Louisiana, Maryland, Michigan, Mississippi, New Jersey, North Carolina, South Carolina, and Virginia. Maryland, whose prison population is 72% African American, tops the nation.

³⁸ deVuono-Powell et al. 15.

In eleven states, at least 1 in 20 adult black males in is prison.

[Latinx people] are imprisoned at a rate that is 1.4 times the rate of [white people]. Hispanic/white ethnic disparities are particularly high in states such as Massachusetts (4.3:1), Connecticut (3.9:1), Pennsylvania (3.3:1), and New York (3.1:1).³⁹

The disproportionate levels of incarceration of people of color represent yet another layer of vulnerability among incarcerated elderly individuals. The Sentencing Project found that “people of color are frequently given harsher sanctions because they are perceived as imposing a greater threat to public safety and are therefore deserving of greater social control and punishment.”⁴⁰ This means that since people of color are statistically more likely to receive longer sentences they are therefore more likely to grow old in prison.

Gender

The Prison Policy Initiative reports that in 2010 there were only 126 women incarcerated per 100,000 women, compared with 1,353 men per 100,000 men.⁴¹ Because of this disparity, it is likely that prison medical staff will be less well-equipped to deal with the different problems faced by aging women that are not faced by aging men. Further, stories about health care gaslighting have started to catch the public eye, with studies revealing women are prescribed fewer pain relievers than men, are less likely to be admitted due to chest pain, and face increased likelihood of undertreatment.⁴² A flood of stories from women across the country revealed a disturbing trend:

³⁹ Nellis, Dr. Ashley. “The Color of Justice: Racial and Ethnic Disparity in State Prisons.” Report, The Sentencing Project. Washington DC, 2016, <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>.

⁴⁰ Nellis, Ibid, 10.

⁴¹ Wagner, Peter. “Incarceration is not an equal opportunity punishment.” PrisonPolicy.org. Prison Policy Initiative, 28 August, 2012. <https://www.prisonpolicy.org/articles/notequal.html>.

⁴² Feters, Ashely. “The Doctor Doesn’t Listen to Her. But the Media Is Starting To.” TheAtlantic.com. The Atlantic, 10 August 2018. <https://www.theatlantic.com/family/archive/2018/08/womens-health-care-gaslighting/567149/>.

many doctors simply do not take women's complaints seriously. In prison, this problem worsens. The National Commission on Correctional Health Care (NCCHC) found that women do not receive annual gynecological exams and that most prison medical staff are not trained in obstetrics or gynecology.⁴³ This means that incarcerated women are at a high risk for having breast and ovarian cancer or abnormal Pap smears go undetected. Further, the NCCHC reported that "many prisons may be failing to recognize and prepare for the specialized physical, preventative health, social, and psychological needs of the older female inmate."⁴⁴ All of these factors make gender a potential layer of vulnerability held by elderly incarcerated persons.

Responses from Different Cultures

The response to the incarceration of elderly persons is vastly different in the United States than it is in some other cultures. Specifically, where a culture focuses more on the responsibility of the community than on the individual it is far less likely that incarcerated elderly persons will face a lack of adequate health care and other mistreatments. Wiebke Bretschneider and her team conducted a study to compare policies on elderly incarcerated persons throughout Europe and the United States. She found that while there is some "soft law" on the subject there is often no enforceable standard.⁴⁵ "Soft Law" as defined by Oxford Bibliographies refers to treaties, resolutions, and other written agreements which are legally unenforceable, unlike statutes, codes, or Court decisions. The exact definition of "soft law" is widely debated, but generally speaking

⁴³ National Commission on Correctional Health Care Board of Directors. "Women's Health Care in Correctional Settings." NCCHC.org. National Commission on Correctional Health Care, 19 October 2014. <https://www.ncchc.org/womens-health-care>.

⁴⁴ "Women's Health Care in Correctional Settings", Ibid.

⁴⁵ Wiebke Bretschneider, Bernice Elger, and Tenzin Wangmo, "Ageing Prisoners' Health Care: Analysing the Legal Settings in Europe and the United States," *Gerontology* 59, no. 3 (2013): 267-275. DOI: 10.1159/000345333.

sets of “rules” which do not lay out minimum standards or consequences for violations can be considered “soft”. Further, she found that most (but not all) countries give the responsibility of prison health care to the Department of Justice or its equivalent rather than the Department of Health.⁴⁶ She goes on to lay out the major difference between health care for the incarcerated population and health care for the general population, writing that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (the CPT) recommends that prison medical care be closely linked with the community.⁴⁷ This conflict of interest represents the difference in healthcare for the two populations, and the CPT’s statement attempts to recognize and address this difference. However, the CPT statement is an example of soft law, and is not enforceable in Europe, let alone in the United States. Bretschneider goes on to demonstrate this lack of enforceability through three case studies: Switzerland, England and Wales, and the United States.

Switzerland

Switzerland is similar to the United States in that it divides itself into twenty-six cantons (or states), each of which defines its own laws for the care and keeping of incarcerated persons.⁴⁸ Though there is no “federal” prison system, as the Swiss government has implemented a series of agreements on the way the prisons in each canton should run.⁴⁹ However, none of these agreements set out standards for the care of elderly incarcerated persons, though the Swiss Academy of Medical Sciences has suggested that elderly incarcerated persons are entitled to the same standard of care as non-incarcerated elderly persons.⁵⁰ However, as Bretschneider points out, this is still

⁴⁶ Bretschneider et al., *Ibid*, 269.

⁴⁷ *Ibid*.

⁴⁸ *Ibid*.

⁴⁹ *Ibid*.

⁵⁰ *Ibid*, 270.

“soft” law and has no enforceability, though the Swiss Criminal Code does contain a provision that would allow enforceable standards to be developed.⁵¹

England and Wales

The British Prison System has had law aimed at protecting the rights of incarcerated persons since 1774 when the Act for Preserving the Health of Prisoners in Gaol was enacted.⁵² However, the impact of this piece of legislation was minimal.⁵³ It would take over two hundred years for meaningful legislation to be passed in the form of the Prison Rules of 1999.⁵⁴ Unfortunately, the Prison Rules of 1999 are soft law; they provide a framework, but offer up no minimum standards nor consequences for failing to meet these standards.⁵⁵ The English prison system has made one notably meaningful step: in 2004 the National Health Service assumed responsibility for the health of incarcerated persons.⁵⁶

France

Eva Stiner discusses the French approach to early release.⁵⁷ Stiner details the 2003 French law which states: “The sentence may also be suspended... for prisoners whose life expectancy is threatened or whose state of health is incompatible with detention...”⁵⁸ Stiner criticizes the new law, arguing that it is too vague and would allow potentially dangerous prisoners to be released without considering the level of threat posed to society.⁵⁹ However, Stiner also notes that in the

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Eva Stiner, “Early release for seriously ill and elderly prisoners: Should French practice be followed?” *Probation Journal: The Journal of Community and Criminal Justice* 50, no. 3 (2003): 267-276.

⁵⁸ Stiner, *Ibid.*, 269.

⁵⁹ *Ibid.*

year since the enactment of the law only 21 people were granted medical parole, which she attributes to a lack of family members and lawyers capable of applying for parole on the incarcerated person's behalf.⁶⁰ It should be noted that this is also a common barrier to programs such as compassionate release in the United States, especially for incarcerated persons suffering from illnesses such as dementia who cannot navigate the process on their own. Despite her criticisms, Stiner is sure to note how this law represents an attempt on the part of the French government to respond to human rights criticisms.⁶¹

Israel

Dr. Israel Doron conducted a study on the experience of elderly incarcerated persons in Israel which sheds light on the nature of this incarceration.⁶² Much like in the United States, the population of elderly incarcerated persons in Israel is growing at an alarming rate.⁶³ Doron finds a discrepancy in the way scholars have reported on the condition of elderly incarcerated persons in Israel. A 1973 study found that Israeli courts treated older defendants with more clemency, but that those who were imprisoned "lived disadvantaged and dependent lives."⁶⁴ On the other hand, a 1977 study found that elderly incarcerated persons were well-cared for and respected.⁶⁵ One observation of note is that of the twelve individuals examined in the study ten of them were serving sentences of eight years or less, with eight serving sentences of less than five years and four serving less than two years.⁶⁶ While Doron relied on a very small sample, it is interesting to note the

⁶⁰ Ibid, 271.

⁶¹ Ibid, 274.

⁶² Doron, Israel, "Heaven or Hell? Aging Behind Bars in Israel," *Hallym International Journal of Aging* 9 No. 2 (2007): 145-159. Accessed 26 January, 2020. Doi: 10.2190/HA.9.2.e.

⁶³ Ibid, 146.

⁶⁴ Ibid, 147.

⁶⁵ Ibid.

⁶⁶ Ibid, 150.

relative brevity of the sentences, especially when contrasted with the staggering figure that 40.6% of elderly incarcerated persons in U.S. state facilities are serving twenty years to life.⁶⁷ Doron's conclusion is that the "older prisoner's wing of the Ma'asiyahu Prison was considered a sort of 'city of refuge.'"⁶⁸ While the interviewees described their existence as being "in a prison", one said "it's ten times better than in an old-age home."⁶⁹ Doron argues that creating a separate wing for "mature" prisoners can be beneficial, but that further study is needed to fully develop what this ideal wing would look like.⁷⁰ However, based on Doron's work it appears that Israel tends to be more forgiving in its sentencing of elderly persons and that they tend to understand how to mitigate the risk faced by these individuals in a way that preserves a sense of community.

American Constitutional Precedent

The American Declaration of Independence promises all persons the rights of life, liberty, and pursuit of happiness.⁷¹ Further, the Constitution and Bill of Rights promise to protect the fundamental rights of each citizen. Wherever these rights are challenged stands a threat to these foundational promises. In *Turner v. Safley*, the Supreme Court of the United States wrote "Prison walls do not form a barrier separating prison inmates from the protections of the Constitution."⁷² The incarceration of elderly persons who are either physically or mentally incapable of committing further crimes is a violation of their rights under both the Declaration of Independence and the U.S. Constitution. In this section, I will analyze the legal and Constitutional precedent establishing requirements for the care of elderly incarcerated persons.

⁶⁷ Cartwright 70.

⁶⁸ Doron 151.

⁶⁹ Ibid, 152.

⁷⁰ Ibid, 157.

⁷¹ Thomas Jefferson, et al, "Declaration of Independence." July 4, 1776. Manuscript/Mixed Material.

<https://www.loc.gov/item/mtjbib000159/>.

⁷² *Turner v. Safley*, 482 U.S. 78 (1987).

The standard of proof for an eighth amendment violation regarding medical care in prisons is “deliberate indifference”.⁷³ In this case, the Supreme Court of the United States defines what “deliberate indifference” means from a legal standpoint. The facts for this particular case involve a trans woman who alleges that her transfer from one facility to another, more violent facility represented deliberate indifference on the part of prison staff to her safety due to her being brutally attacked upon transfer. The Supreme Court has found on several occasions that “The Constitution ‘does not mandate comfortable prisons,’⁷⁴ but neither does it permit inhumane ones... ‘the treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment.’⁷⁵ However, in order for conditions to meet the “deliberate indifference” standard two prongs must be met: first, “the deprivation alleged must be, objectively, ‘sufficiently serious’.”⁷⁶ Second, prison officials must have a “sufficiently culpable state of mind.”⁷⁷ In other words, “deliberate indifference” is “more blameworthy than negligence.”⁷⁸ The Court found that “Eighth Amendment liability requires ‘more than ordinary lack of due care for the prisoner’s interests or safety.’”⁷⁹ The following segments taken from *Farmer* are lengthy, but it is important to understand the exact language the Court uses to establish precedent. The Court found that it requires

something less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result... With deliberate indifference lying somewhere between the poles of negligence at one end and purpose or knowledge at the other, the Courts of Appeals have routinely equated deliberate indifference with recklessness... It is, indeed, fair to say that acting or failing to act with deliberate

⁷³ *Farmer v. Brennan, Warden, et al.*, 511 U.S. 825 (1994).

⁷⁴ Citing *Rhodes v. Chapman*, 452 U.S. 337, 349 (1981) and *Helling v. McKinney* 509 U.S. 25 (1993)..

⁷⁵ Citing

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ Citing *Whitley v. Albers*, 475 U.S. 312, 319 (1986) and *Farmer v. Brennan*, *Ibid.*

indifference to a substantial risk of serious harm to a prisoner is the equivalent of recklessly disregarding that risk.⁸⁰

The Court's ultimate determination is as follows:

We hold instead that a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference. This approach comports best with the text of the Amendment as our cases have interpreted it. The Eighth Amendment does not outlaw cruel and unusual 'conditions'; it outlaws cruel and unusual 'punishments.'

In other words, the court ultimately found that only wherever a prison official knows of a risk and ignores it can they be found to have acted (or failed to act) with deliberate indifference to these conditions.

I find the Court's definition in this case to be far too broad. In particular, I take issue with the Court's determination that "deliberate indifference" requires something more than negligence. During their incarceration, these individuals exist under the care of the state. Therefore, it is the state's responsibility to provide humane conditions, and these conditions include adequate medical care and protection from violence. While recklessness on the part of prison officials would certainly breach this duty, the Court does not go far enough to define what constitutes deliberate indifference. The four basic prongs of negligence are 1) duty, 2) breach, 3) cause, and 4) harm. The Court found in *Estelle v. Gamble* (cited in the Introductory Chapter) that prisons have a Constitutional duty to provide adequate health care, meeting the first prong. Where ever the state fails to do so there is a breach, as they have not fulfilled their duty, meeting the second prong. The third and fourth prongs are usually intertwined in that they require the breach to have effectively

⁸⁰ Ibid.

caused harm to the non-breaching party.⁸¹ As seen through first hand testimonials given throughout this thesis, failure to provide adequate health care directly leads to both physical and mental harm to incarcerated persons. Because of the harm caused, and because this harm is unnecessary and non-punitive, the Court should have utilized the prongs of negligence rather than recklessness in defining deliberate indifference. Lack of knowledge is not an excuse for failing to provide individuals who are completely and fully dependent on the state with adequate health care.

Summary

Ghandi once said “all criminals should be treated as patients and the jails should be hospitals admitting this class of patients for treatment and cure. No one commits crime for the fun of it.” This interpretation holds true for the criminal justice system as a whole (particularly where defendants are mentally ill or have a history of substance abuse). It is particularly relevant when examining the rights of elderly incarcerated individuals. As both U.S. and international courts have established, health care in prison is a fundamental human right which cannot be compromised. The social, familial, cultural, and financial implications of this incarceration cannot be ignored: the system as it currently exists violates human rights. I think of the many stories I have read throughout the course of my research—individuals denied healthcare and adequate living conditions during the course of their incarceration. These stories are, unfortunately, not rare. As Constitutional precedent and independent research has established, the United States and each of the fifty states have a duty to care for those individuals housed in government prisons. Anything less and the government will have failed in its most basic and essential role.

⁸¹ Usually referred to as a “direct and proximate cause”, meaning the breach itself must have directly caused the harm. For example, if an incarcerated person requires a set amount of insulin to manage a diabetes diagnosis and the prison fails or refuses to provide said insulin, that would be a direct and proximate cause of any complications the incarcerated person faces as a result of the lack of insulin.

Conclusion

Throughout this thesis I have laid out the specific circumstances of elderly incarcerated persons and the theological and legal reasoning for a moral response. Much like a criminal defense attorney, my goal is to advocate for the humane and dignified treatment of incarcerated persons, not to justify criminal behavior. This thesis aims to advocate for the 2,521 elderly persons incarcerated in Kentucky and, more broadly, for the 131,500 elderly persons incarcerated across the United States. Each of these individuals is subjected to inhumane treatment in one way or another, whether it be separation from their family members or relying on a doctor with a restricted license and history of malpractice to provide them with medical care. In the introductory chapter, I explained the differences between the retributive, utilitarian, and redemptive schools of thought. Currently, our system reflects the retributive and utilitarian schools. Its focus is on keeping criminals off the streets and punishing them for what they have done. However, the USCCB said it best when they wrote “seek justice, not vengeance.” They illustrated the point so well that I chose it as the title for this project. The point of incarceration is justice, and justice is not possible without redemption. Utilizing both a theological and legal lens, I underscore here what redemption requires.

Theologically, redemption requires an in-depth understanding of universal dignity. Biblically speaking, Christ identifies consistently with the “least of these”—people in poverty, those who are sick, and in prison. Biblical teaching is rooted in a prophetic tradition in which justice demands real criticism of the system as it stands. Beyond scripture, the USCCB teaches that both victims and offenders are made in the image of God. This means that no human being can take away the God-given dignity of another, as punishment or otherwise. In fact, their inherent dignity requires the community to take an active role in their redemption. Moreover, penance is a

community sacrament. Each of the four steps requires some level of community participation. But, the final step and most significant, absolution, requires the community's forgiveness and willingness to welcome the repentant back into society. Human dignity is at the core of compassionate care, and the lens through which we should view the incarceration of the elderly. If dignity is tied to redemption then the current treatment of elderly incarcerated person is unjust, and therefore, we must challenge and transform the current system and approach to sentencing.

Transforming the current system and approach will be difficult. One reason for this is that policymakers and their donors want the voting public to be apathetic. Inattention to current events and human rights violations allows them to line their own pockets while taking away from the most vulnerable. However, I have shown why apathy is immoral. One of the tests of a truly great society is the way it treats its most vulnerable, least powerful members. Whenever society allows incarcerated persons to go without basic rights such as health care and humane treatment that society cannot claim to be just. In the US, the economic impact of incarceration coupled with the impact on families creates a human rights crisis. Furthermore, formerly incarcerated people have reported that their incarceration "instantly destroyed my family." This destruction of families is anything but just, and only serves to discourage any redemption. Redemption cannot happen in isolation. While there are layers of vulnerability to be considered, perhaps in future research, the truth remains that elderly incarcerated persons are an incredibly vulnerable and marginalized group, and society is failing them. Constitutionally, they have a right to adequate health care. Society has failed them. They have a right to keep in touch with family. Society has failed them. They have a right to live fulfilling and meaningful lives. Society has failed them. Time and again apathy has won out over what is legally mandated, and what is legally mandated has fallen short of moral necessity.

The apathy I have criticized throughout this project may seem entirely theoretical. However, as I write this conclusion there is a very real example of how the ruling class is apathetic toward the plight of the vulnerable. I am writing this conclusion while social distancing during the COVID-19 pandemic. Many other United States residents are doing the same. The theory behind social distancing is that it “flattens the curve”, slowing the spread of the disease and attempting to lessen the risk that hospitals and other health care providers will be overwhelmed. However, on March 22, 2020 President Trump took a different approach, tweeting (in all caps) “WE CANNOT LET THE CURE BE WORSE THAN THE PROBLEM ITSELF.” In the eyes of the current administration, the blows being inflicted on the economy are far more damaging than the loss of human lives being foretold by health officials across the globe. In other words, the ruling class has, in the words of writer Ashley Ford, decided that “some of you will have to die so that I never have to live like you.” Perhaps referring to this attitude as apathetic is too kind. This attitude by many high-ranking officials shows that they will always, even in the face of pandemic, value profits over the lives of the very people they are sworn to protect. The reality is that this virus will kill a lot of people unless everyone is willing to make sacrifices. And the majority of the people it will kill are not social and economic peers of Donald Trump and his administration. They are low-income individuals who do not have steady health care, who suffer from prior health related problems and who are, largely, elderly. The people who will suffer the most devastating ramifications of this illness have much more in common with the elderly incarcerated persons discussed in this thesis than they have with the political figures who are demanding their sacrifice in exchange for return on investment from their Wall Street profiles.

It is vital to understand that prison walls offer no protection from the ramifications of COVID-19. There is a grassroots movement in New York, for instance, pressuring Governor

Andrew Cuomo to grant clemency to elderly incarcerated persons in New York state prisons. One member of this movement (and formerly incarcerated person) wrote “during my 38 years in prison I saw how other health crises resulted in the mass loss of human life. I’m terrified for my friends in this moment in which coronavirus continues to spread.”¹ The fact is that if the virus is carried into a prison it will likely devastate the population, particularly the elderly incarcerated persons housed there. Younger incarcerated persons assisting the elderly, or interacting with those in the general population, may be asymptomatic carriers of the virus and pass it onto those most medically vulnerable. Prison medical staff who are providing health services to these individuals may be sources of infection. Even correctional officers are potential carriers of the virus. There is no social distancing in prison, and the already overwhelmed health care system is not at all prepared for the ramifications of this pandemic. The virus does not care what the courts have said—it is a death sentence in and of itself. While it is certainly an extreme and unprecedented event, the outbreak of COVID-19 highlights just how vulnerable these individuals are, and just how important it is to engage in liberative advocacy on their behalf.

In response to the COVID-19 outbreak Kentucky Governor Andy Beshear announced his intent to grant clemency to certain incarcerated persons, specifically those near the end of their sentence and with chronic or terminal illnesses. While this action on Governor Beshear’s part shows a recognition of the risk COVID-19 poses to incarcerated persons, it forgets the reality of early release for elderly incarcerated persons. As discussed earlier, “compassionate release” often leads to homelessness, complete lack of medical care, and, in the worst cases, death. While Governor Beshear’s attempt at recognizing this problem is commendable, it is simply not enough.

¹ Saldana, Jose. “Clemency is needed for incarcerated New Yorkers vulnerable to coronavirus.” *Lohud* (Hudson Valley, New York), March 18, 2020. <https://t.co/YZ1w87iq14?amp=1>.

Liberative advocacy takes many forms. Every effort must be made to not only open our own individual eyes, but to open as many eyes as we can to the plight of these individuals. This means finding local, state, and national advocacy groups (a starter list can be found in Appendix B) and donating time, money, and resources wherever and however you can.² It means contacting state and national politicians to advocate for policies which help these individuals. It means knowing how to hold prisons accountable by supporting responsible journalism. On a more personal level, advocates can join a prison pen pal program (resources listed in Appendix B) to offer support. Advocates who wish to take the extra step can look into guardianship programs for elderly incarcerated persons who have applied for medical leave or compassionate release. In the voting booth, advocates can vote for candidates who feature a strong prison reform message. Policies to look for beyond empty platforms include medical care in prison, clemency policies, and abolishment of private prisons. Holding elected officials, including judges, legislators, and attorney generals, accountable is a major step in advocacy.

Liberative advocacy is not limited to political action. Advocates must work to ensure that religious leaders understand compassionate care as a core goal. A redemptive solution means providing an outlet for incarcerated persons to reconcile with themselves, the community, and, for religious persons, with God. Churches can do this by forming programs and groups which visit prisons and engage with these individuals. Religious leaders can weave liberative advocacy into their preaching, and can make sure that their congregations understand that scripture requires us to pursue justice. Love thy neighbor does not stop at the prison gates.

² As previously stated, this thesis was published in the midst of the COVID-19 outbreak. Readers are encouraged to participate in liberative advocacy in a way which preserves their own health and well being and the health and well being of others.

To reiterate Churchill: “the mood and temper of the public with regard to the treatment of crime and criminals is one of the most unfailing tests of the civilisation of any country.” It is the duty of each and every person to require US society to treat the incarcerated with dignity and humanity, regardless of age and sentence. Wherever the goal is vengeance, demand justice. After all, any criminal justice system which treats their most vulnerable with the same apathy and disdain with which the elderly and incarcerated are treated in this country is not just at all.

APPENDIX A¹

NOTE: States with no or \$0 minimum wage for prisons are shaded in pink. States with no or \$0 co-pay are shaded in green. For both scenarios, hours of work, state minimum wage, and equivalent co-pay have been left blank. Federal and Kentucky data have been shaded dark grey for ease of access.

STATE CORRECTIONAL FACILITY CO-PAY—MINIMUM WAGE CALCULATIONS AND COMPARISONS

State	Co-Pay or Fee	Prison job minimum wage	Hours of work to afford one co-pay	State minimum wage	Equivalent co-pay at minimum wage (hours * minimum wage)
Alabama	\$4	\$0	--	--	--
Alaska	\$5	\$0.30	16.67	\$9.80	\$163.33
Arizona	\$5	\$0.15	33.33	\$10	\$333.33
Arkansas	\$3	\$0	--	--	--
California	\$5	\$0.08	62.5	\$10.50	\$656.25
Colorado	\$3	\$0.13	23.08	\$9.30	\$214.62
Connecticut	\$3	\$0.13	23.08	\$10.10	\$233.08
Delaware	\$4	n/a	--	--	--
Florida	\$5	\$0	--	--	--
Georgia	\$5	\$0	--	--	--
Hawaii	\$3	\$0.25	12	\$9.25	\$111
Idaho	\$5	\$0.10	50	\$7.25	\$362.50
Illinois	\$5	\$0.09	55.56	\$8.25	\$458.33
Indiana	\$5	\$0.12	41.67	\$7.25	\$302.08
Iowa	\$3	\$0.27	11.11	\$7.25	\$80.56
Kansas	\$2	\$0.09	22.22	\$7.25	\$161.11
Kentucky	\$3	\$0.13	23.08	\$7.25	\$167.31
Louisiana	\$3	\$0.04	75	\$7.25	\$543.75
Maine	\$5	n/a	--	--	--
Maryland	\$2	\$0.15	13.33	\$8.75	\$116.67
Massachusetts	\$3	\$0.14	21.43	\$11.00	\$235.71
Michigan	\$5	\$0.14	35.71	\$8.90	\$317.86
Minnesota	\$5	\$0.25	20	\$9.50	\$190.00
Mississippi	\$6	\$0.00	--	--	--
Missouri	\$0	\$0.05	--	--	--
Montana	\$0	\$0.16	--	--	--
Nebraska	\$0	\$0.16	--	--	--
Nevada	\$8	n/a	--	--	--

¹ All information in chart sourced from The Prison Policy Initiative; chart design my own.

New Hampshire	\$3	\$0.25	12	\$7.25	\$87
New Jersey	\$5	\$0.26	19.23	\$8.44	\$162.31
New Mexico	\$0	\$0.10	--	--	--
New York	\$0	\$0.10	--	--	--
North Carolina	\$5	\$0.05	100	\$7.25	\$725
North Dakota	\$3	\$0.19	15.79	\$7.25	\$114.47
Ohio	\$2	\$0.10	20	\$8.15	\$163.00
Oklahoma	\$4	\$0.05	80	\$7.25	\$580
Oregon	\$0	\$0.05	--	--	--
Pennsylvania	\$5	\$0.19	26.32	\$7.25	\$190.79
Rhode Island	\$3	\$0.29	10.34	\$9.60	\$99.31
South Carolina	\$5	\$0.00	--	--	--
South Dakota	\$2	\$0.25	8	\$8.65	\$69.20
Tennessee	\$3	\$0.17	17.65	\$7.25	\$127.94
Texas	\$100/year	\$0.00	--	--	--
Utah	\$5	\$0.40	12.5	\$7.25	\$90.63
Vermont	\$0	\$0.25	--	--	--
Virginia	\$5	\$0.27	18.52	\$7.25	\$134.26
Washington	\$4	n/a	--	--	--
West Virginia	\$5	\$0.04	125	\$8.75	\$1,093.75
Wisconsin	\$7.50	\$0.09	83.33	\$7.25	\$604.17
Wyoming	\$0	\$0.35	--	--	--
Federal	\$2	\$0.12	16.67	\$7.25	\$120.83

APPENDIX B

Local Advocacy Groups (Louisville, Kentucky)

- Mission Beyond Bars and Beyond
 - <https://missionbehindbarsandbeyond.org/index.html>
 - Mentor, volunteer, donate, advocate
- Louisville Family Justice Advocates
 - <https://familyjusticeadvocates.org/how-you-can-get-involved/>
 - Donate, volunteer, participate in quarterly meetings

State Advocacy Groups (Kentucky)

- ACLU of Kentucky
 - <http://aclu-ky.org>
 - Donate, volunteer, email/write
- Appalachian Research and Defense Fund
 - <http://www.ardfky.org>
 - Donate
- Prison Fellowship Kentucky
 - <https://www.prisonfellowship.org/about/justicereform/legislation/state-issues/kentucky/>
 - Donate and volunteer

National Advocacy Groups (United States)

- A comprehensive list can be found here:
<https://libraryguides.law.pace.edu/c.php?g=319375&p=2134160>

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