

Hard Times After Hard Time

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"Joint might'a broke him."

"Boss, you're talkin' about a homie walked up and shot Elijah Davis, broad daylight, at Pennsy and Gold, then picked up the phone, dialed 911, told the police, 'I just shot a nigger — come get him.' That dude ain't breakin'."

— Avon Barksdale and Roland "Wee-bey" Brice, "Time After Time," Season Three

On his last day in prison, Dennis "Cutty" Wise already has a job offer.

A former soldier in the Baltimore drug trade, Cutty has reached the end of a fourteen-year prison stint in Jessup, Maryland. ("Cutty" comes from the prison's nickname, "The Cut.") Before he has even been released, a prospective employer seeks him out.

In this case, of course, it's drug kingpin Avon Barksdale who offers Cutty his old job as enforcer. Perhaps because he's been off the streets for so long, Cutty is initially reluctant, wanting a fresh start. But the drug game, with its promise of money, women, and familiarity, is a strong temptation, especially given the relative lack of readily available legitimate alternatives. Over *The Wire's* last three seasons, we watch him struggle to rebuild his life after prison. In one of the show's few happy endings, Cutty

finds fulfilling, legal work running a boxing gym for inner-city boys — but not before falling briefly back into the drug trade.

Cutty's story throws into sharp relief the challenges many former prisoners face in trying to rebuild their lives after their punishments end. Many ultimately return to crime. The Bureau of Justice Statistics reports that more than forty percent of prisoners released in 2004 returned to prison within three years. We could interpret this as evidence that those who commit crimes typically are just bad people. It's in their character: Bad people don't change, and so of course they commit crimes again. But here's another suggestion: When we consider the obstacles our society puts in the path of former prisoners trying to rebuild their lives, maybe we shouldn't be surprised by how many wind up committing crimes again in fairly short order.

In principle, when offenders' punishments end, they have paid their debts to society and are restored to full membership as citizens in the political community. In practice, though, individuals leaving prison often find little institutional support — and in some cases steep institutional hurdles — in finding work, housing, or other fairly basic goods that many of us take for granted. What's more, as Cutty comes to realize, the stigma of "criminal" often remains even after punishment ends. The cumulative impact of these factors is actually to increase the risk that individuals will fall back into criminal behavior.

Cutty's story raises important questions for moral and legal philosophy about the significance of completing one's punishment: Specifically, how does a person's moral status change with his transition from prisoner to former prisoner? And what obligations, if any, does society have to citizens who have engaged in wrongdoing but have, at least in

theory, paid their debts and thus been restored to full membership in the society? Cutty and other offenders face steep hurdles upon release from prison — obstacles to employment, housing, education, political participation, public assistance, and other goods. Defenders of these restrictions may claim that criminals lose their rights to the same opportunities as everyone else, or that the community has a right to protect its members against these dangerous people. But if we take seriously the commonly expressed notion that ex-offenders have paid their debts to society, then restrictions that target ex-offenders seem unfair. If Cutty has truly paid his debt, then isn't he entitled to many, if not all, of the same opportunities as everyone else to secure the basic goods of life? Obstacles to basic goods such as housing, jobs, and education serve, in effect, to continue punishing ex-offenders, even after their formal sentences have ended and their debts to society supposedly have been paid.

Debts paid?

When Cutty is released from Jessup Prison, he joins roughly seven hundred thousand people who leave U.S. federal or state prisons each year. These people immediately face a number of important challenges: finding a place to live and a job, rebuilding their networks of family and friends, and in general learning to cope on the outside. For Cutty, these challenges loom especially large, as he has spent fourteen years behind bars. For nearly a decade and a half, he lived in a completely controlled environment; he was told where and when to eat, sleep, shower, exercise, and whatever else. Now he must rebuild virtually every aspect of his life.

The rebuilding process is made more difficult by federal and state policies restricting ex-offenders' access to public housing, many jobs, welfare, federal student loans, and the vote. There are plenty of others. Some prevent ex-offenders from holding public office, serving on a jury, or adopting or fostering a child. All of these policies impose limits on ex-prisoners that the rest of us don't face.

Are these policies morally justified? If we take seriously the common notion that, upon finishing punishment, a person has paid his debt to society, then it's not clear how we can justify continuing to discriminate against ex-offenders in all the ways we do now. Imagine instead that on Cutty's last day in Jessup, the warden came to him and said, "Well, you've completed your prison sentence, but we're going to go ahead and keep you in here permanently." Most of us would find this appalling. It's unfair to keep someone behind bars when he's already served his time, already paid his debt. So why, then, should we think it's okay to restrict ex-offenders' access to jobs, housing, or public assistance, or their right to vote? At least, there should be a strong presumption in favor of treating ex-offenders with equal respect, with giving them the same opportunities as the rest of us to secure the basic goods of life. If we can ever be justified in limiting ex-offenders' opportunities in the ways we do now, there had better be strong, compelling reasons for doing so.

Safety first

The most commonly cited justification of ex-offender bans is that they help keep the community safe. This argument is a version of consequentialism, an ethical view that holds, roughly, that actions, rules, or in this case public policies are right or wrong

according to the overall consequences they promote. Restrictions on housing, for instance, emerged in part from concerns about the safety of those living there. In the 1990s, faced with growing drug and gang violence in many public housing projects, Congress enacted laws permitting housing authorities to deny housing to anyone with criminal convictions.

We find similar consequentialist concerns motivating support for myriad employment bans on ex-offenders. These laws vary from state to state, but among the jobs restricted under various statutes are teacher, accountant, chiropractor, architect, barber, roofer, cosmetologist, interior designer, land surveyor, and farm labor contractor. Typically, as with housing restrictions, proponents of job bans point to public welfare as the central reason for excluding ex-offenders. If drug dealers and gang members make life dangerous for everyone else living in housing projects, then isn't it justified to get rid of the drug dealers and gang members? Likewise, isn't it permissible to bar someone once convicted of a sex offense from being a kindergarten teacher?

Maybe. But our intuitions about these cases may differ depending on how we flesh out the details. Makes sense to keep drug dealers and gang members out of the projects, right? But what about Cutty, whose gang activity was decades ago, and who now just wants to get his life back on track? Or what if Reginald "Bubbles" Cousins, during his struggles with heroin addiction, had received a drug conviction? Should we conclude that he represents too much of a threat to be eligible for public housing? Similarly, makes sense to keep sex offenders out of teaching positions, right? But what about someone convicted twenty years earlier for statutory rape because, as an eighteen year old, he had sex with his girlfriend, who was sixteen?

Policies that deny housing or jobs to anyone with a criminal record inevitably restrict not only those who represent a genuine danger, but also others who pose no real threat. These policies cast too wide a net. In other words, they're overinclusive. Sometimes overinclusive policies may be warranted — if we can't tell the dangerous former sex offenders from the non-dangerous ones, then maybe keeping students safe requires a general ban. But given the significant hardships housing and employment bans place on ex-offenders, we should be very careful about using overinclusive policies. In fact, the burden should fall to proponents of such policies to explain why they are necessary — why other, more tailored policies are inadequate.

Notice, too, that even if the community's interest in public safety could justify restrictions on housing or employment, it's hard to imagine how such concerns could justify other obstacles ex-offenders face, such as bans on student loans or voting. Imagine that Malik "Poot" Carr, a Barksdale drug dealer who served a prison stint and later left the drug game, wanted to apply for a federal student loan. Does barring Poot from student loan funding really keep anyone safer? Some have argued that there's a danger in letting ex-offenders vote, because criminals may engage in election fraud, or vote to support corrupt government officials or weaker criminal law enforcement. But ex-offenders are a relatively small portion of the overall population, and there's no reason to think they'd coordinate their votes. Not surprisingly, there's no evidence that states that currently allow ex-offenders to vote have weaker criminal laws or higher rates of voter fraud than states that don't.

All the pieces matter

Most importantly, because a consequentialist defense of housing and employment bans claims that these bans promote better overall consequences, it matters whether they actually do this. A central question, of course, is whether they promote community safety, but we also need to consider other expected outcomes of these policies. If we're assessing what will promote the best overall consequences, then all of the likely benefits and harms are relevant; in a sense, all the pieces matter.

First, we can address the purported benefits in terms of community protection. The idea is that these bans prevent ex-offenders from being in situations in which they might endanger others. In fact, criminological research indicates that ex-offenders who are unable to find housing and jobs are more likely to commit new crimes. This shouldn't seem surprising. If we give people legitimate avenues to secure housing, to work and provide for themselves and their families, then they won't need to turn back to crime to get by. On the other hand, when we throw up roadblocks for ex-offenders, well, we see Cutty briefly fall back into his old role in the drug trade when no fulfilling job alternatives seem readily available. And of course, more crime means more victims and less public safety.

There's reason to be skeptical, then, about whether ex-offender bans do keep the community safer. Even if the bans did promote public safety, though, this wouldn't necessarily mean they're justified on consequentialist grounds. A consequentialist assessment would also need to consider other potential consequences of the bans. Consider housing, for example. Most obviously, the bans mean that public housing often isn't accessible for ex-offenders. This is an especially heavy burden given that private rentals typically aren't a real option, either. Most private landlords, motivated by similar

safety concerns, require criminal background checks for prospective renters. As a result, many ex-offenders are effectively barred from private rentals and public housing. With other options blocked, many former offenders must turn to homeless shelters, which ironically risks violating an explicit provision of their parole: not to associate with other ex-offenders.

Here, Cutty's relatively fortunate. He returns home to live with his mother, in a room in her basement. But even living with family isn't always an option for ex-offenders: The public housing bans allow authorities to evict entire households if anyone living in the home has a criminal record, so families are often afraid to house relatives returning from prison. This can cause serious tension within families.

What about the consequences of employment bans? A little background is relevant. Getting a job, especially in the current job market, would be a challenge for most of us. For ex-offenders such as Cutty, the challenge is especially formidable. Most prisoners have little education and lack skills needed to find work. They don't typically learn these skills in prison: Faced with tight budgets, federal and state authorities have made major cutbacks in funding for prison education and vocational programs. Ex-offenders also must overcome the persistent stigma of "criminal." Employers commonly use criminal background checks to weed out applicants they consider risky.

Other than the standing offer to rejoin Barksdale's organization, Cutty doesn't know about any other jobs or how to find them. His parole officer isn't much help, providing only a standard reminder to get a job, stay away from known criminals, and keep the parole office updated on where he's living. Cutty asks if there are still

opportunities for day labor each morning at the market. “I don’t know, and I don’t care,” says his parole officer. “Just get a job, any job” (“All Due Respect,” Season Three).

Against this backdrop, ex-offender employment bans can create especially steep challenges. Ex-offenders are commonly disqualified from positions that have nothing to do with their convictions. And for those who did receive vocational training in prison, they may find themselves barred from doing these jobs once released. Some prisons provide barber training, for instance, but most states ban ex-offenders from being barbers. The end result of all these restrictions is that former prisoners may not be able to find work for months after release. And here’s some irony: In many states, failing to secure a job is a parole violation, which could thus land ex-offenders back in prison. As Preston “Bodie” Broadus once said, “This game is rigged, man” (“Final Grades,” Season 4).

All of the likely burdens caused by ex-offender bans must be weighed against the potential benefits in a consequentialist assessment. We can agree that community safety is an important goal while still being skeptical about whether these restrictions keep the community safer, much less safe enough to offset the burdens the bans impose. Maybe protecting certain vulnerable populations from dangerous people is an important enough concern to justify particular, narrowly tailored ex-offender restrictions in some cases. But community safety justifies quite a bit less than the full range of restrictions ex-offenders face today.

Not dangerous, just incompetent

Ex-offender restrictions aren't only defended on community safety grounds. A different sort of argument claims that, whether or not ex-offenders are dangerous, they are often not competent to make the same choices as the rest of us.

The competence argument is often used in defense of voting bans. As of 2009, thirty-five states restricted people with felony convictions from voting while they're on parole. So when, on election day in the mayor's race, a canvasser for the Clarence Royce ticket approaches Cutty to solicit his vote, Cutty tells him he isn't eligible to vote, because he's "on papers," the common term for being on parole or probation ("Margin of Error," Season Four). In eleven states, voting rights aren't automatically restored even after people complete parole. And although many states offer processes for restoring voting rights, these are too cumbersome and time-consuming to be a real option for most ex-offenders. The competence argument claims that by breaking the law, offenders show that they don't have the competence, specifically the moral competence, to be entrusted with the responsibility of voting.

In the same way, if those convicted specifically of drug-related felonies have shown by their past actions that they don't have the competence to make good decisions, maybe we shouldn't entrust them with taxpayers' money, in the form of welfare, food stamps, or federal student loans. In tough economic times, why give ex-offenders public assistance if they're likely just to waste it anyway? As former Texas Sen. Phil Gramm said in pushing for the 1996 federal law that barred drug-related ex-offenders from welfare and food stamps, "Welfare shouldn't be used to support drug habits."

It's just not clear, though, why we should think that having a prior conviction is what shows that a person is incompetent to vote, or to be trusted with public assistance.

Was Cutty less competent to vote than Detective Jimmy McNulty, who hadn't voted in the 2004 presidential race and didn't even know the name of President George Bush's Democratic opponent? Competence to vote is a matter of political judgment, but there's no reason to think people without a criminal record have a monopoly on political judgment.

We might think the ban on public assistance for drug-related ex-offenders is more reasonable: As Gramm said, why should taxpayers' money be used to support drug habits? And after all, many states, including Cutty's home state of Maryland, allow former drug felons to become eligible again if they submit to random drug testing and, if needed, complete a rehab program. But not all states are so accommodating. As of 2012, at least seven states (Alabama, Alaska, Georgia, Mississippi, Missouri, Texas, and West Virginia) have retained the federal lifetime ban on both welfare and food stamps, with no provisions for ex-offenders to regain their eligibility. (In several other states, bans are irrevocable on one program or the other, but not both.)

More importantly, if our concern is to make sure those who receive taxpayer support don't use it irresponsibly, this could open doors we'd rather not open. For one thing, maybe we should start requiring mandatory drug testing for anyone who works in the public sector and so has a salary paid by tax dollars: government officials, public school teachers, public university employees, social service employees, and many others. But why stop there? People can waste taxpayer money in lots of ways other than drug use. Maybe we should start monitoring how public employees spend their salaries, to be sure tax dollars aren't being wasted. If these sound like bad ideas — if you think we

should respect people's privacy and give them the benefit of the doubt in such matters — then maybe former prisoners are entitled to the same consideration.

The fact is, people with or without criminal histories can waste money or vote unwisely. But in a liberal democracy where individual autonomy is valued, we don't typically think it's the government's business to restrict people's personal choices merely on grounds of incompetence. Choices that pose a genuine danger to others may be restricted, but as mentioned before, it's unlikely that allowing ex-offenders to vote, or to receive welfare, food stamps, or federal student loans will endanger the community. In the end, the competence argument isn't convincing.

Breaking the contract?

Appeals to the dangerousness or incompetence of ex-offenders claim that allowing them access to public housing, certain jobs, the vote, food stamps, or other goods will lead to bad consequences. But ex-offender bans aren't always defended on consequentialist grounds. Another common argument for voting restrictions holds that if a person breaks the law, he violates the social contract and so forfeits his right to have a voice in the democratic process. Judge Henry Friendly, in a 1967 decision upholding ex-offenders voting restrictions, based his view on the classical liberal philosopher John Locke's notion of society as emerging from a social contract. The idea, basically, is that by entering into society people agree to give up certain freedoms and to obey society's laws in exchange for the protections and benefits that come from living under the rule of law. A person who breaks the law, Friendly argued, gives up the right "to participate in

further administering the compact.”¹ In other words, a criminal demonstrates a lack of respect for the rule of law, and someone with no respect for the law has no right to have a voice in what the laws are.

However tempting this rationale may at first seem, it doesn’t really hold up. Why should we think that criminal acts demonstrate a lack of respect for the rule of law? Many criminals are just weak willed or reckless. For that matter, many non-convicts are weak willed or reckless. Roland “Prez” Pryzbylewski was lucky that when he pistol-whipped a teenager outside the towers in Season One, he had friends on the police force who helped him avoid criminal charges. But suppose he hadn’t been so lucky, and he had been charged with assaulting the teen. Should we then have said that Prez had no respect for the rule of law, and so no right to participate in the democratic process? If Prez showed a lack of respect, it was presumably for the poor kid he blinded in one eye, not for the rule of law or the practice of voting. In the same way, the idea that all criminals show a lack of respect for the rule of law, or the democratic process, just isn’t convincing.

Incidentally, if we’re worried about people showing a lack of respect for the democratic lawmaking process, maybe we should focus less on disenfranchising ex-offenders and more on dislodging corrupt politicians — think Clay “Sheeee-it” Davis. Or if we’re concerned about people abusing their voting rights, maybe we should restrict lazy, poorly informed citizens from having a voice. Actually, that’s sometimes a tempting idea. But we don’t go that far, because we think the right to vote is too important.

Just deserts

¹ The decision was in *Green v. Board of Elections of the City of New York*.

Of course, many people might simply insist that ex-offenders don't deserve all the same benefits as the rest of us. Criminals have done bad things, they've broken laws while the rest of us have complied with the laws — even when it might've been more convenient or profitable to break them. Especially when dealing with scarce resources, whether it's the limited stock of public housing, scarce jobs, or services provided by taxpayer dollars, isn't it okay to give priority to the law abiders over the criminals?

The point here is that, in distributing society's scarce resources, it's justified to prioritize law abiders over offenders. But why should this be so? Some might say it's because unlike law abiders, offenders have done bad things. If this is the basis for barring offenders from these often crucial goods, then we should again ask about the significance of completing punishment. Again, punishment is supposedly how we hold offenders responsible for their criminal acts — it's how offenders pay their debts to society. But if ex-offenders have already been held responsible, if they've already paid their debts, how can it be justified to continue imposing burdens on them that others don't face? How is it just to continue extracting a debt that has already been paid?

Instead, maybe ex-offenders should go to the back of the line not because of what they've done, but because of who they are. Don't people who commit crimes show themselves to have worse moral characters than the rest of us? Maybe this is the basis for treating them unequally even after they've completed their punishments. This question of character ultimately goes to the heart of the issue of ex-offender bans.

Once a con, always a con?

“Gangster, huh?”

“Oh, you’re not that? I pulled your admissions. You were here in ’90 for a gunshot wound. And three years before that, you were here for chest surgery, from Cutty. ... And I see you’re still at it” (“Final Grades,” Season Four).

When Cutty gets shot trying to convince Michael Lee to leave the drug corners, the ER nurse assumes, given his criminal history, that he must still be in the drug game. On learning what Cutty did in the past, she draws conclusions about who he is. He was a drug soldier, a criminal, and so that’s all he’ll ever be.

In fact, by the end of *The Wire*, Cutty has found his calling as a boxing coach and mentor to young boys in the neighborhood (and seems to be getting along much better with the nurse). He has stayed away from the drug game, aside from trying to keep kids off the corners. By all accounts, he’s reformed. Wee-bey and Avon might see Cutty’s behavior as evidence that, as Avon predicted, the joint “broke” Cutty. Avon and Wee-bey have a different perspective on things from most of us, of course. What they call being “broken,” we might call reform. Either way, Wee-bey must’ve been surprised to learn that Cutty didn’t want back into the drug game. He thought Cutty would always be a soldier at heart. Unfortunately, our federal and state policies make the same inaccurate assumption that Wee-bey made about Cutty, the same assumption that his ER nurse made: that those who commit crimes never change.

It’s all too easy to assume that criminals are just bad people, irredeemable. When we assume this, it’s easier to rationalize a lot of the restrictive policies we (the law abiders, the “good guys”) now impose on ex-offenders (the criminals, the “bad guys”). But as *The Wire* shows us, things are rarely so clear cut. Jimmy McNulty’s one of the “good guys,” but he’s also deeply flawed. Omar Little is a likeable killer with a strict

moral code. Even Wee-bey, serving a life sentence for numerous murders he committed (and several he didn't commit), shows depth of character in agreeing to give guardianship of his son, Namond, to Howard "Bunny" Colvin, in hopes that Namond can stay out of the drug game and have a better life.

And as Cutty showed, even murderers can redeem themselves. Not everyone who completes his sentence is thereby reformed, but if punishment really is about paying one's debt to society, then those who serve their time earn the right to make a clean start. As they work to rebuild their lives, ex-offenders have a right not to be hamstrung by obstacles the rest of us don't face.